THE
BENTHAM
NEWSLETTER
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EDITORIAL

This issue of The Bentham Newsletter includes a wide range of articles and reviews written by the staff at the Bentham Project and by research students associated with it, and thus reflects the vitality of the Project as a centre for research. The two articles on Bentham and Paley attempt to illuminate the development of utilitarian thought in the late eighteenth and early nineteenth centuries and tackle themes which have perhaps been undeservedly neglected in more recent scholarship. The article on Panopticon is a lively contribution to the debate on Bentham's authoritarianism, while in a lighter vein three short articles deal with a visit to Bentham in 1831, the Bentham silhouette rings and the manuscript and book collection of Mr. D.R. Bentham. The issue is completed by two review articles and the regular bibliography.

As a consequence of its development as a centre for research, the Project, in conjunction with the History Department and Law's Faculty at University College London, is hoping to attract research students in history, law, economics and politics who are interested in any aspect of utilitarian thought and the historical background to Bentham's work and influence. In addition, from 1988 a new MA in Legal and Political Theory will be introduced which will offer a variety of topics, for instance British constitutional theory from 1688, theories of peace and war, political ideas at the time of the American and French Revolutions, the legal and political thought of Jeremy Bentham, and a large number of options in jurisprudence and history, and should therefore be of benefit to both home and foreign students. The course will be especially attractive to American pre-law students wishing to spend a year in London before taking up further postgraduate study.

The momentum achieved by the launch of the International Bentham Society in 1986 has been maintained. The first IBS-sponsored conference will be held at University College London on 6-7 July 1987, and with a distinguished list of speakers it promises to be an important forum for Bentham studies. Furthermore, members of IBS are entitled to purchase new additions to the Collected Works at substantial discounts: they will be pleased to hear that Correspondence, volume 7 (1802-1808), ed. J.R. Dinwiddy, and Correspondence, volume 8 (1809-1816), ed. S.R. Conway, are now in the press and will be published by Oxford University Press early in 1988.

F.R., T.P.S.
A COMPARISON OF THE MORAL THEORIES
OF WILLIAM PALEY AND JEREMY BENTHAM

T.P. Schofield

The Bentham Project, University College London

Two of the earliest historians of utilitarianism, Leslie Stephen and Ernest Albee, both marked out David Hume as the most profound exponent of utilitarian moral theory in the eighteenth century. Taking utility as the criterion of virtue, Hume had endeavoured to formulate a scientific system of morality based on empirical data. He had gone beyond the dominant contemporary notion of man as a purely self-interested individual, and had attempted to introduce an element of altruism into his analysis of human nature. The perspicacity of Hume's arguments was lost on his immediate successors, and it was left to John Stuart Mill in the nineteenth century to further the development of the theory along the lines suggested by Hume.¹

The most prominent of Hume's immediate successors were William Paley and Jeremy Bentham. Both Paley and Bentham were imbued with the empiricism of Locke and took utility as the criterion of virtue, but they differed in their attitude towards the supernatural. Paley belonged to a group of writers, including Daniel Waterland, John Gay, John Brown and Abraham Tucker, whose doctrine has become known as theological utilitarianism because of its adoption of a religious sanction for the enforcement of moral obligation: virtue would find its reward in the pleasures of heaven, and vice its punishment in the torments of hell. The doctrine was, in Stephen's view, 'a more convenient compromise between the old and the new' - the theological utilitarians, while aware of the need to establish a scientific basis for ethics, were still too much men of their own time to renounce their religious assumptions. As the eighteenth century waned, however, the appeal of theological utilitarianism diminished because, 'Heaven and hell had retired too far from men's minds, and the authority of Scripture had become too feeble to provide an effectual rule.'²

Stephen and Albee agreed that there was no substantive difference in the doctrines of Paley and Bentham despite the fact that Bentham stopped short of any appeal to the religious sanction. According to Stephen, Bentham had merely stripped Paley's system of its unnecessary theological trappings: 'The relation ... of Bentham's ethical doctrines to Paley's may be expressed by saying that Bentham is Paley minus a belief in hell-fire.'³ Albee, on the other hand, believed that Bentham was merely evading a logical difficulty in the conventional eighteenth-century utilitarian theory. Albee assumed that Bentham's theory of human nature was founded on egoistic hedonism, and unless it could be shown, he argued, that the self-interest of the individual and the interest of society would always coincide, there was no recourse but to the


²Stephen, History of English Thought, ii. 90, 105.

³Ibid., ii. 106.
doctrine of rewards and punishments after death in order to retain a notion of complete obligation." Albee went so far as to state that Paley and Bentham, along with Abraham Tucker, formed 'a perfectly definite school', and suggested that 'Bentham's non-theological treatment of Ethics merely indicates his individual attitude, and does not, in itself, represent an advance in ethical theory'. His opinion that 'Bentham contributed almost nothing of importance to Ethics, considered strictly as such', was little different from Stephen's conclusion that,

The writings in which Bentham deals explicitly with the general principles of Ethics would hardly entitle him to a higher position than that of a disciple of Hume without Hume's subtlety; or of Paley without Paley's singular gift of exposition. 5

In more recent years, Paley has been very much relegated to the status of a minor figure in the history of ideas, and his thought has received scant attention from anyone but specialists of eighteenth-century history. 6 In contrast, Bentham's ethical theory has become the subject of much scholarly interest and enquiry, 7 and a deeper understanding of this and its relation to other aspects of his thought has helped to enhance his reputation as a moralist, and thus revise his place in the history of utilitarianism. But this revision should not be taken too far: for instance, while it is easy to regard Bentham as the prophet of the new age of capital and liberalism, it is equally tempting to view Paley as a mere apologist for the corrupt practices of the eighteenth century. This is, of course, to parody both thinkers, yet it is nonetheless true that Paley based a defence of the status quo on his utilitarianism, while Bentham subjected existing institutions to scrutiny from the standard of utility and usually found them wanting. Now it would be inappropriate to try to explain their respective political views solely, or even primarily, from differences in their ethical theories, but it may be argued either that their utilitarianism was in substance the same, and therefore not a causal factor in this respect, or that there was some substantive difference which was more easily reconcilable with conservatism in the one case and radicalism in the other. Bentham himself criticized Paley's conservatism, and suggested that they were using the principle of utility in


6 Two recent studies seem to have done little to revive a more general interest in Paley: M.L. Clarke, Paley: evidences for the man, London, 1974; D.L. Le Mahieu, The Mind of William Paley: a philosopher and his age, Lincoln, Nebraska, 1976.

different ways. In a short essay entitled 'Law versus arbitrary power: - or A Hatchet for Dr. Paley's Net', written mainly in January and February 1809 but never published, in which Bentham subjected Paley's defence of capital punishment, as it was administered under English practice, to a detailed and scathing commentary, he categorized Paley as a member of 'the every-thing-is-as-it-should-be school'. As with the people at large, explained Bentham, so with Paley, practice is the only proper or intelligible standard of right and wrong: with them as with him and Blackstone, so long as every thing is as it is wont to be, every thing is as it should be. In a note to himself, Bentham asserted: 'Paley an Utilitarian - a false brother'.

Ironically the appearance in 1785 of Paley's The Principles of Moral and Political Philosophy probably had some influence in persuading Bentham to publish the work which contains the most important statement of his ethical position, An Introduction to the Principles of Morals and Legislation. Privately printed in 1780, some copies had been distributed amongst Bentham's acquaintances, but by the time Bentham left England in 1785 to visit his brother Samuel in Russia, it still remained unpublished. While in Russia, he received a letter from George Wilson who, despite criticizing certain 'weak places', was forthright in his praise of Moral and Political Philosophy, calling it 'a capital book and by much the best that has been written on the subject in this country'. In a second letter, sent after Bentham's return in 1788, Wilson, encouraging his friend to publish IPML, warned him that he might lose the claim to originality which he deserved, either through other writers reaching the same conclusions through their own researches, or through the plagiarization of IPML. He continued:

I have often been tempted to think that Paley had either seen your Introduction, or conversed with somebody that was intimate with you. There are many things in his book so like you, and so out of

The essay is at UC cvi. 199-266, while related MSS are at UC cvii. 267-77 and UC xxxv. 297-310.

UC cvii. 239.

UC cvii. 211.

UC cvii. 214. Bentham rather contradicted himself when, in a letter to Etienne Dumont of 6 September 1822 (Dumont MSS, Bibliothèque Publique et Universitaire, Geneva, 33/I, fos.167-8), he said that Paley had used the principle of utility in the same way in which he himself had done, that is in order to show 'what ought to be', while in the short version of 'The Article on Utilitarianism', written in 1829, (Deontology together with A Table of the Springs of Action and The Article on Utilitarianism, ed. A. Goldworth, Oxford, 1983, (CW), p.328), he complained that Paley had not put the principle of utility to its proper use. This latter view seems more consistent with 'Law versus arbitrary power'.

the common road, that they cannot be the production of the same person who wrote other things in the same book which are really puerile.

Indeed in the earlier letter Wilson had claimed that there existed a striking coincidence between the views of the two writers with regard to punishment. The criticisms levelled by Bentham against Paley in 'Law versus arbitrary power' should not be allowed to obscure the fact that Paley would have endorsed many of Bentham's maxims on the subject of punishment - for instance that the principal end of punishment was the prevention of crime either through the reformation of the criminal or through the setting of an example to others, that crimes were to be punished not in proportion to some standard of guilt but in proportion to the difficulty and necessity of preventing them, and that punishment itself was an evil and should be used only when it promised to exclude a greater evil. Paley, however, had not plagiarized Bentham's ideas, and Wilson's fear that a spare copy of IPML had fallen into his hands seems to have been groundless. Both thinkers had been subjected to the general influence of the writings of Montesquieu and Beccaria on criminal law, while the origins of Moral and Political Philosophy went as far back as 1767 when Paley had begun to lecture on moral philosophy at Cambridge. He became familiar with the writings of Locke, Hutcheson, Hume, Gay, and in particular Tucker, to whose work Light of Nature Pursued (1768-78) he specifically acknowledged his debt. When he left Cambridge in 1776 for a preferment in Appleby, he began to compose a treatise based on his lecture notes - all this before IPML had even been printed.

Paley and Bentham, then, developed their theories independently. Nevertheless on a cursory view they did share many conclusions: they were both dismissive of competing moral theories; both equated moral good with pleasure and moral evil with pain; both refused to draw any qualitative differences between pleasures; both saw happiness as a balance of pleasure over pain; and both regarded the general happiness as the criterion of virtue. Yet there was, of course, a distinction in their respective attitudes towards religion, and also a broad distinction in the tone of their ethical writings. In Moral and Political Philosophy, Paley explained:

In pursuing the principle of morals through the detail of cases to which it is applicable, I have had in view to accommodate both the choice of the subjects and the manner of handling them, to the situations which arise in the life of an inhabitant of this country in these times. This is the thing that I think to be principally wanting in former treatises; and perhaps the chief advantage which


15 Paley, Works, i. pp.lxiii-lxiv.

16 See Paley, Works, i. 8-9, 14-15; IPML, pp.17-26.
will be found in mine. 17

Paley was primarily a practical moralist: he was content to study the world around him, and by assimilating his observations offer advice as to the best means of conducting every-day life. Bentham, in contrast, was primarily a theoretical moralist: he wanted to subsume the whole of human experience into one grand logical system, and his method was therefore one of rigorous analysis, division and classification. 18 The difference in emphasis between the practical man of the world and the philosophical hermit can perhaps partly explain why Paley found great popularity amongst his contemporaries, yet is now considered to be of little more than historical interest, while Bentham is still regarded as worthy of detailed study. But the clearest theoretical disparity between the two thinkers lay in Paley's appeal to a future state of rewards and punishments. Was this at the periphery of his system, as Stephen suggested, or at its centre?

Scholars have tended to concentrate on Moral and Political Philosophy when expounding Paley's moral theory, but he addressed some of the major issues in greater detail in the last of his major writings, Natural Theology, published in 1802. By regarding these works as complementary, it may be possible to arrive at a fuller understanding of his theory. In Moral and Political Philosophy, Paley defined virtue as 'the doing good to mankind, in obedience to the will of God, and for the sake of everlasting happiness'. The good of mankind was the subject, the will of God the rule, and everlasting happiness the motive of virtue. Not merely happiness in this world, but an eternity of happiness was at stake; and in order to gain happiness in the after-life, one had to practise virtue in the present life. Paley admitted that theologians had not ascertained the precise quantity of virtue necessary to salvation, but felt confident enough to assert that any advance made in virtue procured a proportionable accession of future happiness. Moral obligation rested on the hope of eternal happiness. A man was obliged, said Paley, 'when he is urged by a violent motive resulting from the command of another'. A 'violent motive' was caused by the prospect of gain or loss:

As we should not be obliged to obey the laws, or the magistrate, unless rewards or punishments, pleasure or pain, somehow or other, depended upon our obedience; so neither should we, without the same reason, be obliged to do what is right, to practise virtue, or to obey the commands of God.

The 'violent motive' to practise virtue was the expectation of future rewards and punishments, and the rule a man had to obey was the will of God. 19

A man's eternal happiness then depended upon obeying the will of God, and it was to the discovery of his will that Paley addressed himself in Natural Theology. He aimed to show that the works of nature were not only evidence of, but also a reflection of the divine will, and from this draw conclusions as to the nature of man and the purpose of his existence. He began with an analogy. A man walking across a heath kicked a stone: if he asked himself

17 Paley, Works, i. pp.lxi-lxii.

18 When Bentham did attempt to proffer practical advice, he was perhaps at his most absurd: see Deontology, pp.267-70, 276-7.

19 Paley, Works, i. 31-2, 36-7, 44-6.
how it had come to be there, he might reply that for anything he knew it had always been there. On the other hand, if he had stumbled across a watch, he could not have made the same answer. Why?

For this reason, and for no other, viz. that, when we come to inspect the watch, we perceive (what we could not discover in the stone) that its several parts are framed and put together for a purpose....

It had been contrived in such a way as to indicate the passing of time, and from this discovery of purpose one could not but infer, that the watch must have had a maker: that there must have existed, at some time, and at some place or other, an artificer or artificers who formed it for the purpose which we find it actually to answer: who comprehended its construction, and designed its use.\(^{20}\)

The same indication of contrivance and design which was found in the watch, asserted Paley, could be found in the works of nature, with the difference that the contrivances of nature surpassed the contrivances of human art in quantity, variety, complexity and ingenuity. Just as the existence of the watch implied the existence of the watchmaker, that is to say that just as the construction of the watch according to certain principles in order to achieve a certain end (the rules of mechanics applied in order to indicate the passing of time) implied that it had been constructed by an intelligent being, so the existence of contrivance in nature implied the existence of a contriver, of a creator. For instance, the construction of an eye - with its ability to focus on objects near and distant, the provision of muscles to turn it in one direction and then another, and the provision of lids for protection and glands for cleanliness - was evidence of design, and where there was design must also be a designer. Paley quoted the opinion of Sturmius, the eighth-century abbot of Fulda, 'that the examination of the eye was a cure for atheism'. Once contrivance was established, it was necessary to accept the existence of a superintending intelligence.\(^{21}\)

Observation of nature not only revealed the existence of God, but also the divine goodness. Paley, assuming the connection between goodness, pleasure and happiness, set down two considerations in proof of his argument. In the first place, in the vast majority of cases in which contrivance could be perceived, the design was intended to be beneficial. Everywhere one looked in the animal creation one found unbounded joy: 'The air, the earth, the water, teem with delighted existence.' Taking the whole span of life and an average of sensations, Paley was of no doubt that 'the plurality and preponderancy is in favour of happiness by a vast excess'. This preponderance of happiness was

\(^{20}\) Ibid., iv. 1-3.

\(^{21}\) Ibid., iv. 14-32.
a product of the contrivances with which God had endowed his creatures.\textsuperscript{22} In the second place, God had superadded pleasure to animal sensations when it was unnecessary for the purpose in question, or when the purpose where necessary might have been achieved by the operation of pain. Food, for example, was necessary for the support of animal life; the pain of hunger would of itself induce the animal to procure, prepare and eat its food. There was no need to add pleasure to the act of eating in the shape of taste, nor indeed to hearing in the shape of harmony, to smell in that of fragrance, to vision in that of beauty. This boon depended upon two contingencies: the capacity of men to feel pleasure directly from certain perceptions, and the existence of external objects to provide these perceptions. Such a coincidence could not be the result of accident, but could only be explained by the pure benevolence of the creator. In addition, there were other sources of pleasure which could not be referred directly to the five senses, for instance the pleasure gained from bodily health, from the exercise of the understanding and the choice of a course of action, and from the pursuit of a pastime. Paley remarked that he had been a keen fisherman, but had never been able to trace the source of the pleasure it afforded him.\textsuperscript{23} There was no avoiding the conclusion 'that God wills and wishes the happiness of his creatures'.\textsuperscript{24}

This explained the purpose of the particular contrivances which existed in the world, but for what purpose was the world itself contrived? As Paley himself admitted, an omnipotent deity, if he wished the happiness of his creatures, could have achieved his end without contrivance - instead of producing pleasure through the instruments of contrivance, why not grant immediate pleasure? Indeed, why did the benign creator allow the existence of misery, of evil? And why did its distribution appear to be so much the result of chance? Paley felt that in part the answer to the problem of evil might be inscrutable: nature probably had to be organized on the basis of general laws, which in particular situations and particular applications might produce more evil than good. On a more practical level, he offered several suggestions. In the first place, in those cases where the evil was not the immediate effect of human agency, there were often hidden reasons for it: for instance, bodily pain, when the result of contrivance, could be regarded as ultimately good, giving due warning of some danger and prompting mitigatory action; relief from pain was itself pleasure; bodily diseases helped to reconcile man to his mortality; and one of the greatest pleasures, the pursuit and achievement of some goal, would be nullified were there no difficulties to overcome. In the second place, pains resulting from the agency of individuals could be ascribed to the character of man as a free agent.

\textsuperscript{22}Bentham seems also to have been optimistic on the question of the happiness of mankind. He felt that in the instances of most men, taken through the whole length of their lives, the balance would be on the side of well-being. However he did enter a caveat: if religion were taken out of the account. Men had fabricated an almighty being whose delight was human misery. Whereas Paley regarded religion as the great source of happiness, Bentham regarded it as a great bane. See Deontology, pp.130, 131.

\textsuperscript{23}Paley, Works, iv. 355-84.

\textsuperscript{24}Ibid., i. 53.
Free agency, in its very essence contains liability to abuse. Yet, if you deprive man of his free agency, you subvert his nature. You may have order from him and regularity, as you may from the tides or the tradewinds, but you put an end to his moral character, to virtue, to merit, to accountableness, to the use indeed of reason.

Both good and bad actions could have their origin in the same passion: there was no need to explain evil by an inherent malignity in human nature. If the passions, under the influence of reason, religion and self-restraint, were directed into beneficial channels, then all would be well, but if left to themselves they were capable of becoming excessive and harmful.

The point was that man was placed in this world to prove his worth in the sight of God. This would be impossible without chance and without free-will, which implied the opportunity of acting in such a way as to produce misery. If God had contrived the world so that happiness and misery were an inevitable consequence of the practice of virtue and vice respectively, then this arrangement would amount to nothing less than a distribution of divine justice. No man who knew this would be prepared to act in contradiction to a manifestation of the divine judgement by attempting to relieve suffering. The distribution of evil appeared however to be the result of chance, and in this circumstance, 'one man's sufferings may be another man's trial'.

It is not a state of unmixed happiness, or of happiness simply; it is not a state of designed misery, or of misery simply: it is not a state of retribution; it is not a state of punishment. It suits none of these suppositions. It accords much better with the idea of its being a condition calculated for the production, exercise, and improvement of moral qualities, with a view to a future state, in which these qualities, after being so produced, exercised, and improved, may, by a new and more favouring constitution of things, receive their reward, or become their own.

Every man in every situation was a moral agent: whether rich or poor, free man or slave, wise or ignorant, healthy or sick, he had the opportunity to acquire, exercise and display certain qualities which might be denominated good or bad. The man who proved himself virtuous would be rewarded with the pleasures of heaven, while the vicious man would suffer the pains of hell.²⁵

Paley's view, established in Natural Theology, that this life was a state of moral probation, and that God willed the happiness of his creatures, underpinned the principle which in Moral and Political Philosophy he placed at the centre of his moral system:

The method of coming at the will of God, concerning any action, by the light of nature, is to enquire into the tendency of the action to promote or diminish the general happiness.

That action was right, that is consistent with the will of God, which promoted human happiness. Hence to say that a man acted right was as much as to say that he acted consistently with the will of God, or to say that a man had a right to something that it was consistent with the will of God for him to have it. Thus, 'Whatever is expedient, is right - It is the utility of any moral rule alone which constitutes the obligation of it.'

However the rectitude of an action depended not upon its particular

²⁵Ibid., iv. 385-417.
utility, but rather upon its accordance with a general rule which itself was, all instances considered together, preponderantly useful. In assessing the consequences of any action, the moral agent had to consider both those which Paley denominated 'particular', that is those consequences directly and immediately occasioned, and those denominated 'general', those consequences which impinged upon some more extensive rule. An action which had no particular bad consequences, or greater particular good consequences, would not be right if it had general bad consequences, for these were of greater importance, in other words had greater influence on the general happiness. For example where the owner of an estate employed his influence and wealth to corrupt and oppress all who came into contact with him, and where by his death his estate would be inherited by a man renowned for his benevolence, from a consideration of the particular consequences his assassination might appear to be useful. But when one took into account the fact that the act would violate the necessary general rule that no man should be put to death for his crimes except by due process of law, and would give licence to any man to kill any other he considered unpleasant, the general bad consequences would be seen to outweigh the particular good consequences, and the act judged to be wrong.\textsuperscript{26} Hence each and every consequence of an action had to be considered before it could be applauded or condemned. Moreover no one action was ever necessarily always right, but all had to be measured against general expediency.

I know nothing immutable in morals but their principle - That principle is public expediency - not a present, temporary, particular expediency but an expediency which comprehends all consequences, which includes every operation and every tendency by which in any way or at any distance of time human happiness may be affected by our conduct. Expediency so interpreted becomes the measure of our duty because it is the object to which the will of our supreme governor is constantly and uniformly directed. This principle is founded in our relation to him - like that relation is invariable. It travels unchanged thro every region of the earth. It continues the same in every situation of our being. That which is expedient, expediency being well understood, is always right - so far morality is universal - but what is expedient; what conduct or what measure under given circumstances is entitled to that character becomes the subject of a calculation which must necessarily be affected by the previous situation, the established habits, customs, disposition and manners of the persons upon whom our resolution is to operate. If these vary, the result of the calculation will vary with them - if this variety follow the progress of climates, I know not why we should deny that our moral rules must be adapted to the same temperature.\textsuperscript{27}

Paley nevertheless seemed prepared to argue that there were certain general rights of mankind, that is rights belonging to every member of the species, which it would be expedient to see secured in all times and places. These included a right to subsistence. It was God's intention that the produce of the earth should be applied for the support of human life, and one man had

\textsuperscript{26}Ibid., i. 50, 54-7.

\textsuperscript{27}Memorandum of Paley, n.d., Ellenborough Papers, Public Record Office, 30/12/17/4, fos.25-9.
originally the same right as any other to this produce. The establishment of property was only justified by the fact that certain things could be enjoyed with greater advantage when appropriated than when held in common.

This is true, where there is not enough for all, or where the article in question requires care or labour in the production or preservation: but where no such reason obtains, and the thing is in its nature capable of being enjoyed by as many as will, it seems an arbitrary usurpation upon the rights of mankind, to confine the use of it to any.

A further general right was that of extreme necessity, namely a right to use or destroy another's property when it was necessary for self-preservation to do so. Paley argued that in these few cases the particular consequence exceeded the general consequence, the mischief from a violation of the general rule was overbalanced by the immediate advantage. This however does not seem quite consistent with the thrust of his argument. Rather his final position seems to have been that a view to general consequences supported the establishment of general rules, but that the general rules in any particular society, given the non-infringement of certain general rights (which in regard to general consequences would always be expedient), might vary according to its particular exigencies. This was not then a compromise between act utilitarianism and rule utilitarianism, but the recognition of a hierarchy of rules which were more or less important depending upon whether they were more or less general. Thus the less extensive general rule which justified the establishment of property would give way to what was in effect a universal general rule which justified the destruction of property in order to save life.

A consideration of Moral and Political Philosophy alone, especially in light of the development of nineteenth-century utilitarianism, might appear to support Stephen's conclusion that Paley's theology was an unnecessary trapping to his moral system, but when set in the context of Natural Theology, which Paley himself regarded as the foundation of his system, the significance of his eschatology is clear. This world provided the evidence on which the divine judgement would pronounce whether the soul in question deserved to enjoy the pleasures of heaven or endure the pains of hell, and the criterion would be the agent's promotion or diminution of the general happiness. In Paley's system the central position accorded to the will of God is filled in Bentham's by his theory of motivation. For Bentham, though the criterion of good was still the general happiness, there was only happiness in this world at stake, and his analysis went no further than human psychology. The sensations, together with pain and pleasure, formed the objective fact of human existence. Pain and pleasure alone formed the objective fact of morality and motivation. Moral good was pleasure or its cause; moral evil was pain or its cause. Mankind was motivated by a desire to seek pleasure and to avoid pain. The principle of utility recognized and was grounded upon the


unalterable premise that man desired to enjoy pleasure and to avoid pain, in other words to be happy. An action which increased the happiness of the party whose interest was in question merited approval, while an action which diminished that happiness merited disapproval. Bentham made clear that the happiness under consideration was the happiness of every person affected by an action: if an action affected the whole community, then the happiness of the whole community, or more precisely of the aggregate of the individuals who composed the community, had to be taken into the account. As with Paley, each and every consequence had to be considered, and those actions which conformed to the principle of utility could be described as right, and those which did not as wrong.  

According to Bentham's theory of motives, men were subject to the 'two sovereign masters' of pain and pleasure. A motive, by influencing the will of a man, determined him to act or voluntarily to forbear to act. It could operate either directly on the will, in which case it constituted a desire (a desire for the increase of some pleasure or the decrease of some pain) or an aversion (an aversion against the decrease of some pleasure or the increase of some pain), or indirectly on the will through the understanding, in which case a judgement was made concerning the suitability of some means to the attainment of a desire or the avoidance of an aversion. Moreover, where a pain or pleasure did not appear to be of sufficient strength to act as a direct inducement on the will, the understanding could balance the value of the probable good against the probable evil and so determine the will to action. The motive therefore was based on a desire; the desire was based on a pleasure or pain which the agent supposed relevant to himself; such a pleasure or pain was what Bentham termed the agent's interest.  

A motive considered independently of any act it might give rise to was a good, at least to the individual in question. One of the pleasures defined by Bentham was 'the pleasures of malevolence', namely 'the pleasures resulting from the view of any pain supposed to be suffered by the beings who may become the objects of malevolence'. The corresponding motive was the motive of displeasure. In general terms a malevolent act ran counter to the dictates of utility, since one of the axioms of Bentham's 'mental pathology' held that, 'The suffering, of a person hurt in gratification of enmity, is greater than the gratification produced by the same cause.' But as far as the individual who perpetrated the act of enmity was concerned, he expected to increase his lot of pleasure. A man could only be said to act against his interest in the case where he had miscalculated the values of the respective pains and pleasures associated with the act. Without the expectation of pleasure, the agent would not act - he would have no motive.  

Why should a man do what was right, why should he promote the general happiness, when the only interest he had to consider was his own? Though the line of conduct pursued by any agent would always depend on his conception of his interest, this did not mean on purely his self-interest. Bentham unfortunately never freed his view of human nature from all ambiguity, but he

\[ A \text{ Table of the Springs of Action}, \text{ in } \text{Deontology}, \text{ pp.76, 89; IPML, pp.11-13.} \]

\[ IPML, \text{ pp.96-7; 'Springs of Action', pp.92-4, 98-9.} \]

\[ IPML, \text{ pp.3n., 44, 100, 111-12; see also 'Springs of Action', pp.105-9.} \]
did seem to recognize an inherent sympathy in man, giving rise to pains and pleasures which formed motives to action. Acts which augmented happiness, and were therefore right acts, could be reduced to acts of prudence, which related to the agent's own happiness, and acts of benevolence, which related to the happiness of others. Prudence was itself divided into self-regarding prudence, where the happiness of no other person than that of the agent himself was at stake, and extra-regarding prudence, where it was in the agent's own interest to take account of the interests of others, and give up for their benefit a portion of his pleasure. Bentham seemed to suggest that benevolence of itself could never provide a motive: only self-regarding and extra-regarding prudence were capable of doing this since they alone had reference to the agent's own interest, and it was that interest alone that could afford an inducement to the will. He could only promote the interests of others in so far as their interests coincided with his: the pleasure a man felt in bestowing pleasure on another was still his own pleasure. There were nonetheless, asserted Bentham, many ways in which each man's interest was ultimately promoted by an intermediate regard shown for the happiness of others. A man's happiness, for instance, was itself affected by the way in which his conduct affected the happiness of others: if he made others happy, he would be happier himself. Therefore in order for him to appreciate the interests of others, he had to understand the dictates of benevolence.

Scarcely can that human being ever have existed to whom, unless when afflicted by the contemplation of some unfortunate state of circumstances or agitated by some tumultuous passion, the sight of a fellow creature though a stranger to him in a state of apparent comfort was more gratifying than the sight of a fellow creature equally a stranger to him in a state of apparent sufferance. 3

Though motives in themselves could not be described as good or bad, certain sorts of motives were more likely to give rise to actions which had good consequences, while certain men were more likely to be disposed to be influenced by those motives. A man's disposition could be described as good or bad according to the nature of the motives which he was apt to be influenced by—good if they tended to increase his own or the happiness of the community, bad if they tended to diminish it.

A man then is said to be of a mischievous disposition, when, by the influence of no matter what motives, he is presumed to be more apt to engage, or form intentions of engaging, in acts which are apparently of a pernicious tendency, than in such as are apparently of a beneficial tendency: of a meritorious or beneficent disposition in the opposite case.

The motive most likely to promote general happiness was the social motive of benevolence or good-will, while the semi-social motives of love of reputation, the desire of amity and religion (Bentham later changed his mind as to the probable utility of religion) were also likely to act in this way. When there was no motive encouraging the agent to promote his self-interest to the detriment of the general happiness, when there was no temptation to do mischief, there was a standing disposition to benevolence:

For in every man, be his disposition ever so depraved, the social

motives are those which, wherever the self-regarding ones stand neuter, regulate and determine the general tenor of his life. If the dissocial motives are put in action, it is only in particular circumstances, and on particular occasions; the gentle but constant force of the social motives, being for a while subdued. The general and standing bias of every man's nature is, therefore, towards that side to which the force of the social motives would determine him to adhere."

The object of private ethics was to show to men the points of coincidence between their own interests and the interests of others, thereby to encourage them to pursue the greatest happiness. The object of legislation, by annexing pains to acts with evil consequences, was to tilt the balance of interests in favour of utility on each occasion where a man might otherwise have been expected to pursue his own narrow interest. Thus the social motives, in addition to a course of moral education and a properly organized system of legislation, were enough to prompt men on most occasions to act consistently with the general interest.

The point of a man's endeavour then was happiness, but in what did this consist? According to Paley, happiness was a relative term, and denominated a condition in which the amount or aggregate of pleasure exceeded that of pain. The degree of happiness was the amount of the excess of pleasure over pain. All pleasures and pains could be quantified according to their intensity and duration, there being no qualitative difference between them. Paley's version of the felicific calculus was crude compared to Bentham's, which took account not only of the intensity and duration of pains and pleasures, but also their certainty, propinquity, fecundity, purity and extent, acting upon individuals each with their own 'bias of sensibility' and depending to a greater or lesser degree upon 'circumstances influencing sensibility'. Bentham's distinction between the kinds of simple pains and pleasures, and the situation of the sensitive being, meant for instance that he classified health as a circumstance affecting sensibility - a man in an ill state of health was more likely to be sensible to pain than to pleasure - whereas to Paley health itself was a pleasure. Thus far their respective ideas were similar in principle, but from this point Paley's concern with providing practical maxims and Bentham's with detailed theoretical analysis led to a difference of emphasis. Bentham, in IPML at least, aimed to provide a thorough classification of the various simple pains and pleasures in order to aid the legislator, whereas Paley wanted to show what brought contentment and cheer to men in their everyday lives. Paley explained that happiness did not consist in the pleasures of sense (these only lasted a short time and quickly lost

"IPML, pp.125-42.

"For the demarcation between private and public ethics, see IPML, pp.285-93.

"Paley, Works, i. 16-18.


"Ibid., p.53. Paley did in fact recognize the influence of sensibility, but did not treat it systematically: see Works, i. 20, 24.
their relish), in exemption from labour or care (in a state of ease imaginary anxieties took the place of real ones), or in rank and the exercise of power, but rather in the exercise of the social affections, in avoidance of excess (the moderate man gained a great satisfaction from some occasional luxury, while the sensibilities of those continually exposed to luxury were deadened), in health, and most importantly in the exercise of the faculties of mind and body in the pursuit of some engaging end, in other words in action with some purpose in view. Thus the man who had everlasting happiness in a future state for his goal was most likely to be happy in the present state:

for he has constantly before his eyes an object of supreme importance, productive of perpetual engagement and activity, and of which the pursuit (which can be said of no pursuit besides) lasts him to his life's end.

The hope, or pleasurable expectation, attached to the end was by an association of ideas transferred to the means, and the activity involved in attaining the end became itself pleasurable. Paley could argue that happiness was pretty equally distributed amongst the various social classes and that vice - by which he meant sensuality - brought no more worldly happiness than virtue.9

How far were Bentham's simple pleasures compatible with Paley's notion of contentment? The happiness resulting, according to Paley, from the exercise of the social affections perhaps corresponded to Bentham's pleasures of amity, of a good name and of benevolence. Bentham's pleasures of the memory, of the imagination, of expectation and of association, though not specifically mentioned in Paley's analysis, were implied by it. Bentham however enumerated among the pleasures those of wealth and power, and argued that these had no corresponding pains.9 This did contrast with Paley's position. Nor did Paley acknowledge a pleasure of malevolence, for he believed there was no inherent desire in human nature to do harm: he did not equate the pursuit of self-interest with a wish to hurt others, but argued that a man's ultimate self-interest was best served by increasing the happiness of others. But to Bentham, an evil act was motivated in the same way as any other act, by a desire for pleasure.

There still remains a doubt, as Albee suggested, whether Bentham did provide a comprehensive solution to the problem of moral obligation. It would be inappropriate, for instance, to attempt to strengthen the notion of moral obligation in Bentham's system by identifying the role of the sovereign legislator too closely with that of God in Paley's. The religious sanction in Paley's system extended throughout the whole field of action - it applied both to the private and the public sphere - whereas Bentham drew a distinction between those classes of action which it was suitable for the legislator to notice and those which it was not. Paley did recognize a distinction between perfect and imperfect rights and obligations, namely those which ought to be enforced by law and those which ought not, but the significant point was that

9 Paley, Works, 1. 18-31. Paley turned these arguments to polemical use in an anti-radical pamphlet published in 1793 entitled Reasons for Contentment; addressed to the Labouring Part of the British Public (see Ibid., iv. 463-79).

10 IPML, pp.42-50.
each sort of obligation was of equal importance in the eyes of God."¹ Paley also admitted the validity of general rules in both private and public ethics, whereas Bentham appears to have accepted the need for general rules in some cases, hence the usefulness of legislation, but not in others, the province of deontology. In private ethics there seems to be scope for a separate calculation of utility on each occasion of action. Paley and Bentham agreed that in practice men did not enter into such a calculation every time they were about to act, but that habit had an enormous influence on behaviour. Paley went so far as to say that many things were to be done and abstained from solely for the sake of habit. Habit, he argued, was ultimately grounded on utility through the medium of the association of ideas. Acts which proved through experience to be beneficial came to be associated with the quality of beneficence, and acts generally mischievous associated with the quality of mischievousness. For instance, mankind had discovered the general mischief of stealing, and stealing had come to be held in detestation - nevertheless men did not understand the reasons why they should not steal, but merely perceived it to be wrong."² Bentham, while stating that a habit was a 'fictitious entity', and not 'strictly speaking ... the cause of any thing', allowed that 'The influence of habit ... is a matter of fact, which, though not readily accounted for, is acknowledged and indubitable.'³ Despite Bentham's uncertainty on the question of the influence of habit on action, his theory of motivation was central to his solution of the problem of moral obligation. Men pursued pleasure, and so by definition desired good: it became a matter of realizing that in the long run one could best promote one's own happiness through the promotion of the happiness of the greatest number. Moreover Bentham's allowance for the operation of an intrinsic sympathy means that he is not required to assume a natural identity of interests and perhaps places him rather closer to Hume and J.S. Mill than Albee was prepared to admit.

For Paley, moral obligation was less problematic since the agent always had a motive to do what was right: he gave utilitarian moral behaviour an overwhelming religious sanction in addition to the legislative. There was no need for any motive of sympathy. Paley did not deny that sympathy existed, but reduced it to a mere association of ideas rather than regarding it as an inherent trait of human nature. Just as there was no inherent malignity, neither was there an inherent sympathy. With the sanction of external punishment before him, the agent needed only to consider his self-interest in order to perform the right action. It was in a man's self-interest to pursue the general interest, for only then would God reward him with the pleasures of heaven. If he pursued the gratification of his own immediate interest in preference to that of the community, he would in an after life be subjected to the terrors of hell. Paley's system suffered however from the vagueness of his theory of motivation. He could not for instance adopt Bentham's position. To Bentham, the agent's action was determined by his conception of his interest, his weighing of the desires and aversions which were operating on his will, either directly or through the medium of the understanding. There was no room here for the exercise of free will in the sense it was required by Paley's theology. Paley's idea of this world as a state of moral probation

¹Paley, Works, i. 68-71.

²Ibid., i. 33-6.

³IPML, p.119 and n.
implied the existence of conscientious choice, but he never reconciled this with his hedonism. Where was the virtue in simply following a more extended self-interest? Indeed the difficulty for Paley is not so much not why men should do what is right, but why they should even be capable of doing wrong. Though it is easy to regard the religious sanction in Paley's moral philosophy as a convenient solution to the problem of obligation, it is more appropriate, and makes more sense of Paley's approach, to begin with his theology and to see how that gives rise to what for him is the moral problem - the existence of evil. Presuming a beneficent deity, Paley can only explain evil if this world is a place of probation.

Did these different views of the world, the one theological, the other psychological, have any implications for their political theory? The key lies in their respective attitudes towards the relationship between utility and history. For Bentham, history was at best the source of information for the legislator and furnished examples for illustration; at worst it created prejudices which stood in the way of the greatest happiness." He gave short shrift to any pleas in defence of the status quo, in defence of any institutions or practices he felt to be inexpedient, grounded on prescription, or what he described as 'prejudice ... conceived in favour of antiquity'. In his earlier writings he seemed to have felt that he needed only to point out the laws which utility recommended for their enactment to follow. The difficulty was what he would later describe as a deficiency of intellectual aptitude - legislators had not had the benefit of a clear and objective principle to guide them. Bentham was not unaware of the influence of circumstances, whether physical or political, upon what action it might be useful for the legislator to take. Though human nature was everywhere the same, he admitted that under different circumstances different objects were liable to be the causes of pain and pleasure. But he did recognize in a general sense the existence of an ultimate utility: particular laws might not be universally valid, but certain underlying principles of legislation might be described as such. On account of the prejudices of a people it might not be of the greatest utility, at least in the first instance, to introduce a law which conformed to the ultimate utility, since it might lead to discontent. Nonetheless as long as the legislator recognized the principles of this ultimate utility, he needed only to collect relevant data - 'to be informed of local situation, the climate, the bodily constitution, the manners, the legal customs, the religion' of his subjects - and then 'all places are alike'." He went so far as to suggest that 'I could with the same facility turn my hand to the concerns of [Hindostan], as to those of the parish in which I live'.

It was only later in his career that he came to realize that the legal reforms he wished to implement would have to be preceded by the reform of the political institutions on which the enactment of those legal reforms depended.

"Cf. Stephen, English Utilitarians, i. 195: '[Bentham] cared nothing for history in general, or regarded it, from a Voltairean point of view, as a record of the follies and crimes of mankind.'


"Bentham to Henry Dundas, 20 May 1793, Correspondence, iv. 429-30.
He was therefore led to consider thoroughly the reasons why existing institutions were adverse to utility. Men in general, he argued, acted on most occasions on the grounds of self-preference, and rulers were no different in this respect. Though the proper end of government was the greatest happiness, because effective securities had not been instituted to ensure that rulers served the universal interest, they had in fact served their own interest to the detriment of the universal interest. He concluded that, 'The actual end of government is, in every political community, the greatest happiness of those, whether one or many, by whom the powers of government are exercised.' This sacrifice of the universal interest to the particular interest of rulers was what Bentham termed political corruption. Existing institutions, the product of the self-interest of rulers, were corrupt and needed to be replaced by institutions which genuinely pursued the greatest happiness."

Paley's emphasis was markedly different. Whereas Bentham treated with scorn those practices of the past which he regarded as corrupt because they did not promote the greatest happiness, Paley had a profound respect for the products of history. In Paley's theory there was probably, as Bentham intimated, a certain presumption in favour of that which existed. God had contrived the world with the intention of promoting the happiness of his creatures. As knowledge and experience increased, God's intention would become all the more clear, and human affairs adapted accordingly. The forces of history were therefore representative of man's understanding of the divine will and goodness, and the products of those forces, the existing institutions and relations of society, were to be treated with due respect. They would be altered when this was conformable to God's will: but they were the starting-point for future improvements, and not the rubbish of the past waiting to be swept away. In the same way that in his observation of nature he looked for purpose and design, in his study of the existing institutions of the civil polity he looked for purpose, and often found it, in practices which to others appeared to be abuses. When he examined the institutions of the British polity, his theory of expediency very much resembled Burke's theory of prescription:

The constitution of England, like that of most countries of Europe, hath grown out of occasion and emergency; from the fluctuating policy of different ages; from the contentions, successes, interests, and opportunities, of different orders and parties of men in the community. It resembles one of those old mansions, which, instead of being built all at once, after a regular plan, and according to the rules of architecture at present established, has been reared in different ages of the art, has been altered from time to time, and has been continually receiving additions and repairs suited to the taste, fortune, or convenience, of its successive proprietors. In such a building, we look in vain for the elegance and proportion, for the just order and correspondence of parts, which we expect in a modern edifice; and which external symmetry after all, contributes much more perhaps to the amusement of the beholder, than the accommodation of the inhabitant."

"Bowring, ix. 5-8.

"Paley, Works, i. 413-14.
Paley's mansion was not of a sort to find favour with the architect of Panopticon.

According to Paley, if experience had shown that certain institutions had produced, and still produced beneficial consequences, then they should be allowed to continue until some improvement was suggested and could be safely implemented. Society and government had developed through time as men had become aware of their expediency, and many practices which on a superficial view appeared corrupt, in fact performed functions necessary to the well-being of the whole. Paley pointed out that in theory the King of England appeared to be a despot - his person was vested with impunity, he enjoyed a veto over legislation passed by the two Houses of Parliament, and he could appoint directly to the Lords and confer charters on any men he pleased enabling them to send representatives to the Commons. Yet in practice these prerogatives had been reduced to 'mere ceremonies', and in their place had arisen,

a sure and commanding influence, of which the constitution, it seems, is totally ignorant, growing out of that enormous patronage which the increased territory and opulence of the empire have placed in the disposal of the executive magistrate."^{9}

The influence of the Crown had been a central issue in British politics since the 1760s, and there continued to be calls for its reduction through to the Great Reform Act. Bentham himself in the 1810s and 1820s constantly attacked the power of the monarch in his writings on the British constitution in particular and on constitutional law in general. According to Paley, however, such an influence was vital to the smooth functioning of government - opposition to any ministry would otherwise be overbearing.^{50}

Though it is always possible to find personal factors which might have determined the respective political views of Paley and Bentham, Paley's theology, and Bentham's divorce of ethics from theology, did have implications for their politics. If this world was merely a place of trial, and a place which more or less clearly revealed the divine plan, there was possibly less incentive to change it and more to try to understand the practices which existed in it. On the other hand, if this world was all that mattered, and there was no superintending intelligence to take into consideration, then there was no reason not to try to change things to bring about the best possible state of affairs. This was not to say that Paley was opposed to all change, but rather he was content to retain what was and provide practical remedies to concrete grievances in the classic conservative manner. Programmes of reform were dangerous because there could be no certain basis for calculation in matters of government:

Political innovations commonly produce many effects besides those that are intended. The direct consequence is often the least important. Incidental, remote, and unthought-of evil or advantages, frequently exceed the good that is designed, or the mischief that is foreseen. It is from the silent and unobserved operation, from the obscure progress of causes set at work for different purposes, that the greatest revolutions take their

^{9} Ibid., i. 414-15.

^{50} Ibid., i. 437-43.
rise.\textsuperscript{51}

All this was anathema to Bentham's vision of the enlightened legislator, with his tables of data, constructing from first principles a code of greatest utility for all the peoples of the world. Bentham wanted tradition and prejudice to give way to the new science of legislation; Paley saw something of the will of God in that tradition and prejudice. For Bentham, the prescriptions of the past were the greatest obstacles to utility; Paley believed that utility itself would be found in those same prescriptions.

\textsuperscript{51}Ibid., 1. 415.
STRICTURES ON PALEY'S NET:  
CAPITAL PUNISHMENT AND THE POWER TO PARDON 

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Bentham was a life-long opponent of capital punishment. He left three essays on the subject, dating from 1775, 1809 and 1830, only the first and third of which have been published.¹ Given the critical attention that Bentham lavished on England's penal law it is hardly surprising that he should devote so much time to capital punishment. Nowhere else in Europe was the death penalty so freely imposed as in England, where its apologists were notoriously quicker to urge an increase in the number of capital offences than they were to listen to arguments for a reduction. The growth in population, the expansion of commerce and industry, the increase in wealth, the greater value placed on personal property, all these have been suggested as factors influencing the unprecedented proliferation in the number of 'new' offences against property in eighteenth-century England. By 1765, according to William Blackstone, there were a hundred and sixty-five capital felonies upon the statute books.² Sixty years later the number had grown to over two hundred. If we may credit Bentham, though the figure seems unlikely, between February 1800 and April 1801 there were nearly one hundred public executions for the crime of forgery alone.³ In the absence of a consensus on alternative modes of punishment, the penalty of death was routinely imposed by England's legislators whenever a new crime presented itself for punishment. Even Blackstone was alarmed at the condition in which he found the penal law of England, though he had few suggestions to make for its improvement.⁴ When Voltaire argued against 'judicial murder' in France he pointed to the injustices perpetrated by a penal code characterized by religious intolerance and to the suffering inflicted, out of all proportion to the offences committed, by an absolutist regime indifferent to the human cost of its


³Bowring, x. 356. There is a collection of unpublished manuscripts in Bentham's hand setting out a scheme for a forgery-proof currency at UC iii. 341-57, probably written circa 1800. Leon Radzinowicz argues that the rigorous treatment of forgery in English law was largely due to George III's personal opinion of this offence: see A History of English Criminal Law and its Administration from 1750, 4 vols., London, 1948-68, i. 122.

⁴See Blackstone, op.cit., iv. Chs.3-4.
actions. What disturbed Bentham most about England was less the extent to
which the death penalty was employed (though he was highly critical of this
also), than the inefficiency of the judicial process caused by the inordinate
number of capital offences. It was all too often the case that the infliction
of punishment, instead of being defined by rational utilitarian
considerations, was left to the arbitrary decision of the magistrate.

It was this system of justice that the Cambridge divine William Paley
(1743-1805) defended in Bk.IV, Ch.XI of his highly successful Principles
of Moral and Political Philosophy (1785). In Bentham's unpublished critique of
this part of Paley's work (UC cvii. 193-277) there is much that is common with
his essay of 1775, with its utilitarian arguments for preferring life
imprisonment instead of the death penalty. But the emphasis in his reply to
Paley is placed on a theme barely suggested by the earlier analysis - the
evils of the power to pardon traditionally vested in the hands of the monarch
but actually exercised by functionaries other than the king.

The manuscripts are variously titled 'Strictures on Paley's Net', 'Law
versus arbitrary power: A Hatchet for Paley's Net', or more simply 'Pains:
Paley's Net'. Bentham began the work on 29 January and completed most of it
by 31 January 1809 (UC cvii. 193-242, 258-9); he then added a few pages a
week later (UC cvii. 222, 243-56, 260-1, 265-6) and, true to his habit of
leaving one project to pursue another, did not return to the subject again
until 19-20 July 1810, when material originally intended for the book on
'Fallacies' was added to the rest of the manuscripts (UC cvii. 267-77). The
work was finally completed by the transfer of several more sheets of
manuscript, this time from a project headed 'Evid[enoe] Prosp[ective] View'
dated 28 January 1808 (UC cvii. 262-4), and the addition of a few lines on 26
February 1811 (UC cvii. 213). The manuscripts are prefaced by a draft letter
to the 'Editor, Mr. Philanthropist' (UC cvii. 199), indicating that Bentham
intended that it should be published in the radical journal of the same name.
Certainly he was in no doubt as to the importance of his subject:

Between life and death: between capital punishment and punishment
not capital: between law and arbitrary power: between the
fulfilment of royal engagements and the violation of them: such
are the questions; such the options that are to be made. (UC cvii.
200.)

Subsequently, Bentham had his manuscripts copied in a fair hand (UC cvii.
278-343) but this project, like so many others, went no further and has been

5For Voltaire's crusade against the death penalty in the cases of
Francois Rochette, Jean Calas, the Sirven family, and the chevalier de la
Barre, all of whom were the casualties of religious intolerance, see H. Mason,
Voltaire. A Biography, Baltimore, 1981, Ch.5.
neglected ever since.  

The tone of Bentham's 1809 essay is marked by scorn for 'the Reverend Doctor Paley', who is frequently coupled with that other Bentham-target, Blackstone, as an exponent of 'the every-thing-as-it-should-be school' of thought, and derision of the arguments Paley presents. For example, commenting on Paley's claim that knowledge of the severity of the punishment is sufficient to deter from 'the commission of any enormous crime', Bentham writes: 'But of this clause the looseness, ambiguity and inanity is such as involves in a net of perplexity the mind that struggles to find a meaning for it' (UC civi. 225). Peremptory dismissals of this kind occur throughout the manuscripts, yet Bentham was not so off-hand as to treat his subject-matter in a superficial manner. For all its looseness and ambiguity Paley's defence of the administration of justice as it related to capital offences was probably the most coherent contemporary statement and justification of the principles of established practice. Indeed, one modern commentator has described his doctrine as 'the most eloquent and ingenious defence of a criminal law based on capital punishment'.  

For nearly forty years Bentham had been at war with the English legal system, its defenders and practitioners, and he felt duty-bound to subject that part of Paley's work dealing with the death penalty — one of the most scandalous features of English law — to a thoroughgoing and searching analysis. The result is a commentary on Paley's defence of the English practice of prescribing death as the penalty for a multitude of offences but then frequently substituting lesser penalties after conviction, or pardoning the criminal altogether.

Paley's defence is enunciated by employing the metaphor of a fisherman's net. By the number of statutes creating capital offences, the law of England  

... sweeps into the net every crime which, under any possible circumstances, may merit the punishment of death: but when the  

Perhaps it was the publication of James Mill's essay 'On the Penal Law of England, with respect to Capital Punishments, and as connected with the Transportation and Penitentiary Systems', in the first number of The Philanthropist (1811) 66-77, 143-56, which stayed Bentham's hand. In some respects Mill's is the better work, but it also follows very closely Bentham's own analysis of punishment in 'Principles of Penal Law', including the chapter on capital punishment dating from 1775. Too much duplication on the same subject may have convinced Bentham to set the essay on Paley aside. Mill briefly considered 'Paley's Net' in a section of his unpublished 'Common Place Books', 4 vols., London Library, ii. 36r, probably dating from 1811.


Radzinowicz, op.cit., i. 506. A.V. Dicey comments that despite Paley's keen and enlightened interest in legal problems, he either did not grasp the need for, or did not care to pursue the idea of, a systematic revision of English laws. Paley's philosophy 'is, in so far as he applied it to law, an ingenious defence of things as they stood in 1786. He is neither an innovator nor a reformer, but like Blackstone an apologist'. See Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century, 2nd edn., London, 1930, p.143.
execution of this sentence comes to be deliberated upon, a small proportion of each class are singled out, the general character, or the peculiar aggravations, of whose crimes, render them fit examples of public justice. By this expedient, few actually suffer death, whilst the dread and danger of it hang over the crimes of many. (Principles, 373-4.)

By 'fit examples of public justice', however, it should not be thought that Paley means that only the worst crimes are to be punished by death. Rather it is according to the difficulty of preventing the occurrence of particular offences that the measure of punishment to be attached to each is determined. What distinguishes crimes against property from other crimes is the high incidence of repetition. Penalties must be conceived, therefore, not in relation to the crime itself, but with a view to the likelihood that it will be committed again in the future. 'Thus', writes Paley,

sheep-stealing, horse-stealing, the stealing of cloth from tents or bleaching grounds, by our laws, subject the offenders to sentence of death: not that these crimes are in their nature more heinous than many simple felonies which are punished by imprisonment or transportation, but because the property, being more exposed, requires the terror of capital punishment to protect it. (Principles, 370.)

It is this comprehensive principle which allows Paley to justify the strange inconsistencies of English penal law regarding capital punishment. No other penalty is 'sufficiently terrible to keep offenders in awe'. Transportation to the penal colonies answered the purpose of example 'very imperfectly', since it is a punishment 'unobserved and unknown'. If punishment is to deter then its severity must be known and attested to, and Paley evidently believed that only public execution could accomplish this. So far as the reformation of criminals through imprisonment and hard labour was concerned, Paley simply accepted the conventional wisdom that 'little has ever been effected, and little ... is practicable' (Principles, 381).

Finally, despite what he had argued earlier in the Principles in relation to England's notorious libel law, Paley held 'the glorious uncertainty' of the criminal law in regard to capital punishment to be one of its excellences.9 This appreciation of the flexibility of the judicial process ties in with the notion that the circumstances of a crime should determine whether or not it is penalized by death. The sentence should be calculated by the magistrate in accordance with 'those numerous, unforeseen, mutable, and indefinite circumstances, both of the crime and the criminal, which constitutes [sic] or qualify the malignity of each offence'. As to the effectiveness of this method, Paley argued that it is the possibility of capital punishment, rather than its frequent employment, which acts to limit the extent of criminal activity, hence there is no need to apply the penalty in all cases (Principles, 373). Judicial discretion, therefore, is a neat adjunct to

9Regarding libel law, Paley had written: 'For, this is the alternative: either the law must define beforehand and with precision the offences which it punishes; or it must be left to the discretion of the magistrate ... which is in effect, leaving to the magistrate to punish or not to punish, at his pleasure, the individual who is brought before him; which is just so much tyranny.' (Principles, 17.)
English penal law.

Paley's doctrine became the credo of all opponents of the movement for the reform of penal law, and reformers, either in speeches or in print, frequently began their arguments for reform by questioning the soundness of the same doctrine. Bentham was no exception. In the manuscripts of 1809 he set about his task in determined fashion, moving through Paley's text phrase by phrase, proposition by proposition. Paley had distinguished between two methods of administering the death penalty: the one, assigning it to only a few offences and inflicting it without exception; and the other, assigning it to a great many offences but inflicting it at the discretion of the magistrate in only a few cases - this latter being the practice in England (Principles, 372). Bentham's alternative is stated at the outset of his critique: 'the not assigning capital punishment to any offence, and whence not inflicting it at all' (UC civii. 201). His position is supported by three principal arguments: (i) the death penalty is ineffective as a deterrent when compared with other modes of punishment; (ii) the system defended by Paley is arbitrary in character; and (iii) the power to pardon breeds corruption in the judicial process.

(i) According to Paley the 'public safety' requires that some offenders suffer the death penalty. Bentham has two things to say in answer to this. First, as Paley himself seems to have acknowledged (Principles, 385), deterrence depends upon the certainty of punishment for the breaking of a specific law, and that in this respect the mode of administering justice in England manifestly fails to deter criminals. Paley argues that 'legal description' (that is general laws) cannot encompass beforehand all the circumstances which may be relevant to the malignity of a crime; after an offence has been committed, however, they are relatively easy to perceive (Principles, 372). But if the essential characteristics of a type of crime are incapable of being adequately described, then, asks Bentham, 'by what means is it that for the purpose of a man's being deterred from the commission of it, any conception of it can be lodged in his mind?' (UC civii. 222). And again:

if there be a set of general terms which before this or that crime has been committed are capable of serving to give expression to the material circumstances of it ... why the same words should be incapable of serving for the giving expression to those same circumstances before that same individual crime has been committed, remains to be explained. (UC civii. 219.)

If the circumstances can be perceived after a crime is committed they can be expressed, and if they can be expressed then there is sufficient ground for constructing a law containing all the general characteristics necessary to distinguish capital from non-capital offences. There should be no doubt in the mind of the potential offender either as to the nature of the criminal act he is considering or of the penalty he risks should he perform it. Clarity of description and the certainty of punishment - both necessary for deterrence - are within the scope of a rationally grounded and well-administered penal law.

In the second place, and here modern criminologists would also agree, it only makes sense to measure the potential deterrent effect of a punishment by comparison with the consequences of alternative penalties. Bentham's alternative to death in the 1775 essay was 'perpetual imprisonment', his choice being supported by a lengthy examination of the factors for and against these two punishments. Agreeing with Beccaria, he argues that, with suitable aggravations of labour and solitary confinement, life imprisonment would have
a more terrifying impact on prospective offenders than was then the case, and more than the threat of capital punishment, which rarely figured in the imagination of the lower orders from whose ranks most criminals were drawn.⑩ Paley, as we have seen, hardly gave a second thought to the deterrent value of imprisonment, considering it a terror insufficient to make an impression upon the minds of potential offenders. But his analysis of the possibilities was hopelessly incomplete, not to say at times confused, as Bentham recognized (UC cvii. 205). On several occasions Paley appears to conflate two different aspects of deterrence - the specific prevention of further criminal acts by the convicted criminal, and the general deterrent effect of punishment on the public at large. The distinction is a pertinent one often overlooked by less thoughtful protagonists in recent discussions bearing on the deterrent value of capital punishment. For Bentham it was central to the consideration of the alternatives: by either punishment - death or life imprisonment - he argued, the offender is prevented from perpetrating further crimes, but the cruel prospect of the latter has the additional utility of serving as an example to deter others. What evidence does he have to support the claim that capital punishment is not as effective a deterrent as imprisonment? 'In the Grand Duchy of Tuscany', he writes, under the Government of Leopold afterwards Emperor, for a course of years in no instance was this punishment inflicted and yet neither to any degree in point of mischief nor to any great extent in point of frequency did the public security suffer violation than in the equal number of years under the influence of capital punishment in that same country during a former period or in other Countries and particularly in England.⑪

The Criminal Code promulgated by Leopold in 1786 was constructed under the influence of Beccaria's Dei delitti e delle pene, and has been described as 'the crowning achievement of the Continental movement for the reform of criminal law'.⑫ The suggested comparison, however, between Tuscany under Leopold and England during the same period is unsophisticated by modern standards of empirical analysis. But had better evidence been available, Bentham, perhaps more than anyone else of his day, would certainly have employed it. His thirst for data is well-known and was always in advance of the techniques for accumulating the matter he required. Nor should it be forgotten that at the time Bentham was writing it was hardly an established practice to enlist empirical evidence in support of arguments over penal policy. Paley, certainly, made no attempt to substantiate his view that imprisonment was not a deterrent by reference to anything that might pass for empirical proof. In this, as in so many other aspects of social analysis, Bentham showed himself to be at the forefront of intellectual endeavour.


⑪UC cvii. 205. A similar passage appears in the 1830 essay, where John Howard, the English penal reformer, is cited as the source for the information about Tuscany under Leopold. See Bowring, i. 531.

⑫Radzinowicz, op.cit., i. 293.
(ii) According to Paley, the judicial selection of those criminals fit for execution is dependent on 'circumstances' which are impossible for the legislator to 'enumerate or define beforehand'. Hence the need for the 'net'. The advantage of having a multitude of capital offences is that, depending on the circumstances of a particular case, the magistrate can use his judgement as to whether it is suitable or not to impose the death penalty. For Bentham, who had long inveighed against the discretionary power of judges and against judge-made law, this argument was indicative of Paley's failure to recognize the superiority of general statute law to the vagaries and unpredictability of the Common Law. Dependence upon the subjective assessment of individual judges made the English judicial system a purely arbitrary one. Following the rules laid down by Paley (those actually in use in England's courts) it could not be known whether the use 'made of the power of punishment was proper or improper' (UC cvii. 203). The 'danger' in this policy is that the decision whether to be lenient or not rests almost entirely on how judges perceive the circumstances of each particular crime. It is upon this that the lives of men depend (UC cvii. 204).

The arbitrariness of the English judicial system was another illustration for Bentham of that perennial battle between, on the one side, the principles of antipathy and sympathy, and on the other, utility. Paley's terminology suggests the contest when he speaks of 'some' criminals guilty of capital offences 'deserving' or 'meriting' death. Here, rejoins Bentham, antipathy and sympathy assume 'the more limited appellation of the principle of vengeance' (UC cvii. 206). Needless to say, utility should be the preferred principle of action in all matters, not least of all where questions of punishment are concerned:

Under the principle of utility, not an atom of pain or evil in any shape would be inflicted on any sensitive being but under the supposition and persuasion of its necessity; viz. the necessity of such infliction to the preserving of the same individual or some other individual or individuals from some greater evil. (UC cvii. 206.)

Contrary to this, under Paley's method, it is the degree of intensity to which the passion of ill-will is excited which is taken for 'the self-sufficient measure' of punishment, and this is 'the ruling principle or efficient cause of action of the tyrant' (UC cvii. 207). 'A Nero or a Caligula', asks Bentham, 'if it were an object with them to find a justification for their barbarities, would it be possible for them to devise or wish for a theory that should set them more completely at their ease?' (UC cvii. 202).

(iii) The aspect of Paley's argument upon which Bentham concentrated most of his fire was his defence of the power to pardon. The power of remittance is necessary, according to Paley, so that not every man convicted of a capital offence need incur the maximum penalty. Hence in England nine out of ten capital offenders are saved from death by this means. Paley thought this preferable to a system which does not allow remittance of sentences, because such a system is bound to depend on a more sanguine execution of the laws - more 'than the public compassion would endure, or than is necessary to the general security' (Principles, 373). Unavoidably, one feels, this is the kind of convoluted thinking that results from trying to defend such penal laws as those existing in England at that time. With the exception of pick-pocketing (Principles, 374), Paley never considers reducing the number of offences punishable by death, taking refuge in the power to pardon to lessen the severity of the system. Bentham, of course, was particularly unimpressed by
this uncritical Blackstonian. So far as Paley is concerned, 'death and destruction ought to have place, death and destruction dealt without reason: pardon, exempting from death, in like manner without reason'. For Bentham, there was no reason for executions at all; there should be 'pardon in every case, with reason but in no case without reason' (UC cvii. 210). The 'benignity of the Crown', he argues, is no more than a metaphor used to describe a power that is exercised by 'innumerable and undiscoverable' hands. Worse still is the absence of rules stipulating the conditions under which pardons may be granted:

Laws are made, declaring each of them that for such and such a modification of theft the punishment shall be death: but by an original and a standing rule of constitutional law the King has it in his power to exempt from this punishment, and without reason declared, and without having any reason at all, any and every man he pleases. (UC cvii. 269.)

The arbitrariness to which this delegated discretion gives rise is invariably productive of evil. But in accordance with 'the system of synomyation received in the every-thing-is-as-it-should-be school', Paley defends only what 'is, and ever will be', ignoring the fact that the system of remittance as it stands is pregnant with abuse (UC cvii. 228, 236-9). The discretion left in the hands of the magistrate is the source of untold corruptions, the most blatant of which is a standing invitation to bribery:

What the left hand doth, the right hand knoweth not, or at least needeth not to know: the good which is always done is done - the rewards which at any time may precede, accompany or follow it, are all protected from the eye of inquisitive impertinence. (UC cvii. 247.)

Nor does the corruption stop here, but can be seen to permeate the entire judicial process. Ways of avoiding the imposition of the ultimate penalty are openly discussed in courts of law, even though such discussions, conducted in mysterious lawyers' jargon, are often unintelligible (UC cvii. 248).

Everything, protests Bentham, is deliberately 'wrapt in confusion' and 'the life of [a] man is made the [subject] either of chance, or of corrupt design still more than chance' (UC cvii. 268). As things stand it is clearly in the interest of judges and lawyers, not to mention the array of anonymous advisers to the monarch, to maintain the established practice. For jurors, however, the choice is less obvious - it lies between perjury, on the one hand, and 'cooperation in the work of subservience to useless and pernicious barbarity on the other' (UC cvii. 266).

The English judicial system, then, is corrupted from top to bottom, but all the 'diseases' which infect it as a result of the dispensation of pardons can be cured by the abolition of the death penalty. If there were no other way to avoid executing criminals than by perjury on the part of witnesses and juries or by allowing judicial discretion in the choice of penalties, then 'the mischief thus done whether useful upon the whole or not, would not be absolutely devoid of use'. But, and this is Bentham's last word on the

1 The 'anonymous' manner in which the Crown's mercy was often dispensed and the grounds upon which magistrates recommended pardons is discussed by Radzinowicz, Ibid., i. 107-22.
matter, 'a much more surely efficacious as well as ... simpler mode of avoiding the use of this pernicious mode of punishment is in some men's power, viz. the abolishing it' (UC vii. 263).

How extensive was the practice of pardoning convicted criminals in Bentham's day? Though it is impossible to give a precise answer to this question, it does not appear that he exaggerated matters. In France there were only six crimes stipulated as capital offences by the Code Napoleon; in England, by 1820, two hundred and twenty-one offences carried the supreme penalty. The aim of reformers of all political persuasions was to reduce significantly this number; in the process they frequently spoke with great asperity of the discretionary power wielded by the magistrates. The connection between the arbitrary use made of the royal prerogative and the general state of the administration of the criminal law was apparent to all who approached the problem with an open mind.15

According to Patrick Colquhoun, four-fifths of offenders condemned to death were pardoned.15 James Abercrombie (afterwards Lord Dunfermline) was not alone when in 1812 in the House of Commons he deplored 'the extended practice of admitting convicts into the military service of the country and the greatly increased number of free [unconditional] pardons'.16 Samuel Romilly, by no means a radical in politics, broadly supported Bentham's views on capital punishment. Between 1808 and his death in 1818 he made several unsuccessful attempts to amend the statute books by introducing bills to remove particular acts of legislation which decreed the death penalty, only to have them condemned as dangerous innovations and thrown out by the Lords.17 Romilly was not opposed to vesting discretionary powers in the courts, but he argued that there was 'a wide difference between investing the judges with the power to determine the degree in which the same species of punishment may be

"According to Radzinowicz the operation of capital statutes was restricted by the cumulative influence of three factors: '(1) the frequent commutation of death sentences by the Crown; (2) the underestimating of the value of stolen property by the juries; (3) the merciful interpretation of capital statutes by the judges'. Ibid., i. 96-7.

15P. Colquhoun, A Treatise on the Police in the Metropolis, 4th edn., London, 1797, p.294. Radzinowicz has a table giving information on the number of persons capitaly convicted and the number executed in London and Middlesex in the period 1749-1799. Certain exceptional years aside, only between twenty-five and fifty per cent of those convicted in any one year were actually executed (in a few cases much less, for example 1794 when seven of seventy-one capitaly convicted persons suffered death), and 1,696 out of 3,680 in total for the entire period. In the years 1800-1810 a noticeable relaxation in the administration of the death penalty in capital cases occurred in London and Middlesex, when only 123 of 939 capitaly offenders were executed. See op.cit., i. 147, 152.

16Parliamentary Debates, XXI (1812), 1253-8, cited by Radzinowicz, Ibid., i. 131.

inflicted, and leaving it dependent upon their will whether the offender shall
be put to death or shall only suffer a six month's imprisonment'. He
disagreed with Paley's view that aggravating circumstances justifying the
infliction of capital punishment cannot be laid down by law or described with
sufficient precision. Sir James Mackintosh was an ardent supporter of
Romilly's proposals for easing the severity of the criminal law, and after
Romilly's death took charge of similar measures in the Commons. On 2 March
1819 he was able to carry a motion against the government, by a majority of
nineteen, for the establishment of a Select Committee to consider capital
punishment as it was administered in England's courts. Edward Gibbon
Wakefield, a less well-known member of the radical coterie at this time,
condemned the death penalty on the familiar principles of severity and
disutility and fully credited Bentham and Romilly for his conversion to the
cause of abolition.

A consistent theme in the writings and speeches of these disciples of
Bentham and, indeed, of others who argued for abolition or some degree of
reduction in the number of capital offences, was the futility of imposing laws
which could not be enforced or which were merely rendered futile by the
practice of pardoning criminals after they were sentenced. Lord Holland, in a
Lords' debate on one of Romilly's bills, reiterated the charge that the courts
mete out punishment inconsistently out of fear or abhorrence for the laws they
are sworn to uphold. 'It is notorious', he claimed, 'that the practice of our
courts is at variance with the laws they profess to administer.' The
reluctance of juries to hand down a guilty verdict and of judges to inflict
the death penalty for the theft of forty-shillings from a person sufficiently
attested to the fact that justice was being administered contrary to the laws.
It was the prevalence of this kind of thing that moved over one hundred
bankers and company directors to sign the London Jurors' Petition, presented
to the Commons by Henry Brougham on 19 November 1830. The aim of the
petitioners was to abolish the death penalty for those offences against
property which were unaccompanied by violence, including that most refined of
capital felonies, forgery. Their motivation, they confessed, was not to
lessen the hardships caused by the penal law but the protection of their
property, of which they could not be assured by a judicial system which, due
to the severity of the laws, frequently prevented the conviction and
punishment of criminals, or simply pardoned those it had found guilty. The
London Jurors echoed the view of Bentham when they asked 'that criminals might

19S. Romilly, 'Observations on the Criminal Law of England as it relates to
Capital Punishments, and on the mode in which it is administered', in
Speeches of Sir Samuel Romilly in the House of Commons, 2 vols., London, 1820,
1. 135-6.

19For a discussion of the work of the committee and Mackintosh's part in
it, see Radzinowicz, op.cit., i. 528-61.

20E.G. Wakefield, Facts relating to the Punishment of Death in the

21Cited by B. Montagu, The Opinions of Different Authors upon the
Punishment of Death, 3 vols., London, 1809, iii. 266.

22See Radzinowicz, op.cit., i. 595-6, 731-2.
suffer the punishment of their guilt by the authority of defined statutes, and not by the uncertain and capricious rule of judicial discretion'.

It was the heightened public interest in the use of the royal prerogative to pardon which almost certainly moved Bentham to write his final essay 'On Death Punishment' in 1830. He addressed the essay 'to his Fellow-Citizens of France' and there exist at University College some related manuscripts (UC xxiii. 77-85), dated 26 October to 18 November 1830, which lend credence to the notion that the work was begun in response to the public reaction to the events in Paris of that year. Entitled 'JB to France: Death', or occasionally 'JB to France against Death', these manuscripts are prefaced by a later loose note, dated 1 June 1831, describing them as 'matter which relating to the Ex-ministers was kept back and not sent this day with the other matter to the printers' (UC xxiii. 77). The 'Ex-ministers' in question were the former ministers of Charles X held responsible for the 1830 'July Days' of insurrection in Paris, and for whom the Chamber of Deputies eventually secured a pardon in the face of virulent public criticism. In a note to the published version of his essay Bentham supplies the evidence which confirms its connection with the unpublished material:

In France, while this paper was writing, two mutually connected questions were on the carpet:— the general question — shall death-punishment, in any, and what cases, be employed? — [and] the special question — shall it be employed in the case of the Ex-ministers? The lot of these men now being disposed of, the matter which applied exclusively to their case has been struck out.

The English papers were full of the pros and cons of pardoning the French ministers, and there can be little doubt that Bentham's essay was intended to place the debate within the wider context of the failings of the English judicial system caused by the power to pardon. Subsequently, when Bentham sent his essay to the printers in the summer of 1831 he omitted as redundant the manuscripts dealing with the 'special question' and more or less restricted himself to the 'general question' of whether capital punishment should be employed at all. So far as the issue of pardons was concerned he merely reiterated in condensed form the case he had previously argued in his critique of Paley.

The inefficiency of the administration of justice caused by the penalty of death and the wide powers of discretion invested in the magistrates was clearly a matter of some concern in Bentham's day. That it was for many the primary focus of discussion concerning the death penalty was a reflection of the state of contemporary opinion. When Bentham wrote his first analysis of capital punishment in 1775, when he scribbled down his thoughts on Paley's

23 The Punishment of Death. A Selection of Articles from the Morning Herald with Notes, 2 vols., London, 1836-7, i. 167.

24 Bowring, i. 525n.

25 For extracts from reports in the Morning Chronicle and Morning Herald concerning the events in France, see The Punishment of Death, i. 65-71.

26 See Bowring, i. 529-30.
defence in 1809, and even for some time after he wrote his final essay on the subject, the question of total abolition was not upon the public agenda. It was difficult enough to persuade England's legislators that even a slight reduction in the number of capital offences would not threaten the security of person and property. By the 1830s reformers had achieved sufficient momentum that sentiments favouring abolition no longer looked quite so radical or dangerous as they had in the troubled years after the Napoleonic Wars, but even then it was wise to marshall arguments piecemeal and present them with caution if even a minimum of success was to be achieved. Bentham could not realistically hope for complete abolition, but any reform of a system so fraught with anomalies would have been welcome to him. Abolishing the power to pardon was one step, and that not an insignificant step, in the right direction. Without pardons to fall back upon to ease the severity of the penal law England's legislators would be forced to set lesser penalties in the place of capital punishment or, if they refused to alter the laws, face a judicial massacre of criminals on an unprecedented scale. In the event, the gradual process of dismantling a penal system dominated by the penalty of death was begun, a process not to be completed in England until the final act of abolition in 1969.
"I do not like", he would say, "to look among Panopticon papers. It is like opening a drawer where devils are locked up — it is breaking into a haunted house." This reminiscence of Bentham's old age inspired Gertrude Himmelfarb's short study, 'The Haunted House of Jeremy Bentham', a descriptive interpretation of the Panopticon prison. This essay is well known and highly regarded, in many ways justly so; it is eloquent, persuasive and imbued with moral fervour. Published in 1968 in a climate of libertarianism and revulsion from the overmighty state, it encapsulates a certain reaction to Bentham's thought. It deals with the fundamental question, previously raised by Herbert Spencer, A.V. Dicey and Élie Halévy, on the relation of Benthamite utilitarianism to liberty. A similar insight illumines much of the most valuable subsequent work in Bentham studies. In the field of penal history, Foucault and Ignatieff have critically questioned the basis and thrust of eighteenth and nineteenth-century penal reform and have raised doubts as to the nature of the humanitarianism of the Enlightenment.

The theme of Miss Himmelfarb's seminal study is that the Panopticon penitentiary was a wicked concept designed to deprive the inmate of rights and to grind him down for the pecuniary advantage of the gaoler — Jeremy Bentham himself — who was actuated by the most sordid of motives, that of gain. The devils that haunted the Inspection House were those of greed, oppression, cruelty and degradation. She denounces other writers on Bentham in these terms: 'The subject of the gullibility and culpability of these biographers and historians is too vast to be documented here but I shall deal with it at

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1 Based on a paper read at the Bentham Seminar, 6 February 1986.


some length in my forthcoming book on Bentham.¹⁶ One can sympathise with her irritation; Mary Mack, for instance, is almost mawkish in her uncritical eulogy of the happy-busy world of Panopticons.¹⁷ But Miss Himmelfarb sees the issues in terms of moral absolutes: whoever is not for her is against her, on the other side of a chasm; in their disregard of the wickedness of the Panopticon or in their misapprehension of its true nature, in their silence, they are besmirched by evil and comprehended in the guilt of Bentham himself. She chides him for his sins, finding it astonishing that he can look back in later life with his self-respect unimpaired, even more astonishing that his nice friends, Wilberforce, James Mill, even Romilly, joined him in contemplating these monstrous proposals. Miss Himmelfarb extends her attack to the realm of political philosophy to argue that the Panopticon is 'the existential realisation of philosophic radicalism', the Inspection House the paradigm of society, the governor the state with its power total and illimitable; the democratic state of the utilitarians turned its back on individual rights and the mixed and balanced constitution, and opened the door to an omniscient and omnipotent legislature. She implies that Bentham foreshadowed Big Brother, and with his logic and his contrivances was building the apparatus of the totalitarian state.

These are serious charges and raise important issues. It has to be admitted that the Panopticon writings are disturbing and create problems for Bentham's admirers; this may indeed be one of the reasons why so little attention has been paid to them. The disapproval of Benthamites also haunts the Inspection House. Like Leslie Stephen, they believe that it diverted him from 'his more legitimate employment of speculative labour'.¹⁸ The Panopticon writings do not always present Bentham personally in an attractive light; his messianic tendencies are somewhat alarming; his devices when not ridiculous are repellent; his mechanistic concept of the nature of man is degrading to human dignity; he contemplated the exploitation of the labour of men, women, children, the sick and the maimed, over an oppressively long working day; his complacency and his cupidity are openly displayed. Punishment and prisons are not agreeable subjects; they raise questions full of doubt and dread, emotions to which Bentham seems a stranger. Yet Miss Himmelfarb is, at times, tempted into denunciations of Bentham that are less than just. She fails to take into account the profundity and complexity of his ideas on punishment, or to deal adequately with the contemporary context. This leaves an impression of moral incoherence; it is by no means clear on what basis she rests her condemnation, on the inherent wickedness of Bentham himself, on the superior virtue of his contemporaries, or on her own


understandable emotional revulsion.

Bentham himself dealt in no uncertain terms with the sensibilities that squeamishly recoiled from punishment. For him, punishment was the foundation of society and government: 'Punishment is everywhere an evil; but everywhere a necessary one... No punishment, no government; no government, no political society.' And he gave short shrift to those who objected on grounds of humanity:

Abolish any one penal law, merely because it is repugnant to the feelings of a humane heart, and, if consistent, you abolish the whole penal code; there is not one of its provisions that does not, in more or less painful degree, wound the sensibility. All punishment is in itself necessarily odious: if it were not dreaded, it would not effect its purpose; it can never be contemplated with approbation, but when considered in connection with the prevention of the crime against which it is denounced.\(^\text{10}\)

Punishment is thus 'an indispensable sacrifice to the common safety'. This is the bedrock on which Panopticon is founded, and it is difficult to deny. Legal punishment has a twofold function, to deter the criminal and to protect the law-abiding, but it must also appease the public's wrath and slake their thirst for retribution. Miss Himmelfarb does not deal with these considerations, nor how they have to be applied to the realities of police and prisons. If the Panopticon is to be condemned on humanitarian and moral grounds, it must be considered against contemporary realities. Bentham lived at a time when punishment in Europe was barbarously cruel. In Britain, unlike other European countries, the common law had no place for torture either in the judicial process or in punishment, but peine forte et dure was discontinued only in 1771. And imprisonment of itself could lead, in Bentham's indignant words, 'from one degree of atrocity to another, till it terminates in a most cruel death; and this without being intended by the legislators but altogether arising from absolute negligence.\(^\text{11}\)' The well fed, clean prisoners in the Panopticon must be seen against the filth and starvation of the real prisons. Again Bentham's scheme for prisoners at the end of their gaol terms should be put in perspective. He suggested that unless the prisoner could find a householder willing to put up a bond of £50 as security for good behaviour, he should be enlisted in the army or navy or be enrolled into a subsidiary Panopticon run by the governor. Miss Himmelfarb's mind quails at the enormity of this proposal that would make a mockery of release, condemning most of the inmates to perpetual imprisonment. It does indeed seem to be abominable; yet seen from the perspective of the eighteenth or indeed the nineteenth century it becomes, if not defensible, at least understandable. The penitentiary was designed as a substitute for transportation. Despite its somewhat romantic image, the realities of transportation in the eighteenth century were harsh. The prisoner was handed over by an English court to a contractor who shipped him across the Atlantic. Up to 1775, between 30,000 and 50,000 English men and women had made this journey. Many of the contractors were concerned also with the slave trade.

\(^{9}\)Browning, i. 528.

\(^{10}\)Ibid., i. 412.

\(^{11}\)Ibid., i. 421.
from West Africa - indeed Bentham calls transportation 'the white negro trade'. Often one-third died before they reached the end of the journey. Those who survived were sold to work in the fields of Maryland, Virginia or Georgia. Men would fetch about £10, women £8 to £9. The conditions of the first convicts transported to Botany Bay were worse. They were landed on desolate, marshy ground where barracks, storehouses, huts and hospitals had to be built and the growing of food had to be organised. Starvation, crime, whippings and hangings were the inevitable consequence. In 1791, the year Panopticon was published, a transport carrying 1,763 convicts set out to Botany Bay. Over three hundred died on the voyage or shortly after; hardly surprisingly, for the master of the ship was paid a lump sum for each prisoner, so the less they ate and the sooner they died, the greater would be his profit. Here indeed duty was utterly disjoined from interest. At the end of their term, very few of these convicts managed to return; indeed many were forcibly detained in bondage. In comparison, Bentham's eternal Panopticons do not seem so black. They were at least a rational attempt to deal with a very real problem and one to which there were no easy solutions. From the point of view of the authorities and the public, the overwhelming advantage of transportation was that the country was rid of the criminal. Fifty years after the Panopticon scheme was mooted, 'The mere idea of retaining a large mass of convicts at home was hailed by the public with alarm; and it became almost an axiom that offenders sooner or later, but as a rule inevitably, must be banished from the country.' In the mid-nineteenth century it was the refusal of the colonies to accept any further drafts of criminals that forced the end of transportation, not the humanitarian or utilitarian revulsion from it. The problem of how to reassure public opinion that dangerous criminals are not let loose on society remains a live issue today. Bentham's answer was a thorough and perhaps draconian solution but it must be seen in this context. It also addressed itself to the perennial difficulty facing the ex-convict of finding honest work. For Bentham, the object was 'to ensure good behaviour and subsistence of convicts after the expiration of their punishment, regard being had to economy, humanity, and justice.' Perhaps he had some doubts, for he goes on, 'If perfection be still at a distance here, shall we find anything nearer to it in the colonisation scheme, or the Penitentiary Act? That is the question that Miss Himmelfarb does not ask.

Bentham's original Panopticon writings are in three parts. The letters were written in Russia in 1786; these are lighthearted, clear, cogent and with few qualifications. The two postscripts were written five years later and published in haste; these are serious but slovenly, muddled and verbose, and an oddly paradoxical product of a man famous for his reluctant, cautious, perfectionist attitude to the publication of his works. The letters fill a mere 27 pages in the Bowring edition, the postscripts together 105. Miss Himmelfarb bases her initial description on the simpler, more extreme letters.

12 A. Griffiths, Memorials of Millbank and Chapters in Prison History, 2 vols., London, 1875, ii. 15.

13 Ibid., ii. 253.

14 Bowring, iv. 169.

15 Not 1787, as on Bentham's title page.
and dismisses the more profound and far more complex postscripts as afterthoughts inspired by 'the overriding consideration of economy'. In her treatment of Bentham's frugality she overstates her case. She reveals as a horrifying fact that Bentham was clandestinely planning to feed his convicts on potatoes. He certainly did propose an exclusive diet of potatoes which would, in the long run, have had detrimental effects on the human frame. But Miss Himmelfarb is not content with leaving the question at that; she asserts that potatoes were then regarded 'even by the poorest as animal fodder', thus implying that Bentham was contemplating degrading his prisoners to the level of swine. But the place of the potato in the eighteenth-century diet was one of great complexity. Certainly it was a food for cattle, pigs and poultry; but it was, particularly after 1760, increasingly used for human consumption; it was cultivated extensively around London and had its place even on a gentleman's table. Howard includes it in his prison dietaries without explanation or apology, and Eden confirms its 'very general use ... as food for man'. The potato was not just a vegetable but a subject of debate among politicians, economists and agriculturalists; the central question of the debate was the advocacy of the potato as a substitute for bread as the staple food of the poor. Adam Smith, Arthur Young and Patrick Colquhoun recommended this change; in 1795 Pitt commended a loaf made of potatoes and maize as a nutritious and palatable alternative to the wheaten loaf. Bentham was concerned not only with the potato as food for his prisoners but with its cultivation. In this he was sharing a concern of many of his most eminent contemporaries. It was a matter of moment, at a time of rising wheat prices, to find a substitute food for the poor and so avoid the necessity of a ruinous rise in wages. Bentham was following established enlightened opinion in suggesting a staple diet of potatoes. Miss Himmelfarb's gloss on his suggestion is not entirely fair. Certainly a fine sensitivity to the dignity of the poor was not one of his attributes but it is less than just to suggest that he contemplated feeding his prisoners on the eighteenth-century equivalent of Whiskas. On the question of bedding, Miss Himmelfarb again puts the worst construction on Bentham's proposals. She lists hammocks as one of the measures that he was 'tirelessly and ruthlessly casting about for' in his drive for economy. Yet there is nothing in the context of penal history particularly ruthless about hammocks as opposed to iron or wooden bedsteads. Indeed in the 1850s, hammocks were used in the 'soft' prisons such as Reading and were popular with the inmates. The Prison Act of 1865, imposing a harsh discipline, insisted on the use of wooden planks as a punitive measure.

A more serious matter is Miss Himmelfarb's treatment of Bentham's attitude to solitary confinement, and her failure to discuss the problems this raised for penal policy. To Howard and his contemporaries it was obvious that promiscuous association made prisons schools of vice, corrupting the innocent.

16 Himmelfarb, op.cit., p.62.


19 Himmelfarb, op.cit., p.62.
and giving lessons in crime to the inexperienced. Bentham in his writings of the 1770s showed himself deeply concerned with this problem; association as it was practised in the gaols not only corrupted but inflicted sufferings on the sensitive and exposed them to the tyranny of their fellow prisoners - these evils still exist in British prisons. At first, solitary confinement seemed the simple and obvious solution. Howard suggested separate cells at night; Bentham seized on this and extolled the Panopticon as a device for perfecting absolute solitude at all times. Yet between writing the letters and writing the postscripts, Bentham changed his mind; the evil of solitude was 'certain - it is immediate - it is intolerable - it is universal'. He proposed, as a compromise to avoid both the evils of promiscuous association and total solitude, that the inmates of the Panopticon should be divided into companies and housed two, three or four to a cell. This would enable a greater variety of trades to be carried on, it would allow experienced workmen to teach boys and it would nurture friendship, 'the sister of the virtues.... Quitting the school of adversity, they would be to each other as old school fellows.' Miss Himmelfarb admits that at first sight the change would seem to be actuated by humanitarian motives but she cannot accept this. She argues that Bentham was neither truthful nor sincere in his account of his motives and was actuated entirely by cupidity. Yet in the first indication of his doubts, as early as 1790, he suggests movable partitions to alleviate the punishment of solitude on the grounds of humanity, not economy: 'to the poor devils in question it might make the difference betwixt rapture and despair'. He later gave his own account of his conversion in these words: 'In the letters I assumed solitude as a fundamental principle. I then copied and I copied from recollection. I had no books. I have since read a little. I have thought more.' He goes on to refer to Howard's opinion that prolonged absolute solitude is 'more than human nature can bear, without the hazard of distraction or despair'. Miss Himmelfarb casts doubt on this account by referring to his 'belated attention to Howard'. But the reference cited in Bowring is not to The State of the Prisons, published in 1777, which indeed Bentham would have been aware of in 1786, but is to a footnote in The Principal Lazarettos in Europe; and this was not published until 1789. To call Bentham's consideration of it in 1791 'belated' is hardly reasonable. She goes on to assert that it was the expense of solitary cells that caused Bentham to change his mind, and to prove this she quotes words of his:

What startled me, and showed me the necessity of probing the subject to the bottom, was the being told by an architect that the walls alone as expressed in Plate III, might come to two or three thousand pounds. It was high time then to inquire what the advantages were that must be so dearly paid for.

Again on a point of detail, one must take issue with Miss Himmelfarb's use of these words and the meaning attached to them. They come in a footnote (see

Bowring, iv. 140.

Ibid., iv. 74-5.

Bentham to Sir John Parnell, 30 August 1790, Correspondence (CW), ed. A.T. Milne, iv. 190.

Bowring, iv. 71-2.
Bowring, iv. 138) in one of the most obfuscated passages in the second postscript concerning the separation into companies or classes. The paragraph to which the footnote refers is as follows:

Of the separation according to classes, as contradistinguished from the separation into companies secured as by the airing plan, the chief inconveniences are the two following: it leaves the convicts still, as we have seen, in crowds and if pushed to any length and carried into effect by separation walls, it is proportionably attended with great addition to the expense.2

The Plate III referred to in the footnote is printed in the first postscript and is a diagram not of cells but of an exercise yard. Any reasonable reading of the context would take the footnote to refer to the walls necessary to confine and keep separate convicts while at exercise, not the partitions between cells. However one should not make too much of this misreading; it is not difficult to find quotations in which Bentham extols the virtues of economy. Indeed far from being ashamed, he gloried in frugality, believing it to be one of the cardinal virtues of all administration. Yet it is a different matter to insist, as Miss Himmelfarb does, that he gave an absolute priority to economy. She allows that his three principles of prison management were lenity, severity and economy, but she believes that economy eclipsed the others. She compares Bentham, to his disadvantage, with other reformers, Howard, Wilberforce, Bell and Lancaster, and denies that he was motivated by the desire to relieve suffering; he was concerned with the interests of society rather than with compassion. This raises the vexed question of the utilitarian attitude to minorities; but on the personal level it is difficult to believe that Bentham was unmoved by human misery; he may indeed have tried to distance himself from it by quantification, but in his calculus of happiness and suffering he puts much emphasis on the pain of sympathy; and his revulsion from the injustice and cruelty of prisons is apparent in his private writings. He affirmed that his rejection of solitary confinement derived from the realisation of the damage it could do to men's minds - a fear amply justified in subsequent penal history. There is no substantial reason to doubt it. Bentham qualifies his assertion that economy must be the prevalent consideration with the proviso 'saving the regard due to life, health, bodily ease, proper instruction and future provision'. He believed that the Panopticon was the best way of resolving the tensions between his three principles of prison management, lenity, severity and economy; and he put lenity first.

L.J. Hume has pointed out that in her emphasis on the absolute power that he wanted for his governor, Miss Himmelfarb has failed to realise that he is not the embodiment of the state but in the position of an official.25 In Constitutional Code officials have authority because they have responsibility; but they are subject to checks. The public opinion tribunal plays a vital part in scrutinising the management of the Panopticon, but the Panopticon is not an architectural representation of utilitarian democracy. The inmates of the prison can never see their rulers; the Benthamite state is more an inverted Panopticon where those who exercise power are subjected to scrutiny.

2"Ibid., iv. 137-8.

Miss Himmelfarb states that 'Benthamism ... has as little in common with either our functioning democracies or our democratic ideals as the Panopticon has with our actual, let alone ideal, prisons.' Both these statements need qualification. The prisons as they developed did incorporate some of the ideas of the Panopticon. Discipline maintained by surveillance became generally accepted as the nineteenth century progressed. The authorities ceased to rely on massive walls, iron bars and chains, and moral supervision replaced physical restraint. Arthur Griffiths, writing in the 1870s, echoed Bentham: 'the sleepless eye of a stringent systematic discipline' enforced order and hindered escape. 'Our reliance is placed on the moral aid of continuous supervision.' Today, surveillance is an important aspect of discipline in prisons; and although the idea of a private profit-making prison seemed bizarre to the Webbs, they have been set up successfully in America, and the Adam Smith Institute is pressing for the privatisation of British prisons. The British constitution certainly differs significantly from Constitutional Code, in particular in the power of the executive and of party, but the central concept of an omniscient elected legislature has emerged in the doctrine of the sovereign parliament and the eclipse of the monarchy and the House of Lords. In the classic tradition of A.V. Dicey, Ernest Barker and Ivor Jennings, the checks and balances of the constitution are seen to be rooted in free discussion, a free press and an active informed public opinion, not in a declaration of abstract rights.

Miss Himmelfarb has not tried to relate Panopticon to penal history. As Hume pointed out, she has misread the connection between Bentham's proposals and the Penitentiary Act of 1794. She is also misleading on the substance of the Act of 1779; she writes that the object of the Act was to do away with prisons run by contractors. In fact the Act was designed to set up a penitentiary near London with a new system of management; it left untouched the county gaols and the hulks. The contractor-governor continued well into the nineteenth century; in the 1790s his demise was far from inevitable. Yet Miss Himmelfarb bases her moral condemnation of Bentham on the superior virtues of other reformers, and of his schemes on the superior virtues of the reformed prisons. She refers to George Holford as 'one of the great prison reformers of the century' and approves his 'appalled' rejection of Bentham's insurance scheme and visitors' gallery in favour of official medical supervision and official inspectors. She assumes without question that Holford was right, Bentham wrong. Yet the history of prison reform is not simple and is far from being a success story. During the nineteenth century, scandal followed scandal; failure was piled on failure; penal theories and experiments were hopefully promulgated only to be shattered by the realities of criminal and official behaviour. Many of the dangers that Bentham had anticipated from trust management came to pass. In 1872, almost a hundred years after the publication of The State of the Prisons, a Howard League pamphlet asserted that it was 'quite certain that great abuses do exist in the practically secret wards of the convict prisons'. And the safeguard of inspection extolled by Holford had failed; it was 'the uniform practice on the part of convict authorities to ignore complaints, deny abuses and represent themselves as exemplarily efficient'. Abuse came to light not through official reports but by the chance revelations of infrequent and

26 Himmelfarb, op.cit., p.81.

27 Griffiths, op.cit., i. 34, 237.
special visitors and of coroners' inquests. This was just as Bentham had foreseen. Miss Himmelfarb's 'great' prison reformer, George Holford, was himself at the centre of one of the most unhappy stories. He was responsible for the concept and management of the great prison at Millbank, set up as a model penitentiary after the final rejection of Panopticon in 1811. Stigmatised by Bentham as a 'hermetically sealed Bastille', its record was one of dreary cruelties, bungling experiments and morbid religiosity. In 1823, an epidemic of scurvy followed by dysentery killed 31 and incapacitated over 400; the prison had to be evacuated. This was the result of one of the experiments, a drastic reduction in the diet to bread, gruel and watery soup. Millbank penitentiary not only killed its inmates, it failed to reform them. Its achievements up to 1843 were summed up by its historian:

So the Millbank Penitentiary, the great reformatory and moral hospital, the costly machine in which had been sunk half a million of money, was nothing but a failure after all.... Its great hopes and ambitious aims were therefore at an end; it was all a mistake, a mockery, a sham."

Holford may have been a 'great' prison reformer but he was hardly a successful one. And as a touchstone for humane penal theory, Holford's practice is not adequate. The article in the Quarterly Review cited by Miss Himmelfarb to suggest that the mainstream of prison reformers disapproved of Panopticon is itself evidence that their methods are also abhorrent to twentieth-century susceptibilities. The writer, an adherent of Holford, defends the treadmill as 'a most important instrument of prison discipline ... we are at a loss to understand how it can be said to degrade in the offensive sense'.

Miss Himmelfarb's study of the Panopticon prison should not be allowed to go unchallenged. She approaches Bentham as a counsel for the prosecution; he is tried, found guilty and damned. Her very vocabulary is redolent of moral condemnation. He 'minced no words'; he 'exacted a pledge of collusion'; he 'did not try to conceal his intentions'. And in her conclusion she chills the blood with an impassioned plea to exorcise the devils that haunt the Panopticon from 'the entire edifice of his thought which is our heritage'. Before we summon priest, bell, book and candle to University College, we might question Miss Himmelfarb's central assertion that Bentham had both in practice and in principle denied any rights to the prisoner. 'There was no question of the "rights" of prisoners and paupers for there was no such thing as rights at all. There were only interests, and the interests of the majority had to prevail.' Bentham's ideas are considerably more complex than this. He did not argue that because the interests of the law-abiding must prevail, the interests of the criminal need not be considered.

28 Defects in the Criminal Administration and Penal Legislation, issued by the Howard League, 1872.

29 Griffiths, op.cit., ii. 1-2.

30 'Prisons and Penitentiaries', Quarterly Review, XXX (1824), 419.

31 Himmelfarb, op.cit., p.81.

32 Ibid., p.77.
It ought not to be forgotten, although it has been too frequently forgotten, that the delinquent is a member of the community, as well as any other individual — as well as the party injured himself; and that there is just as much reason for consulting his interest as that of any other.... It may be right that the interest of the delinquent should in part be sacrificed to that of the rest of the community; but it never can be right that it should be totally disregarded.  

In practice, Bentham's prisoners did have rights; by the rule of lenity, 'The ordinary condition of a convict doomed to forced labour ... ought not to be attended with bodily sufferance, or prejudicial, or dangerous to health or life.'  

If prison abridges a man's life it is 'unjustifiable homicide, to say no worse of it'; worse indeed than capital punishment, for 'death is accompanied and preceded by lingering torture'. Bentham's convicts did then have security, that is freedom from oppression, hunger, disease and death. He believed, and given his constant reiteration of this point the belief was surely genuine, that these interests, this security, could best be safeguarded by the transparent management of the Panopticon and by the junction of interest and duty. The advantages of contract as against trust management are worth some consideration; Miss Himmelfarb rejects them out of hand. Lenity was the first of his cardinal principles and if one were constructing the case for the defence of Jeremy Bentham, one could argue that he planned to harness the self-interest of individuals, the governor, the turnkeys, the doctor and the inmates, to create a humane prison. The security of the prisoners, their freedom from want and oppression, was the primary aim, but to achieve this the interests of the prison officials and the taxpayer must be accommodated; hence the emphasis on economy, the prerequisite of profit. Profit would be the fundamental safeguard for the well-being of the inmates.

As to the rule of economy, its absolute importance is great — its relative importance still greater. The very existence of the system — the chance, I should say, which the system has for existence, depends on it.  

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33Bowring, i. 398.  
34Ibid., iv. 122.  
35Ibid., iv. 123.  
36Ibid., iv. 125.
A VISIT TO BENTHAM, FEBRUARY 1831
S.R. Conway and T.P. Schofield
The Bentham Project, University College London

A recent circular letter to libraries and record offices designed to uncover items of Bentham's correspondence has brought to our attention an account of a visit to Bentham on 7 February 1831. The identity of the author is not evident from the account itself, though there are clear indications that the writer was a young man and that he was interested in the ballot. The author, however, was almost certainly Thomas Erskine Perry (1806-82), who was active in reform politics and was soon to play a part in the founding of the Parliamentary Candidate Society. He was the second son of James Perry, editor of the Morning Chronicle, and was knighted in 1841 on being appointed a judge of the supreme court of Bombay. The piece can be attributed with some confidence to Perry because of a letter of 2 February 1831 from Bentham to Albany Fonblanque (1793-1872), editor of the Examiner, and Edwin Chadwick (1800-90), at this time a journalist, law student, and close associate of Bentham.¹ This letter reveals that Fonblanque had written to Bentham about Perry, who had just returned from the University of Munich, and contains Bentham's agreement to see him. This conforms with the remark in the account that the author was invited by Bentham 'on Fonblanque's recommendation'.

The account is in the Horace Smith papers in the Essex Record Office, Chelmsford (D/DRn C130/1), and is reproduced here by kind permission of the County Archivist.

Feb. 7th. 1831. Spent the morning in the British Museum hunting up Ballot in the ancients - could find nothing of it in Plato - find it recommended in More's Utopia.² Dined with Jeremy Bentham, who asked me on Fonblanque's recommendation. We dined at about 8 - as soon as I got in and that he came down stairs he took me round the garden to show me Milton's house. We then went up stairs, being four, two famuli³ making up the square, who left the table with the cheese. Conversation rolled at dinner on the new religion in France⁴ - on Lords King, Radnor and

¹Bentham to Fonblanque and Chadwick, 2 February, 1831, photocopy at The Bentham Project, University College London.


³i.e. 'attendants'. Their identity is unclear. This and following Latin translations supplied by Ms. C. Atkinson.

⁴The Saint-Simonian 'religion' had been actively propagated in France by the disciples of Claude-Henri de Saint-Simon (1760-1825) since 1829, and had aroused great interest in several European countries.
Brougham as radicals, on editions of Jeremy's works etc. — when the young men left us. Jeremy complained of a slight stomach affection which impaired his mental energy and unfitted him for talking, he therefore begged me to talk chiefly — I began to draw him out about his works — asked him at what age he began to write, he gave this account: 'My father was a weak man and I am ashamed to say an attorney, and he would have me be a lawyer, he however soon allowed me to quit the profession. When I was reading law I had an old 4to volume, black letter, interleaved with blotting paper — as I read, I used upon each sentence that struck me to feel an idea or a half idea present itself, in the shape often of a single word, which word that I might not lose I used to write down, unable very often to work out the whole idea of which it was the germ — in looking over this book you will be surprised to find the quantity of words and the small quantity of sentences which I was able to complete.' He said, 'I don't find my inventive powers at all diminished, but my memory fails exceedingly, and as for my senses they are all going rapidly — smell I have quite lost, my hearing is very much deadened, my eyes are dim, and as for taste I can only distinguish between the four radical qualities of salt, sour, bitter, sweet, and am totally unable to discriminate the flavors dependant on the essential oils.' I remarked it must be very gratifying to him in his old age to observe his doctrines daily gaining ground, and his pupils increasing every day. He said, 'it is very cheering and that it made up for a very desolate boyhood, and early manhood, that he had been entirely cut off from society, that his father had no, or at least no desirable connections, and from peculiar circumstances he had been estranged from the world.' I remarked that probably this circumstance had had a very favorable effect upon him in inducing him to study more. 'Probably, probably,' said he, 'it made me fly to my books, and now sir,' he went on, 'what is your birth, parentage, education and pursuit?' I told him that I had got nothing but what Hell is paved with — good intentions, that I had been at a bad school where I learned little, and at a bad university where I had learned nothing, and when I came from college at 21, I had begun to read and had gone on with tolerable industry since that time.' 'That was just my case,' said he, 'I had no guide, had to form myself.' I asked him who he

5 Peter King, 7th Lord King, Baron of Ickham, Surrey (1776-1833); William Pleydell-Bouverie, 3rd Earl of Radnor (1779-1869); and Henry Peter Brougham, Baron Brougham and Vaux (1778-1868).

6 Jeremiah Bentham (1712-92).

7 Perry attended Charterhouse School from July 1816 to March 1822, and was admitted at Trinity Hall, Cambridge, in December 1823. He matriculated at Michaelmas 1824, and received his BA in 1829. He had been admitted at Lincoln's Inn in February 1827, and in 1829 had gone to the University of Munich.
considered his most illustrious disciple. "Bowring\(^8\) without doubt, he is quite omniscient, quite, such a correspondence with all parts of the globe," *cum multis aliis quo nunc perscribere longum est.*\(^9\) And so we went on tête à tête, I humoring this fine old man from time to time by talking of or quoting his works, he telling me I ought to have my ears boxed for talking so eulogistically - until at \(1/2\) past 12 he put on his nightcap telling me the hour was come for 'an ignominious expulsion', giving me one of his works and wishing me good night - he then called me back to say 'he had asked me to day for Fonblanque's sake, he would ask me next time for my own, for that I was a *bonus puer,*\(^10\) and so I left the old hero of 83.\(^11\)


\(^9\)i.e. 'with many others, to write them out in full now would be tedious.'

\(^10\)i.e. 'good boy'.

\(^11\)Bentham was not 83 until 15 February.
THE JEREMY BENTHAM SILHOUETTE RINGS

Catherine Atkinson

The Bentham Project, University College London

Last year University College London was fortunate enough to acquire a Jeremy Bentham silhouette ring, one of a number of similar rings probably crafted shortly after Bentham's death and distributed among his friends and followers to commemorate him. The ring is gold, with a silhouette portrait of Bentham on the front of the bezel, and a glass-fronted locket on the back of the bezel, inside the ring. This locket contains a few strands of Bentham's hair. Round the inside of the shank runs an inscription which reads: 'Jeremy Bentham hair and Profile born 4/15 Feb. 1747.8 died 6 June 1832 in his 85 year'.

The portrait on the ring is the work of John Field, one of the finest silhouettists working in England at the time. His name and address (11 Strand) may be discerned beneath the silhouette. Field invented the technique of 'bronzing', which enabled the artist to add a bronze-coloured sheen to parts of the silhouette; in the ring portrait, Bentham's hair and the lower edge of the silhouette have been treated in this way. The bronzing technique gave silhouette-artists, for the first time, the opportunity to use differing shades of colour, and thereby to impart character to otherwise monochrome portraits. The bronze added to the details of Bentham's portrait complements perfectly the gold of the setting.

There is another portrait of Bentham by Field in the National Portrait Gallery, dated by the Gallery to circa 1823 (N.P.G. No.3068). This portrait is an oval miniature, although at 7.9cm x 6.4cm it is at least three times larger than the ring portrait. The N.P.G. portrait, executed on a larger scale, includes more of the top torso of the sitter; details of collar, buttons, sleeve, eyebrow and eyelash are emphasised with bronzing. The ring portrait is not quite an exact scaled-down replica of the miniature portrait: the bronzing of the hair has been done quite differently, and the shape of Bentham's upper chest is different; yet the two portraits are unmistakably the work of the same artist. The respective dates of the two portraits suggest that Field used his own miniature portrait of Bentham as the model for the commemorative portrait. Notwithstanding the subtle differences, it is quite staggering that such an accurate smaller copy should have been produced in the 1830s, when all such work was done by human hand and eye, unaided by technology and photography. Admirers of the miniature form must applaud Field's technically more taxing creation for the commemorative ring.

We do not know exactly how many rings like this one were actually produced, but we do have some idea of Bentham's intentions regarding the recipients of the rings. At UC c1v. 36-8 is a typed copy of Bentham's will, part of which deals with the matter of the commemorative rings:

I direct that after my death a ring with my Effigie and some of my hair may be given by my executor to every of the persons whom I hereafter mention - in alphabetical order (that is to say) Doctor Arnott M.D. Mrs Austin the wife of John Austin Professor of Jurisprudence at the London University Henry Bickersteth Barrister at Law Felix Boden the said John Bowring Thomas Cartwright Dentist the said Edwin Chadwick Madame de Quesnel my eldest niece the said
Richard Doane General de la Fayette Albany Fonblanque James
Harfield John Steward Mill General Miller Joseph Parkes of
Birmingham Solicitor Francis Place Jean Baptist Say the said
Southwood Smith the said William Stockwell William Tait of
Edinburgh Peyronnet Thompson John Tyrrell Barrister at Law - Del
Valle - Mynheer Van de Weyer the said Mary Watson and George
Wheatley of Whitehaven.

This list provides an interesting reflection of several of Bentham's concerns
in the spheres of law, radical politics and writing. Those who were involved
in the editing and publishing of Bentham's works include J.S. Mill, who edited
the Rationale of Judicial Evidence and Francis Place, who had constructed Not
Paul but Jesus from Bentham's notes. William Tait was the publisher who was
later to publish the Bowring edition of Bentham's works. Bowring, in addition
to other connections with Bentham, was closely involved with the Westminster
Review, the radical journal which first appeared in 1824, funded by a donation
of nearly £4,000 from Bentham: he had been one of the first co-editors of the
paper. Albany Fonblanque was a leading contributor to the Westminster Review
from its foundation, and General Thomas Perronet Thompson had contributed to
its first issue in January 1824.

Bentham's extensive links with thinkers and statesmen in other countries
are mirrored by the inclusion in the list of General Lafayette, the French
statesman and soldier who was involved in the fight for American independence;
General William Miller, who took part in every battle fought in Chile and Peru
in the cause of South American independence and who became an intimate friend
of Bolivar; José Cecilio del Valle, the Guatemalan politician who was the
last President-elect before the break-up of the Central American Federation
and a staunch Benthamite; Jean-Baptiste Say, the French economist and writer,
and Van de Weyer, the Belgian ambassador to London.

The list also contains figures from Bentham's more personal life: his
niece Madame de Quesnel, Samuel Bentham's eldest daughter Mary Sophia; his
current amanuensis William Stockwell, and one of his former amanuenses Richard
Doane; Mrs Sarah Austin, the translator, who had been a neighbour of
Bentham's in Queen's Square for some years during the 1820s; and Mary (or
Ann) Watson, Bentham's housekeeper, who, as Bentham notes elsewhere in his
will, had 'determined not to go into the service of any other person than
myself'.

One could speculate endlessly upon this list, upon the reasons for the
inclusion of some names and the omission of others. Why, for example, should
Bentham wish John Stuart but not James Mill to have a ring? One is equally in
the dark on a number of other points. Were these wishes of Bentham's
faithfully carried out? If so, twenty-six silhouette rings must have been
made and distributed. One wonders what has become of them all.

We have information on only three of these rings. One, whose original
recipient is unknown, is now in the possession of University College London.
A second is in the possession of Mr. D.R. Bentham of Loughborough.
Interestingly, this ring is not exactly identical to the University College
one. It bears, round the outside of the shank, the personalised inscription
'Memento for S. Van de Weyer'; inside the ring is the inscription '4/15 Feb
1747 D 1832 85 Y'; and the silhouette is signed 'Field & Miers'. William
Miers, jeweller and profilist, who for some years prior to 1832 had been
Field's partner, had perhaps helped in making the ring. And we have a
pictorial representation of a third ring: the only known portrait of José del
Valle depicts him standing in front of a bookshelf on which J.B. Say's
Economica Politica and Bentham's Preuves Judiciaires are prominently displayed; on his left hand, del Valle is wearing a Bentham ring. The ring is painted perhaps a little larger than proportion demands, but this exercise of artistic licence has the happy result of rendering the profile on the ring eminently recognisable as Bentham's. One may be tempted to conclude that del Valle received his ring; but the story is not quite so simple. Painted across the bottom of the del Valle portrait is an inscription which reads: 'Se hizo este retrato en 1822, cuando se separó del seno de su familia y fue de diputado a la Asamblea Constituyente de Mexico'. 'This portrait was done in 1822,...', a full ten years before Bentham's death. So was the ring added more than ten years after the portrait was painted? And if so, was the book on the shelf also added later, or had that always been there as a sign of del Valle's allegiance? More questions unanswered as yet. However, some further light is cast on the story of del Valle and his ring by Miriam Williford in her book Jeremy Bentham on Spanish America (London, 1980, p.136). She explains that although del Valle was delighted at Bentham's bequest, and begged Bowring to send the ring to South America as soon as possible, sadly he died, on 2 March 1834, before the ring had been sent. It was not until the 1840s that del Valle's widow finally received the ring. Perhaps it was she who arranged for the ring to be painted on to the portrait of her husband, to mark his pleasure at being thus honoured by his mentor. Certainly with a possible twenty-three rings in existence about which we know nothing, there is much still to be discovered about the Bentham silhouette rings.
THE D.R. BENTHAM COLLECTION

S.H. Conway

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Readers of the new Collected Works edition of Bentham's correspondence will probably have seen the citation 'D.R. Bentham MSS' or 'MS in the possession of D.R. Bentham' in several of the footnotes identifying the source of the letters. For more than two decades the Bentham Project has been indebted to Denis Roy Bentham of Loughborough, Leicestershire, who has most generously supplied us with a steady stream of photocopies of manuscripts in his possession. The object of this note is to provide a brief description of Mr. Bentham's collection.

As a result of purchases made over many years, Mr. Bentham has acquired a substantial number of papers and antiquarian books. He is a keen student of local history, and has material relating both to Loughborough and to Leicestershire in general. But his interests are by no means confined to parochial matters. He owns letters written by many literary and political figures—especially of the nineteenth century—such as Anthony Trollope, Thomas Babington Macaulay, Charles Dickens, and Benjamin Disraeli. He is particularly interested in British radicals and reformers, and includes autograph letters of Thomas Paine and Robert Owen among his most prized possessions.

The core of his collection, however, is a significant body of material relating to the Bentham family. Mr. Bentham has some forty letters either to or from Jeremy Bentham. The earliest of these is to William Eden (later Baron Auckland), dated 26 March 1778,¹ and the latest from Talleyrand, 8 February 1832. Among the other recipients or writers are Sir Francis Burdett, Thomas Holt White, Joseph Hume, Henry Brougham, Robert Torrens, Charles James Fox, the Earl of Radnor, Thomas Southwood Smith, Jean-Baptiste Say, and Bernardino Rivadavia. Most of the letters have not yet appeared in print, and they should make useful additions to the volumes of Bentham's later correspondence. Mr. Bentham also has a fragment of the manuscript of Chrestomathia, dated 4 March 1814, and a copy of Draught of a New Plan for the Organisation of the Judicial Establishment in France, London, 1790, which bears the autograph inscription: 'Q.S.P. 24 May 1831/ Lent not given to/ Edwin Chadwick/ by Jeremy Bentham'. In addition, the D.R. Bentham collection contains several Bentham artefacts, one of which—a mourning ring apparently intended for Jean-Sylvain Van de Weyer, the Belgian statesman and lawyer—is described elsewhere in this issue of the Newsletter.²

Further items relate to Sir Samuel Bentham and his family. There are letters to Sir Samuel from the civil engineer Marc (later Sir Marc) Isambard Brunel, Lieutenant-general Sir Herbert Taylor, Sir Samuel Romilly, and Sir Humphry Davy. Among Lady Bentham's correspondence are letters from Joanna Baillie, the dramatist, poet, and neighbour of the Benthams at Hampstead, and

¹A copy in the British Library collection of Bentham papers was used in The Correspondence of Jeremy Bentham, vol. ii, ed. T.L.S. Sprigge, London, 1968, 90-1, as Mr. Bentham had not at that time purchased this letter.

²See pp. 48-50 above.
Madame Berthollet, the wife of the celebrated French chemist. Another letter is to George Bentham, the son of Sir Samuel and Lady Bentham, dated 1843, from Sir Robert Inglis, the Tory politician.

A few letters in the collection are concerned with other Benthams distantly connected with Jeremy and Sir Samuel. Dr. Edward Bentham (1707-76), regius professor of divinity at Oxford from 1763, is represented by two items, and his younger brother, the Revd. James Bentham (1708-94), historian of Ely, by a third. Mr. Bentham also owns copies of works by Joseph Bentham (1594?-1671), the Northamptonshire clergyman and royalist.

Partly as an offshoot of his interest in Bentham, and partly on account of his wider interest in British radicals and literary figures, Mr. Bentham has obtained several letters of John Bowring. Many of these date from the 1820s and 1830s, and are addressed to William Johnson Fox, the man of letters, Unitarian minister, and radical MP, whom Bowring first met in 1817. Of some interest to Bentham scholars is a much later Bowring letter. Dated 24 September 1866, it is to a lady in Bolton, Bowring's old parliamentary constituency. The letter mentions Bowring's gift to the lady of a Bentham letter or letters. One shudders to think how many more items of Bentham's correspondence were similarly distributed as a result of Bowring's largess, only to disappear without trace.
THE INFLUENCE OF BENTHAM ON THE THOUGHT OF J.S. MILL: A CRITICAL REVIEW

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None of the above books are about Bentham or his thought; in fact the only work which includes him in its title, A. Ryan’s Mill and Bentham: Utilitarianism and Other Essays, is largely concerned with J.S. Mill’s rejection of Bentham and Benthamism. Apart from including selections from the first fourteen chapters of An Introduction to the Principles of Morals and Legislation [hereafter IPML], the main body of this book is an edition of a number of essays written and published in the years following J.S. Mill’s mental crisis in 1826 which emphasise the development of his thought in directions away from those mapped out by Bentham and his father, James Mill. Nevertheless, Bentham figured personally in the young Mill’s upbringing and education and his thought dominated Mill’s intellectual inheritance to such an extent that it is not inaccurate to see John Stuart’s subsequent philosophical development as an attempt to salvage what was of value within the utilitarian tradition from the nineteenth-century reaction to Benthamism. In this short review I shall consider how this close connection between Bentham and J.S. Mill is reflected in recent Mill scholarship and the way in which Bentham is treated within these works. A variety of methodological approaches are adopted within the works under consideration, ranging from the purely historical approach of William Thomas in his book Mill, through the careful balance of historical and theoretical considerations in the works of Hollander, Rees and Semmel, to Berger’s purely philosophical approach in Happiness, Justice and Freedom. Each methodological approach presents J.S. Mill’s thought in a different light and consequently puts a different emphasis on the nature of Mill’s debt to Bentham. Semmel, for example, virtually denies the existence of Mill’s debt to Bentham in his book John Stuart Mill and the Pursuit of Virtue.

In many ways Semmel’s book is the least satisfactory of those under consideration, not least because he fails to take seriously this question of
Mill's debt to Bentham. Semmel is a revisionist and like other revisionists he is motivated by a desire to salvage Mill from the standard criticisms that have characterised the received interpretation of nineteenth-century utilitarianism. He sets out to answer recent writers on Mill who have argued that he is a major figure within the liberal tradition and a source of inspiration for much contemporary 'liberal' legislation. And he proposes to show that Mill was more inclined towards conservatism than has often been supposed and that he was not a radical but a 'neo-radical', influenced more by Carlyle and the German Idealists than by Bentham or his father. Semmel begins by acknowledging Bentham's formative influence on Mill's thought. He describes John Stuart's first reading of Bentham through Dumont's Traité de législation civile et pénale, as producing an 'emotional experience that transformed his life' (p.26). However, according to Semmel, this 'emotional experience' must have been short-lived for the whole thesis of this book is premised on Mill's wholesale rejection of Bentham and Benthamism following his mental crisis in 1826. The choice facing Mill was between accepting a crude Benthamite psychology which emphasised material happiness and physical pleasure or a deeper understanding of human motivation which emphasised self-culture and the pursuit of virtue. Semmel argues that Mill consistently chose the path of virtue. The rest of the book defends this interpretation of Mill by concentrating on those parts of his works which suggest his abandonment of Bentham and the utilitarians. Consequently, Carlyle, Coleridge, Comte, Saint-Simon, Sterling and German Idealists such as Fichte feature more prominently in the narrative than do Bentham, James Mill or any of John Stuart's radical friends and colleagues. The problem with Semmel's theory is that in attempting to defend Mill from the faults and inadequacies of Benthamite utilitarianism, he places too much emphasis on the non-utilitarian influences on Mill's thought at the expense of those such as Bentham and his father who were clearly in the utilitarian tradition. Thus he is unable to account for Mill's continued adherence to the utilitarian tradition despite his supposed rejection of his Benthamite inheritance. For all the influence of continental thought on Mill, the clearest influences on his thinking remain his father and Bentham; and even when the continental influence is strongest, Mill still translates this into the idiom of the utilitarian tradition. Mill's ideal of liberty and individuality in On Liberty may have been derived from Von Humbolt, but in developing the harm principle John Stuart was influenced by James Mill's Liberty of the Press and Bentham's IPML. Similarly, in Chapter V of Utilitarianism, Mill's use of security as the basis of a utilitarian theory of rights reflects Bentham's use of security as the basis of the distribution of legal rights by a utilitarian legislator.

Semmel attempts to defend Mill as a serious and interesting writer by denying any substantial similarities or connections between his thought and that of Bentham or his father. Therefore the net result is at best a one-sided portrait of Mill's utilitarian theory. A much better account of the influence of Bentham and James Mill on John Stuart's philosophical development is to be found in John C. Rees' John Stuart Mill's On Liberty and Samuel Hollander's The Economics of John Stuart Mill.

The late John Rees was one of the first revisionist Mill scholars. In a number of papers which were being reworked at the time of his death for inclusion in a book-length study of Mill's On Liberty, he defended the coherence of Mill's utilitarian defence of liberty and his utilitarian theory of justice. Over the last twenty-five years Rees' work has become a starting place for many of the subsequent revisionist accounts of Mill's moral theory,
and though versions of some of the chapters have appeared elsewhere, they continue to provide fresh insights and perspectives. The importance of Rees' book in the context of this review is that unlike Semmel he does take seriously the question of the influence of Bentham and James Mill on John Stuart's philosophical development. In an important chapter on Mill's 'Early Views and Influences', Rees balances the influence of Carlyle, Coleridge, Comte and Saint-Simon against that of Bentham and his father. Thus, while acknowledging the influence of the continental thinkers in turning his discussion of liberty from a security against bad government to the defence of individuality against a mass society, Rees emphasises that Mill's defence of freedom of expression is nevertheless a utilitarian one. When Rees turns to Mill's defence of his principle of liberty the influence of Bentham and his father is given greater prominence. He claims that Mill's argument that an action could be wrong independently of the belief that it was wrong was implicit in Bentham's IPML and that in consequence Mill followed Bentham in attempting to determine a realm of objective harms with which the legislator ought to be concerned. Rees' book does little to challenge the way in which Mill is supposed to have reacted to Bentham, but it is suggestive of the ways in which Bentham influenced Mill's later thought on liberty. Rees' important book, carefully edited by G. Williams, does much to correct the imbalance of such partial treatments as Semmel's John Stuart Mill and the Pursuit of Virtue.

Samuel Hollander has also produced an important work which in the course of analysing Mill's economic writings acknowledges the influence of Bentham on John Stuart's theory of liberty. Hollander's two volume work, The Economics of John Stuart Mill, is a major landmark in Mill studies and is likely to remain the definitive study of Mill's economic writings for the foreseeable future. Though Bentham had at best a marginal influence on Mill's methodological and analytical writings on economic subjects, Hollander nevertheless acknowledges and credits that influence. This amply demonstrates that as well as having an unsurpassed mastery of Mill's economic writings, Hollander is equally well-read in Bentham's writings and recent Bentham scholarship. All this reinforces the impression that until very recently it has been historians of economic thought such as Viner, Stark, Hutchison and Winch who have been among the most perceptive and sympathetic critics of Bentham and Benthamism. The second volume of Hollander's work, which deals with Mill's political economy, is the most important from the perspective of Bentham. In a long chapter entitled 'Utility and Liberty', Hollander explores in detail just what Mill's reaction against Bentham amounted to. Hollander argues that in the 1830s, following his mental crisis, Mill reacted against Bentham in a number of works, most notably the obituary article for Bentham in the Examiner, the Remarks on Bentham's Philosophy and the Essay on Bentham. All of these essays concentrate on the supposed narrowness of Bentham's account of human nature and were strongly influenced by Mill's friendship with Carlyle. However, by the 1840s when Mill came to formulate his own defence of utilitarianism in Utilitarianism and On Liberty, Hollander argues that Mill returned to Bentham's utilitarian theory. He argues that in developing his utilitarian defence of justice, Mill drew directly on Bentham's connection between justice and security and that in doing so he came to a more favourable appreciation of the subtlety of Bentham's utilitarianism. It is not possible to do full justice to the breadth of Hollander's learning in this review. Nevertheless, it must be said that this is a very important work for two reasons; firstly it is the definitive work on Mill's economic writings, and secondly the chapter on 'Utility and Liberty' is in my view the most important.
essay on Mill's reaction to Bentham and its effects on his utilitarianism and his theory of justice.

Alan Ryan's introduction to John Stuart Mill and Jeremy Bentham: Utilitarianism and Other Essays is disappointing because it serves to emphasise the received interpretation of Mill's reaction to Bentham which Hollander has undermined. It is doubly disappointing in view of the fact that Ryan has written suggestively, though not always sympathetically, about Bentham's theory of property. This book mostly comprises essays which reflect Mill's supposed rejection of Bentham's utilitarianism, and according to the introductory essay these works are supposed to offer an introduction to utilitarianism by way of Mill's thought. Ryan's introduction includes a short section on Bentham's utilitarianism which he derives solely from the first few chapters of IPML, but this amounts to little more than the recounting of the greatest good being the 'greatest happiness of the greatest number'. Ryan offers little by way of interpretation of Bentham's utilitarianism or its influence on Mill's thought. As such this introduction is likely only to foster the false impression of Bentham as a simplistic and careless philosopher whose mind was always on other things.

This mistaken impression is reinforced by Fred R. Berger in Happiness, Justice and Freedom. Berger, however, presents the best and most persuasive revisionist interpretation of Mill's moral theory to date. Berger's concern is primarily philosophical. He attempts to present the most coherent and philosophically defensible account of Mill's moral theory and he is concerned with the logical structure of Mill's argument and not the sources of his thought. Partly for this reason Berger plays down Bentham's role as an influence on Mill's moral theory. However, he also plays down Bentham's influence for another reason which is common among revisionist critics, that Bentham's arguments are weak or simplistic and any close connection between Bentham's thought and Mill's would seriously undermine John Stuart's credentials as a serious and important thinker. In this way Berger's position is not dissimilar to Semmel's. Berger accepts unquestioningly the received interpretation of Bentham, which portrays him as a crude act-utilitarian and an egoist. Thus in the first part of the book Berger argues that Mill rejected Bentham's narrow understanding of human nature and replaced it with a more subtle theory which acknowledged more complex motives than the pursuit of pleasure. Similarly, Berger argues that Mill rejects Bentham's crude act-utilitarianism and replaces it with a subtle indirect utilitarian theory that employs a strategy conception of rules in determining moral obligations. However, in each case it can be argued that Bentham's political morality is rather closer to Mill's than Berger is prepared to admit. H.L.A. Hart has argued that Bentham has an indirect utilitarian theory and Hollander, Rees and some Bentham scholars have argued that Mill's utilitarian theory of justice derives much from Bentham's civil law writings. Berger shows no awareness of recent Bentham scholarship and this is reflected in his citation of Ernest Albee as evidence for the received interpretation of Bentham as an act-utilitarian. However, Berger's book is not totally disappointing from the perspective of Bentham scholarship, as many of Berger's arguments suggest directions in which the interpretation of Bentham's moral theory can be pursued. He admits, for example, that Mill followed Bentham in his commitment to equality, but he does not attempt to follow up the question of how far

Bentham shares a 'base-line theory of equality'. Happiness, Justice and Freedom highlights the limitations of a purely philosophical approach to Mill as a political thinker. What is needed to restore the balance is a book like William Thomas' Mill which sets the discussion of Mill's thought in its historical context.

For providing a readable general introduction to John Stuart Mill in 126 pages, Thomas is to be commended. He produces a useful and interesting overview of Mill's thought and its historical context. However, in light of the enormous body of scholarship on Mill and his predecessors and contemporaries, it is not surprising if there are points of contention in Thomas' book. Though generally unsympathetic to Bentham, Thomas is nevertheless careful to give due acknowledgement to Bentham as a formative influence on Mill's thought. Thomas also reflects the received interpretation of Bentham and adds nothing new to the understanding of the relationship between Mill and Bentham. He sees Bentham as simply one among many influences on the young Mill which included his father's own peculiar fusion of Benthamite utilitarianism and the Scottish Enlightenment, Ricardo's economic theory, Malthus on population and Hartley on the psychology of associationism. Unlike Hollander, Thomas does not acknowledge that following Mill's rejection of Benthamism in the 1830s there was a substantial reconciliation with Bentham in the development of Mill's own utilitarian theory.

Given Mill's personal and intellectual relationship with Bentham, it is surprising and a little disappointing that recent Bentham scholarship has not made more of an impact on Mill scholarship. Some of the works considered above do not even credit Bentham in their bibliographies and when they do, they refer to out-dated or questionable texts when recent reliable texts are available. The two major exceptions to this criticism, Rees' John Stuart Mill's On Liberty and Hollander's The Economics of John Stuart Mill, show that sympathetic and perceptive Mill scholarship can benefit Bentham studies just as much as Bentham scholarship can inform the understanding of the thought of J.S. Mill.
TORY ROOTS; WHIG AND RADICAL CONNECTIONS:  
BENTHAM IN RECENT HISTORICAL LITERATURE  

S.R. Conway  
The Bentham Project, University College London  


Ronald K. Huch and Paul R. Ziegler, *Joseph Hume: The People's M.P.*  


None of the four items noticed here is primarily concerned with Bentham, but all of them, to varying degrees, tell us about aspects of his life and work. J.C.D. Clark's *English Society 1688-1832* is a controversial book that has ruffled many academic feathers. Despite its title, it is not a social history in the generally accepted sense. Dr. Clark is as much concerned with the history of ideas as with social structures. One of his aims is to emphasise the importance of religion and religious divisions in the eighteenth century, and thereby to rescue church history from the periphery of historical scholarship. He argues that theological dispute, and not class antagonism, was the cause of the emergence of radicalism after 1760, and accuses many historians of an unhistorical tendency to view the eighteenth century in the light of nineteenth and twentieth-century preoccupations, rather than in its own terms. He claims, in effect, that the industrial revolution had little or no impact on eighteenth-century attitudes. The century was dominated, both ideologically and culturally, by the aristocracy. Dr. Clark stresses the survival of the Jacobite doctrine of Divine Right, and explains how between 1745 and 1760 this doctrine was modified and absorbed into Whig thinking, so that not only the monarchy but the whole social structure came to be seen as sanctified.  

It is in the context of this survival and reformulation of Jacobite ideology that Bentham is first mentioned. Dr. Clark predictably goes on to criticise Bentham's utilitarianism (relying rather too heavily on David Manning's *The Mind of Jeremy Bentham*), but it is his picture of Bentham's Tory roots that I found particularly interesting. Dr. Clark writes that Bentham's family background was Jacobite and that Bentham himself, both at Westminster School and Queen's College, Oxford, was exposed to a Toryism that preached passive obedience and loyalty to kings. It is implied that this Toryism lay at the root of Bentham's rejection of contract theory. This image of the youthful Bentham as influenced by Tory and Jacobite ideas is not new, but has perhaps been insufficiently considered by those (myself included) who habitually assess Bentham in terms of his connection with nineteenth-century liberal and radical thought.
John Dinwiddy's *From Luddism to the First Reform Bill* presents us with an altogether more familiar Bentham, but is not the less valuable for that. A short study in the Historical Association series, it sets out briefly to trace the various currents in the early nineteenth-century reform movement. Dr. Dinwiddy writes with the authority of a scholar experienced with the personalities and the ideas of the period. In a few pages we are given a concise and coherent account of Bentham's democratic theory and the reception of his ideas in radical circles. Those looking for an introduction locating Bentham and his followers in their historical context need go no farther than this clearly-written and tightly-argued little book.

Bentham appears in another guise in Robert Stewart's biography of Brougham. Here we see Bentham as a law reformer of great importance. In a long book, however, he is mentioned only occasionally; but then Brougham was a man of many parts, who lived a long and eventful life, so it is perhaps unreasonable to expect that Bentham should feature more prominently. Stylistically, this work has an old-fashioned feel to it. Although elegantly written, there are rather too many lengthy quotations from correspondence and other contemporary sources for my liking. It comes as something of a surprise to find that Mr. Stewart does not appear to have consulted the large collection of Brougham papers at University College London. Compared with this omission, his not using the Bentham papers - either at University College or in the British Library - seems of little consequence.

The Bentham papers would have helped Ronald Huch and Paul Ziegler to construct their biography of Joseph Hume. No substantial body of Hume's papers has survived, and the authors have been obliged to piece together Hume's career from a wide range of manuscript and published sources. The result, probably inevitably, is a patchy book. Had Huch and Ziegler examined the Bentham papers - and the xeroxes and transcripts of letters from other collections assembled at the Bentham Project - their task might have been made marginally less difficult. Hume stayed with Bentham at Ford Abbey, and his nephew, James Hume, acted for some time as Bentham's amanuensis. In later years, Bentham was critical of Hume's parliamentary performances, but in general Hume's 'economia' met with Bentham's approval. The authors, while acknowledging Hume's general debt to Bentham, give only a partial picture of the relationship between the philosopher and the radical M.P.
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John Dinwiddy's *From Luddism to the First Reform Bill* presents us with an altogether more familiar Bentham, but is not the less valuable for that. A short study in the Historical Association series, it sets out briefly to trace the various currents in the early nineteenth-century reform movement. Dr. Dinwiddy writes with the authority of a scholar experienced with the personalities and the ideas of the period. In a few pages we are given a concise and coherent account of Bentham's democratic theory and the reception of his ideas in radical circles. Those looking for an introduction locating Bentham and his followers in their historical context need go no farther than this clearly-written and tightly-argued little book.

Bentham appears in another guise in Robert Stewart's biography of Brougham. Here we see Bentham as a law reformer of great importance. In a long book, however, he is mentioned only occasionally; but then Brougham was a man of many parts, who lived a long and eventful life, so it is perhaps unreasonable to expect that Bentham should feature more prominently. Stylistically, this work has an old-fashioned feel to it. Although elegantly written, there are rather too many lengthy quotations from correspondence and other contemporary sources for my liking. It comes as something of a surprise to find that Mr. Stewart does not appear to have consulted the large collection of Brougham papers at University College London. Compared with this omission, his not using the Bentham papers — either at University College or in the British Library — seems of little consequence.

The Bentham papers would have helped Ronald Huch and Paul Ziegler to construct their biography of Joseph Hume. No substantial body of Hume's papers has survived, and the authors have been obliged to piece together Hume's career from a wide range of manuscript and published sources. The result, probably inevitably, is a patchy book. Had Huch and Ziegler examined the Bentham papers — and the xeroxes and transcripts of letters from other collections assembled at the Bentham Project — their task might have been made marginally less difficult. Hume stayed with Bentham at Ford Abbey, and his nephew, James Hume, acted for some time as Bentham's amanuensis. In later years, Bentham was critical of Hume's parliamentary performances, but in general Hume's 'economania' met with Bentham's approval. The authors, while acknowledging Hume's general debt to Bentham, give only a partial picture of the relationship between the philosopher and the radical M.P.
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