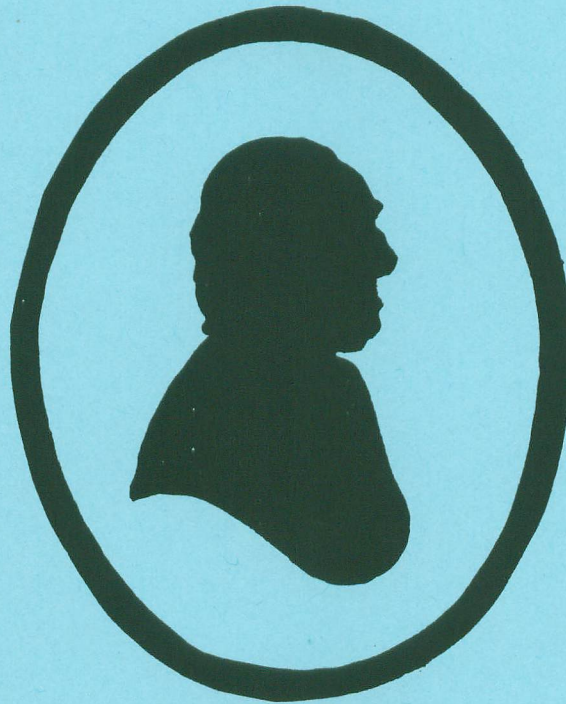


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JEREMY BENTHAM:
ON THE MEASUREMENT OF SUBJECTIVE STATES

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Chapter IV, 'Value of a Lot of Pleasure or Pain, How to be Measured', of *An Introduction to the Principles of Morals and Legislation* is Bentham's purportedly definitive attempt to place private and public morality on a scientific footing. As Bentham viewed it, the quantification of the values of pleasure and pain is akin to the assignment of numbers to force and acceleration in Newton's physics. However, for Newton, quantification serves as part of a descriptive and predictive apparatus; for Bentham, it serves to validate moral judgments and social decisions.

Contrary to conventional opinion, Chapter IV of the *Introduction* does not contain all that Bentham had to say on the measurement of pleasure and pain. A more complete account is to be found in U.C. xxvii 29-40.¹ This manuscript not only presents an enlarged and superior account of the topics discussed in Chapter IV, but it also introduces topics not present in this chapter; namely, the notion of money as a derived measure of the value of pleasure and pain, the notion of just noticeable difference (jnd) familiar to psychologists, and the application of the economic law of diminishing marginal utility. If the *Introduction* was the only source of Bentham's views on the measurement of values, one would be inclined to accept the conventional opinion that Bentham presented a single simple-minded method which is either nonsensical or not to be taken literally. But what is contained in U.C. xxvii is suggestive of more than one method of measurement. Furthermore, the discussion found in this manuscript is sufficiently sophisticated to require for its appraisal familiarity with aspects of modern philosophy, economics and psychology.

Given its sophistication, it is perhaps surprising to learn that the U.C. xxvii manuscript is an early work. But how early a work is it in relationship to the printed *Introduction* of 1780? Halévy believed that the U.C. xxvii text was written about 1782. Baumgardt, following Halévy, concluded that the manuscript 'was obviously worked out after the printing of the *Introduction*'.² Both men were mistaken. The manuscript was written in the 1770's. A comparison of Chapter IV of the *Introduction* and the U.C. xxvii text reveals that the former is a considerably reduced and over-simplified version of the latter. This is partly indicated by the fact that Bentham's early discussion of money in U.C. xxvii, while missing from Chapter IV, is reintroduced in the following works which were written over a span of approximately twenty-nine years: *Principles of the Civil Code*, *Codification Proposal*, *The Constitutional Code*, *Pannomial Fragments*.³

Baumgardt claimed that Bentham voiced doubts whether proximity or certainty of pleasure and pain could be accurately measured.⁴ But examination of the relevant passage⁵ in the *Introduction*, Chapter XIV, section 16, does not bear this out. What Bentham is concerned with in this passage is the fact that of two pleasures or pains of equal magnitude, people are more attracted to the more immediate pleasure and more repelled by the more immediate pain. This fact, according to Bentham, needs to be taken into account when meting out punishment.

In later years Bentham voiced doubts regarding the measurement of intensity, proximity and certainty.⁶ Bentham's remarks regarding the latter led Wesley C. Mitchell to suggest that the calculus was intended not as a measuring device but as a basis of ordinal classification, and led Jacob Viner, while denying Mitchell's contention, to claim that the

calculus was a way of performing a mental comparison of the comparative weights of different states of affairs.⁷ However, these contentions are misleading. An examination of the passages in Bentham's *Codification Proposal*, which deny that intensity, propinquity, and certainty of pleasure and pain are measurable, suggests that pleasures and pains are indirectly measurable in terms of money.⁸

In the text that follows, several considerations have led me to take liberties that I would studiously avoid as an editor of Bentham's works. First, the relevant pages bulk too large to be completely reproduced in this article. Second, my primary aim is to interest or reinterest the reader in Bentham's views on measurement which are either more specific than or markedly different from what is found in the *Introduction*. With these considerations in mind, I have selected and rearranged passages from U.C. xxvii according to their importance and apparent connection with one another, and supplemented these with relevant passages from other writings of Bentham.⁹

BENTHAM'S TEXTS¹⁰

Under the article of *Value*, every observation that can be made with regard to pleasure, applies equally to pain: after this notice, to save words, I shall all along make mention only of pleasure.¹¹

The circumstances on which the value of a pleasure depends when considered by itself are these four: viz.

1. Intensity,
2. Duration,
3. Proximity or remoteness,
4. Degree of certainty, that is of probability or improbability.

The circumstances of intensity and duration belong necessarily and at all times to all pleasures: every pleasure must be more or less *intense*: every pleasure must last for such or such a *time*.

These two circumstances taken together constitute what may be properly termed the magnitude of a pleasure.¹²

The limit of the quantity of a pleasure in respect of intensity on the side of diminution is a state of insensibility: the degree of intensity possessed by that pleasure which is the faintest of any that can be distinguished to be pleasure, may be represented by unity: Such a degree of intensity is in every day's experience. According as any pleasures are perceived to be more and more intense they may be represented by higher and higher numbers: but there is no fixing on any particular degree of intensity as being the highest of which a pleasure is susceptible.¹³

The limit of the quantity of a pleasure in respect of duration is the least portion of duration that can be distinguished: suppose a moment. If then a moment be taken for the least portion of time that is distinguishable, it is certain that no pleasure, to exist at all, can

last for less than a moment. Such a degree of duration is within every day's experience. But there is no fixing upon any particular number of moments as being the greatest during which any pleasure can continue.¹⁴

Next with regard to the circumstances of proximity and certainty.

A pleasure, like anything else, must be either past, present or future. If past, its value is at an end. [as such there can be no further occasion to consider it.] Present, any single pleasure can be only for a very short space of time, without the interruption of indifference, of pains, or of other pleasure. How long soever anything may continue that is a fund of pleasures. Future, it may be an indefinite length of time; accordingly, there is much more occasion to consider pleasures as future than as present.

When once a pleasure is present, no speculations concerning either its remoteness or its uncertainty can have place. It can be in no degree remote or uncertain. So long as it is yet to come, it must be in some degree remote, and it may be in a greater or lesser degree uncertain.¹⁵ Presence therefore is at once the limit of remoteness and uncertainty.

The quantum of the value of a pleasure in point of proximity has for its limit on the side of increase actual presence. No pleasure can be nearer, no pleasure can on the score of proximity be more valuable, than one that is actually present. Pleasures that are actually present are within every day's experience. But there is no fixing upon any number of moments, months or years that shall constitute the greatest interval which can subsist between any present time, and the time at which the event of a pleasure's being enjoyed is to take place. The greatest possible duration of a man's life, were it determined, might indeed determine the greatest degree of remoteness of a pleasure as far as a single person were concerned: but in the first place the greatest possible duration of a man's life is a quantity that never can be determined; in the next place it often becomes material to consider the pleasure not of a single person only, but of many persons in succession.

The quantum of the value of a pleasure in point of certainty, as it is more convenient to call it on the present occasion, has for its limit on the side of increase that absolute certainty which cannot be denied to take place where the pleasure is actually present. But there is no fixing upon any number of chances which shall be the greatest there can be against the event of any pleasure's taking place.¹⁶

When a pleasure is remote, the value of it will again be less the less certain it is: or to speak at full length, the less certain the event is of its happening. When such an event is not absolutely certain, the degree of its uncertainty, like that of the certainty of any other event is measured by the ratio of the number of chances there are for its happening, to that of the number of chances there are for its not happening.....

The quantities of intensity and duration of which a pleasure is susceptible have each of them a fixed limit on the side of diminution: they have none on the side of increase. On the other hand the quantities of proximity and degree of certainty of which it is susceptible have each of them a fixed limit on the side of increase; they have none on the side of diminution.¹⁷

Now then, whole numbers increase continually from a fixed point: fractional numbers decrease continually from the same fixed point. Hence, it appears, I imagine pretty plainly, why the degrees of intensity and duration must be express'd by whole numbers: that of proximity and that of certainty by fractions.¹⁸

The numbers expressive of the intensity of a pleasure and those expressive of its duration, are to be multiplied together, not merely added. For supposing the pleasure to continue all along at the same degree of intensity, every degree of intensity it possesses is carried through every degree of duration: and *vice-versa* every degree of duration is extended over every degree of intensity. Accordingly if of two pleasures, the one be *three* times as intense as the other, and likewise continues three times as long, it is not six times only as great, but nine times.....

In like manner the numbers expressive of its magnitude and those expressive of its proximity must be multiplied together and not barely added. The magnitude of the first pleasure is 27, that of the other, 3. At the same time the degree of proximity or remoteness of the first is such as makes its value less by 1/3 only than it would have been had the pleasure been present: while the degree of remoteness of the other pleasure is such as makes it less by 2/3 than it would have been had the pleasure been present: leaving it equal to 1/3 only of that of a present pleasure of the same magnitude.....27 then multiplied by 2/3 or in other words 2/3 of 27 is 18: and 3 multiplied by 1/3 or in other words 1/3 of 3 is 1. The value then of the greater pleasure will be to that of the lesser as 18 is to 1.¹⁹

At full length thus: the value of any [given] pleasure is to the value of any other pleasure as the product of the numbers representing the intensity duration proximity and degree of certainty of the *one* when multiplied together, is to the product of the numbers representing the intensity duration proximity and degree of certainty of the *other* when multiplied together.²⁰

So much for the circumstances that are ingredients in the value of a pleasure considered as being enjoyed as far as a single individual is concerned in it: when a whole community, that is a multitude of individuals, is considered as being concerned in it, the value of it is to be multiplied by the number of such individuals. The total value of the stock of pleasure belonging to the whole community is to be obtained by multiplying the number expressing the value of it as respecting any one person, by the number expressing the multitude of such individuals. The accession a pleasure receives in value by this circumstance may be denominated by its extent.....

So much for the value of a pleasure considered by itself. Considered with reference to other sensations that may result from the same causes, the value of it may be regarded as susceptible of two other ingredients, fecundity and purity: Fecundity in so far as those causes may be productive of sensations of the same kind, to wit, pleasures: purity in as far as they may be exempt from producing sensations of the opposite kind; to wit, pains.

It is evident that the more pleasures in number and value any given pleasure is followed by, the greater will be its value: and for the more pains, the less.

Of the four other ingredients in the value of a pleasure there will be perpetual occasion to make mention under their respective names: the whole system of the ensuing disquisitions in a manner turns upon them. Of these two last there will hardly be equal occasion to make mention, at least under these names. For in taking an account of the physiological effects of any mode of conduct the more simple way is to consider the several pleasures and pains it is productive of by themselves; (setting the sum of the pleasures on one side of the account, and on the other, that of the pains) instead of bringing in all the subsequent pleasures and pains in the lump, by way of appendages to the first. For each of them in order to the obtaining a true estimate of its value, must be considered under the same four heads under which the value of the first was taken.²¹

Instead of pleasure itself, to show how an estimate might be formed of the diminution its value is subjected to by diminution of propinquity and certainty, it becomes necessary to substitute to pleasure itself some external object known by experience to be of the number of its *sources* or say its *causes*: for example, *money*.²²

Now then of these three possessions, money, power, and reputation, it is only in small quantities to a few persons and on particular occasions that the two latter are at the disposal of the Legislator. Suppose a fund of money once collected no matter by what means, and every individual in the state may be made to profit by a distribution of it: such individuals may be *rich* with respect to the individuals of another state; but if any of them are rendered *powerful* or *honorable* by their own Government, they must be *powerful* or *honorable* in comparison of one another, and therefore in respect to and at the expense of, one another. Money, therefore, is the only current possession, the only current instrument of pleasure. When a Legislator then has occasion to apply pleasure, the only method he has of doing it, ordinarily speaking, is by giving money. Now then, money being the current instrument of pleasure, it is plain by uncontroverted experience that the quantity of actual pleasure follows in every instance in some proportion or other the quantity of money. As to the Law of that proportion nothing can be more indeterminate.²³

When the effect of a portion of wealth upon happiness is spoken of, it is always without reference to the sensibility of the particular individual, and the exterior circumstances in which he may be placed. Difference of character is inscrutable; and there are not two individuals whose circumstances are alike. If these two considerations were not laid on one side, it would be impossible to form a single general proposition: but though each of these propositions may be found false or inexact in each particular case, it will neither militate against their speculative correctness, nor their practical utility.

It is sufficient, --1st if they approach more nearly to the truth than any other which can be substituted for them; and 2dly, if they may be employed by the legislator, as the foundation of his labours, with less inconvenience than any others.²⁴

Thus much, however, is true in general, that the more money a man has given him the more pleasure. There are it is true some men to whom the same sum would give more pleasure than to others: to the same man likewise the same sum would give more pleasure at one *time* than at another: and even with respect to the same man at the same time it is not true

where the disproportion is very large between two sums that the proportion between the two pleasures would follow exactly the proportion between sums. *One guinea*, suppose, gives a man *one degree* of pleasure: it is not true by any means that a *million* of guineas given to the same man at the same time would give him a *million* of such degrees of pleasure. Perhaps not a thousand, perhaps not a hundred: who can say? perhaps not fifty.²⁵

Take, on the other hand, the day-labourer, who throughout life has had complete means of subsistence, but at no time any portion of the elements of abundance: take, on the other part, the monarch, who throughout life has had the elements of abundance, together with all the other instruments of felicity, in the greatest quantity possible. Ages equal, scarcely can any one assure himself by full persuasion, that the quantity of felicity enjoyed by the monarch has been twice the amount of that enjoyed by the labourer; for the quantity of felicity is not as the quantity of the elements of felicity simply, but as the quantity of the elements of felicity, and the capacity of containing the felicity, taken together.²⁶

- I. Case or state of things the first, -- the quantities of wealth in question, considered as being in a quiescent state, actually in the hands of the two parties in question: neither entering into, nor going out of the hands of either.
 1. *Caeteris paribus*, - to every particle of the matter of wealth corresponds a particle of the matter of happiness. Accordingly, thence,
 2. So far as depends upon wealth, - of two persons having unequal fortunes, he who has most wealth must by a legislator be regarded as having most happiness.
 3. But the quantity of happiness will not go on increasing in anything near the same proportion as the quantity of wealth: - ten thousand times the quantity of wealth will not bring with it ten thousand times the quantity of happiness. It will even be a matter of doubt whether ten thousand times the wealth will in general bring with it twice the happiness. (In England a disproportion still greater than this is actually exemplified.) Thus it is, that,
 4. The effect of wealth in the production of happiness goes on diminishing, as the quantity by which the wealth of one man exceeds that of another goes on increasing: in other words, the quantity of happiness produced by a particle of wealth (each particle being of the same magnitude) will be less and less at every particle; the second will produce less than the first, the third than the second, and so on....

- II. Case, or state of things the second, -- the particles of wealth about to enter into the hands of the parties in question.
 1. Fortunes unequal: - by a particle of wealth, if added to the wealth of him who has least, more happiness will be produced, than if added to the wealth of him who has most.
 2. Particles of wealth at the disposition of the legislator, say 10,000; - happiness of the most wealthy to that of the least wealthy, say... as 2 to 1; - By giving to

each one of 10,000 a particle of wealth, the legislator will produce 5,000 times the happiness he would produce by giving the 10,000 particles to one person...

- III. Case or state of things the third, -- the particles of wealth about to go out of the hands of the parties.
1. By the subtraction of a particle of the matter of wealth, a less subtraction from happiness will be produced, if made from the wealth of him who has the matter of abundance, than if from the wealth of him who has the matter of subsistence only.
 2. So, if from the wealth of him who has a larger portion of the matter of abundance, than if from the wealth of him who has not so large a portion of the matter of abundance.
 3. Fortunes equal, and the aggregate sum subtracted being given, the greater the number of the persons from whose wealth the subtraction is made, the less will be the subtraction thereby made from the aggregate of happiness.
 4. Fortunes unequal, still less will be the subtraction of happiness, if it be in the ratio of their fortunes that the subtraction is made, the greatest quantity being subtracted from those whose fortunes are greatest.
 5. A quantity of the matter of wealth may be assigned, so small, that if subtracted from the fortune of a person possessed of a certain quantity of matter of abundance, no sensible subtraction of happiness would be the result.
 6. The larger the fortune of the individual in question, the greater the probability that, by the subtraction of a given quantity of the matter of wealth, no subtraction at all will be made from the quantity of his happiness.
 7. So likewise, if the ratio of the sum to be subtracted, to the aggregate mass from which it is to be subtracted, be so great, that by the subtraction from it, subtraction of a quantity, more or less considerable, cannot but be made from the aggregate of happiness, - still the larger, in the case of each individual, the aggregate of wealth is from which the subtraction is made, the less will be the quantity of happiness so subtracted, as above.
- IV. Case, or state of things the fourth, -- the particles of wealth about to go out of the hands of the one party into the hands of the other.
1. Fortunes equal: - take from the one party a portion of the matter of wealth and give it to the other, - the quantity of happiness gained to the gainer of wealth, will not be so great as the quantity of happiness lost to the loser of the wealth.
 2. Fortunes unequal: - the poorer the loser, the richer the gainer: greater in this case is the diminution produced in the mass of happiness by the transfer, than in the last mentioned case.
 3. Fortunes again unequal: - the richer the loser, the poorer the gainer: the effect produced on happiness by the transfer may in this case be either loss or gain. Whether it be one or the other, will depend partly upon the degree of the inequality, partly upon the magnitude of the portion of wealth transferred. If the inequality

be very small, and the wealth transferred also small, the effect produced on the sum of happiness may be less. But if either be - much more if both be other than, very small, the effect on happiness will be gain.

4. Income of the richer, say £100,000 a year - income of the less rich, say £99,999 a year: wealth taken from the first, and transferred to the less rich, £1 a year: - on the sum of happiness the effect will be on the side of the loss; - more happiness will be lost by the richer than gained by the less rich. Hence one cause of the preponderance produced on the side of evil by the practice called gaming.
5. Income of the richer loser, £100,000 a year; - income of the less rich gainer, £10 a year; wealth lost to the richer, gained by the less rich, £1 a year: More happiness will be gained by the less rich gainer, than lost by the more rich loser.

Thus it is, that if the effects of the first order were alone taken into account, the consequence would be, that, on the supposition of a new constitution coming to be established, with the greatest happiness of the greatest number for its end in view, sufficient reason would have place for taking the matter of wealth from the richest and transferring to the less such, till the fortunes of all were reduced to an equality, or a system of inequality so little different from perfect equality, that the difference would not be worth calculating.²⁷

But call it now the effects of the second and those of third order, and the effect is reversed: to maximization of happiness would be substituted universal annihilation in the first place of happiness - in the next place of existence. Evil of the second order, - annihilation of happiness by the universality of the alarm, and the swelling of danger into certainty: Evil of the third order, - annihilation of existence by the certainty of the non-enjoyment of the fruit of labour, and thence the extinction of all inducement to labour.²⁸

There are men whose pleasure the acquisition of a hundred guineas would carry to the utmost limit: which borders on distraction; beyond which is pain, a hundred thousand could not carry it beyond. Here then is the quantity of money increased a thousandfold, and that of pleasure not at all. For all this it is true enough for practice with respect to such small quantities as ordinarily occur, that *caeteris paribus* the proportion between pleasure and pleasure is the same as that between sum and sum: so much is strictly true that ratios between the two pairs of quantities are nearer to that of equality than to any other ratio that can be assigned. Men will therefore stand a better chance of being right by supposing them equal, than by supposing them to be any otherwise than equal. They ought therefore, in every case in which no particular reason can be given to the contrary, to be supposed equal, and spoken of as such.

Speaking then in general we may therefore truly say, that in small quantities the pleasures produced by two sums, are as the sums producing them. But money is capable of being measured: any sum of it consider'd as a whole is capable of being divided into parts, the ratio of which parts one to another may be made evident to the senses to the utmost degree that can be required: to wit in respect of bulk and weight.

Now to these parts correspond so many degrees of pleasure: and thus it is that under the restrictions above specified we may measure with the utmost exactness any such pleasure as is producible by money, that is any such pleasure as in general within the province of the legislator to bestow.

As pleasure is given by giving money, so is pain by taking it away. This latter fact stands equally uncontroverted, and is equally a matter of experience with the former. For correspondent reasons and under correspondent restrictions it is right to say that *caeteris paribus* the [quantity of] money is the direct and proper measure and the only proper measure of that sort of pain which is produced by means of money.²⁹

The loss of a portion of wealth will produce a loss of happiness to each individual, more or less great, according to the proportion between the portion he loses and the portion he retains.

It is to this head that the evil of gambling may be referred. Though the chances, as they respect money, may be equal, the chances, as they respect happiness, are always unfavourable. I possess £1000; the stake is £500; if I lose, my fortune is diminished by one-half; if I gain, my happiness is not doubled with my fortune; if I lose my happiness is destroyed -- I am reduced to poverty.³⁰

Now money, as has been said is the only current and universal means in the hands of the Legislator of producing pleasure. At the same time it is not by any means the only current and universal means of producing pain. With respect to pain it is not a universal means in itself: nor is it even so general as other means which the nature of mankind affords. For to any man money may be given. But from him who has no money, no money can be taken. At the same time of producing pain there is another means which is strictly universal: for every man has a body.

Of such pleasure then as is produced by the bestowal of money, and of such pain as is produced by the taking away of money, money is the direct and proper measure: being not only the measure, but the producing instrument or cause.

But of a pleasure or a pain produced by any other cause, money though not the cause may be the measure; if not the direct one, yet an exact and proper one, and the only one such pain or pleasure will admitt of.

If of two pleasures a man knowing what they are would as lief enjoy the one as the other, they must be reputed equal. There is a reason for supposing them equal, and there is none for supposing them unequal. If of two pains a man had as lief escape the one as the other, such two pains must be reputed equal. If of two sensations, a pain and a pleasure, a man had as lief enjoy the pleasure and suffer the pain, as not enjoy the one and not suffer the latter, such pleasure and pain must be reputed *equal*, or as we may say in this case, *equivalent*.

If then between two pleasures, the one produced by the possession of money, the other not, a man had as lief enjoy the one as the other, such pleasures are to be reputed equal. But the pleasure produced by the possession of money is as the quantity of money that produced it: money is therefore the measure of this pleasure. But the other pleasure is equal to this: the other pleasure thereof is as the money that produces

this: therefore money is also the measure of that other pleasure. It is the same between pain and pain; as also between pain and pleasure.³¹

The use of a common measure is to enable the person who speaks to communicate to anyone he is speaking to the same idea of the quantity of anything he is speaking of as he himself conceives. A common measure must therefore be some instrument the name of which suggests upon being mentioned to both parties an idea of the same quantity. You tell me St. Paul's is bigger than the Pantheon: I agree with you that it is so. This agreement does not hinder our ideas of the proportion of those two bodies from being very different. You may think St. Paul's ten times as big as the other building: I may think it not more than half as big again: You now tell me that St. Paul's contains two millions of cubic feet; the Pantheon but half a million. If I agree with you in this, our ideas of the bigness of the respective building are now the same. We have found a common measure for them viz: a foot ruler an instrument the use of which is familiar to both of us, and which through the medium of our senses presents us with such ideas of quantity as by experience we always find to be alike.....

If then, speaking of the respective quantities of various pains and pleasures and agreeing in the same proposition concerning them we would annex the same ideas to these propositions, that is if we would understand one another, we must make use of some common measure. The only common measure the nature of things affords is money. How much money would you give to purchase such a pleasure? 5 Pounds and no more.³² How much money would you give to purchase such another pleasure? 5 Pounds and no more. The two pleasures must as to you be reputed equal. How much money would you give to purchase immediately such a pleasure? 5 Pounds and no more. How much money would you give to exempt yourself immediately from such a pain? 5 Pounds and no more. The pleasure and pain must be reputed equivalent.

From what source such pleasures or such pains may issue, whether the pleasure consist in drinking so many bottles of wine, in enjoying the favours of such a woman, in possessing the respect or good will of such a man, in relieving such an object in distress, in doing such a service to one's country or to mankind in general, in revenging one's self in such a manner upon such a person; whether the pleasure be in its consequences productive of pleasure, or of pain or of neither: the pain of pain or of pleasure or of neither [in a word whether they be fruitful, pure, or insulated] are circumstances which so long as the pains or pleasures in question be considered *in themselves* and without regard to consequences, make no difference with respect to the propriety of speaking of them, as being in money of such a value. If I having a crown in my pocket and not being adry, hesitate whether I shall buy a bottle of claret with it for my own drinking, or lay it out in providing sustenance for a family I see about to perish for want of my assistance, so much the worse for me in the long run: but it is plain that so long as I continued hesitating the pleasures of sensuality in the one case, of sympathy in the other, were exactly worth to me five shillings: to me they were exactly equal.

I beg a truce here of our man of sentiment and feeling: while from necessity and it is only from necessity, I speak and prompt mankind to speak a mercenary language. The thermometer is the instrument for measuring the heat of the weather: the barometer the instrument for measuring the pressure of the Air. Those who are not satisfied with the

accuracy of these instruments must find out others that shall be more accurate, or bid adieu to Natural Philosophy. Money is the instrument for measuring the quantity of pain or pleasure. Those who are not satisfied with the accuracy of this instrument must find out some other that shall be more accurate, or bid adieu to Politics and Morals.³³

CONCLUDING REMARKS

The reaction to a literal interpretation of Bentham's view concerning the measurement of subjective states has been generally a critical one. One early writer, for instance, charged that Bentham's thinking was banal and concluded, 'We can see nothing new but the quackery - the absurd affectation of mathematical exactness in a matter which does not admit of it'.³⁴ Observations of this sort, which are found throughout the relevant literature, are the direct outcome of a failure to know all that Bentham had to say concerning measurement. Responsibility for this rests mainly with Bentham who lacked sufficient interest to organize carefully what he wrote and published.

But even if the interested reader in the eighteenth or nineteenth centuries had had an enlarged awareness of Bentham's views concerning measurement, it is not likely that he would have appreciated their significance. Writers such as the psychologist G.T. Fechner, and the economists F.Y. Edgeworth and A. Marshall, given their own published views, would certainly have noticed and supported at least some of the observations and claims found in the Bentham texts above. But what these individuals lacked were the theoretical and analytic insights supplied by the developments in the twentieth century of formal logic, measurement theory, welfare economics and decision theory.

Bentham's ideas are, in various instances, wrongheaded, ambiguous and based on controversial assumptions. But in those passages in which he departs from the approach in Chapter IV of the *Introduction*, Bentham speaks with a modern tongue. Although more suggestive than systematic, seminal rather than complete, these passages can be assessed accurately only against the background of such twentieth century works as Stanley S. Stevens' *Handbook of Experimental Psychology*, J.M.D. Little's *A Critique of Welfare Economics* and Kenneth J. Arrow's *Social Choice and Individual Values*. Whatever the final accounting, it is clear that 'banal' and 'quack' are the least fitting terms to be applied to the founder of Utilitarianism concerning the measurement of subjective states.

NOTES

1. A part of this text was produced in French by Elie Halévy in his *La Formation du Radicalisme Philosophique*. A larger portion was reproduced in English in David Baumgardt's *Bentham and The Ethics of Today*. Baumgardt was incorrect in claiming to have reproduced the entire text, for he failed to include the first eight manuscript pages. Since these pages are in the hand of an amanuensis and the rest are in Bentham's hand, it might be supposed that the beginning and later portions are separate works. Indeed, the first eight pages are entitled 'Happiness and Unhappiness: their Dimensions. Value of a Pain or Pleasure', whereas later pages are entitled with some slight variations 'Pleasures and Pains -- how measured'. However, page 33 with the latter title contains *inserenda* no.5, which is a continuation of the first four *inserenda* begun on page 31 and this page has the former title. In addition, all the manuscript pages up to and including page 31 are sequential, as is the case with the pages following page 33.

In addition to U.C. xxvii. 29-40, related materials are to be found in U.C. xxvii. 20, 22, 23 and U.C. xiv. 3-6, 9. A tentative ordering of these pages, which Bentham in several places refers to as "Br", the French abbreviation for "Brouillon", is as follows: U.C. xiv. 3, 4, 5, U.C. xvii. 22, 20, 23, U.C. xiv. 6, 9.

2. David Baumgardt, *Bentham and The Ethics of Today* (Princeton, New Jersey, 1952), 296.
3. *Principles of the Civil Code*, Bowring i, 305, 306; *Codification Proposal*, Bowring iv, 540, 541; *The Constitutional Code*, Bowring ix, 14, 15; *Pannomial Fragments*, Bowring iii, 228-230.

I have Mr. Jan Phillips to thank for determining the date of the U.C. xxvii manuscript. Mr. Phillips did some research for the Bentham Project which established both the dates of Bentham's early works and their relationship to later published writings. In his report he observed that, 'It is clear from scrutiny of the early MSS that the *Introduction to the Principles of Morals and Legislation* as we have it now is something of an *ad hoc* assembly of papers, taken from various parts of the planned "my capital work"'. Bentham's 'capital work' never saw the light of day but was dismembered for use in his later works.

4. Baumgardt, *op. cit.*, 296.
5. Jeremy Bentham, *An Introduction to The Principles of Morals and Legislation*, eds. J.H. Burns and H.L.A. Hart (London, 1970), 169, 170.
6. *Codification Proposal*, Bowring iv, 540, 542.
7. Wesley C. Mitchell, *The Backward Art of Spending Money, and Other Essays* (New York, 1937), 182-189, 200; Jacob Viner, 'Bentham and J.S. Mill: The Utilitarian Background', *American Economic Review*, XXXIX (March, 1949), 367.
8. *Op. cit.*, 540, 541.

9. As an editor, one would need to consider the use of U.C.xxvii. 20, 22, 23, 29-40 as well as U.C. xiv. 3-6, 9 as part of Bentham's economic writings. These writings have, as yet, to be definitively edited. I hope that those who are interested will have an opportunity to read the U.C. xiv and xxvii material in their original form or as part of a satisfactorily published edition. This material contains many interesting observations that I have not included below.
10. I have used the following conventions in the texts below:
- 1) Unless otherwise indicated, all references are to U.C.xxvii. Thus, (38) is an ellipsis for U.C.xxvii. 38;
 - 2) Bentham's spelling and punctuation have been faithfully reproduced;
 - 3) Where Bentham has alternative words or phrases, only one of the alternatives is reproduced;
 - 4) Marginal comments and marginals are not reproduced;
 - 5) Obvious errors, such as the mistaken use of the singular instead of the plural, have been corrected without notice.
11. (33)
12. (38)
13. The first part of the paragraph, preceding the colon, suggests a natural zero for the measurement of pleasure, except what we would label 'zero', Bentham labels 'one'. What follows the colon does not seem to make sense, if the numbers are to be added together, unless we consider the intensity of the perceived pleasures to be just noticeably different.

It is of some historical interest to note that it is not until some eighty years after Bentham's intimation of the notion of just noticeable difference (jnd) as the unit for measuring pleasure and pain that G.T. Fechner, in his *Elemente der Psychophysik* (1860), provided a detailed account of jnd, and not until some twenty-one years later than F.Y. Edgeworth, in his *Mathematical Psychics: an Essay on the Application of Mathematics to the Moral Sciences* (1881), conceived of the 'minimum sensible' as the commensurating unit of pleasure and pain.

14. (33)
15. (38)
16. (33)
17. (38)
18. (33)

Although Bentham speaks of the degree of proximity and remoteness as reducing the value of some future pleasure or pain by some fraction between zero and one of its values when present, there is nothing said as to the manner in which this number is to be obtained. Alfred Marshall refers to this form of reduction in value as a 'discount'. See his *Principles of Economics: An Introductory Volume* (8th edition, London, 1930), 120.

19. (40)
20. (38)
21. (34)
22. *Codification Proposal*, *Bowring* iv, 540-541.
23. (35)
24. *Principles of The Civil Code*, *Bowring* i, 305.
25. (35)
26. *The Constitutional Code*, *Bowring* ix, 14-15.
27. These various passages, beginning with the line 'Thus much however is true in general,...' on page 11, are a defence of the commensurability of pleasure and pain in terms of money. If money could, in the fashion presented, be used as a measure then the hedonistic calculus, in treating pleasure and pain in terms of intensity and duration, would no longer play any formal role in deciding social policy. Bentham appears not to have appreciated this fact. For he returns in later pages to an analysis of the dimensions of pleasure and pain.

The analysis employed in these passages depends upon the use of the law of diminishing marginal utility. What Bentham assumes, which is not generally assumed by contemporary economists, is that this law may be used in making interpersonal comparisons of utility.

28. 'The Philosophy of Economic Science', *Jeremy Bentham's Economic Writings*, ed. W. Stark (London, 1952), I, 113-116.
29. (35)
30. *Principles of The Civil Code*, *Bowring* i, 306.

This analysis can be employed in the making of interpersonal comparisons, given that money is the commensurate unit. So employed, it is interesting to observe that maximum aggregate pleasure results from the equalizing of money income as it does by employing the more general law of diminishing marginal utility.

31. The previous two paragraphs reveal Bentham's understanding of what in contemporary economic circles are called 'indifference mappings'. The major difference between Bentham and the modern economist in the use of these mappings is that Bentham's measurement is cardinal while the economist's is ordinal. It is of some interest to observe that Alfred Marshall approximates Bentham's approach in his *Principles of Economics*, *op. cit.*, 15.
32. (36)
33. (37)

34. Hugh Swinton Legaré, 'Jeremy Bentham and the Utilitarians', *Writings of Hugh Swinton Legaré* (2 volumes, Charleston, South Carolina, 1845), II, 468. For comparable remarks in some contemporary writers, see Wesley C. Mitchell, *op. cit.*, 177; John Petrov Plamenatz, *Mill's Utilitarianism, Reprinted with a Study of the English Utilitarians* (Oxford, 1949), 73; Jacob Viner, *op. cit.*, 367.

JOHN AUSTIN (1790-1859)
PUPIL OF BENTHAM

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For many years in the eyes of legal theorists Austin eclipsed Bentham almost entirely.¹ Although it is undoubtedly the case that he derived much of his general legal theory from Bentham (though he added and changed features under other influences), the availability of his writings in print, whilst Bentham's major work of legal theory remained in manuscript, led to a concentration on the views of the pupil rather than the master. In recent years, in large part due to the efforts of H.L.A. Hart,² Bentham has been brought to the attention of legal theorists to the extent that there is now almost a tendency to regard Austin as a poor relation, despite the fact that he is regarded by proponents and opponents alike as a paradigm example of the theoretical school known as Legal Positivism. It would seem that the time has come for a re-evaluation of Austin's contribution to the study of law both in historical and philosophical terms. Some work of comparison has of course already been done but until more is known of Austin's life and general outlook, the comparison with a figure so comprehensively studied as Bentham will be a little one-sided. It is the purpose of this short article to give some outline of what is currently known about Austin the man.

The primary source of information about an academic figure is his writing. Most of Austin's important work is in print, though not all of it in a version which he would have accepted and much of it is largely unread. Of his legal work, he himself published *The Province of Jurisprudence Determined* in 1832:³ a set of six lectures which was originally the substance of the first eight lectures delivered orally to his Jurisprudence Class at the University of London (now University College London) in 1829.⁴ The greater part of his course at the University remained unpublished at his death in 1859 despite his wife's urgings and although there was a demand for a reprint of *The Province*, he declined to allow this on the ground that it contained many uncorrected defects.⁵ Eventually his widow accomplished in three years what he had failed to do in thirty, and published an edition of the whole of the Lectures together with a reprint of *The Province* in the years 1861-3.⁶ This itself is by no means a complete course. It contains nominally 58 lectures:⁷ Austin himself reckoned that a full course would take one hundred and twenty lectures and from the printed *Outline of the Course of Lectures* appended to *The Province of Jurisprudence Determined*, it can be seen that the course as written and published covers but half of the ground outlined.⁸ Later editions (in two volumes) were edited and revised by Robert Campbell, in which the author's manuscripts were collated with notes taken by John Stuart Mill at the original delivery of lectures in the academic year 1829-30.⁹

Austin's other published work consists of his political essays. Between the years 1824 and 1859 he wrote five reviews and essays, ranging in context from the subject of Property to proposed reform of the Constitution.¹⁰ These writings are the subject of a recent study by Eira Ruben,¹¹ who traces a consistent theme in the writer who attacked Primogeniture in 1824 from the standpoint of equality but who in 1859 defended the Constitution from the attacks of reformers. For Ruben, Austin throughout espouses the course of the middle classes, arguing for their rising rights to property as against aristocratic Primogeniture in 1824 and defending their acquired property in 1859 against the new unpropertied classes. One may accept Ruben's conclusions without necessarily rejecting the notion that we have here the natural progression from the radicalism of youth to the conservatism of old age. Ruben suggests that one major

development within Austin's political thought is his final rejection of the theory of Utility in 1859 on the ground that it could be used to further the course of radicalism. Austin adopted Utility in his younger days under the influence of Bentham, but when he came to write his lectures he discussed its application in a way with which Bentham would hardly have agreed. In a long and often neglected passage,¹⁴ Austin examines the basis upon which human law can be tested or measured: this measure he conceives to be provided by the laws of God which are laws properly so called.¹⁵ Although rejecting what he terms the hypothesis of moral sense relied upon by Butler and others in favour of the hypothesis of Utility, he sees Utility not as an ultimate test, but as providing a guide or index to the discovery of a further principle, the Divine commands.¹⁶

There are no further works of Austin extant¹⁷ except in so far as his hand may be detected in two published governmental reports. In 1833 after he had ceased to lecture at the University, Brougham, then Lord Chancellor, appointed Austin to the Criminal Law Commission.¹⁸ He soon took a dislike to the work, apparently conceiving that nothing short of a fundamental reformation and codification of the whole Criminal Law would prove satisfactory and to that end he seems to have commenced work on his own on a draft of a Criminal Code.¹⁹ His contributions to the published *First Report of the Commissioners Appointed to Inquire into the Criminal Law* have yet to be established.²⁰ Later, in 1836 Austin was appointed together with his former pupil George Cornwall Lewis (later Chancellor of the Exchequer) to investigate conditions in the Island of Malta. The Commissioners produced reports dealing in detail with defects in the administration of the Island²¹ but were recalled before they could pass on to review the details of the legal system.²² The Malta Reports are written in Austin's style and one remark in the 3rd Report neatly ties together Austin's views on the matters he had been engaged on since 1833: 'No rational reformer of the criminal law of Malta would take the criminal law of England as his model: for though the former may be worse than the latter, the badness of the latter is undisputed and indisputable'.²³

Of unpublished material there appears to be very little remaining. The jurisprudential papers from which Sarah Austin published the *Lectures* have disappeared: they may, like the fragments of the Criminal Code, have gone to Janet Ross, Austin's granddaughter, who lived the greater part of her life in Italy. Other, more personal, material, a Diary kept in the year 1812 and various letters between Austin and his wife, disappeared during the last war.²⁴ A much more serious loss occurred when Austin's library of jurisprudential and legal works, which his widow had presented to the Inner Temple, was lost by enemy action in the 1940's. One volume only survived: Bentham's *Introduction to the Principles of Morals and Legislation* (1789). A list of these books is printed in the introduction to the later editions of the *Lectures*. The loss is serious because it is evident that Austin annotated some of the books heavily: some of this material was used by Sarah Austin when preparing the text of the *Lectures*²⁵ but there was much more.²⁶ Many of the books were German and were presumably acquired and used by Austin in the course of his preparation for his course of lectures at the University when he spent six months studying in Bonn. The surviving volume, which carried the signatures both of Bentham himself and of James Mill, is annotated with explanatory headings and Austin's characteristic illustrative diagrams, but it would

appear to date from a relatively early stage in Austin's jurisprudential studies.²⁷ As regards unpublished correspondence there are a number of letters relative to Austin's tenure of the Chair of Jurisprudence at the University in the College Collection at University College London;²⁸ here also is a single letter written by Austin to Bentham in 1819²⁹ and a large correspondence from Sarah Austin to Henry Brougham which is incidentally informative.³⁰

A number of memoirs of Austin by members of his family exist in print: the foremost being that published by Sarah Austin as an Introduction to her edition of the Lectures and reprinted in subsequent editions. Austin's granddaughter, Janet Ross, wrote brief accounts in her volume of family biography and autobiography.³¹ Ross' works are particularly valuable, as is the work mentioned above by Gordon Waterfield,³² in that they contain in print letters and other papers which have since disappeared. Ross' *Three Generations*, a series of biographies of her mother, grandmother and great-grandmother, is in fact largely an archive of letters to and from members of the family.

Certain aspects of Austin's character are clearly discernible from his writings. In his literary style he cultivated a precision which often spills over into pedantry and frequently obscures the substance which he is trying to communicate. In *The Province* his most carefully prepared work, he is fond of restating propositions by means of phrases like 'or (speaking in homelier and plainer language)'..., 'Or (changing the phrase)...' or by simple reiteration. This method, judicious as it is in oral delivery, is calculated to weary a reader: if read out aloud such alternative expressions do not have the same value as spontaneous oral variations and the ensuing dryness of delivery may go some way to explaining Austin's lack of success as a lecturer. By contrast his contemporaries spoke highly of his powers of conversation³³ and it would seem that the analytical powers which when used to excess ruined his literary style, helped him to a clarity of oral exposition far exceeding the usual. Austin was aware of his stylistic precision, but seems to have ascribed it to his legal studies, which at one stage he claimed would hamper his power of free correspondence.³⁴ His powers of analysis both of situations and of self were never put to more surprising use than in his letter of proposal to his future wife, Sarah Taylor, written on November 12, 1814.³⁵ It would seem from the circumstances of the case that his passion for niceness in expression was more firmly embedded in his character and modes of thought than he himself was prepared to allow.

Of Austin's other personal characteristics, the one most frequently noticed has been his ill health and its effect upon his work. His course of lectures at the University suffered considerably through his indisposition. He postponed the start of his lectures from the first Session in 1828 until the beginning of the following session and then started one week late.³⁶ He suffered a relapse in the following June and was forced to cease lecturing a month earlier than he had intended:³⁷ in any case he failed to fulfil his original ambitions in his first year of lectures as has already been noticed. Austin then postponed the commencement of his second year of lectures until January 1831 on the ground that he lacked an audience. In the 1831-2 Session he again started late, the delay being partly due to illness according to Sarah Austin;³⁸ in the event the expected starting date of January 11, 1832 was further postponed owing to 'a violent attack of illness'.³⁹ His fourth and final year of lectures seems to have caused him no difficulty once he had begun

in December 1832. Austin's having given up practice at the bar in 1825 is assigned to his ill health by Lord Brougham in the obituary he wrote for the *Law Magazine*,⁴⁰ but there are no references to illness in the earlier part of Austin's life; it is not, for example, mentioned in Austin's forthright letter of proposal to his future wife in 1814.⁴¹ The nature of the illness is uncertain. From the evidence it would appear that he was particularly troubled by it at moments of crisis, and it is possible that he had contracted malaria during his Army service in the Mediterranean.⁴²

There must be a suspicion that Austin's illness played handmaid to a degree of academic torpor. He himself diagnosed his chief failing as 'indolence' in his 1812 Diary,⁴³ and there is a very uncharacteristically revealing passage in a letter written by Sarah Austin towards the end of his life. Referring to Austin's insistence on the revision of *The Province* which he himself was failing to undertake, she writes, 'What reason can he give to me or to himself? Health? But to me, he could hardly urge that'.⁴⁴ If it were known that Sarah herself suffered from any disability then it would be easier to give this passage a lenient interpretation; as it is the implication is that ill health had served too often as an excuse.

Of the external factors which helped to shape Austin's life and philosophy, amongst them his years of service in the Army against Napoleon,⁴⁵ his intermittent contacts with German lawyers and philosophers⁴⁶ and his periods of residence in France,⁴⁷ the most important was his relationship with Jeremy Bentham. By 1819 when Austin married and went to live in the upper part of 1 Queen Square Place, close to Bentham and the Mills, they were already acquainted. Sarah Austin and Bentham were on close terms after her marriage: she addressed letters to him 'dearest grandpapa'⁴⁸ and Bentham reciprocated signing himself 'great grandpapa'.⁴⁹ Sarah came from a Radical background, her mother Susannah Taylor being noted for her advanced views.

It is not impossible therefore that Sarah was acquainted with Bentham before Austin and was responsible for introducing him. On the other hand, Austin being in chambers from at least 1814 and his friendship with Bingham may suggest a legal background to their meeting.⁵⁰ The first indication of Bentham's influence on Austin, excepting probably the reading of the *Introduction to the Principles of Morals and Legislation*,⁵¹ is a letter written by Austin to Bentham just as he launched himself on his unsuccessful legal career.⁵² The burden of the letter is that since Austin is constrained to earn his living for the immediate future in legal practice or grimgibber, as he calls it in Benthamic fashion,⁵³ he is constrained to forego expressing his support for Bentham's ideas of reform. "There would be no great chance of my making money in my profession if I began, at a very early period of my professional life, to hold up the absurdity of the system to public view." The greater interest, however, lies in the professions of support and regard for Bentham's views. We have seen how it would appear that in his later years Austin abandoned Utility altogether, and how even in his 1829 lectures he advanced Utility only as a means to an end, the discovery of the will of God. When Guizot asked Sarah Austin after his death whether Austin had ever been Bentham's disciple, Sarah denied it as far as politics and philosophy were concerned, though as a jurist he regarded him with 'profound veneration'.⁵⁴ From the context it would seem that Sarah is referring to law reform rather than jurisprudence. In 1819, however, Austin was less circumspect: 'Nothing but my desire to convince

you that I am truly your disciple, and, as such, earnest for the improvement of human happiness,' would have prompted Austin to take up Bentham's time: once he is established financially 'I shall feel no violent desire for any other object than that of disseminating your doctrines'. The following years in legal practice were apparently ones of some difficulty. Austin went on the Norfolk circuit, but his training in the chambers of a Special Pleader may not have fitted him for the rough and tumble of Assize business. His granddaughter reports that he never held a brief and that he had great difficulty in addressing a court,⁵⁵ statements that can be reconciled by presuming either that one is incorrect or that it is meant that Austin was never engaged individually upon a case. He is said to have abandoned practice in 1825, but what he then did is somewhat of a mystery. The Chair of Jurisprudence at London University was announced in 1827, there does not appear to have been much competition and Austin was appointed on July 27 of that year. It seems that Bentham may have been instrumental in obtaining the post for his 'disciple'. In the unique diary for 1822-4⁵⁶ there is an entry on the first leaf dated '1827/18 July 1827' followed beneath by the date '19 July' and the entry 'Dicenda to B.' found elsewhere in the Diary. There follows a list of matters, some marked with a cross. This indicates a degree of interest, not perhaps wholly surprising, in Austin's future career: if Bentham had known what Austin was to say in his lectures he might have been less pleased. Sarah Austin reports that a coolness developed between them towards the end of Bentham's life which she ascribes to the fact that Bentham could not stand criticism:⁵⁷ it may be however that it was the nature of Austin's criticism that hurt the most.

Austin died on December 17, 1859 in the house in Weybridge where he and Sarah had gone to live after their return from revolution-torn Paris in 1848. He is buried in the churchyard of the Parish Church which, as a Unitarian, he never attended, beneath a tomb which is inscribed with a eulogy in Latin composed by Sarah and put into Latin by the Provost of Eton⁵⁸....'vir intelligentia ac virtute aequae insignis mirum ingenii acumen excelsiove animi vires neque lucri neque famae spe allectus studio veri iusti honesti strenue dicavit iurisprudentiae praesertim principia ratione subtilissima enodata ore et scriptis luculenter exposuit'. A fitting tribute, but a more accurate obituary was provided by Austin himself as the frontispiece to his 1812 Diary:

Nous tromper dans nos entreprises
 C'est à quoi nous sommes sujets;
 Le matin je fais les projets
 Et le long du jour des sottises.
 (Voltaire)⁵⁹

FOOTNOTES

1. Thereby falsifying for a time Mill's expectations as expressed in his review of Austin's posthumous *Lectures*: "It is not, of course, intended to claim for Mr. Austin a position in the philosophy of law either equal or similar to that which posterity will assign to his great predecessor, Bentham". *Edinburgh Review*, 118 (1963), 439.
2. In addition to the edition of J. Bentham, *Of Laws in General* (C.W.) see his articles in *Irish Jurist*, 2 (1967), 327 and *Yale Law Journal*, 81 (1972), 799.
3. John Murray (London), 1832.
4. This appears from a letter he wrote to the Warden of the University on Friday, November 12, 1830, in which he states his intention of abandoning his lectures for the Michaelmas Term 1830 and commencing again after the Christmas vacation since he had but three regular students. He would use the time to publish 'the eight lectures which I placed at the beginning of my course'. Once published 'they may eventually bring me hearers'. U.C.L. College Correspondence (Coll.Corr.), 29. It would appear that Austin read his written lectures aloud for the most part: his widow, Sarah Austin, records in her preface to her posthumous edition of his *Lectures* that in places the manuscript was marked 'v.v.' where viva voce extemporisation was intended. This is confirmed by a letter Austin wrote to George Grote whilst he was preparing material for his lectures in Germany in 1827: the letter is printed in Janet Ross, *Three Generations of Englishwomen* (1893 ed.), 67.
5. Letter from Sarah Austin to F. Guizot, March 17, 1857, printed in Ross, *Three Generations* (1893), 324.
6. John Murray, vol.i, 1861, vols. ii and iii, 1863. This first edition of the *Lectures* was in three volumes, the first of which was a reprint of *The Province* corrected by Sarah Austin from Austin's own annotated copy. The substance of the *Lectures* printed in the subsequent volumes is a conflation of the lecture courses prepared for and given at the University of London in the years 1829-32, and the Inner Temple in the Spring of 1834.
7. In the printed editions, the *Lectures* subsequent to *The Province's* six are numbered 12 to 58. This is accounted for by the fact that in delivery the substance of *The Province* was given variously in eight to eleven lectures. This phenomenon will not appear strange to experienced lecturers.
8. The *Outline of a Course of Lectures* was first printed in 1832 as an addition to the London University Calendar, within which it could not be included by reason of its bulk. The Calendar was designed to advertise the various courses available. Austin subsequently printed the *Outline* as an appendix to *The Province*. A copy of the original printing marked with many amendments by Austin, together with what appears to be page proofs of the final version of the *Outline*, has been donated to University College Library, and will be catalogued in the Add.Mss. Collection.

9. Mill had lent his manuscript notes to Sarah Austin in 1865: Sarah Austin to Brougham, December 10, 1865: Brougham Mss. 43,322 (U.C.L.).
10. 'Disposition of Property by Will - Primogeniture', *Westminster Review*, 2 (1824), 503: 'Joint-Stock Companies', *Parliamentary History and Review*, (1826), 709: 'List on the Principles of the German Customs Union', *Edinburgh Review*, 75 (1842), 515: 'Centralisation', *Edinburgh Review*, 85 (1842), 221: *A Plea for the Constitution* (John Murray, 1859). A copy of the Second Edition of the last, probably Austin's own copy, has recently been donated to University College Library.
11. 'John Austin's Political Pamphlets 1824-1859', *Perspectives in Jurisprudence*, edited by Elspeth Attwooll (University of Glasgow Press, 1977), 20.
12. Austin's blend of progressiveness and conservatism is indicated clearly in an undated letter possibly written from Paris in the year 1846. 'Looking at the Communist and anarchical opinions which are now prevalent in Europe, and at the financial difficulties weighing upon the governments, I believe that a general war would be followed in almost every European country by most perilous revolutionary movements. All Europe is progressing rapidly; but as the improvement in respect to social questions, is not at all proportional to the merely material civilisation, the very progress, in its present stage, is full of danger to peace and security'. Austin's fears were to bear fruit whilst he was still resident in Paris in 1848.
13. Lectures II-IV.
14. But see, most recently, D.N. MacCormick, *Legal Reasoning and Legal Theory* (Oxford, 1978), 60.
15. '...I proceed to distinguish laws set by men to men from those Divine laws which are the ultimate test of human'. *The Province* (1832), Lecture II, p.31. Quite apart from the need to expound Divine laws because they are, for Austin, law properly so called, he justifies his enquiry by indicating that some human laws are really Divine laws 'clothed with human sanctions' and further that this enquiry forms necessary part of the science of legislation, or what the law ought to be.
16. "Accordingly, I style the Divine commands the ultimate measure or test: but I style the principle of Utility, or the general happiness or good, the proximate measure to which our conduct should conform, or the proximate test by which our conduct should be tried." *The Province* (1954 ed. Hart), Lecture IV, 104.
17. If we count the essay *On the Uses of the Study of Jurisprudence* as part of the matter of the *Lectures* with which it is printed. The essay was pieced together by Sarah Austin out of fragments: Sarah Austin to Brougham, November 9, 1862 Brougham Mss. 22,437.

17. (cont'd)
According to Mill these fragments were from the introductory lectures given at the University and at the Inner Temple, *Edinburgh Review*, 118 (1863), 439ff.
18. The Commission was appointed in 1832: Austin signed its first report in 1834 but took no further part. A letter from Bentham to Brougham of November 2, 1827 refers to the appointment of commissioners for an unspecified purpose connected with law reform. 'A propos of *Commissioners*. You mention *Austin*: probably enough the first man I myself should have named had the matter depended upon me: *Bickersteth* of course excepted. What do you say to Bingham? If not equal to Austin in judgment and comprehensiveness of conception, he is beyond comparison superior to him in dispute.' Brougham Mss. 22,007. Bickersteth, later Master of the Rolls as Lord Langdale 1836-1851, and Bingham, the law Reporter, were both Benthamites. Of Bickersteth it was said that his friendship with Bentham was 'a circumstance which somewhat retarded his career at the bar' (*Dict. Nat. Biog.*), whilst Bingham was described by John Stuart Mill as 'a frequenter of Bentham, and a friend of both the Austins', (*ibid.*)
19. The Criminal Code is mentioned by Sarah Austin in the Memoir pre-faced to the *Lectures*. It was in the possession of Austin's granddaughter, Janet Ross, at the end of the century: Ross, *Three Generations* (1893), 87ff.
20. Austin kept a copy of the Report as it was printed as an appendix to the weekly *Legal Observer*: this is now in University College Library. It is officially printed in *Parliamentary Papers* (1834) XXVI, 105.
21. The Reports were published in *Parliamentary Papers* (1837-8) XXIX, 311, 389 and (1839) XVII, 753.
22. A change in Government combined with pressure upon the new Colonial Secretary, Lord John Russell, to terminate the investigation was responsible for the Commissioners' sudden recall. Austin bitterly resented what he regarded as a slight on his ability and his health suffered as a result: Sarah Austin to Brougham, 22 February (1838), Brougham Mss. 26,521.
23. *Parliamentary Papers* (1839) XVII, 753.
24. Some of this material is in print. Extracts from the Diary kept by Austin, from 31 December 1811 to March 1812, a period covering his last few months as a serving officer in the 44th Regiment of Foot, are printed in Gordon Waterfield's *Lucie Duff Gordon* (Murray, 1937) a biography of Austin's daughter, at pages 13ff. Extracts were also printed by Sir William Markby in his account of John Austin in the *Encyclopaedia Britannica* (11th Edition, vol.ii, 938).
25. See for example the note to Lecture VI, *Lectures*, vol.i (1885 edition), 251.
26. Sarah refers to some heavily annotated volumes in a letter to Brougham of early 1860: Brougham Mss. 32,458.

27. The second edition of the *Principles* was published in 1823 which may provide a *terminus ad quem*.
28. College Correspondence in the yearly collections 1828-1834, and P.22-29.
29. Ogden Ms. 62 (2), 3, U.C.L. discussed below.
30. Brougham Mss. U.C.L.
31. *Three Generations of English Women* (1st ed., London, 1888 in two volumes: subsequent editions in one volume); *Early Days Recalled* (London, 1891); *The Fourth Generation* (London, 1912).
32. *Supra.*, 24.
33. In addition to Sarah Austin's reference in her first Preface to the Lectures is the evidence of John Stuart Mill, 'few have contributed more by their individual influence and their conversation to the formation and growth of a number of the most active minds of this generation' (letter of December 1859 to Janet Duff Gordon: Ross: *Fourth Generation* 74), and of Dr. E.C. Hawtrey, Provost of Eton (*ibid*). There seems no reason to disregard these on the ground only that they are post-obit eulogies.
34. This appears from an extract of a letter written to Sarah Taylor (later Austin) before their engagement. The extract is printed in Gordon Waterfield's *Lucie Duff Gordon* (Murray, 1937) at 24. Earlier in his Diary of 1812, however, Austin has admitted to himself that 'the only excellencies of my style are clearness and precision', *op.cit.*, 17.
35. Waterfield, *op.cit.*, 25-29.
36. The delay is ascribed partly to ill-health in a letter to the Warden of the University of October 30, 1828, Coll.Corr. 1828:583; a later letter ascribes the delay wholly to illness, letter of March 30, 1829, Coll.Corr.P.22. The final week's delay seems to be unconnected with his illness, letter of October 26, 1829, Coll.Corr., 1829:1206.
37. Letter to the Warden of June 15, 1830, when the illness is referred to as 'a severe return of fever', Coll.Corr.P.25, and a letter of July 5, 1830 to J.A. Roebuck of Gray's Inn, one of his students, informing him of the early finish: 'I am compelled by the state of my health to leave London without delay....' U.C.L.Ms.Misc.2A.
38. Letter from Sarah Austin to Thomas Coates, Secretary of the University, November 10, 1831: Coll.Corr., 1831:2267.
39. Letter from Austin to Coates, January 10, 1832, Coll.Corr.1832:2535.
40. *Law Magazine* (1860), 164.

41. *Supra*, note 35.
42. Malaria is characterised by the sudden onset of fever in the midst of health. It was of course endemic in the Mediterranean when Austin served as a soldier.
43. Waterfield, *Lucie Duff Gordon*, 18.
44. Sarah Austin to F. Guizot, March 17, 1857, already cited *supra*, note 5.
45. Austin served in Sicily and in Malta, but it is not known whether he saw any fighting.
46. Austin visited Bonn in 1827-8 whilst preparing for his lectures at the University. He knew insufficient German when he arrived to attend public lectures, but took private lessons with a pupil of Savigny: Austin to George Grote, December 9, 1827 printed in Ross, *Three Generations* (1893), 67. Later in 1840-4 the Austins visited Germany and in 1843 stayed in Berlin where they met Savigny himself: Brougham, *Law Magazine* (1860), 164ff.
47. The Austins lived in Boulogne for the winter of 1833-4 and spent four years in Paris preceding the 1848 Revolution: Sarah Austin had a large acquaintance amongst prominent French literary and political figures, including Guizot, Barthélemy, St. Hilaire and Victor Cousin.
48. Letter of December 18, 1826, U.C. xii, 358.
49. Letter of 25 August 1830 printed in Ross, *Three Generations* (1893), 82. Shortly before his death Bentham sent Sarah Austin a ring bearing his portrait and a locket of his hair, engraved 'Memento for Mrs. John Austin. J.B. Hair and Profile'. Ross, *Three Generations* (1893), 84.
50. In his letter to Brougham mentioned above (note 18) Bentham alludes to the fact that Bingham and Austin were in pupillage together in the same chambers.
51. Which Austin annotated, see text to note 27.
52. Letter of July 20, 1819, Ogden Ms. 62(2)3 U.C.L.
53. Bentham uses the same word in his letter to Brougham, *cit. supra*, notes 18 and 50.
54. Letter to F. Guizot of December 18, 1861: Ross, *Three Generations* (1893), 381.
55. Ross, *Three Generations* (1893), 88.
56. U.C. clxxiii, 62-106..
57. Letter to Guizot, *cit. supra*, note 54.

58. Letter of Sarah Austin to Brougham, June 11 (1862?), Brougham Mss. 26,541.
59. I am very grateful to Gordon Waterfield for providing me with information about his great-great-grandfather and the fate of his papers, and for allowing me to quote from letters in his possession.

BENTHAM'S LETTERS TO JOHN HERBERT KOE

J.R. Dinwiddy

The purpose of this short paper is to report on a collection of about fifty letters from Bentham to John Herbert Koe which came to light a few years ago when Koe's papers were inherited by a descendant of his, Mrs. Hyde-Smith of Wilbraham Temple, Great Wilbraham, Cambridge.¹ The letters (with two exceptions) were written at Ford Abbey, on the borders of Dorset and Devonshire, in the years 1816-1818, and were addressed to Koe at Bentham's house at Queen's Square Place, Westminster. A few other letters of slightly earlier date from Bentham at Ford Abbey to Koe at Queen's Square Place are to be found elsewhere,² but the other side of the correspondence - apart from one and a half letters from Koe to Bentham in November 1817, which are among the Bentham Mss. at University College³ - does not appear to have survived.

John Herbert Koe (1783-1860) was the younger son of John Koe, a merchant of Swedish origin who had settled in the City of London and married an Englishwoman, Mary Browning.⁴ John Koe had been declared bankrupt in 1778, and he died within a couple of years of John Herbert's birth. How it was that his two sons were brought into contact with the Bentham family is not clear. But it seems that by November 1795 John Herbert's elder brother, John Heide Koe, was living at Queen's Square Place and acting as Bentham's secretary.⁵ About two years later John Heide went to sea on board H.M.S. *Dart*, a sloop designed by Samuel Bentham.⁶ He became a naval purser and served until 1806, when he married a widow three years older than his mother, who had the ownership for life of a large house at Barrow Green, near Oxted in Surrey.⁷ Thereafter, from 1807 to 1813, Bentham regularly spent several weeks at this house in the late summer and autumn of each year.

According to some reminiscences of Bentham later recorded by John Bowring, Herbert Koe (as he was generally called) joined Bentham's household when his elder brother left it.⁸ He was certainly installed there by October 1800, when Bentham asked his brother Samuel to give Herbert ('who increases in intelligence') a ticket for the lectures at the Royal Institution. Herbert Koe was, in the words of his son, 'in a manner adopted' by Bentham and brought up by him.¹⁰ In due course he studied for the bar, being admitted as a student at Lincoln's Inn in November 1804 and being called in November 1810. In the meantime, and even after he began to practise, he continued to live at Queen's Square Place and to act as a sort of factotum for the Bentham brothers. Jeremy evidently became very attached to the young man and very dependent on him. Had he gone, as he contemplated doing, to St. Petersburg in 1807 or to Mexico in 1809, he would have taken Koe with him; and he described him in a letter to Lord Holland in 1808 as known to every one to whom he himself was known.¹¹

In 1814, having recently been granted £23,000 in compensation for the cancellation of his Panopticon agreement with the Treasury, Bentham became tenant of Ford Abbey, a magnificent house which combined medieval and later styles and had a front (as Bentham told his brother) measuring two hundred and fifty feet.¹² Here he spent a substantial part of each year until he gave up the lease in 1818. He said later in describing the house to Bowring that he had enjoyed it prodigiously, and Herbert Koe wrote to Sir Samuel Bentham in March 1815: '....he seems in such high admiration of the place, and enjoys such abundant health there, that it seems probable even when he does come, that he will stay only a short time in London'.¹³ Several accounts of life at Ford Abbey during Bentham's tenure of the house were written by people who stayed there as his visitors - by Francis Horner in 1814, by Lady Romilly in a vivid

letter to Maria Edgeworth in 1817, and by Francis Place in a series of letters to his wife in the same year.¹⁴

Koe was married from Ford Abbey in August 1815 to Anne Jump, who came from a Devonshire family and was the daughter of a captain in the Navy. The first of their fifteen children was born in June of the next year and was christened Bentham Dumont Koe, Dumont having offered to be a godfather¹⁵ and Bentham having declined to be one in the following words:

A propos of his Bratship, I told you I could not endure to take part in that abominable ceremony, but if you have a mind to give him my name - my surname - for a Christian name well and good. You will then have a Bentham to tyrannize over, as you yourself have been tyrannized over by one: and, according to Juggical justice you may revenge yourself on the young one for what you have suffered under the old one.¹⁶

From July 1816 to January 1817, and again from July 1817 until the following February, the Herbert Koe family lived at Queen's Square Place while Bentham was at Ford Abbey. It is to these two periods that almost all Bentham's letters in the Koe collection belong.

Many of the letters are concerned mainly or entirely with the commissions Koe was expected to perform: some of them are mere scraps of paper containing lists of 'mittenda' and 'facienda'. The things Bentham asked to be sent down to Ford Abbey were multifarious: pens and cart-ridge paper, books old and new, shuttlecocks made to a special design by Place, Handel's concertos, a case of mathematical instruments, silver spoons for the Romillys' visit, and quantities of seeds and plants. Koe was also instructed to communicate with Bentham's printer John McCreery,¹⁷ to dispatch complimentary copies of Bentham's publications to a variety of people at home and abroad, to collect rent from his tenants, to check facts and transcribe passages in books at Queen's Square Place, and to arrange for the repainting of parts of the house (including the staircase 'up to your room: viz., at least so high as company coming up to my room will see").

Some of Bentham's letters are written in a relaxed, gossipy style and provide miscellaneous information about the Ford Abbey household. It is reported that the peacocks have developed a taste for carnations and been banished to the upper pond; that the organ has been taken to pieces and put to rights; that the new amanuensis, John Colls, has arrived and is 'deficient in general instruction' but 'reads well beyond expectation';¹⁸ that Mrs. Stoker, the housekeeper, has had 'one of her fits' and been seen 'in a horrible state' by James Mill. But the letters are chiefly interesting for the light they throw on Bentham's more public concerns. In the late summer of 1816 he was arranging for copies of *Chrestomathia*, Part II of which was just emerging from the press, to be distributed to people who were regarded as possible subscribers to the school he intended to establish in the garden of his London house.¹⁹ Also, he was excited by the possibility that a Panopticon might be built at Bristol, or that one intended for juveniles might be erected in London through the efforts of a newly-formed society for the prevention of juvenile delinquency (with which Koe was associated). He advised that when a deputation from the society called on the Home Secretary, Lord Sidmouth, his own name

should if possible be kept out of the conversation. But at the same time he returned with relish to the consideration of some of the details of his plan, discussing in one letter a contrivance suggested by Place whereby the lavatories would be 'capable of being exposed to inspection (viz., by drawing aside or removal of a curtain.....) yet perfectly air tight, - the windows not opening, and thence no possibility of annoyance by bad smell'.²⁰

As for his own writing at Ford Abbey ('this holy place', as he liked to call it), he was chiefly engaged in 1816 and 1817 on the works that Colls was later to describe as 'volumes of blasphemy and slander..... against the Author of Christianity and His people'.²¹ In the latter part of 1816 he was finishing 'Church Cat.', alias *Church-of-Englandism and its Catechism Examined*, and a year later he was working intensively on *Not Paul, but Jesus*. For a period between these works on religious matters he turned his attention to parliamentary reform. Encouraged by the revival of public interest in the reform question in the winter of 1816-17, and urged on by James Mill, he spent most of that January composing a theoretical catechism on the necessity of reform, to serve as an introduction to the 'Parliamentary Reform Catechism' which he had written in 1809.²² In fact this 'Necessity Cat.' was never published;²³ but on his return to London he wrote the more topical introduction which appeared later in the year in the pamphlet called *Plan of Parliamentary Reform, in the form of a Catechism*.

The letters to Koe illuminate several aspects of this phase of Bentham's career, including for example his relations with Sir Samuel Romilly and his attitude to the Whigs.²⁴ But perhaps the thing that emerges most strongly of all is Bentham's intense desire for publicity - especially, at this time, for publicity in North America. It was in August 1816 that he received from President Madison a reply to the letter he had addressed to him in 1811 offering to draw up a Pannomion or complete code of laws for the United States. Madison's letter was in essence a polite refusal, but it did express the hope that although Bentham's services could not be accepted in the mode suggested 'the fruits of your labours may in some other not be lost to us'.²⁵ Bentham described the letter to Koe as 'highly gratifying' and interpreted it as 'in substance... a recommendation to the several states'. It confirmed an intention he had already formed of sending to the leading men of each separate state an offer of his services as codifier, together with copies of letters from various public men which would serve as testimonials. Koe was instructed to extract several such letters from the bundles of correspondence at Queen's Square Place and send them down to Ford Abbey. He was also instructed to call on the American ambassador in London and request him to send Madison an acknowledgement of his letter, with copies of Bentham's *Chrestomathia* and *A Table of the Springs of Action*. Bentham added: 'If you observe any tendency on the part of the Minister (Adams M[ill] says it is) to a personal intercourse with me, encourage it'.²⁶

Bentham did, after his return to London, establish a close relationship with the Ambassador, John Quincy Adams; in the early summer of 1817, before Adams returned to America to become Secretary of State, they formed a habit of walking together in Hyde Park and Kensington Gardens.²⁷ Meanwhile, Bentham composed two circular letters addressed to the governors of the American states, one making his offer with regard to codification, and the other recommending the system of education detailed in his *Chrestomathia*. A collection of supporting documents, including his correspon-

dence with Madison and with the Emperor Alexander of Russia, was printed under the title *Papers relative to Codification and Public Instruction*. Adams undertook to take back with him to America, and to send out to the twenty governors, copies of the circulars and pamphlet plus copies of *Chrestomathia* and *Plan of Parliamentary Reform*.²⁸ Later in the year Bentham was arranging for further batches of material, including multiple copies of his public letter entitled 'Jeremy Bentham, an Englishman, to the Citizens of the several American United States', to be forwarded to Adams by his nephew John Adams Smith, who was secretary to the American legation in London and one of Bentham's admirers.²⁹

In October Bentham's *Papers relative to Codification and Public Instruction*, having been published in England, were reviewed in *The Examiner* by his former secretary Walter Coulson.³⁰ Bentham's general practice was to avoid reading or hearing articles that were written about him or his work,³¹ but on this occasion, as he put it to Koe,

Some how or other the first line or two without intention on my part fell under my eye, or my ear I forget which: and the observation it conveyed was that my writings were little known upon the continent, and perhaps he went on to say in England either. Now for a recommendation of them to U.S. this was one of the worst things that could have been said.

He wished that the article had been written not by Coulson, who had 'no affections public or private', but by Leigh Hunt, 'who without presuming to criticize would have poured forth laud on some of the more prominent parts' and 'would have informed U.S. what a glorious opportunity was put into their hands and what fools they would be as well as ingrates if they neglected to avail themselves of it'.³² In November Bentham was becoming anxious at having received no response to the circulars he had entrusted to Adams, and was beginning to wonder whether they had ever been sent out.³³ But in that very month he received an 'opportune and comfortable' letter from Governor William Plumer of New Hampshire, who thanked him warmly for his disinterested proposal and promised to communicate his papers to the state legislature during its next session. Bentham immediately sent Koe a copy of the letter, urging him to get it printed, if possible in the *Morning Chronicle* and *Examiner*. It would have two uses, he explained, 'one in America, to encrease the bustle: the other here to serve as an advertisement, and assist the circulation of Codification Papers'.³⁴ The letter did duly appear in the *Morning Chronicle*,³⁵ and Governor Plumer did communicate Bentham's proposal to the New Hampshire House of Representatives in 1818. But the proposal was not accepted, and in other states the response to Bentham's efforts to advertise his services was disappointing.³⁶ Although he cultivated the new ambassador, Richard Rush,³⁷ and retained a keen interest in the United States, the year 1818 saw a shift in his main focus of attention towards the emerging states of Latin America.

The last two letters from Bentham that Koe preserved among his papers are of personal rather than public interest and do not belong to the Ford Abbey period, being dated September 1818 and September 1820. Bentham had left Ford Abbey for the last time in February 1818,³⁸ having been obliged to give up the lease on account of a serious financial setback that he had

suffered in the previous year. One James Grellier, a cement manufacturer at Millwall who had earlier had business dealings with Samuel Bentham, had acquired in 1813 the lease of a marble quarry at Babbacombe in Devon, and Jeremy Bentham had been induced to invest £6,000 in it. Also, he had invested £2,000 in the cement concern, in which Herbert Koe's elder brother had become a partner.³⁹ Samuel Bentham, in a letter to Jeremy from France in March 1816, had expressed doubts about the wisdom of financial involvement with Grellier,⁴⁰ and his apprehensions soon proved to be justified. Grellier was declared bankrupt in February 1817, and the bankruptcy of John Heide Koe followed a few months later.⁴¹ Bentham later said that he had lost £8,000 of his own and £2,000 of his brother's as a result of Grellier's failure.⁴²

The letter Bentham wrote to Koe on 30 September 1818 shows that the latter was moving from Queen's Square Place to set up house on his own, and that Bentham, although he regretted this move, had decided after a survey of his own damaged affairs that he could afford to give him an allowance of £100 a year. 'I wish it was more', he wrote. 'God help you with it. During my life it shall not cease, without a twelvemonths notice.' The other letter, written almost exactly two years later, stated that the allowance was to come to an end after one more year. Bentham complained of certain ways in which Koe had presumed too much on his generosity, and he said that as Koe was now comfortably established he saw no reason why he should support him further.⁴³ It is clear from other correspondence of 1820 that Bentham had come to feel that Koe was neglecting him; he wrote to Samuel on 24 May: 'H. K..... takes not any the smallest interest in any thing that concerns me'.⁴⁴ It is also clear that the decision to stop Koe's allowance coincided with the commencement of Bentham's close relationship with Bowring, for it was in September 1820 that he wrote Bowring the letter which began: 'Now that you have taken me under your protection, there are some hopes for me'.⁴⁵ Koe, it seems, was virtually discarded from Bentham's life, and the remarks which Bentham subsequently made about him to Bowring were not (if accurately reported) either affectionate or flattering.⁴⁶ The *Edinburgh Review* was later to comment on Bentham's capacity for dropping old friends 'with more than philosophical facility',⁴⁷ and the treatment of Koe may have been an instance of this - though it may also be true that the separation stemmed partly from a desire by Koe to establish his independence of Bentham. Koe himself went on to become in due course a leading counsel in the Rolls Court, a county court judge and, like Bentham,⁴⁸ a bencher of Lincoln's Inn.⁴⁹

NOTES

1. Mrs. Hyde-Smith has kindly allowed the Bentham Project to transcribe the letters in full, and she has given permission for these transcripts to be made available at University College for consultation by interested scholars. I am myself very grateful to Mrs. Hyde-Smith for her hospitality at Wilbraham Temple. I am also much indebted to Mr. Martin Smith for his help in transcribing the letters. Mr. William Thomas of Christ Church, Oxford, has consulted the Koe Mss. and makes use of them in the first chapter of his book *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817-1841* which is to be published in the autumn of this year by the Clarendon Press, Oxford. We are very grateful to him for informing the Project of the existence of the collection.
2. J[eremy] B[entham] to John Herbert Koe, 24 November 1814, U.C. clxxiv.108; 15 and 20 December 1814 and 6 July 1815 (extracts), *Bowring*, x, 484-5; 2 January 1816, B.L. Add.Mss.33545, fos.218-19.
3. John Herbert Koe to J.B., 5 November 1817 (incomplete) and 13 November 1817, U.C. clxxiv.96-7.
4. The information about the Koe family provided in S.L. Koe, *Short Sketch of a Family* (privately printed, Brighton, 1894) has been corrected and supplemented through the researches of Mrs. R.G. Taylor of Hollen House, Buckland, near Faringdon, who is herself a descendant of John Herbert Koe. I am very grateful to Mrs. Taylor for generously sharing with the Project the information she has collected.
5. John Heide Koe to S[amuel] B[entham], 9 November 1795, B.L. Add. Mss.33542, fos.120-1.
6. John Heide Koe to S.B., 14 March 1798, *ibid.*, fo.538, and 4 September 1799, B.L. Add.Mss.33543, fos.103-4.
7. J.B. to S.B., 25 December 1806, B.L. Add.Mss.33544, fos.229-32.
8. *Bowring*, x, 573. Bowring substituted blanks for names, but the second and third paragraphs on this page clearly refer to the Koe brothers.
9. J.B. to S.B., 14 October 1800, B.L. Add.Mss.33543, fos.425-6.
10. S.L. Koe, *op.cit.*, 4-6.
11. J.B. to S.B., 18 September 1806, B.L. Add.Mss.33544, fos.214-15; J.B. to Lord Holland, 31 October 1808, *Bowring*, x, 444.
12. For his own description of the house, see J.B. to S.B., 19 July 1814, B.L. Add.Mss.33545, fos.183-4. For a modern description, see Royal Commission on Historical Monuments, England, *An Inventory of the Historical Monuments in Dorset*, I (1952), 240-6.
13. *Bowring*, x, 479; Koe to S.B., 9-10 March 1815, B.L. Add.Mss.33545, fo.204.

14. *Memoirs and Correspondence of Francis Horner*, ed. Leonard Horner (2 vols., 1843), II, 178-80; *Romilly-Edgeworth Letters 1813-1818*, ed. S.H. Romilly (1936), 174-7; B.L. Add.Mss.35143, fos.281-301, partly published in Graham Wallas, *Life of Francis Place* (4th edition, 1925), 73-7.
15. Koe to Etienne Dumont, 29 July 1816, Dumont Mss. 33/III, fos.288-9, Bibliothèque Publique et Universitaire, Geneva.
16. J.B. to Koe, 7 August 1816, Koe Mss. "Juggical" was Bentham's word for "Christian".
17. On McCreery and the work he did for Bentham at this time, see J.R. Barker, "John McCreery: a radical printer, 1768-1832", *The Library*, 5th series, XVI (1961), 81-103.
18. J.B. to Koe, 17 August 1816, Koe Mss. John Colls was to remain with Bentham for fourteen years but was subsequently to take Holy Orders and to publish a hostile pamphlet about Bentham and Benthamism, *Utilitarianism Unmasked* (1844). This work provides some further glimpses of life at Ford Abbey: of Bentham (aged nearly seventy) playing fives with Colls before breakfast, and being rather put out when he challenged Lady Romilly to a running race and was easily beaten.
19. J.B. to Koe, 26-28 July and 19 August 1816, Koe Mss.
20. J.B. to Koe, 17 and 19 August 1816, *ibid.* Cf. Koe to Dumont, 29 July 1816, Dumont Mss., *loc.cit.*
21. Colls, *op.cit.*, 10.
22. J.B. to Koe, 1 and 25 January 1817.
23. This material dated late-December 1816 and January 1817 is in U.C. cxxv.185-211, 215-47, 252-410.
24. These topics are discussed by Mr. Thomas in his forthcoming book.
25. *Bowring*, iv, 467-8. Cf. H.L.A. Hart, "Bentham and the United States of America", *Journal of Law and Economics*, XIX (1976), 547-67, especially 565-6.
26. J.B. to Koe, 19 August 1816, Koe Mss.
27. See the frequent references to Bentham in this section of Adams' diary: *Memoirs of John Quincy Adams*, ed. Charles Francis Adams (12 vols., Philadelphia, 1874-7), III, 511-65.
28. J.B. to Adams, 7 June 1817 (copy), U.C. xii.9. *Plan of Parliamentary Reform* was included in the package because it showed, Bentham said, "the state of his affections" regarding the United States.

29. J.B. to Koe, 30 September and 16 November 1817, Koe Mss.; John Adams Smith to J.B., 11 December 1817, U.C. xii.17; Smith to Koe, 14 January 1818, *ibid.*, fo.19.
30. *The Examiner*, 10 October 1817.
31. The reasons he gave for this general rule were 'saving present time, and saving attention from being needlessly called off': J.B. to Koe, 1 February 1818, Koe Mss.
32. J.B. to Koe, 29 October 1817, *ibid.*
33. J.B. to Koe, 11 November 1817, *ibid.*
34. J.B. to Koe, 16 November 1817, *ibid.*; *Bowring*, iv, 577.
35. *Morning Chronicle*, 25 November 1817.
36. *Bowring*, iv, 578-9, and x, 504; J.B. to Place, 17 January 1818, Jacob Hollander Collection, University of Illinois.
37. J.B. to Smith, 22 December 1817 (draft), U.C. xii.18; Richard Rush, *A Residence at the Court of London* (1833), 286-91.
38. J.B. to Koe, 7 February 1818, Koe Mss.
39. Copy of agreement between John P. Hubbard and James Grellier, 24 December 1813, *ibid.*; Place to James Mill, 8 December 1816, B.L. Add.Mss.35152, fo.228, and 15 January 1817, B.L. Add.Mss. 35153, fo.1.
40. S.B. to J.B., 17 March 1816, Koe Mss.
41. *The Times*, 17 February and 5 May 1817.
42. *Bowring*, x, 573. Bowring substituted a blank for Grellier's name.
43. J.B. to Koe, 30 September 1818 and 28 September 1820, Koe Mss.
44. J.B. to S.B., 24 May 1820, B.L. Add.Mss.33545, fo.413. See also J.B. to S.B., 28 January 1820, *ibid.*, fo.382.
45. *Bowring*, x, 516. Cf. J.B. to S.B., 29 November 1820, B.L. Add.Mss. 33545, fo.455, for a glowing description of Bentham's new friend.
46. *Bowring*, x, 573.
47. [William Empson,] "Jeremy Bentham", *Edinburgh Review*, lxxviii (1843), 467.
48. It appears from one of Bentham's letters to Koe (29 September 1817, Koe Mss.) that the main reason for his own acceptance of the invitation to become a bencher was 'the improbabilization of prosecution' (for seditious or blasphemous libel).

49. Frederic Boase, *Modern English Biography* (6 vols., Truro, 1892-1921), II, 265-6.

Besides the letters of Bentham to Koe there are some other documents in the Koe Mss. that relate to the Bentham family. There are several letters of Sir Samuel and Lady Bentham (1811-1816), and there is a letter to Koe from a Maria Burton of Bishops Stortford (24 April 1816) which shows that she had had two daughters by Samuel before his marriage; she may be identifiable with the mysterious "Puss" who appears in Jeremy's letters to Samuel in the mid-1790s. Also worth mentioning is a letter from Robert Owen to Koe (7 October 1816) about a sum of money that Koe had borrowed from the New Lanark company; Bentham's letter to Koe of 28 September 1820 shows that Bentham had settled this debt, of £571, on Koe's behalf.

THE CONSTITUTIONAL CODE: THE NEW VERSION

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The object of this note is to provide a brief account of how the new version of the Constitutional Code will differ from the one with which most scholars are familiar in the ninth volume of the Bowring edition. The most striking change will be that the new edition will begin with 'Book II' of the Bowring volume. This change will reflect a return to Bentham's original three volume plan of publication which he outlined in the preface to the single volume of the Code published in 1830.¹ Here, Bentham referred to the three volumes with the latter two 'in such a state of forwardness, that, were the author to drop into his last sleep while occupied in the tracing of these lines, able hands are not wanting, from which the task of laying the work before the public would receive its completion'.² The 'able hands' turned out to be those of Richard Doane who was responsible not only for the whole of the Constitutional Code but also for the Bowring version of the Procedure Code. Doane (who has suffered unjustly at the hands of Bentham scholars) completed the text of the remaining two volumes and added a lengthy introductory essay to which Bentham also referred in the 1830 preface.³ But Doane confused matters by calling the introductory material 'Book I' (*Bowring ix, 1-145*) and the three volumes of the actual Code 'Book II' (*Bowring ix, 146-647*). In the new version Bentham's original three volumes will appear as three separate volumes and will correspond to the Bowring volume as follows:

Volume I	(Chs. I-IX)	<i>Bowring ix, 146-333</i>
Volume II	(Chs. X-XI)	<i>Bowring ix, 333-354</i>
Volume III	(Chs. XII-End)	<i>Bowring ix, 454-647.</i>

These volumes will be followed by several volumes of supplementary and code-related material some of which appears in Doane's 'Book I', but much more remains either unpublished or in other Bowring volumes. This material is very extensive and could fill three additional volumes.

By taking as the starting point of the Code Bentham's three volume plan, we are able to see more clearly Bentham as 'legislator' and appreciate his skill in constructing a detailed legal code. Too frequently, students read only the introductory material of 'Book I' and fail to reach the text of the Code itself. Very few discussions of the Code penetrate to its actual structure as a carefully constructed system of governmental functions and securities. This has been due to the tendency to take the introductory essays of Doane's 'Book I' as the main part of the Code.

Two major additions to the new Code should be mentioned here. The first is the Manuscript Key which will be found in all of the Code volumes and refers to the manuscripts which form the basis of the text. For Volume I and most of Volume II, Bentham's final manuscript no longer exists. It was common practice for him to destroy the final manuscript once the text appeared in print. Thus, there is no way of checking some of the obscurities of the 1830 text against Bentham's manuscript. Nonetheless, the Manuscript Key for Volume I will be fairly extensive, as earlier and discarded versions of the chapters and sections still remain. These do not form an authoritative basis for the text, but with further study (a useful PhD thesis?), they could reveal the evolution of Bentham's conception of the Code. From Chapter XI and for much of the supplementary material, the Manuscript Key will show the actual basis of the text, as from this point the text will have to be reconstructed directly from the existing manuscripts.

The second addition will be the subject index designed to provide easier access to the Code. The Code was not written as an essay to be read from beginning to end, but to be consulted and used as a legal document. However, Bentham's technical language and the sheer size of the work has made such consultation difficult. In spite of his frequent use of 'visual aids' in his writings, Bentham failed to provide the reader with adequate means to use the Code. The general index at the end of the Bowring edition is not sufficiently detailed, and the provision of a subject index for each Code volume will make it possible for the Code to be used as it was intended.

Let us now examine each of the new volumes in greater detail. Volume I will follow closely Bentham's original 1830 published text. Unfortunately, Bentham failed to correct numerous errors in printing and presentation, although a few corrections and additions in his hand may be found in a copy of the 1830 volume in the University College London Library. We have found more than 700 errors in the text. Doane corrected many of these for the Bowring edition, but he did not indicate where the corrections were made. In spite of his fairly careful editing, he also missed some errors and made a few more. The new version corrects the errors and indicates each correction in the text and notes and/or in collations of the texts. Many of the errors are minor, but others make Bentham's text more obscure than it would otherwise be. However, some errors can only be acknowledged but not corrected. For example, Bentham's cross-references are frequently incorrect, and it is occasionally impossible to find the reference to which he refers. When he wrote one section, he most likely had a version of the section to which he referred in mind, but then drafted another when he came to compose it. The cross-references were never systematically checked.

The new version of Volume I will attempt to follow as closely as possible the published 1830 edition in style and punctuation. Doane 'modernized' the spelling and added a large number of commas and semi-colons in an unsuccessful attempt to make the text more readable. In many cases the additional punctuation makes Bentham's text even less intelligible, and unless Bentham's text is obscure, we have returned to the 1830 version. Where Doane's improvements are followed (and they are at a number of important points), these are noted in the text.

The new Volume II will include the lengthy Chapter X on the Defensive Force which was printed but not published in 1830. As far as we know, only one copy survives, and it is in the US Library of Congress. The new text for this chapter will follow the principles adopted for the text of Volume I. The brief but important Chapter XI on the various government ministers will also be included in Volume II. Here, Bentham's text will have to be constructed from the manuscripts. Although Doane's version has many admirable qualities, he simply attempted to create a readable text which roughly followed Bentham's intentions. The new version, while retaining a readable text, will reflect more carefully the actual state of the manuscripts.

The whole of the new Volume III will be constructed from the manuscripts. Some chapters and sections are more complete than others, but none are, as Bentham suggested, 'in such a state of forwardness' to make the task of the editors an easy one. Much of the volume is concerned with the organisation of the judiciary, but such topics as local government and federalism are taken up in later chapters.

The supplementary volumes will contain material of three types. The first consists of essays written before Bentham started the Code in its final form in 1823. Some of this material appears in Bowring where Doane incorporates it into 'Book I', but much more remains unpublished.⁴ The second type was written for the 1830 Code as 'rationale' and then excluded from the final version. Doane also included part of this material in 'Book I' but much remains unpublished.⁵ The third type consists of writings published separately by Bentham but obviously related to the Code such as some of the essays which make up his *Official Aptitude Maximised, Expense Minimised*.⁶

Doubtless, as further volumes are produced, other editors will make additions or alterations in the plan of the Code. But the overall effect will be to present Bentham's mature work on constitutional democracy in a form which for the first time can be consulted and studied as Bentham intended.

NOTES

1. *Constitutional Code; for the use of all nations and all governments professing Liberal opinions*, Vol.i (London, 1830).
2. *Bowring* ix, 146.
3. *Bowring* ix, 146; see Doane's discussion on iii-iv.
4. See, for example, *Bowring* ix, 46-64.
5. See, for example, *Bowring* ix, 114-27.
6. (London, 1830).

A REVIEW

Nancy L. Rosenblum, *Bentham's Theory of the Modern State*.
Harvard University Press, 1978. Hardback, 169 pages.

The title of this book is a more precise indication of its content than it may at first be taken to be. It is not a commentary on Bentham's theory of the state; that is, it does not provide a systematic account of Bentham's treatment of the nature and origin of government, sovereignty and law. Rather, it is an attempt to treat Bentham as an exponent of the theory of the *modern* state, by which Rosenblum means the absolute and sovereign unit of government which first appeared in seventeenth-century Europe. According to Rosenblum, Bentham belonged, not only to the Enlightenment tradition, but also to the older 'reason of state' tradition. His membership of the latter has, she claims, been unnoticed by the moral philosophers who have 'nearly monopolized Bentham studies' (p.6). The aim of this book, then, is to set the record straight by presenting Bentham as primarily a political philosopher and as an advocate of absolutism.

Bentham left the Enlightenment tradition and joined that of Machiavellism, we are told, in regarding the state, not as a temporary arrangement that would in due course be superseded by a world-wide federation of nations, but as a 'norm of order', a principle in its own right, resulting, in the international sphere, in a system of sovereign states. This is an interesting and a controversial claim, since it goes beyond the usual assumption that Bentham approved of government because it gave rise to a balance of good over evil, and asserts that he preferred the world divided into a number of sovereign states to the possibility of a government whose authority should extend over all mankind. It is, therefore, somewhat surprising to find that Rosenblum intends to substantiate this claim on the basis of Bentham's published works alone. There is not one direct reference to his unpublished manuscripts. It is also surprising that she devotes only the two central chapters to making her case. The remaining chapters amount, in effect, to a collection of essays on various aspects of Bentham's political thought. Not that this detracts from their usefulness, although in this respect they are uneven. Especially worthwhile are the second and third chapters, dealing with the social psychological assumptions underlying Bentham's theory of social control, and his treatment of moral philosophies opposed to utilitarianism. The purpose of these chapters is to emphasise that Bentham's concerns were eminently practical and political; he was neither a social psychologist nor a moral philosopher as such, but took over from the experts in those fields that amount of intellectual equipment which a good legislator would require to do his job. (It is, then, irrelevant to criticize Bentham for the inadequacy of his treatment of the 'principles adverse to utility'. The principles of asceticism and of sympathy and antipathy were, for Bentham, conceptual waste-paper baskets by means of which the legislator could quickly dispose of moral arguments that hindered the construction of the utilitarian order.) The first chapter concerns the relationship between law and utility, while the last examines Bentham's prescription for the operation of the public service. The most important chapters, those in which Rosenblum argues for her fresh interpretation of Bentham, are the fourth ('Sovereignty and Law') and the fifth ('The Sovereign State'), and it is with these that the remainder of this review is concerned.

In chapter four, Rosenblum does not address herself only to that notion of sovereignty which is associated with the command theory of law. She asserts, rightly, that sovereignty in this sense is a purely formal requirement entailed by the idea of law as command; if laws are of this nature, there must be a person or group which creates them (p.88). Rosenblum argues that there is another notion of sovereignty at work in

Bentham's mind, namely, *popular* sovereignty, which, she claims, Bentham used by way not only of justifying mass resistance to bad government but also of establishing the absolute nature of the power of the state. Thus, popular sovereignty both operates as a kind of check on that power and permits it to be constitutionally unlimited (p.80). Rosenblum warns that the idea of popular sovereignty cannot be reduced to that of representative government or to that of what Bentham called, in *Constitutional Code*, the 'constitutive power' of the people (pp.83-4). Rather, these latter ideas refer to a set of institutions which became Bentham's preferred means of expressing popular sovereignty and which were themselves justified by it. As a principle, popular sovereignty was prior to any particular form of government, and remained a norm under all of them.

Rosenblum is, I think, correct in arguing that Bentham believed that the ultimate source of the legitimacy of government lay with the government, in a sense that went beyond the 'disposition to obedience' which Bentham took to be the 'efficient cause' of the power of the sovereign, and involved some notion of a right exercised by the people at large. Whether or not this idea can be best elucidated by the concept of popular sovereignty is open to dispute. It has been shown that, for most of his life, Bentham used the term *sovereign* solely in the sense required by his command theory of law. It was only when he came to write *Constitutional Code* that he transferred the reference of the term from the legislature (whose powers remained unlimited) to the people, who were, he wrote, 'the only legitimate source of power'.² To associate Bentham too closely with the idea of popular sovereignty gives a false impression of his actual usage of the term; and it also tends to push him into the linguistic ambience of the French Revolution, from which he was notoriously eager to dissociate himself. The concept which Bentham did employ throughout his life, including the years before he became converted to democratic reform, to express the normative relationship between government and governed was *responsibility*.³ Rosenblum is aware of the significance of this concept (p.86), but she does not make as much of it as she might have done. This is an area of Bentham's thought which has received comparatively little attention and which deserves much more; there is, clearly, a job to be done in establishing whether a concept of political responsibility can be coherently derived from the principle of utility as opposed to the Lockean concept of natural right. But Rosenblum does succeed in demonstrating the absolutist implications of accepting some kind of ultimate popular right prior to the powers of the state.

In chapter five, Rosenblum examines Bentham's treatment of the absolute state in the field of international relations. She relies mainly on the work which Bowring edited under the title *Principles of International Law*. Here, she argues, Bentham unambiguously embraced the doctrine of reason of state. Not only did he assume that 'a system of states is the form political order must take' (p.107); he regarded the conduct of international affairs as being exempt from the dictates of the principle of utility, at least in the universalist sense of that principle. Rather, he viewed this aspect of policy as simply one of the areas in which the sovereign state was entitled to act as it saw fit by way of fulfilling its obligation to maximize its subjects' happiness. The behaviour of each state with regard to all other states was, then, 'characteristically egoistic' (p.107). The obvious difficulty with this interpretation is that it appears to contradict Bentham's assertion that the end of a code of international law should be 'the common and equal

utility of all nations'.⁴ Rosenblum accordingly devotes the greater part of this chapter to justifying her claim that Bentham intended this end to be 'a technique of reason of state....by which the ruler can preserve and protect the interests of his own state in the face of challenges by other states and in the face of traditional moral constraints on policy' (p.102). (It is worth noting that this interpretation is very similar to that offered by David Lyons, who, in his *In the Interest of the Governed*, argues that the *Principles of International Law* may be regarded as 'an attempt to show that internationalism is really in each nation's best interest'.⁵) In concluding, Rosenblum states:

.....when it came to international relations, the happiness of men individually and universally was a derivative consideration. An increase in the happiness of all men may be the consequence of the state system he described, but care for the general welfare was not a principle of action..... Where the state is a norm of order, as it was for Bentham, the care of men is a matter for their own state, and neither private individuals nor governors are constrained by utility to attend to man universally (p.116).

Rosenblum is certainly right in arguing that, when Bentham prescribed the end of common and equal utility of nations in the conduct of international affairs, he envisaged no conflict between that end and the end which each sovereign ought to set himself as 'the end of the internal laws of a society', namely, 'the greatest happiness of the society concerned'.⁶ But it does not necessarily follow that Bentham regarded internationalism as merely a 'technique of reason of state'. It could just as plausibly be argued that Bentham's purpose in writing *Principles of International Law* was to point out to sovereigns that the best they could do by way of achieving the end of common and equal utility of nations was to promote the interests of their own subjects. The obvious advantage of this interpretation is that it is consistent with Bentham's general argument that the individual, in attending to his own interests, was contributing in a most concrete manner to the maximization of utility as such. Since, in most persons, the self-regarding motives were stronger than the social motives, the intelligent pursuit of self-interest was the most direct and secure manner in which they could follow the dictates of the principle of utility. This is not to say that benevolence was not a moral requirement - on the contrary, Bentham wrote that 'the dictates of utility are neither more nor less than the dictates of the most extensive and enlightened.....benevolence'⁷ - but it would be futile to expect the average individual to display generosity beyond the point where his own interests were endangered.

This interpretation has the further advantage over Rosenblum's of making sense of what was, in *Principles of International Law*, a clear statement of the moral obligation on nations to behave benevolently towards one another:

But ought the sovereign of a state to sacrifice the interests of his subjects for the advantage of foreigners? Why not? - provided it be in a case, if there be such an one, in which it would have been praiseworthy in his subjects to make the sacrifice themselves.

A little later on, Bentham clarified this injunction by asserting that each nation should do 'the greatest good possible to other nations, saving the regard which is proper to its own well-being'.⁹ Rosenblum takes this limitation on benevolence to be evidence for her interpretation of Bentham as a theorist of reason of state (p.103). But, surely, all that Bentham meant to say here was that a nation which was selfless to the point of neglecting its own interests was more likely to frustrate than to promote the end of the common and equal utility of nations. Bentham's brief excursion into the field of international relations should, I think, be viewed as an attempt to demonstrate that, just as utilitarianism was a moral philosophy which it was both rational and psychologically possible for individuals to follow, so sovereigns could heed it in their mutual dealings without ignoring their obligations to their subjects. On this reading, the end of 'the common and equal utility of nations' is what the principle of utility requires in the conduct of international affairs. Rosenblum is led to reduce it to a mere 'technique of reason of state' by her mistaken belief that utilitarianism ruled out self-interested behaviour on the part of sovereign states.

Some of the references that Bentham made elsewhere to the preferred behaviour of states in the international arena seem particularly remote from Rosenblum's interpretation. Take, for instance, the following passage from the 'Legislator's Inaugural Address' in *Constitutional Code*:

Never, by force or intimidation, never by prohibition or obstruction, will I use any endeavour to prevent my fellow-countrymen, or any of them, from seeking to better their condition in any other part, inhabited or uninhabited, of this globe. In the territory of this State, I behold an asylum to all: a prison to none.¹⁰

In view of this 'enlightened' sentiment, it seems far-fetched to argue that 'For Bentham, the state comprises a higher rationality, or utility, to which subjects owe loyalty, and which requires their support' (p.109).

In Rosenblum's defence, it might be asked why Bentham did not in fact advocate a world federation of nations. But this question can be adequately answered by reference to Bentham's belief in the habitual basis of obedience to sovereigns, which implicitly ruled out world government as sociologically impossible even if it were morally desirable. A multiplicity of sovereign states was, then, not a norm of order but an inescapable fact with which moral philosophers had to deal. This might have removed Bentham from the Enlightenment with its cosmopolitan aspirations; but it placed him firmly, not in the tradition of reason of state, but in a British tradition of moral and political inquiry of which David Hume was the most notable member.

This book leaves me with the overall impression of being an attempt, not only to advance a radically new interpretation of Bentham's political thought, but also to conscript Bentham in the defence of the 'modern state', of which Rosenblum says she is 'by political preference an enthusiast' (p.2) and which is, she claims, 'under attack' (p.1).

She does not indicate the nature of this attack, nor does she specify its origin; we are not told if the assailants are anarchists, cosmopolitans, constitutionalists, or some other kind of anti-absolutists. In the absence of such clarification, her assertion seems odd, since, in many parts of the world where the control of the state is not already total, it is steadily increasing; and the doctrine of reason of state has surely triumphed over the tentative cosmopolitanism of the early post-war years. Rosenblum may, of course, have in mind the growing scepticism about the effectiveness of state action that is to be found in some Western countries; if so, one might be inclined to suggest that it is the absolutist tendency of the state that leads to the alienation of its citizens. In Britain in particular, whose constitution has developed very largely along the lines advocated by Bentham, the combination of absolute government (in the form of parliamentary sovereignty) and a democratic electoral system has encouraged the formation of political alliances which are motivated by their mutual competition to promise more than they can deliver and to promote the interests of sinister groups. As a recent editorial in *The Times* put it:

It is a curious feature in our democracies, based in name largely on the Benthamite principle of the search for the greatest happiness of the greatest number, that political and social decisions should so extensively be taken in response to pressures from so many organized minority groups.¹¹

If this state of affairs can indeed be explained by reference to the democratic absolutism of the kind that Bentham recommended, then perhaps the 'modern state' deserves to be attacked, and some of its (presumably old-fashioned) alternatives looked at again.

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NOTES

1. *Of Laws in General* (C.W. ed. Hart), 18n.
2. *Bowring*, ix, 203. See J.H. Burns, 'Bentham on Sovereignty: an Exploration', in M.H. James (ed.), *Bentham and Legal Theory* (Belfast, 1974), 133-50.
3. See *An Introduction to the Principles of Morals and Legislation* (C.W. ed. Burns and Hart), 263 and 307.
4. *Bowring*, ii, 537.
5. (Oxford, 1973), 103. There is a clear affinity between Rosenblum's 'reason of state' interpretation and Lyons's argument that Bentham prescribed a 'parochial political standard' to be observed by sovereigns. But although twice mentioned with approval by Rosenblum (pp. 157 and 163), Lyons is by no means confident that *Principles of International Law* directly supports his interpretation; see *ibid.*, 102-05.
6. *Bowring*, ii, 537.
7. *An Introduction to the Principles of Morals and Legislation*, 117.
8. *Bowring*, ii, 537.
9. *Bowring*, ii, 538.
10. *Bowring*, ix, 203.
11. 13 September 1978, 15.

THE BENTHAM BIBLIOGRAPHY, PART 2: 1966-78

The accompanying bibliography is the concluding part of the list of writings on Bentham which appeared in the first issue of the *Newsletter*. The present instalment carries the bibliography up to the present day and includes, as well, some additions and corrections to the first part. Any further additions, either to Part 1 or to Part 2, would be gratefully received.

The bibliography itself was largely compiled by Donald Jackson of Algoma University College, Sault Ste. Marie, Ontario. Additions and corrections were made by David Lieberman of St. Catherine's College, Cambridge, and by other readers of the first issue of the *Newsletter*.

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BENTHAM STUDIES CONFERENCE

9 and 10 JULY 1979

The venue for the Conference is University College London.

The following is a detailed programme of speakers, titles and times of papers, etc. The inclusive cost is £12.00. University accommodation is available at Canterbury Hall, Bloomsbury; this consists of bed and breakfast for the nights of 8 and 9 July (cost £13.00) and should be booked as soon as possible. Details for this are given at the end of the programme.

All papers will be given in the Statistics Lecture Theatre.

MONDAY, 9 JULY

- 10.45 am Conference convenes - registration (North Cloisters)
- 11.00 am COFFEE (North Cloisters)
- 11.30 am 'The Political Functions of Bentham's Theory of Fictions'
Dr. L.J. Hume, Australian National University
Chairman: Dr. B. Parekh, University of Hull
Respondent: Dr. Ross Harrison, King's College, Cambridge
- 1.15-2.15 pm LUNCH (Old Refectory)
- 2.30-4.00 pm 'Bentham on Democratic Theory'
Dr. Fred Rosen, London School of Economics
Chairman: Professor W.B. Gwyn, Tulane University, New Orleans
Respondent: Professor D. Long, University of Western Ontario.
- 4.00-4.30 pm TEA (North Cloisters)
- 4.30-6.00 pm 'Bentham's Poor Law Proposals'
Professor Warren Roberts, Tulane University, New Orleans
Chairman: Professor J.R. Poynter, University of Melbourne
Respondent: Professor C. Bahmueller, University of California at
Santa Cruz
- 7.00-10.00 pm CONFERENCE DINNER (Old Refectory)
President: Jeremy Bentham
Speakers: Professor J.H. Burns, General Editor, 1961-1979
 Professor H.L.A. Hart, Conference Chairman

TUESDAY, 10 JULY

- 9.30-11.00 am 'The Role of Bentham in the Early Development of
Ricardian Theory'
Professor S. Hollander, University of Toronto
Chairman: Lord Robbins
Respondent: Professor M. Blaug, Institute of Education, University
of London

