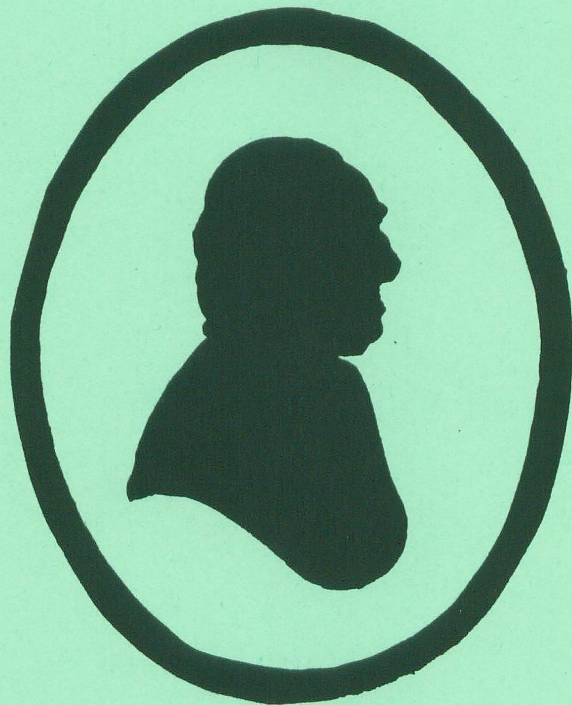


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NEWSLETTER**



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EDITORIAL

The first Bentham Studies Conference took place at University College London on 9 and 10 July. There were 72 participants, and additional guests for the Conference Dinner on the evening of the 9th. The names and addresses of participants are printed at the end of this issue.

It has not been possible to print all the conference papers in this number and we intend to print more in the next issue - May 1980. The discussions that followed the reading of papers do not appear here, but they were recorded on cassette and anyone wishing to consult them should write to the Committee.

As this issue is additional to the normal one, there is no bibliography section; there are, however, corrections and additions to issue No.2. The journal will appear annually from 1980.

Claire H.G. Gobbi

Newsletter No.2 - ERRATA

- A.D.E. Lewis: 'John Austin, : Pupil of Bentham', p.23, lines 19-20, should read 'There follows a list of matters some marked with a cross, possibly to indicate their having been accomplished.' The fifth entry is 'Austin's appointment' and is marked with a cross.
- J.R. Dinwiddy: 'Bentham's Letters to John Herbert Koe', p.31: Koe's father was of Norwegian, not Swedish origin; (we are grateful to Mrs. R.G. Taylor for this correction).
- F. Rosen: '*The Constitutional Code: The New Version*', p.41: Vol.II (Chs.X-IX) *Bowring ix*, 333-453.
- M.H. James: Review of N.L. Rosenblum's *Bentham's Theory of the Modern State*, p.46, lines 2-3, should read 'government'.
- Bibliography: 1969. ALLENTUCK Marcia.

ADDENDA TO BIBLIOGRAPHY:

- 1972: FINER, S.E. 'The transmission of Benthamite ideas 1820-50', in G. Sutherland, ed., *Studies in the Growth of nineteenth century Government*, Routledge and Kegan Paul. (Paper originally delivered to the Anglo-American Historical Conference in 1959.)
- HEZEL, George M. 'The Influence of Bentham's Philosophy of Law on the early 19th century Codification Movement in the United States', *Buffalo Law Review*, Vol.22, pp.253-68.
- 1978: ROSENBLUM, N.L. *Bentham's Theory of the Modern State*, Harvard University Press, Mass.

THE ROLE OF BENTHAM IN THE EARLY DEVELOPMENT OF RICHARDIAN THEORY:
A SPECULATIVE ESSAY

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This paper constitutes a speculative discussion of Ricardo's possible 'indebtedness' to Jeremy Bentham during the early course of development of his theoretical system. A precondition for good scholarship is, of course, the phrasing of worthwhile questions. There are, in fact, two 'mysteries' which set the stage for our investigation. The first relates to Ricardo's breakaway from Smithian principles - the abandonment of the famous conception 'competition of capitals' in the context of profit-rate theory, and more particularly the introduction of agricultural productivity as a key variable in that context. The second turns upon a lost Bentham manuscript, apparently once in Ricardo's possession, dealing with the effects on profits of cultivating successive qualities of land. A little elucidation is required regarding these matters.

In his pamphlet of 1810-11 Ricardo appears as a full-fledged Smithian on most theoretical matters. Thus, for example, in the *High Price of Bullion* he insisted that 'profits can only be lowered by a competition of capitals not consisting of circulating medium'.¹ But a concern with the general profit rate is not conspicuous at this stage and the matter is scarcely raised between Ricardo and Malthus in their correspondence of 1811. Indeed a preoccupation with currency and the exchanges characterizes the extant Ricardo correspondence until March 1813. The first indications of a specific concern with the theory of profits, and one which implies a breakaway from Smith (partial only at this stage) are contained in two letters to Malthus dated 10 and 17 August 1813.²

In the first of the two letters in question Ricardo objected to Malthus's contention (made in correspondence and perhaps also in conversation) that contemporary extensions of foreign trade could be taken as evidence of a rising rate of profit: 'On further reflection I am confirmed in the opinion which I gave with regard to the effect of opening new markets or extending the old. I most readily allow that since the war, not only the nominal but the real value of our exports and imports has increased - but I do not see how this admission will favour the view which you take of this subject ... [Extension of trade] does not prove a general increase of profits nor any material growth of prosperity'.³ In the second letter Ricardo explicitly stated the position that attention should be directed at agricultural productivity to understand trends in the rate of profit:

That we have experienced a great increase of wealth and prosperity since the commencement of the war, I am amongst the foremost to believe; but it is not certain that such increase must have been attended by increased profits, or rather an increased rate of profits, for that is the question between us. I have little doubt however that for a long period, during the interval you mention [1793-1813], there has been an increased rate of profits, but it has been accompanied with such decided improvements of agriculture both here and abroad, - for the French revolution was exceedingly favorable to the increased production of food, that it is perfectly reconcileable to my theory. *My conclusion is that there has been a rapid increase of Capital which has been prevented from shewing itself in a low rate of interest by new facilities in the production of food.*⁴

Quite clearly, Ricardo presumed that but for improved agricultural technology during the Revolutionary and Napoleonic periods the profit rate would have declined with accumulation.

Each of the extracts given above is followed by a statement insisting that an increase in general prices occurs only in consequence of a rising money supply (or velocity), while only a falling level of prices can induce a monetary inflow.⁵ Although we cannot be positive about the matter it is most likely that the statements alluding to the profit rate and those relating to the monetary mechanism are connected rather than independent. If this is so, Ricardo appears to be objecting to a formulation by Malthus very similar to that which was to appear later in the latter's *Principles* of 1820 - namely that an increase in the value of aggregate output from given resources may be 'occasioned by commerce' and will be associated with a rise in profits of those engaged in the new or expanded trade which extends to the general rate of return.⁶ It would seem to be precisely this body of doctrine, which attributes the rising value of national product since 1793 to the opening of new markets for British goods, with which Ricardo took issue in 1813, apparently on the grounds that the expansion of the means of finance required to assure a higher level of prices and profits, of which Malthus was very confident, would not in fact be forthcoming.

Ricardo's rejection of Malthus's position implies the rejection of the standard Smithian view according to which 'the acquisition of new territory, or new branches of trade, may sometimes raise the profits of stock... even in a country fast advancing in the acquisition of riches', by way of the reduction in the pressure exerted by 'competition of capitals'.⁷ Now early in 1811 Ricardo had been maintaining the Smithian position that the price level will vary with the general profit rate (analysed in terms of 'competition of capitals'),⁸ although at the same time (as we shall see) he also insisted (in a different context) that a monetary expansion was *essential* to assure a rise in general prices. He was bound sooner or later formally to take issue with the *Wealth of Nations*. Malthus's analysis of the period 1793-1813 in terms of Smithian principles may have merely served as catalyst in this intellectual process.

Still, dissatisfaction with Smith along the above lines does not explain adoption of the alternative analysis relating the profit rate to agricultural productivity. The precise nature of this transition remains an uncertain matter. Whence this positive aspect of Ricardo's new position?

Here a potentially complicating feature of the record requires attention. What conclusions can be drawn regarding Ricardo's intellectual indebtedness from the recognition by Smith himself of the phenomenon of increasing land scarcity and its implications for distribution? For at one juncture in his chapter 'Of the Profits of Stock' Smith related the secular decline of the return on capital to the necessity of extending cultivation to increasingly inferior land: 'As the colony increases, the profits of stock gradually diminish. When the most fertile and best situated lands have been all occupied, less profit can be made by the cultivation of what is inferior both in soil and situation.' The (real) wage is likely to rise, we are told, at least for a period, but since the ultimate state of stationarity is characterized by minimum wages ('subsistence' wages in the technical sense) the effects of increasing land scarcity must ultimately include a falling trend of average wages: 'In a country fully peopled in proportion to what either its territory could maintain or its stock employ, the competition for employment would necessarily be so great as to reduce the wages of labour to what was barely sufficient to keep up the number of labourers...'⁹ (This is not the only discussion in Smith's work of this kind of conception. The implications of changing factor ratios for resource allocation between agriculture and

manufacturing and different categories of manufacturing - plentiful and cheap land and scarce and dear labour at an early stage of development, and increasing scarcity of land and abundance of labour as growth proceeds - are developed quite extensively in Book III of the *Wealth of Nations* in the chapter 'Of the Natural Progress of Opulence' and in Book IV in the chapter 'Of Colonies'.¹⁰)

Despite the presence in Smith's work of these allusions to the implications of increasing land scarcity, it would, I believe, be an error to give much weight to any dependency by Ricardo upon his predecessor as far as this matter is concerned. On the contrary, the evidence suggests that he was quite *unaware* of Smith's discussions. But if Ricardo in fact misunderstood Smith's intentions, Smith himself must bear a large part of the responsibility, for his notion of 'competition of capitals' occurs repeatedly in the analysis of the profit rate and is presented as the general theory into which the consequences of diminishing returns may be fitted as a special case. It is not surprising then that what appears to be the obvious implications for Ricardo's own argument of what Smith had to say about secular changes in factor ratios in general and land scarcity in particular should have escaped him.

I conclude therefore that Ricardo's new theory of profit - that aspect involving a linkage between agricultural productivity and the profit rate - constituted an intellectual break with Smith. While for some purposes it may be legitimate to talk of a 'canonical' classical theory of growth and distribution¹¹ it would be inappropriate to do so in the context of our present problem.

Where does Bentham fit into the story? In *The Works and Correspondence of David Ricardo*, there appears the following editorial note: 'In the Mill-Ricardo case [of the Ricardo Papers now deposited at Cambridge], there is also a paper probably in Bentham's hand-writing on the effects on profits of cultivating successive qualities of land'.¹² I have made a thorough search of the Ricardo Papers and no such document is to be found. It is perhaps fair to assume that the editor felt that the item in question lacked any connection with the origins of Ricardo's theory, or was not in any other way interesting.¹³ Yet to leave the matter there is not satisfying. The existence of such a manuscript whets the appetite. It opens up the *possibility* at least that Ricardo may have learned something from Bentham regarding the matter at hand. For this reason I wish to explore further some of the potentialities of the connection.

I shall consider first, within an appropriate general framework, Bentham's own position on the question of land scarcity and its implications for distribution, before turning to what we know of Ricardo's familiarity therewith.

I Land Scarcity and the Falling Rate of Profit

Throughout the entire range of Bentham's writings allusions will be found to a downward trend in the rate of profit during the course of secular expansion - a trend formally related to increasing 'competition of capitals'. There can be no question of the Smithian pedigree for the principle, on the basis of which Bentham rationalised the supposed fact that 'Holland excepted, there is no nation that has so much capital as England, and consequently none which invests so much with so little profit'.¹⁵ But there is an ambiguity to be reckoned with. When Smith referred to 'competition of capitals' he had in mind pressure in both commodity and labour markets. It is not always clear which of these phenomena - the first clashing with the law of markets and the second quite consistent with it - Bentham had in mind in his various statements or whether both were intended,

The falling profit rate is sometimes discussed without reference to pressure from rising real wages: 'It is the tendency and property of what

may be called naturally formed capital, to lower prices in a variety of ways, in proportion to its increase: to lower the cost of production in respect of labour, by division of labour, introduction of machinery, and so forth, as per Adam Smith; to lower the rate of profit on stock, to wit by competition, as again per Adam Smith'.¹⁶ It appears that Bentham, here at least, had in mind downward pressure on final prices, an impression confirmed in the lengthy tract on *Circulating Annuities* in a passage touching upon some consequences of a rise in the rate of accumulation:

By adding to the number of capitalists of all sorts (i.e. of proprietors of stock employed in the several branches of productive industry) in the production of the several vendible articles of national wealth, and thereby *by increasing the competition amongst them, in their capacity of vendors of such articles, reducing the rate of profit upon stock* (including the rate of interest on money borrowed to be employed as stock), reducing the real as well as money prices of such articles, in as far as the profit upon stock constitutes a component part in the composition of such prices, and thus increasing the quantity of vendible articles of each given kind brought to market by the employment of a given sum of money.¹⁷

It cannot however be ruled out that, even when not explicit about the matter, Bentham may also have intended pressure on profits by way of rising real wages. And there are instances where this certainly appears to be his intention. Thus in the early work *In Defence of Usury*: 'when capital is plenty, interest is low, and real price of labour high and when capital is scarce, interest is high, and real price of labour low'. More generally, 'the relative quantity of capital will increase, and consequently the rate of interest fall, where thesaurisation goes on faster than population'.¹⁸ From this perspective profits are treated as a 'residual',¹⁹ varying inversely with the wage rate.

Rising real wages appear in Bentham's vision of the recent past - the last three or four decades of the eighteenth century - given in the paper of 1795 entitled *Supply Without Burden*. Here Bentham observed that 'Children in greater and greater numbers are every year produced, children which for a certain number of years in the earlier part of their lives consume something without producing anything. But wealth in still greater quantities than is necessary for the maintenance of the children during that expensive period of their lives is at the same time every year laid up...'²⁰

It must be noted that a rapid rate of accumulation (and consequently rising wages) is not *necessarily* inconsistent with 'diminishing returns'. But on the whole the impression seems to be that Bentham here took for granted *increasing* returns. For reference is frequently made to increasing 'relative wealth', or 'wealth in proportion to the numbers of those who share it',²¹ which strictly interpreted includes non-wage earners as well as wage earners. If increasing real average wages are in fact a feature accounting for the falling rate of profit it must logically be presumed that their upward movement *exceeds* that of productivity.

In the later *Institute of Political Economy* further reference is made to growth rates during the last three or four decades of the eighteenth century, implying that 'wealth has gone on increasing faster than population'.²² At the same time Bentham also observed that 'the half, or thereabout, of the aggregate wealth will be that which is shared among individuals of the poorest class: and in the case of that class, the wealth of an average individual appears within the period in question to have rather diminished than increased'. The reference to *falling* real wages is spec-

ificantly to the *poorest* class which does not preclude rising wages to labour as a whole.^{23a}

Whatever may have been the experience of the past with respect to productivity and general wages, prospects for the future were less promising. I come at last to the matter of land scarcity and its implications for distribution.

In some of his earlier writings Bentham made out a case against colonies on the grounds that domestic investment opportunities - with particular reference to agriculture - were unlimited; colonial activity implied merely the transfer of capital from one use to another with no net benefit:

It is impossible...that you can ever have too much agriculture. It is impossible that, while there is ground untilled, or ground that might be better tilled than it is, any detriment should ensue to the community from the withholding or withdrawing capital from any other branch of industry and employing it in agriculture. It is impossible...that the loss of any branch of trade can be productive of any detriment to the community....^{23b}

The assertion hinges on the proposition, that 'by promoting an encrease of the productions of agriculture...you create a demand for the industry of those who afford a demand for the productions of agriculture'.^{23c} It is unlikely that it would have been so formulated in the event that land scarcity constituted an issue. But, somewhat later, a case was made out for colonisation, in the *Institute of Political Economy*, as a means of counteracting the prospective *downward* trend of real wages attributed to growing land scarcity: 'taking futurity into the scale, the well-being of mankind appears to have been promoted upon the whole by the establishment of colonies. Taking Britain for example, at the rate at which population has been encreasing for this last century, long before the conclusion of the present century, the population would have extended beyond the utmost number for which the soil would be capable of affording sustenance: long before which period [a] great diminution of relative opulence, a severe sense of general poverty and distress, would necessarily have taken place'.²⁴

The True Alarm similarly spells out the consequences of land scarcity as an even more immediate prospect: 'If we consider further the increase of population such as it has been even during the war, if we observe that it would soon, by its natural course, reach the point where it exceed the means of subsistence which the two isles could produce, it will be recognized that the emigration of men and capital is a real good in the present state of Great Britain'.²⁵ And, in the *Defence of a Maximum*, 'exportation of capital and emigration' are cited as the sole valid solutions, apart from the setting up of state magazines, for the consequences of the increasing scarcity of corn:

The scarcity has for its ulterior cause prosperity in all its shapes: an exuberant population, exuberant not with reference to wealth taken in all its shapes, for that too is an exuberance, but with respect to the capacity of raising within the local precincts of the chief seat of empire the quantity of food necessary for the sustenance of its inhabitants...

In regard to scarcity, two remedies commonly relied on as sufficient are essentially inadequate: cultivation of wastes, and importation with or without bounties: two others commonly shrunk from, but the only ones upon which any safe reliance can be placed: magazines on public

account, and facility afforded, allowance declaredly and liberally given, to exportation of capital and emigration.

By inadequate, in speaking of cu[lt]ure of wastes, I certainly do not mean undesirable: but where is the resource when all shall have been brought into culture? a state of things which many now living may perhaps live to see. The arrival of the period is an event worth calculation, but [this] is not a fit place [for it].. In the mean time encrease of mouths is going on, as fast perhaps as the encrease of land in a state to feed them..

It is time to cast off antipathies and panic, and look difficulties in the face. Subsistence must remain for ever precarious, or magazines must be established. Wheat with the inferior grains rather than none - rice from Hindostan would stand clearest of objection. The objections that have been urged against magazines are strong, perhaps conclusive. But they all turn upon a state of things out of which we have emerged, and in which nothing but some unexampled calamity can replace us. They turn upon an habitual sufficiency, either actual or possible, of the average stock of grain for the subsistence of [all] inhabitants. With us, barring calamity as above, or emigration to an unexampled and improbable amount, the very possibility of such a sufficiency is gone for ever. Population has already outstripped culture. Population having no limit, so long as food is to be had from abroad in exchange for wealth, that it should ever be overtaken by culture seems altogether improbable, that it should long continue so to do is, unless contiguous land were to arise out of the sea, impossible.^{26a}

In the same work will be found pertinent references to the limits imposed upon the application of capital to agriculture (flowing in part from the small size of holdings).^{26b} And a criticism of the expenses entailed by colonies concludes in the following terms:

Thus stands the account, so long as the land suffices for its inhabitants in prospect as well as in existence, and so long as emigration, whether of hands or capital, is a loss. But when efflux in both ways is become a relief - efflux of hands and mouths by mitigating scarcity, efflux of capital by mitigating the income tax imposed by capitalists upon capitalists as capital accumulates, and the rate of interest, the income obtainable for the use of it, is borne down - in this already impending, if yet scarcely so much as imagined state of things, colonies, though still a drain, are not withstanding, and even because they are a drain, a relief.^{26c}

The outcome of all this seems clear enough - the consequences of land scarcity are a falling rate of real wages and a falling rate of profit.²⁷ The former trend is explicitly noted and also suggested by the allusions to emigration, while the latter is implied by the references to capital export also within the context of the implications of land scarcity.

It also follows that the falling profit rate does not *necessarily* hinge upon rising commodity wages; it may, in conditions of falling productivity, occur despite a downward trend in the real wage rate. *Now all of this constitutes what was to be standard Ricardian doctrine and Bentham preceded Ricardo in the general formulation.* Can more be said regarding the logic for the case? I turn to this matter in the next section.

II An Implicit Logical Basis for Bentham's Position

It is possible to construct a logical basis for Bentham's position from his writings along the following lines. The reasoning amounts in substance to that subsequently utilized by Ricardo.

Land scarcity is manifested in the rising prices of cereals. Thus in *Paper Mischief* the contemporary price movements are explained partly by an 'occasional' cause - poor harvests - and partly by an 'habitual' cause - namely 'a deficiency in the quantity of land employed in the production of the article in question, regard being had to the continually encreasing numbers of the mouths that call for it'.²⁸ Moreover, Bentham adhered to Smith's approach towards both real-wage determination, running in terms of the relative growth rates of capital and population, and money-wage determination involving the real wage in conjunction with the prices of wage goods. According to the Smithian analysis a change in the price of cereals will imply subsequently an appropriate change in the money wage to assure against any reduction in the commodity wage. (It must be emphasised that nothing in the argument hinges upon the presumption that 'subsistence' wages prevail.) The matter is stated repeatedly but nowhere clearer than in the *Manual of Political Economy* in the context of a hypothetical fall in the price of oats in consequence of a subsidy:

Oats would be sold to the poor for less money to the amount of the bounty, but they would get less money to buy oats with. What the poorest class of the poor has to live upon, is the wages of labour: that is the quantity of *wealth* given to them in exchange for their labour. But the rate of wages depends upon, and is necessarily governed solely and exclusively by, the degree of opulence in the country at the time: that is by the proportion of the quantity of wealth in readiness to be employed in the shape of capital in the purchase of labour to the number of persons for whose labour there is a demand: and this degree of opulence is supposed... to be the same.²⁹

For the next step in the argument we must refer back to Bentham's adherence to the Smithian 'adding-up-cost' theory of price. This has been briefly documented earlier from various statements relating reduced general prices to a lower return on capital in the context of the discussion of 'competition of capitals'.³⁰ In one of the relevant discussions - that in *Circulating Annuities* - there is a considerable elaboration of the consequences for prices of *upward* pressure on wages. A distinction is there drawn between cases of initial unemployment and initial full employment; money supply increase in the latter case will generate upward pressure on general prices in consequence of higher wage costs per unit:

If it were possible that such offer should confine itself to hands whose time was already fully employed, and employed to as much advantage (in respect of the amount of their contribution to the general mass of national wealth) as they would be were the supposed fresh offer to be accepted by

them, it could not, although it were accepted, be productive of any the smallest addition whatever to the general mass of national wealth: it could have no other effect than that of raising the price of labour, and thence the prices of goods, in respect of such part of the price of goods as is composed of the price of the labour employed in the production of those goods.³¹

It appears from this passage read in context that the adding-up-cost approach, according to which a rise in a cost element (such as wages) implies a consequential increase in general prices, *was strictly conditional upon a concomitant expansion of the money supply*. Moreover, detailed discussions of the effects on general prices of increased money supply acting by way of the higher expenditure by labourers on consumer goods will also be found in *The True Alarm*.³² Bentham's adherence to Smithian doctrine was evidently much qualified. Before exploring the implications of this qualification it will be fruitful to examine Bentham's highly critical comments on Smith regarding the general price level.

In *The True Alarm* Bentham took Smith to task for failing to deal with two questions relating to the monetary mechanism: 'In which way and by what causes does cash receive an encrease?' and 'Why is the Bank of England the only channel, or almost the only channel, through which gold in bars passes to the Mint and enters into circulation?'³³ In a subsequent passage, apparently part of the same manuscript (sometimes referred to as 'Of the Balance of Trade') the first criticism is applied to Smith's analysis of contemporary price movements, according to which - at least on Bentham's reading - increased general prices, over an extended period of time, were accounted for in terms of a series of poor harvests, *without allowance for the necessary increase in money supply*:

Speaking of his own time, [Smith] denies the facts of an encrease of prices in so far as it depends on an encrease of money. He does admit an encrease of prices, and even for the period of the ten or twelve years ending in 1775; but he attributes it to the bad seasons, and not to money. He prefers the assumption of ten or twelve bad seasons to any other: not considering that, though the dearth of corn may encrease the relative price of this commodity for a time, yet it cannot encrease the aggregate of prices for any considerable length of time: because the encrease in the aggregate of prices implies by definition an encrease in the aggregate of money, both quantity and [velocity of] circulation being taken into account.³⁴

Bentham frequently restated his position - without necessarily referring to the *Wealth of Nations* - that an increased volume of money (or higher velocity) is essential to maintain a higher price level, except in the case of *short-term* grain shortages and war:

These two causes suffice to bring about, each in its sphere of action, a rise of prices, and even a considerable rise, without any addition having been made to the mass of money.

These two cases excepted, prices can only rise by reason of a pecuniary augmentation in the mass of the national revenue, that is to say, in the total of individual revenues: and that augmentation can only take place by the addition of

a new quantity of money, or by a greater rapidity in its circulation.³⁵

It follows logically from all this that a rise in money wages during the course of a regular process of capital accumulation - assuming relatively slow population growth, and an unchanged supply of money - cannot generate a general rise of prices.³⁶ It also follows logically, and this is the key point for our purposes in this paper, that the rising price of corn in the course of secular expansion due to land scarcity, induces a compensatory rise in the money wage rate to assure unchanged real wages *which cannot be passed on in higher general prices* (in the event of a constant money supply) and which therefore exerts pressure on the return on capital.³⁷ In the event that the burden of land scarcity is, so to speak, *shared* between labourers and capitalists - as Bentham implies by his allusions to a falling real-wage rate as well as a falling profit rate in his discussions of secular trends - a slight modification is required: The money-wage increase in consequence of the higher corn price will be insufficient to prevent some decline in the commodity wage in which case the fall in the profit rate is somewhat checked though not prevented.³⁸

III On Ricardo's Possible 'Debt' to Bentham

The inverse relationship between wages and profits constitutes what came to be known as the fundamental Ricardian theorem on distribution. It is my belief, based on the foregoing evidence, that the theorem itself and the logic upon which Ricardo constructed his case for a falling profit rate in consequence of land scarcity - which turns strategically upon the demonstration of constant general prices in the face of a rising price of corn and money wage rate³⁹ - are to be found in Bentham's writings at the turn of the century.

Yet we must proceed cautiously. Even if it were certain that the Bentham documents examined above had been available to Ricardo we could not be sure of the impression conveyed thereby. It must be remembered that while Bentham related the secular decline of the profit rate to land scarcity the logic for the relationship traced out in our reconstruction was by no means formulated by Bentham himself in a deliberate and concerted fashion; in particular, the squeeze on profits exerted by the constancy of prices in the face of rising money wages is only an implicit property of his argument, but not explicitly stated. Nor did he *formally* disclaim the principles of 'competition of capitals' and the 'adding-up-cost' approach to pricing.⁴⁰

What we in fact do know of Ricardo's reaction to Bentham and other contemporaries during the period of his transition from Smithian theory, and immediately before, reinforces the need for prudence in the drawing of intellectual linkages. This matter requires our attention.

A French translation, entitled 'Sur les Prix' by Etienne Dumont, of Bentham's *The True Alarm* - made during the period 1802-10 - found its way into Ricardo's hands through James Mill, and Ricardo made informal notes on the manuscript. It is not clear that he saw the entire document reproduced by Stark and the specific criticism therein of Smith.⁴¹ Moreover the document sometimes referred to as 'Of the Balance of Trade', which was originally probably part of *The True Alarm*, may not have been seen by Ricardo.⁴² But Ricardo did comment upon Bentham's allowances regarding general price increase (given the money supply) in the case of short-term grain shortages:

If any rise in the price of commodities is caused in the way here supposed it must be by diminishing the amount of commodities, which will make the money which circulates

them more relatively abundant. If the commodities remained the same and their price was increased, more money would be absolutely necessary to circulate them. But if it is the mass of prices of which the author speaks, he is mistaken because what [*sic*] one commodity rose in price another would fall....⁴³

The passage is somewhat unclear for it would seem logical to suppose that in the case of a poor harvest the volume of transactions *does* decline. However, the following note suggests that Ricardo was insisting upon an unchanged price level in final equilibrium alone, conceding a *temporary* price increase as part of the adjustment mechanism: '[Bentham's] arguments are all founded on the supposition of the country to which they are applied being insulated from all others. If not it is evident that the rapidity of the circulation would cause an exportation of money, and would not therefore raise prices at home.'⁴⁴

An increase in the money supply was thus said to be *essential* for a (permanent) rise of general prices.⁴⁵ Moreover, at least in the 'sound state' of the currency, such an increase in the money supply occurred only in response to an initially *reduced* price level; no other means of raising the money supply was conceded.⁴⁶ Indeed, Ricardo firmly rejected Bentham's various allusions to real output effects of monetary expansion in terms making this very clear: 'money cannot call forth goods', he insisted, 'but goods can call forth money'.⁴⁷

Ricardo's insistence, in line with that of Bentham, upon an increase in the money supply to assure a higher level of prices is inconsistent with subscription to the Smithian proposition that a money wage increase or an increase in profits will be passed on to consumers. It is precisely this direction that the subsequent Ricardian argument was to take. But there is nothing to suggest at this stage that Ricardo recognized these implications.

We must now address the matter of land scarcity and its relevance for distribution. Ricardo explicitly commented on a passage in Dumont's translation involving the consequences of land scarcity for the returns to labour and capital,⁴⁸ but denied any advantage to capital outflows and insisted that stationarity was a far distant prospect: 'It can never be allowed that the emigration of Capital can be beneficial to a state. A loss of capital may immediately change an increasing state to a stationary or retrograde state. A nation is only advancing whilst it accumulates capital. Great Britain is far distant from the point where capital can no longer be advantageously accumulated. I do not mean to deny that individual capitalists will be benefited by emigration in many cases, - but England even if she received the revenues from the Capital employed in other countries would be a real sufferer'.⁴⁹ By itself this might appear to constitute an index of Ricardo's appreciation of the key theoretical issue at hand - his difference with Bentham amounting solely to the empirical question of proximity to the stationary state. There exists, moreover, an independent allusion in Ricardo's notes on Bentham to the matter of diminishing returns: 'It appears to me that the possession of new Land would add to our own sum of riches without additional labour, because the same labour employed on double the quantity of equally good land now in cultivation in England would produce a greater return. This opinion is founded on the decreasing power of the land to produce in proportion to the labour and capital employed on it.'⁵⁰

But the implications of these references should not be exaggerated. This becomes clear when we carry the story further. I turn to an obscure work of 1810 by Coutts Trotter which came to Ricardo's attention.⁵¹

Trotter had denied the existence of a contemporary excess paper issue: 'the currency of the country is in no degree depreciated by the use of paper'.⁵² That the currency had lost some part of its value is conceded but the fact is ascribed to gold itself (throughout Europe) falling in value relative to commodities; to the burden of taxation; and to the increase in population. It is the last which interests us here. For Trotter gave a clear statement of diminishing returns, and attempted to relate the phenomenon to the level of general prices by way of the price of corn and the wage rate:

In a country insulated as ours now is, by political as well as natural circumstances, every increase of population must make an increase in the demand for all the articles which land and industry produce. To raise the former, worse soils and more unfavourable situations must be taken into cultivation; and the produce therefore will be obtained, and must be sold, at an increased expense. To create the latter, men must be paid at a higher rate of wages, because in every state of society, and especially in one progressive, as that of England is, men must receive somewhat above what is necessary for their support; and the expense of that support will be regulated principally by the cheapness or dearness of food.⁵³

Trotter thus linked the Smithian relationship between the corn price and general prices to the principle of diminishing returns.

Ricardo's response is of the very first importance. It is that 'every increase of population must arise from an increase of capital, and has a tendency to lower the prices of commodities and therefore the wages of labour, not to raise them'.⁵⁴ The notion of diminishing returns, and implications thereof for the rising real costs of food production, would appear from this observation to have been totally foreign to Ricardo - despite the allusions to the phenomenon in the *Notes on Bentham*. Ricardo had his eye solely upon the depressing effects upon prices of Smith's 'increased competition' between capitalists: 'An increase of Capital never raises the prices of commodities.... Can there be an increase of population without an increase of Capital having preceded it?, yet...we are told that an increase of population will occasion a rise in the price of commodities, and in the wages of labour....A competition of Capitalists keeps down prices.'⁵⁵

It is evident then that, at least until the early months of 1811, Ricardo fell squarely in the Smithian camp. His attachment to the principles of the *Wealth of Nations* extended to the effect on the price level of changes in the price of corn by way of wage-rate variation; the 'adding-up' cost theory of price; and the explanation of profit-rate determination in terms of the 'competition of capital'. *At the same time, the building-blocks for a reconstruction were already at hand in Trotter's explicit formulation of the principle of diminishing returns applied to explain rising corn prices and money wages - if not in Bentham's less formal statements - coupled with Bentham's insistence - to which Ricardo subscribed - that any general price increase cannot be sustained without an increased volume of money.* Ricardo's total unawareness of this potent mixture is clear not only from the fact that he rejected Trotter's case based upon diminishing returns, but that he did so on the grounds of inconsistency between this argument and the Smithian notion of 'competition of capitals' whereby capital accumulation was supposed to lower general prices, rather than the 'monetary' grounds of the non-sustainability of higher

general prices (along which lines the breakaway was ultimately to occur).

It seems fair to conclude from this episode, quite generally, that the extant documents which came to Ricardo's attention in 1810-11 - and these include some of the Bentham items we have discussed - left no impression upon him (no *conscious* impression at least) regarding the main issue at hand. There remains then only the lost Bentham manuscript on the effects on profits of cultivating successive qualities of land, referred to by Piero Sraffa. Unless and until this comes to light I cannot see that much more can be said on the potential influence of Bentham upon Ricardo.

In conclusion, I would add only that since Bentham had written most of his economics by 1813 it is probable that the lost document was of no later date; it therefore remains an open possibility that Ricardo's new doctrine formulated in the first half of that year, may have owed something to Bentham. This possibility is reinforced by the presence in the extant Bentham manuscripts of arguments, outlined in this paper, which are quite consistent with those subsequently used by Ricardo in making his case.

REFERENCES

1. *Works and Correspondence of David Ricardo* ed. Piero Sraffa (Cambridge, 1951-73), III, 92.
2. There are no extant letters between those of late March and early August 1813, while those up until 24 March make no mention of profit-rate determination. As it is most unlikely that what Ricardo called 'my theory' in August would have been under consideration without appearing in the correspondence, the transition from the Smithian conception, it seems safe to conclude, probably occurred at some time during the four-month period from April to July 1813.
3. *Ibid.*, VI, 93. Malthus's letter, to which Ricardo's of 10 August is a reply, and Malthus's answer are both wanting; indeed we do not have any Malthus letters from March 1812 until June 1814. The two met frequently, however, during 1813 and the issue of profit-rate determination was doubtless discussed. Letters by other correspondents to Ricardo between January 1812 and November 1813 are missing.
4. *Ibid.*, 94-5. (My emphasis.)
5. Thus immediately after the passage from the letter of 10 August Ricardo formalized the proposition in the following terms: 'I am of opinion that the increased value of commodities is always the effect of an increase either in the quantity of the circulating medium or in its power, by the improvements in economy in its use, - and is never the cause. It is the diminished value, I mean nominal value, of commodities which is the great cause of the increased production of the mines, - but the increased nominal value of commodities can never call money into circulation. It is certainly an effect and not a cause.' Similarly, immediately following the passage from the second letter Ricardo asserted of commodities in general that it is 'their cheapness which is the immediate cause of the introduction of additional money'. (*Ibid.*, 93-4, 95.)
6. This interpretation was first suggested by G.S.L. Tucker, 'The Origins of Ricardo's Theory of Profits', *Economica*, XXI (Nov.1954), 323-4.
7. *Wealth of Nations*, Modern Library edition (New York, 1937), 93.
8. *Works*, 92.
9. *Wealth of Nations*, 92f.
10. The discussion of Smith's Books III and IV are analysed in my *Economics of Adam Smith* (Toronto and London, 1973), chap.10, dealing with investment priorities.

11. Great weight is placed on the 'Ricardian' implications of Smith's discussion of growth and distribution in Paul A. Samuelson, 'A Modern Theorist's Vindication of Adam Smith', *American Economic Review*, LXVII (Feb. 1977), 42-9; and Samuelson, 'The Canonical Classical Model of Political Economy', *Journal of Economic Literature*, XVI (Dec. 1978), 1415-34.
12. *Works*, X, 388n.
13. Professor Burns, who heads the University College 'Bentham Project' has written to the present writer: 'Nothing that I am aware of here, in the British Museum or among the Dumont papers in Geneva seems to correspond to the paper Sraffa described.'
15. Jeremy Bentham, *Of the Balance of Trade* (1801) in W. Stark, ed. *Jeremy Bentham's Economic Writings* (London, 1954), III, 222. I rely throughout on this collection
16. *Paper Mischief (Exposed)* (1800-1), *ibid.*, II, 450.
17. *Circulating Annuities* (1800), *ibid.*, II, 303.
18. *Defence of Usury* (1787), *ibid.*, I, 206-7.
19. E.g. *ibid.*, 116-7, where Bentham writes of profits as the revenue remaining to the employer after deducting wages.
20. *Supply Without Burden* (1795), *ibid.*, 361. (The falling profit rate is alluded to in this context, *ibid.*, 359.)
21. *Ibid.*, 366.
22. *Institute of Political Economy* (1801-4), *ibid.*, III, 376.
- 23a. Cf. also some rough notes by Bentham cited by Stark, *ibid.*, 482, referring to 'the impossibility of raising the wages of ordinary labour beyond mere subsistence', but also asserting that 'the higher the wages of labour the better consistent with national security...' which implies a distinction between different groups of labourers.
- 23b. 'Colonies and Navy' (c.1790), I, 217.
- 23c. *Ibid.*, 216.
24. *Institute of Political Economy*, *ibid.*, III, 355. (See also *ibid.*, 352-3.) There is a similar (but not identical) reference recorded by Bowring in his edition of the *Manual of Political Economy*: 'Let us take England, for example. According to the progress which population has made during the last century, it may be supposed that it would soon have attained its extreme limits - that is to say, that it would have exceeded the ordinary means of subsistence, if the superabundance had not found means of discharging itself in these new countries. But a long time before population has reached these limits, there will be a great diminution of relative opulence, a painful feeling of general poverty and distress, a superabundance of men of all the labouring classes, and a mischievous rivalry in offering their labour at the lowest price'. (John Bowring, *The Works of Jeremy Bentham*, London 1833-43, III, 53. According to Stark, *Economic Writings*, I, 49, the 'Manual' as published by Bowring is in fact largely from a manuscript developed after the turn of the century, and designed for the *Institute of Political Economy*.)

In certain materials apparently prepared for the *Manual of Political Economy* (1793-5), as classified by Stark, there is explicit reference to the stationary state and subsistence wages, reminiscent of the *Wealth of Nations*; cf. *Economic Writings*, III, 539. Also in the *Manual* will be found the celebrated passages in Latin alluding to birth control as a means of preventing population increasing more rapidly than capital; *ibid.*, I, 272-3. On this matter see J.R. Poynter, *Society and Pauperism. English Ideas on Poor Relief, 1795-1834* (London and Toronto, 1969), 122f.

25. *The True Alarm* (1801), *ibid.*, III, 68. It is not clear to me that the case for capital export is necessarily connected to Bentham's allowances of a possible divergence between savings and investment; but see Donald Winch, *Classical Political Economy and Colonies* (London, 1965), 33.
 - 26a. *Defence of a Maximum* (1801), *ibid.*, III, 293-6.
 - 26b. *Ibid.*, 299f.
 - 26c. *Ibid.*, 301-2.
 27. The falling profit rate for Bentham (as for Smith and the later classicals) was a 'contingent prediction', conditional upon appropriate *ceteris paribus* conditions. See e.g. *ibid.*, I, 359-60; III, 222, 287, 352, 469.
 28. *Paper Mischief*, *ibid.*, II, 435. Reference is made in *The True Alarm*, *ibid.*, III, 135, to a relative rise in the prices of agricultural compared to manufactured produce - since 1760 the former had increased by more than 50% and the latter by at most 12½%. (Cf. also *Circulating Annuities*, *ibid.*, II, 331.)
 29. *Manual of Political Economy* (1793-5), *ibid.*, I, 248. See also 236n., 272-3, regarding real-wage determination. On the variability of the money wage with the price of provisions see *ibid.*, II, 447-8; III, 91-2, 127, 246, 503. For further discussion of Bentham on real-wage rate determination see Poynter, *Society and Pauperism*, 120-1.
 30. Above p.5.
 31. *Circulating Annuities*, *ibid.*, II, 304-5. (The same principles are applied to rent, *ibid.*, 303.) By contrast: 'If it were possible that such offer could confine itself to hands as yet altogether without employ, it would, in as far as it were thus accepted, be productive of a real addition to the mass of wealth, without any corresponding addition, or any addition at all, to the price of labour, and therefore without any addition at all to such part of the prices of goods as is composed of the price of the labour employed in the production of these goods'. (*Ibid.*, 304.)
 32. *Ibid.*, III, 114f.
 33. *Ibid.*, III, 131n. (cf. also *ibid.*, II, 339, 342n).
 34. *Ibid.*, 237. Bentham did not, however specifically attribute to Smith (in the present context) a process whereby an increase in the price of corn acts upon general prices *by way of the money-wage rate*.
 35. *Ibid.*, 114-5.
 36. See a possible allusion to this result *ibid.*, 120-1.
 37. The argument is fool-proof, however, only if it is certain that the burden of a wage increase does not fall on *rent*. While Bentham does not develop the differential rent principle it must be borne in mind that Ricardo too formulated the inverse profit-wage relation *before* realizing the significance of the principle for his case; differential rent was subsequently fitted easily into a well prepared structure.
- Much later Bentham apparently criticized Ricardo's formulation in the *Principles*. See *Works of Jeremy Bentham*, X, 498: 'In Ricardo's book on Rent', runs the report, 'there is a want of logic. I wanted him to correct it in these particulars; but he was not conscious of it, and Mill was not desirous. He confounded *cost* with *value*'.
38. In a later manuscript (dated 1821) *ibid.*, 410, Bentham asserted that the corn laws entailed a high corn price and ruin to the labourers. This assertion also suggests that the rising corn price is not entirely compensated for.
 39. It may be noted that Ricardo did not formulate a complete case in early 1813. And even in the following year he still maintained a positive (if qualified) relationship between the corn price and

- general prices. In short, the relevance for his *own* approach to profits of the monetary argument used to counter the principle of 'competition of capitals' was apparently not self-evident.
40. The absence of a well thought out case may be illustrated by the apparent failure by Bentham to apply his monetary argument against Smith's analysis of the corn-export bounty according to which the rise in the price of corn would generate, via the money wage rate, a general rise in the *level* of prices. (For Bentham's own case against the bounty, see *ibid.*, I, 266-7; II, 295-6.)
 41. Above pp. 9-10. In particular, there are no comments by Ricardo on the section of the manuscript referred to in note 33 above.
 42. Stark, *ibid.*, III, 27.
 43. *Works*, III, 300.
 44. *Ibid.* See also Ricardo's response *ibid.*, 311: 'Is not the mass of prices the same after [corn] scarcity as before. May we not as before put the mass of commodities of all sorts on one side of the line, - and the amount of money multiplied by the rapidity of its circulation on the other. Is not this in all cases the regulator of prices?' This too is presumably a statement relating to long-run equilibrium states allowing therefore for a *temporary* increase in the general level of prices.
 45. Except where taxation was responsible for higher prices; *ibid.*, 270, 307, 328, 341.
 46. *Ibid.*, 325.
 47. *Ibid.*, 301.
 48. See text relating to note 25 for corresponding English text given by Stark.
 49. *Ibid.*, 274.
 50. *Ibid.*, 287. Ricardo actually took Bentham to task in this context for failing to appreciate the phenomenon of diminishing returns. Immediately thereafter (*ibid.*, 288) he conceded that Bentham possessed the principle.
 51. *The Principles of Currency and Exchanges applied to the Report from the Select Committee of the House of Commons Appointed to Inquire into the High Price of Gold Bullion*, ed. 1 (London, 1810). See for the full text J.H. Hollander, *Minor Papers on the Currency Question* (Baltimore, 1932). (Ricardo's comments were written in December 1810, or thereabouts.)
 52. *Works*, III, 388.
 53. *Ibid.*, 388-9.
 54. *Ibid.*
 55. *Ibid.*, 389-90.

APPENDIX

While searching the Ricardo Papers I came across a manuscript (ADD. 7510. IV. B24) written in French, in Ricardo's hand, entitled 'The advantages and disadvantages of colonies are ably explained by Mr. Bentham'. (The item bears no watermark.) Here we find Bentham in a 'conservative' mood; it is not generally known that Ricardo, at any period, took a similar position, approving of the notions that it were better for the colonies to remain with the mother country; that the United States would have been better served by remaining longer under Britain; and that Egypt would benefit by coming under British rule.

Internal evidence suggests, according to Prof. J.H. Burns, that the original from which Ricardo copied was a *Bentham manuscript in French* (rather than a Dumont translation) and that such a manuscript could have been communicated to Ricardo by James Mill during the period 1810-11.

Circumstantial evidence also suggests that the manuscript dates to the early years of the new century; see Winch, *Classical Political Economy and Colonies*, 34: 'In the early years of the nineteenth century, possibly as a result of the turn of events in France, Bentham retreated from the radicalism on questions of government expressed in some of his writings in the 1790's. Prior to his meeting with James Mill in 1808, Bentham's Toryism seems to have reasserted itself; and this change of heart is reflected in his views on colonies at this time.'

There is a resemblance (although not an identity) between the manuscript in question, and passages in the Et. Dumont collection *Théorie des peines et des recompenses*, 3rd ed. (Paris, 1826), II, Livre Quatrième, chap. XII ('Des Colonies'), 336-55, and in the materials reproduced by W. Stark as 'The Institute of Political Economy'. The manuscript lacks the discussions of the ultimate limits to population growth due to land scarcity, and of the relatively slow growth of population in old-settled countries contained in these works. (See above text corresponding to note 24.) It cannot, however, be positively excluded that the manuscript from which Ricardo copied contained these or similar passages.

THE POLITICAL FUNCTIONS OF BENTHAM'S THEORY OF FICTIONS

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Bentham's theory of fictions, as I understand it, can be summed up in the following terms:

- i) The world consists properly of *real* entities, bodies and substances and certain ideas prompted by them, which may be directly perceived and experienced.
- ii) The character and limitations of language require us to use words - names resembling the names of real entities - on many occasions when there are no real entities to serve as referents for them. These words are the names of fictitious entities; or, for convenience, they can themselves be called simply fictitious entities. Many frequently-encountered nouns, especially abstract or collective terms such as motion, relation, power, obligation, right, property and community, are fictitious entities. In so far as use of them is necessary and legitimate, they can be understood through the perception of their relation to some real entity or entities; it is the presence of this relation that makes the use of fictions legitimate, just as its absence makes their use illegitimate.
- iii) Human discourse includes, besides the names of real and fictitious entities, certain falsehoods - false propositions - that are known to be false but are employed as though they were true. Legal fictions are typical of these. They are illegitimate and mischievous fictions.

It seems that Bentham developed the main features of this theory relatively early in his intellectual life. We find him employing its terminology, and appealing to the distinctions between real entities, fictitious entities and legal fictions in his fundamental works on jurisprudence which were more or less complete by 1782. He was already hinting then that a theory which 'would take up a whole volume' could be constructed around these distinctions, but his 'present design' did not permit him to produce it.² He did not tackle the task of construction until about thirty years later, when he turned his mind to fiction along with other aspects of language. As C.K. Ogden has pointed out, his most concentrated work on these subjects seems to have been done in 1814-15, but he had been preparing for this certainly since 1811 and perhaps since 1807 or 1808.³ In his later writings he continued to employ and to value the distinctions and the conclusions that he had established - to his own satisfaction - in that period. In particular, he scattered them freely through his drafts for the *Constitutional Code*. These drafts contain many references to and examples of fictional entities, and Doane was able to construct a short chapter for his 'Book I' out of some of the material dealing with the legal and other fictions that functioned as instruments of misrule.⁴ Bentham seems to have hoped until his death to find an opportunity to organise his various writings on language into a systematic work or set of works.⁵

Ogden suggested that Bentham elaborated the theory of fictions 'in order to deal with the symbolic factor in all its ramifications'.⁶ It is clear, however, from Ogden's own account of the genesis of the theory that Bentham's interest in the 'symbolic factor' was not wholly autonomous but sprang at least in part from certain real concerns. Some of these concerns, for example his much-remarked fear of ghosts, were personal; but others were connected with his social and political enterprises and objectives, and it is on these that I want to concentrate. There were, I think, at least three of them.

His first concern was to outlaw the propositions that he classed as legal fictions, both those employed in the courts' procedure and those to which constitutional lawyers appealed in defence of the constitution. This was closely related to a second point, namely his desire to expel from political philosophy and jurisprudence certain notions such as natural law, natural rights and the common law which were employed by the same constitutional lawyers. His objection to both the propositions and the notions was that they spread a 'curtain of mystery' over the law, and that consequently they served not the interests of the members of the community at large, but the professional interests of lawyers and the interests of those who wanted to preserve 'the Laws that are (because they are)', and more specifically 'those who have had the direction of the Law'.⁷ These two concerns thus shared common political targets, but he chose to pursue them in somewhat different ways. The propositions could be falsified directly: he could simply deny that an 'original contract' had ever been agreed to, and could challenge his opponents to produce any evidence that it had. It was not so easy to subject natural rights to the same sort of test, and he adopted the alternative course of trying to establish that such notions were inherently meaningless and confused because they ignored the real constitution of the world. This purpose was admirably served by a characterisation of the world as a set of bodies and substances. Natural law and the common law were clearly not bodies or substances or aspects of them, and could be confidently dismissed as fictions. The writers who employed them could then be reproached with 'wandering in a labyrinth of fictitious entities' instead of 'gathering up that clue that might have been afforded by an attentive consideration to such particulars as the acts which are made offences, ... the persons who are sufferers by them, the pain experienced by those persons, the pain to be inflicted on the offenders and so on throughout the region of real entities'.⁸ But while this focus on 'real entities' served its critical purpose, it tended to be too radical in other directions. Bentham found that in his own jurisprudence he could not pay attention exclusively to 'such particulars', and could not do without a mass of terms that he must classify as fictions, including rights, obligations, duties, trusts, motives, passions and dispositions, powers, abstractions (universals) such as condition, reputation, trust and law, and collectivities such as the community. But his use of such terms jeopardised his efforts to protect the community against legal fictions and doctrines of natural law and the like. This circumstance generated his third concern, which was to provide a limited rehabilitation for fictions as 'fictitious entities' which had their origin in the requirements of discourse and the inescapable limitations of language. This rehabilitation involved, in its turn, a distinction between legitimate and illegitimate fictions - between the politically acceptable 'Fiction of the Logician' and the politically objectionable 'Fictions of poets, priests and lawyers'.⁹ Given his starting-point, he had to base the distinction on the contiguity of the fictional to some real entity or entities. Once armed with the distinction, he was able to separate 'proper' and 'objectionable' uses of words such as 'duty', and to confine the former to those which had 'real' consequences in the form of pleasures or pains. In this fashion he determined that if these words were to be used at all they must be used in the ways and in the senses which were compatible with his political and legal objectives.

These three concerns were all present, as I have suggested, while he was engaged in drafting his fundamental works, and they were grounded in his approach to and in his assumptions about law and society. They continued to be fed in later years by his persistent adherence to that approach. But they were made a good deal more urgent and extensive in the

nineteenth century by certain developments in his thinking about social and political life, which gradually took shape after the breakdown of the Panopticon scheme. These developments were associated with his espousal of a radical-democratic programme, although they cannot be adequately summed up as a process of democratisation. Their starting-point was his heightened awareness of the malevolence and the resources of the enemy against which he was contending, namely the 'ruling few' or the 'sinister conspiracy' which was opposed to, and was effective in preventing, the promotion of the greatest happiness. This awareness led him to develop an increasingly complex and detailed budget of reforms, among which electoral reform was a necessary but far from sufficient item. The same circumstance encouraged him, too, to make more resolute and sustained efforts to translate his budget of reforms into legal and institutional terms. He ultimately achieved a significant part of this objective in the *Constitutional Code*, but his efforts bore fruit also in his other draft codes and, considerably earlier, in some more specialised projects such as his work on the judiciary, the Church and the press. Finally, in order to elucidate the character and resources of the enemy and to explain and justify the measures that he was directing against it, he devised a new body of social and political theory which he added to or incorporated in the codes and in the works that preceded and led up to them. The new measures and the new theory made many demands on his theory of language in general, and on his theory of fictions in particular. They provided him with additional and powerful reasons for his hostility to fictions - that is, mischievous fictions. At the same time they generated many new fictitious entities, which were even more difficult than the earlier ones to represent as real entities, or alternatively, to relate to entities which he was able to recognise as real. It became correspondingly more important to establish the distinction between fictions and fictitious entities, and to establish the propriety of the fictional entities that he wanted to employ.

The new social and political theory was central to these developments. It was not entirely novel. Its germs may be found in the political theory contained in Bentham's early works on jurisprudence. Its construction required a shift in emphasis rather than the introduction of hitherto alien ideas. But the shift was precisely away from real entities to fictions of various kinds. In the early works, which were focused on sovereignty and the legal system, the principal political elements seemed to be individual actors, their motives and interests, their acts and the real consequences of those acts: the sovereign who commanded, the subjects who obeyed, the commands of the former, the obedient or disobedient acts of the latter, the rewards and punishments that they experienced. Fictitious entities, such as roles and relationships, figured in the analysis, but in a much less prominent way. In Bentham's more mature theory, individuals and their real attributes tended to be submerged in and determined by collectivities, roles and social forces which were clearly fictitious and not real entities. And among the social forces, a special place was found for mischievous fictions which were seen to pervade not only the legal system but the whole of society.

Bentham now depicted a political society not as a mass of self-motivated individuals but as a set of interacting groups, offices and relationships. He recognised in the set two major groups, the ruling few or aristocracy and the subject many or democratical section of the community. He defined the democratical section in two slightly different ways. In one sense it encompassed the whole community, including the aristocracy. In another sense it was the non-aristocratic part of the community.¹⁰ The former view helped to make plausible a particular association that Bentham wanted to establish, namely between the subject many and the universal interest, but the other view fitted in better with the rest of his

argument and it was the one that he adopted most frequently. The aristocracy was distinguished from the democratical section primarily by the fact that its members were 'ruling or otherwise influential'; in practice, it was 'composed principally of the non-productive classes', while the democratical section was 'composed chiefly of the productive classes'.¹¹ The aristocracy could be divided into a dozen or more sub-groups according to the source of their power or influence: for example, the legislative aristocracy, the moneyed aristocracy, the spiritual aristocracy and the literary aristocracy.¹² For some purposes these sub-groups could be treated as distinct, and in conflict with each other. But in relation to the subject many they could be relied on to work together in order to promote aristocratic happiness at the expense of the general happiness, and to do so in association with monarchy and under its shelter wherever it existed.¹³ The democratical section did not have any systematic divisions and so could be treated simply as a unit. Political society included, besides these groups, certain characteristic forms of conduct (or misconduct) such as corruption, the dissemination of delusion, and obsequiousness. It also included certain relations, particularly that between ruler and subject, and certain offices or conditions, such as that of monarch, and a general *system* or *frame* of government.

In some parts of his argument Bentham sought to give an individualist and voluntarist account of these phenomena, especially of the two sections of the community. He suggested that membership of the respective sections might be voluntary, a matter of preference or choice, so that some individuals might float between the two or be attracted by ambition or sympathy to move from one to the other. In particular, he argued, individuals who lacked 'factitious honour, power or wealth', but who aspired to gain them, might attach themselves to the aristocracy and its interests; while other individuals who were technically members of the aristocracy might be moved by 'sympathy with those belonging to the [democratical] section, or by antipathy towards this or that portion of the aristocratical section' to join with the subject many and their interest.¹⁴ He suggested, too, that the interests of the two sections might be indefinite and constituted simply by the autonomous interests of a majority of the members of each section.¹⁵ But this voluntarist line did not suit very well the main thrust of his argument, which was to establish the inevitability of conflict between the ruling few and the subject many, the commitment of the former section to particular interests and the commitment of the latter section to the universal interest. These purposes were better served by a more determinist form of argument which made group-membership and other circumstances the determinants of individuals' characteristics, and that was the kind of argument that he developed most fully and consistently.

In an important and familiar sense, Bentham represented (but did not in so many words describe) the sections as prior to the individuals of whom they were composed or who were involved in them. He believed that it was possible to recognise the sections, their interests and their activities although it was not possible to divide the members of the community accurately or fully between them; to make such an allocation of individuals was, he insisted, 'precluded by the nature of the case', but he did not count this as an objection to talking about the sections or attributing characteristics to them.¹⁶ He thought it proper, too, to think of groups as surviving losses of or changes in their membership, as different individuals came to possess more or less the things (power, honour and wealth) that distinguished one group from the other.¹⁷ Even the idea that parts of the community might 'float' between the sections implied a certain permanence in and priority of the sections in relation to their individual members. The components of the sections changed; their interests, conduct and other characteristics remained the same.

The reason for their survival was ultimately that the character and interests of the sections were determined not by the personal characteristics of their individual members but by the situations in which those individuals were involved. 'In every political state', Bentham maintained, 'the interest of the ruling functionaries' must be opposed to the interest of the subject many ('the universal interest') because of 'the unchangeable nature of their relation'.¹⁸ In this account of the matter the ship of ruler to subject determined both membership and interest, and sentiments such as ambition, antipathy and sympathy ceased to be important. Possessors of power were willy-nilly rulers, members of the aristocratical section and devoted to enhancing its and their power, and they could not be distracted by sympathy or any other sentiment to view their own interest in a broader way or to develop a sense of responsibility to the universal interest. (If they could do so, the argument about an inevitable conflict of interests would break down.) And the individual's interest ceased to be the product of his own motives or preferences and became the product of his role in the relationship; it was 'the interest of a member of the democratical section as such' or 'the interest of a member of the aristocratical section as such', not the interest of a discrete individual.¹⁹

Bentham narrowed still further the possibility of an independent or determinant role for individuals by his treatment of their opinions and conduct. He rooted their opinions firstly in their interests. He claimed that, as a general rule, interests determined affections, and interests and affections together determined opinions and judgments ('expressive modes of disapprobation and approbation'). This was true, he believed, 'with regard to [judgments about] human conduct in every part of the field of law and morals'.²⁰ The 'state of interests' would therefore be reflected and reproduced in the state of opinions and judgments: each section of the community would equip its members with those opinions and judgments appropriate to its interests. So the priority of interests over opinions became another aspect of, and it reinforced, the priority of the group over its members.

For the same sort of reason, he found that sinister individual conduct was often the product of social situations and relationships rather than the actor's own characteristics. He expressed this point in a contrast between forms of conduct which were 'personally seated' and those which were 'systematically seated'. They were systematically seated when their source was not 'the qualities of this or that individual' but was 'in the system or frame of government'.²¹ Corruption typically was, and delusion might be, systematically-seated. Similarly official incompetence or 'inaptitude' - especially the inaptitude of the monarch - had its source in the situation of the official in question: 'not in the particular nature of the individual but in the general nature of the situation'.²² Bentham agreed that the system must originally have been created by individuals, but his point was that it survived its creators.²³

The same analysis of political society produced a more extended and sustained attack on mischievous fictions, as Bentham sought to discover the forces and instruments sustaining the system of misrule and separating the ruling few from the subject many.

The most powerful of those forces and instruments was of course control of the law, and this was closely backed up by wealth and other means of distributing or withholding rewards which could function as patronage or corruption. But these things, although they were powerful, did not fully account for the strength of the system. In order to complete his explanation, Bentham looked more closely at the influence of thought - that is, opinions and judgments - on action, and then at the ways in which thought was formed. He found that among the subject many, opinions and

judgments did not simply or accurately reflect the objective interests of the democratical section of the community. They, together with the subject many's perceptions of their interests, were socially shaped and - so he argued - distorted. The process of distortion was what he meant by 'delusion'. A characteristic product of delusion was the belief that the ruling few possessed unusual aptitude, probity and benevolence, and that this would qualify them to rule and would render unnecessary any restraints on them or any supervision of them. Another of delusion's products was the complementary belief that the subject many were unqualified to possess or exercise power.²⁴ The process operated through a number of channels, many of which were social and cultural rather than overtly political. They included the Church and religion, education, the symbolism of monarchy, writings on politics and history which included idealised 'portraits' of rulers and their assistants, literature and the fine arts, and even language, 'taste' and conventional and officially-supported morality.²⁵ The function of all these channels and sources of delusion was to place the 'conceptions, ... judgments, ... suffrages ... [and] language' of the subject many 'almost completely under the guidance, and almost as it were at the disposal' of the ruling few.²⁶ They operated partly through fallacies and partly through fictions - mischievous fictions. In that way fictions came to be seen not only as devices for corrupting the legal system in the interests of lawyers, but also as devices for corrupting the whole system of politics and government in the interests of the governors.²⁷

This new or at least revised analysis of the workings of political society had important implications for the programme of reform that Bentham felt impelled to devise. The vital point here was his claim that sinister conduct was 'systematically-seated'. The analysis demonstrated, as he saw clearly, that reform must focus not on individuals but on the system and on the situations within it. In dealing with monarchy, an 'inquiry into the character of this or that individual' or an attempt to effect remedies by substituting one individual for another would be 'needless and useless'.²⁸ The sinister acts of individuals would be 'occasional and temporary'; the sinister effects of system or situation would be 'permanent and irremediable' as long as the system itself was allowed to survive.²⁹ It was this circumstance, above all, which determined that reform must be radical, and which determined many of the targets of a radical reform. These were the characteristics of the system and the forces sustaining it: of individual acts but kinds of conduct and activities; not the psychological characteristics or tendencies of particular individuals but the forces to which they were subject, the relations in which they stood to other individuals and the whole framework in which they and their activities were set. So an account of 'government as it should be' had to be stated, like the account of 'government as it was', in terms of activities, offices and relationships. In so far as persons figured in this account at all, it would not be as concrete individuals but as the incumbents of offices or the performers of roles. The identity and the distinctive characteristics of individuals would not be important. What would be important was simply that the office be filled and the role performed.

The results of these conditions can be seen in the *Constitutional Code* (Book II) where most of Bentham's programme was set out. That work is cast almost entirely in abstract terms, and it employs a greatly expanded vocabulary of such terms. It describes not a mass of individuals but a network of offices and roles, each of which is analysed like a legal condition: the analysis focuses particularly on the duties and functions of the office, its relations with other offices, the means by which it may be acquired and vacated, and particular obligations or rights attaching to it. It turns out that there are many of these offices and roles, and that many names had to be invented or adopted for them and for their attributes:

names of ministries, local government offices, judicial offices, administrative functions and so on. The roles and the arrangements within and between the offices are designed to prevent certain forms of conduct, including the familiar corruption and delusion, and the less familiar insubordination, quasi-insubordination, oppression, speculation, and corruption.³⁰ For this purpose they employ other social forces and forms of conduct, such as subordination, economy, appropriate aptitude, responsibility, punibility and dislocability. Individuals appear in this account not in terms of their distinctive characteristics, but as filling some offices, performing some task, being a party in some relationship. They are, typically, 'functionaries' or, even more significantly, 'actors on the judicial theatre' any one of whom 'may happen to be in two consecutive moments a performer in two different characters'.³¹ Alternatively, they may be - consecutively or simultaneously - electors, members of the Public Opinion Tribunal, members of a quasi-jury, suitors, evidence-holders or inspectees. In each case Bentham's interest is not in the individual actor or patient; it is in the activity, role or relationship itself, for this is what is vital to his programme.

The outcome of this whole line of thinking was, then, both the discovery of an enhanced role for mischievous fictions, and the generation of a new, extensive and important set of fictitious entities. The two sections of society, corruption, delusion, misrule, obsequiousness, situations, and the system or frame of government were crucial to Bentham's analysis and all fell outside the bounds of real entities. Similarly, the real constituents of the *Constitutional Code* are a mass of fictitious entities - offices, administrative activities, forms of conduct, social forces and roles - which quite eclipse the individuals and other real entities that make fleeting appearances in it.

In illustrating Bentham's dependence on fictitious entities and his hostility to fictions in the nineteenth century, I have used mainly materials drafted during the early 1820s. These provide the clearest and most succinct statement of his mature understanding of political life. But that understanding was taking shape for a considerable time before the 1820s. The notions that figure in it - such as delusion and its political role, the nature of aristocracy and the existence of a system constraining individuals - can be traced back through many of his earlier writings to at least his (largely abortive) commentaries on judicial organisation of 1806-08.³² Bentham was employing these notions in recognisable, if incomplete, forms in an important set of works in which he declared his hostility to the ruling few and their allies, and which he drafted in the period 1809-16: 'Parliamentary Reform' (1809-10), *Church of Englandism* (1812-16), *A Table of the Springs of Action* (1813-16) and associated brouillons and marginals. By that time, too, he was also aware that his proposals for reform must be expressed in elaborate legal codes making great use of generalities rather than particulars, for he had already tried to draft a body of electoral law for 'Parliamentary Reform', and codes for narrower topics such as the Press and Naval Prizes. At about the same time there was appearing in his thought another source of uneasiness which had both a political aspect and a link with the subject of fictions. This was the status of utilitarianism and of its central notion, the greatest happiness of the greatest number, which he set out to defend in *A Table of the Springs of Action*. His motives for defending it were political: it provided the moral foundation for his condemnation of the aristocracy or ruling few, and he felt that the sinister interest of the ruling few was the principal cause of resistance to it in the community.³³ But his defence of it would have been endangered if he had lowered the barriers against fictitious entities and had counted relations, traditions or structures as real entities. Once admitted into the real world they could have become competitors with

pleasures to function as values, and it was in his interest to limit that sort of competition as much as possible. With hindsight, and if we believe that his radicalism (or populism) was already present in his thought in the 1770s and 1780s, we can see the desire to restrict the number and kinds of potential values as a fourth 'concern' encouraging him to make his original distinction between real and fictitious entities.

I suggest that the themes he was developing in his political writings from about 1809 onwards explain the revival of his interest in fictions (and indeed in the whole subject of language) in and around 1814. That interest was the product of an awareness that he had greater need of, and was making greater demands on and presenting greater challenges to, the epistemological and linguistic ideas that he had developed as a young man. The demands and challenges became especially obvious during the drafting of *Church of Englandism*, which included an attack on the Church for its part in deluding the people through the dissemination of mischievous fictions, and an acknowledgement that the Church belonged to a *system* which disciplined and directed the behaviour of individuals in non-utilitarian directions.³⁴ Bentham needed to be reassured that he could continue to denounce fictions and their users, could continue to maintain a restrictive view of real entities, and yet could justify his heavy reliance on fictitious entities in his analysis and his prescriptions. He responded by trying to set down his linguistic ideas in a systematic fashion, and thus to reaffirm his confidence in them and in his ability to establish the legitimacy of his own fictitious entities, and to ensure the illegitimacy of those employed by his opponents.

At one point in C.K. Ogden's discussion of the theory of fictions, he reproached C.W. Everett for over-rating Bentham's earlier writings and for under-rating the later ones by representing the latter as 'completions of plans sketched in his early years'.³⁵ One might agree with Ogden that Bentham showed remarkable vitality and ingenuity in his old age in developing his ideas in ways that could not easily have been predicted from a knowledge of his early works. It is also true, however, that his later works contain little that was totally unforeshadowed in the early ones, and that he was notably faithful to many of his earliest ideas. As it happens, the theory of fictions illustrates his fidelity to the old rather than his vigour in developing the new. His elaboration of the theory in the nineteenth century followed closely his earliest references to it, filling out his original points but not changing them in essential respects. But if we turn from the content of the theory to its place in his thought we are brought back to an awareness of his continuing ability to adopt and develop new ideas. We learn that he elaborated the theory because he was developing some striking new ideas about politics. We may also gather some clues about the criteria and the processes determining the mixture of new and old in his mature theories.

He first developed the rudiments of his theory of fiction in order to buttress certain philosophic views which he had adopted and which in turn helped to sustain his moral and political preferences. Those preferences yielded, and may always have involved, a marked hostility to the community's elite or 'ruling few'. As time went on his hostility increased and he expressed it more openly, and at the same time he became more aware of the extent and complexity of the elite's power and resources. He experienced, however, some difficulty in explaining its power, in identifying its resources and in devising counter-measures within his original stock of political ideas. In order to cope with that problem, he promptly and skilfully devised a new set of ideas which switched attention from individuals and their initiatives to the groups, institutions, roles and activities in which they participated. As a by-product, the new ideas threw additional strain on his original philosophic views. The alternatives

then facing him were to innovate further by modifying or abandoning the philosophic views, or to cling to those views and to try to strengthen them by some means. But innovation at this point would have set at risk his moral and political preferences, and that was the sort of risk he was not prepared to take. He therefore chose the second course, summoning up the theory of fictions to provide the additional support that he needed.

NOTES

1. See *Bentham's Theory of Fictions* by C.K. Ogden, (London, 1932) Part I, 'General Outline', 7-58; and Appendix A, 'Legal Fictions', 141-50.
2. *An Introduction to the Principles of Morals and Legislation*, edited by J.H. Burns and H.L.A Hart (London, 1970), 111 (Note p). Cf., *ibid.*, 125, where it is pointed out that fictitious entities may be 'feigned for the convenience of discourse'.
3. Ogden, *Bentham's Theory of Fictions*, *op.cit.*, xxxii-xxxiii. But there are a number of earlier papers on these or related matters among the Bentham Mss. - for example, U.C. ci, 220-1 and 274, and B.L. Add. Mss. 33550, fols.2-3, and 33551, fols.289-93.
4. *The Works of Jeremy Bentham*, edited by John Bowring, Vol.ix (Edinburgh, 1843), 77-78.
5. The arrangement of the papers on language in B.L. Add. Mss.33549-51 suggests this conclusion. See also cii in the U.C. collection, especially 234-68 and their references to a projected 'Essay on Language'.
6. *Bentham's Theory of Fictions*, xxvii.
7. *A Comment on the Commentaries*, edited by J.H. Burns and H.L.A. Hart, (London, 1977), 45 and 124-5. For the interests of lawyers, see also *ibid.*, 57-8 and 320.
8. *Of Laws in General*, edited by H.L.A. Hart (London, 1970), 3, (Note a).
9. *Bentham's Theory of Fictions*, 18.
10. U.C. clx, 406 and 420.
11. *Ibid.*, 416; *Bowring*, ix, 43.
12. *Ibid.*, Vol. iv, 558n; U.C. clx, 428vo. and 449vo.
13. *Ibid.*, lxxxiv, 91 and 146. These papers form part of an extensive but incomplete essay on aristocracy, which occupies most of lxxxiv.
14. *Ibid.*, clx, 390 and 399; *Bowring*, ix, 46.
15. *Ibid.*, 43; U.C. clx, 416-7.
16. *Ibid.*, fols.389-90; *Bowring*, ix, 46.
17. *Ibid.*
18. U.C. xxxvii, 226.
19. *Bowring*, ix, 44; U.C. clx, 419 and 407 and 420-1.
20. *Ibid.*, clx, 418 and 407; *Bowring*, ix, 43-4.
21. U.C. xxxviii, 202. This passage deals with corruption. For the related argument about delusion see cvi, 317.
22. U.C. xxxvi, 150.
23. U.C. clx, 146.
24. U.C. xxxvii, 262-3, and U.C. cvi, 314-5, 320-3.
25. *Ibid.*, and U.C. clx, 339-401, 435-7 and 448-9.
26. *Ibid.*, 402-4; *Bowring*, ix, 44.
27. *Ibid.*, 59 and 76-7; U.C. xxxvi, 166-9 and 263-8.
28. U.C. xxxvi, 150.
29. *Ibid.*, and U.C. clx, 146.
30. See, for example, Book II of the *Constitutional Code*, Ch.IX, ss.20-3 in *Bowring*, ix, 302-16.

31. *Ibid.*, 459. See also 446-7, 'Ministerial Judiciary Functionaries' where it is made clear that what are nominally classes of 'functionaries' (messengers, prehensors, etc.) are really kinds of functions, some of which may be combined in one person.
32. See for example, U.C. xc, 90 (a draft for the *Court of Lords' Delegates*).
33. His motives appear more clearly in his working drafts than in the completed work. See U.C. clvii, 52-122, especially 52, 69, 88, 113 and 117.
34. *Church of Englandism and Its Catechism Examined* (London, 1817-18). See the 'Preface on Publication', viii-ix, for a strong statement of the view that individuals are 'but the children of the system'.
35. Ogden, *Bentham's Theory of Fictions*, xxx. Ogden's reference is to the concluding paragraphs of Everett's *The Education of Jeremy Bentham* (New York, 1931), 197.

BENTHAM'S POOR LAW PROPOSALS

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In this paper the term 'proposal' will be used in two senses. First we will consider the form in which the Poor Law proposals were made, or, in other words, the works embodying the proposals. We will discuss the order in which the works were written, the basic contents of each, and how each compares with the others. Thus far to my knowledge there has been no systematic effort to study each work in this fashion. The two most comprehensive and authoritative studies of Bentham's Poor Law proposals are Professor J.R. Poynter's *Society and Pauperism: English Ideas on Poor Relief, 1795-1834*, published by Routledge and Kegan Paul in 1969, and Professor C.F. Bahmueller's *The End of Contingency: Bentham on Poverty*, a PhD dissertation at Harvard University in 1975.¹ Neither treats the different works in this way. The second sense in which the term 'proposal' will be used involves the content of the proposals or, in other words, the ideas being proposed. To a large extent the ideas will be presented in discussing the different works, but at the end there will be a systematic summary as well as a critique. Of course, the ideas themselves have been treated by Professors Poynter, Bahmueller, and others; consequently, in this case I will simply be offering another interpretation.

Bentham's Poor Law proposals were written almost entirely during the years 1796 and 1797. The condition of the poor deteriorated markedly in 1795 and the problem of what to do about them became one of the most pressing issues in public policy of the time. As was his wont in situations like this Bentham turned his attention to the problem and offered his proposals for solving it. In this case he became so deeply engrossed that he wrote some 2,800 to 3,000 pages on it. The manuscripts are at University College and are located in boxes cli, clii, cliii, and cliv. In addition there are important MSS. in box cxxxiii. 1-106 and a few miscellaneous MSS. in other boxes.² Unfortunately, they are in a chaotic condition and it is very difficult to determine which MSS. belong to which work.

Once Bentham became interested in the Poor Law problem he followed his usual procedure of trying to get as much information as he could about the situation.³ Even after reading the most important existing works on the subject and amassing as much data as could be obtained, however, he still felt that far too little was known about the actual state of the poor. Consequently, he wrote three short works designed to fill the gaps. These were first published in Arthur Young's *Annals of Agriculture* and then later included in the Bowring edition of *The Works of Jeremy Bentham*.⁴ In his letter to Young on what he was sending him, Bentham describes the first of these, his *Pauper Population Table*, as a 'blank' that was 'framed for the purpose of collecting an account of the Pauper Population in as many parishes, etc., as I may be able to obtain it from'.⁵ Bentham's second work on this subject is entitled *Table of Cases Calling for Relief*.⁶ In his 'Observations' on this he says that it differs from the *Pauper Population Table* in that the *Table* is concerned exclusively with what he calls the 'permanent stock of pauper hands' whereas the *Table of Cases Calling for Relief* is concerned with every class, every individual that may need relief. The third of these three brief works is entitled *Non-Adult Value Table*, an 'Outline' of which is published in Bowring.⁸ The purpose of this *Table*, he says, is to determine 'the pecuniary value, negative or positive, of the service of a pauper...from birth to twenty-one years' of age. On the negative side of course are the expenses of maintaining the pauper and on the positive the value of his labour.

These three works were considered together because of their similarities rather than because they were the first to be written. Actually, as pointed out in the footnotes, they were written over a period of time ranging from early 1796 to early 1798. One other work will be considered out of chronological order: Bentham's *Observations on the Poor Bill, Introduced by the Right Honourable William Pitt*.⁹ The main reason for this is that it is basically a negative critique of someone else's proposals rather than a positive set of Bentham's own. Pitt's Bill was introduced in December of 1796. In late December or early January Bentham decided to give his reactions to the Bill in order to help prevent its enactment. The work was circulated among a number of influential people and is said to have contributed significantly to the defeat of Pitt's Bill.¹⁰

Among other things Bentham is highly critical of the drafting of the Bill. However, he devotes most of his critique to its contents and, in particular, to the new sources of relief in the out-allowance or home-provision system.¹¹ His main point is that Pitt's proposals are much too prodigal and, consequently, embody an inexcusable waste of public money. This is the most important of the many ways in which they are impracticable. In general, Bentham seems to question the out-allowance or home-provision system but there is no all-out attack upon it similar to those in many of his other works. Although there are hints concerning his position on such things as the relative merits of large and small establishments, the *Observations* really does not give much indication of Bentham's positive proposals.

His first major work embodying in systematic form his own Poor Law proposals is entitled *Essays on the Subject of the Poor Laws*.¹² The work is divided into three parts: 'Essay I, Definitions and Distinctions; Essay II, Fundamental Positions in Regard to Providing for the Indigent Poor; Essay III, Collateral Uses Derivable from the System of Industry Houses'. Although the MSS. are not dated, there is a cover for the second essay dated '28 April 1796', and I think the work may very well have been completed at about this time.¹³ Apparently, Bentham circulated the *Essays* since there are copyists' versions including one complete transcript of the entire work.¹⁴

In Essay I Bentham makes a distinction between poverty, the 'state of everyone who in order to obtain *subsistence*, is forced to have recourse to labour', or, in other words, the general lot, and indigence, the state of those who are unable to labour or are unable even through labour to satisfy their necessary wants, which to Bentham meant the 'absolute necessities' of life.¹⁵ Clearly the Poor Laws are designed basically to help the indigent. However, Bentham is also interested in the 'independent poor' or those in poverty who are not indigent. In discussing the 'collateral uses' of his proposals he points out how the independent poor would be helped, sometimes directly and sometimes indirectly. Thus his proposals help not only the indigent but the vast majority of the people in the country. Indeed, in so far as they involve labour as a general prerequisite to aid and in so far as labour is the source of wealth, the nation as a whole is helped by this addition to its wealth. This general position on the purpose of the Poor Laws as aiding primarily the indigent but also the independent poor and the nation as a whole is one which Bentham maintains throughout his works on the subject.

The second essay deals with Bentham's 'Fundamental Position in Regard to Providing for the Indigent Poor' and is by far the most important of the three.¹⁶ Here he states clearly for the first time many of the basic principles that were to characterize his Poor Law proposals. He begins with his arguments for the 'necessity for relief'. Private charity is inadequate and only a national system of public relief will solve the

problem. He then considers the 'quantum of relief' and argues that it should be limited to the absolute necessities of life. More than that would undermine the independent poor; moreover, the country could not afford it. In comparing what those on relief would receive with what the independent poor had, Bentham argues that the condition of the indigent should not be made more eligible than that of the independent poor. If it were, the independent poor would lose their incentive to work and would go on relief.¹⁷ One of his criticisms of the existing system is that those on relief are given too much - for example, they are fed too well, given meat too often. Professor Poynter claims that the 'less eligibility principle' which was so basic to the Poor Law Amendment Act of 1834, and was the 'final justification of a legal system of relief' that could be used effectively against the Malthusians in the debate about whether to abolish or amend the Poor Law, was first stated by Bentham in the *Essays* of 1796.¹⁸ While it is true that Bentham does refer to less eligibility in a later work I do not think he is thinking in these terms in the *Essays*. All he says in the *Essays* is that the condition of those on relief should not be 'more eligible' than that of those not on relief, a situation which all too often was the case under the existing system. To me there is a significant difference between 'not being more eligible' and 'being less eligible'. This is one of the two or three cases where I question Professor Poynter's excellent analysis and insightful interpretation. We will consider the problem again later in the paper.

To return to Bentham's 'fundamental positions', he argues, thirdly, that 'conditions of relief' may be exacted if they benefit the individual receiving relief or the community at large. Two conditions are specified: (1) working, as he is able, if not inconsistent with health and life; and (2) submission to governmental rules concerning the place of relief, place or work, and mode of living. Fourthly, he treats the problem of 'ability as to work' and argues that only in the case of 'utter inability' should relief be given without work. As for people with 'adequate ability', no relief should be given but for work of equal value. The work itself should be that which is best adapted to the skills of the worker so that labour may be used most advantageously. He adds, rather casually compared with his later position, that under good management work will be profitable, and later lists as one necessary reform the adoption of the 'cheapest plan of management'. A number of specific proposals follow, including the principle that 'extra-relief' should come from private charity, not at public charge. Minors may be apprenticed and made to work until they reach their majority in return for their education. Beggars must be taken to an Industry House and made to work.

In the third essay he discusses the 'Collateral Uses Derivable from the System of Industry Houses', and begins by stating the basic principle that it is far better to multiply the services performed by a single establishment (the Industry House) than to multiply establishments, with or without services, as has been done in the past.¹⁹ By following this approach it is possible to include many services which otherwise would be too expensive. In the *Essays* he distinguishes four types of collateral uses: (1) pecuniary, (2) itinerary, (3) medical, and (4) institutional. Under pecuniary he includes a 'Poor Man's Loan Office' to make loans to the independent poor and thus prevent indigence, a 'Poor Man's Bank' to serve as a 'shield to prudence', and a 'Poor Man's Remittance Office' to send money to relatives in distant places. Under itinerary he includes 'Poor Man's Inns' and 'Poor Man's Stage Houses' to aid the poor in getting to jobs elsewhere. Under medical he includes 'Medical Dispensaries' and 'Lying-in Dispensaries' for pregnant women. Finally, under institutional

he includes 'Militia-Exercise Schools' for all boys in the Industry House to serve as a check on regular military forces. As anyone familiar with *Pauper Management Improved* knows, most of these collateral uses are included there as well as some additional ones added later. Indeed the vast majority of his proposals in the *Essays* are found in his later works. Most of them are developed further in subsequent works but the basic ideas remain the same.

There are, however, certain differences between the *Essays* and later works. For one thing I get the impression that he is exploring possibilities and is not as sure of his position on various points as he is in his later works. For example, he says he might dispense medical aid to the independent poor in their own house unless it were better for them to be in the Industry House. He is not sure.

Secondly, and closely related to the first point, he seems to want to bring about changes in a more gradual, piecemeal fashion than he does in his later works. He is always concerned about upsetting established expectations since this is an invasion of security, but he seems especially concerned about this in the *Essays*. For example, he discusses the need for reform with regard to diet, but says that those now on relief or those expecting better should be introduced to the new more stringent diet gradually, *if at all*, depending on local discretion.²⁰

Thirdly, he seems to have more faith in government in the *Essays* than he has in his last two major works. The reforms that he proposes must not only be legislated by government, they must also be administered by it. There is no mention of such important later principles as the juncture of duty and interest in order to get efficient independent management. Indeed, efficiency itself is not emphasized the way it is later.

This leads to a subtle but very interesting difference between the *Essays* and the last two works. His motives seem more humanitarian in the *Essays*. The main reason why public relief is necessary is that it is inconsistent with common humanity to deny it.²¹ Many would perish without aid; they would be condemned to slow death, a worse punishment than they would receive if they had committed the worst crime. He even says that it is better that ten get too much relief than that one perish for want of it.²² The fact that the indigent have been improvident or that for some other reason they do not 'deserve' relief has nothing to do with their need and demand for it. In general the tone of the *Essays* is quite humanitarian.

Apparently Bentham decided that the scope of the *Essays* was too narrow and that he should write a more inclusive work which would place greater emphasis on management. In any event there is a 'Table of Contents' with marginals and notes for a new work on the poor dated '31 May 1796'.⁹³ A full title for the work is given in several places. On one occasion in the MSS. dealing with his work on Pitt, he says that in addition to his proposed work on Pitt he has a forthcoming work entitled *Principles of Legislation and Management relative to the subject matter of the Poor Laws*.²⁴ This title fits the 'Table of Contents' and the existing MSS. much better than any other. The 'Table of Contents' contains ten chapters. Five are concerned with various aspects of management and constitute his first major focus upon this area.²⁵ To recapitulate, it would seem that in late 1796 and early 1797 he had two major works on the poor in mind - one his critique of Pitt's Bill, and the other his *Principles of Legislation and Management* which presumably was to have contained his positive proposals and included everything else of importance that he had to say.

Actually as things turned out only certain parts of the *Principles* were written or at least have been preserved.²⁶ It thus became the most

fragmentary of his major works on poor relief. In his chapters on 'Management' he first discusses 'Employment' - i.e., who is to be employed in the Industry Houses, under what conditions, and the rules used to determine the types of employment available - what is proper and what is improper.²⁷ He also discusses 'Place' or, in other words, the place where relief is to be given. In the *Principles* three places are specified: (1) home, (2) parochial, and (3) district.²⁸ Bentham of course opts for the district, provided it is large enough, because it assures the best management. He foreshadows a fundamental later principle when he refers to the advantage of giving a manager an interest in the success of management. He adds that interest is highest where management is farmed. Unfortunately, the most important aspects of management - in particular, those concerning what he calls the 'Official Establishment' - are not developed at all in the *Principles*. In the latter part of the work he considers the independent poor and how they should be assisted.²⁹ The last two chapters were not written. At best, then, this work is but a fragment in the development of his Poor Law proposals.

Bentham seems to have set aside the *Principles* in order to write *Pauper Systems Compared*. In both the *Essays* and the *Principles* he had indicated an interest in other systems. Apparently, he decided that it would be better to publish a systematic comparative analysis of the various possible systems and the result was *Pauper Systems Compared*.³⁰ In a letter to Arthur Young dated '8th September, 1797' and published in *Bowring*, viii, 361-362, Bentham refers to his plan to publish 'two independent, though connected volumes, *Pauper Systems compared: - Pauper Management improved*'.

There is no single table of contents for *Pauper Systems Compared*, but there are a number of tables for the different parts of it that were written.³¹ The most interesting part is entitled 'Systems Enumerated'. Here he develops a more inclusive classification system than any that he had previously used.³² The longest section of the proposed work that was completed is a 95-page consecutive essay in which he compared the 'Home Provision System and Public Establishment System'.³³ In my opinion this is much the best of his many comparisons of these two systems. He considers these systems under a number of headings: (1) Extent of universality of application; (2) Economy, both with regard to employment and with regard to relief; (3) Moral influence; (4) Justice; and (5) Perfectibility. In all areas he finds public establishments far superior to home provision. There is also a comparison between large and small establishments in which he shows why large ones are superior.³⁴ In addition, he treats the various objections to public establishments and answers each.³⁵

In general, *Pauper Systems Compared* is potentially Bentham's most systematic analysis and critique of the various possible systems of poor relief. The parts that are completed are developed in greater detail than elsewhere. The arguments are more carefully thought out and more persuasive. But the work is far from complete. Had Bentham later gone back to any incomplete work on the Poor Laws this is the work that I think he would have returned to and finished.

As things worked out he seems to have put aside his *Principles* in order to write *Pauper Systems Compared* and then failed to complete the latter in order to write his *Plan of a National Charity Company for the Management of the Poor all over England*.³⁶ There is a 'Table of Contents' for the *Plan* dated as early as '15 February' that must have been 15 February 1797.³⁷ The *Plan* is divided into two parts. Part I consists of eight chapters with the following titles: '1. Authority-Local extent and unity; 2. Constitution; 3. Funds; 4. Coercive Powers; 5. Obligations; 6. Collateral Powers - pecuniary; 7. Restraints; and

8. Director's Oath'.³⁸ Those of us familiar with the published *Pauper Management Improved* will recognize immediately that Book I of that work is very similar to Part I of the *Plan*. The same is true of Part II of the *Plan*: counterparts to almost every chapter in Part II of the *Plan* became *Pauper Management Improved* and nearly all of Bentham's later MSS. embodying his proposals for a National Charity Company were to have been incorporated into the latter work. The proposed 'Table of Contents' for this work is to be found in *Bowring* viii, 360. It is true that a few of the proposed chapters in Part II of the *Plan* do not have exact counterparts in *Pauper Management Improved*. It is also true that there are chapters in the 'Table of Contents' for *Pauper Management Improved* that have no counterparts in the *Plan*. Since the two works are basically the same and since a comparison of the differences would be far too time consuming, they will be treated as one in this paper. Most of the *Pauper Management Improved* MSS. that are dated April, May, August, and November, 1797. The published version of *Pauper Management Improved* is obviously incomplete. Consequently, some important points in the unpublished MSS. will have to be included in our analysis. Although *Pauper Management Improved* is the later title, in order to save time in reading I will refer to *Plan* except where the material was written specifically for *Pauper Management Improved*.

Clearly the most important new element in the *Plan* is Bentham's proposal that an independent joint-stock company known as the National Charity Company be established in order to manage his poor relief system. The joint-stock company is to be set up like the East India Company with a Board of General Directors, 'say twelve or twenty-four', in London.³⁹ Only by having such a company would there be a juncture of duty and interest.⁴⁰ In other words, it would be in the interest of the Directors to perform their duties as effectively as possible. Although Bentham had previously referred to this principle he had never developed it fully and made it the basis for his whole system of management. In the *Plan* he argues that 'personal interest' is the most basic motivating force there is and that any system not built on it is built on 'quicksand'.⁴¹ Since money is the best way of measuring what is in one's interest, profits are to be the rewards of managers who perform their duties well and losses the punishments of those who do not. Duties are of two types: first, towards those under the managers' care - i.e., the indigent, or the paupers as he now refers to them, and secondly, those toward their principals - i.e., the shareholders in the company.⁴² The first involve humanity and the second economy. The best way of securing the first is through publicity which will be considered later. As for the second, the contract with its provisions for profits and losses and the accompanying assurance of a juncture of duty and interest is much the best way to avoid waste and secure economy. The juncture of duty and interest principle not only applies to top management - i.e., the Board of General Directors - it also applies to the management of each of the 250 Industry Houses. Each is to have a Governor who is to be very powerful but also subject to checks, a Chaplain, a Medical Curator, a Schoolmaster, an Organist-Clerk, a Governess and such other officers as are necessary.

Going hand-in-hand with this principle as a means of securing good management is his emphasis upon publicity for the actions of the manager. The best way to get proper publicity is to begin with an adequate system of book-keeping.⁴³ He proposes a new method which he calls 'tabular book-keeping' where everything is to be reduced to a table inspectable at one view. Obviously the whole idea fascinates him to the point where he makes such statements as 'good book-keeping is the hinge on which good management will turn', it is an 'indispensable basis to good management'. The records of all the important activities of management would be available for inspection and the publicity given them would insure good manage-

ment. One record would be the 'Complaint-books' in which among other things the paupers could record their complaints against management.⁴⁴ This would be their ultimate safeguard against abuse.

Just as the *Plan* spells out the duty and interest junction and publicity principles in so much greater detail than any previous work, so it is with everything else that Bentham treats. Book I is concerned with 'Political Arrangements' and considers them in much greater detail than previously.⁴⁵ The same is true of Book II which is entitled 'Plan of Management'.⁴⁶ Here he goes into infinite detail in applying Panopticon principles to his Industry Houses. The final chapter is entitled 'Pauper Education' and deals with one of the most important functions of the Company, the education of non-adults during the first 21 years of their life.⁴⁷ He lists many individual benefits from education but I think that essentially they may be reduced to three: (1) physical, such as comfort, health, strength, cleanliness; (2) mental, and here he is considering the useful knowledge that each individual should acquire; and (3) moral, and here he is considering the acquisition of such moral virtues as frugality, discipline, self-respect, self-maintenance, hard work, or even religious affection. Basically he wants them to become mature, responsible people who know how to occupy their time well.⁴⁸

Book III is entitled 'Collateral Benefits' and is similar to the third essay on 'Collateral Uses' in the *Essays* but in addition to those in the earlier work includes a great many more benefits.⁴⁹ He adds to the earlier list such benefits as 'Habitual Depredation Exterminated'.⁵⁰ Here he is advocating that smugglers, thieves, highwaymen and the like be put in Industry Houses thus protecting society from this sort of depredation. He also adds 'Imprisonment Rendered Unexpensive and Reformatory'. Here he proposes that prisons be abolished and the prisoners placed in 'strong wards' in the Industry Houses, there to be reformed and presumably eventually restored to society.⁵⁰ There are other new benefits for want of space I will omit them.

Book IV is entitled 'Pauper Comforts' and is designed to show that conditions in the Industry Houses are not going to be as bad as many think. Indeed, it would seem that in many ways Bentham's paupers are going to be better off than the independent poor. He discusses some fifty-odd different comforts, some applicable to all, others only to certain types of people. Among those applicable to all are the following: (1) 'Extraordinary security in respect to health', (2) 'Consciousness of a superior probability of long life and health', (3) 'Security against want of any kind', (4) 'Consciousness of security against want', (5) 'Constant cleanliness and tidiness', (6) 'Employment favourable to health and recreation', (7) 'Nights comfortable', (8) 'Security against annoyance, as from fellow paupers', (9) 'Security against oppression from officers', (10) 'Entertainment of various kinds, a day a week', and (11) 'A clear conscience, brightened by religious hopes'. There is a special section on the comforts of non-adults which includes such things as swimming, 'exemption from intellectual exertions of the most painful kind', and early marriage. His treatment of non-adults involves a problem since he had said earlier in the *Plan* that 'the condition of the Company's wards promises to be placed upon a footing obviously *more eligible* than that of the children of the self-maintaining poor, even in the highest paid classes'.⁵² The reason for this is that 'from every point of view, probability of life and health, good conduct and assurance of future livelihood', they are better off than the independent poor. Clearly, this does not jibe with the so-called '*suitable fare* principle' which is a basic principle for the treatment of the working hands. According to this principle, 'charity maintenance... should not be made more desirable than *self-maintenance*. Fare, conse-

quently, the cheapest that can be found, so it be nourishing and wholesome'.⁵³ This would seem to fit in perfectly with Bentham's position in the *Essays* to the effect that the condition of paupers on relief should not be 'more eligible' than that of the independent poor. But it does not fit in with the idea that the condition of non-adults in the Industry Houses would be 'more eligible' than that of their counterparts outside. Perhaps the difference can be explained as one of focus: 'suitable fare' refers largely to material things such as food whereas the non-adult's greater eligibility refers largely to non-material psychological and moral factors. But if this distinction is accepted, then I think that it probably should apply to adults as well since in Bentham's view his reforms would have made his adult paupers psychologically and morally more eligible than the independent poor. In any event neither idea - that of Bentham's paupers being 'more eligible' or 'not more eligible' than others - fits in with Professor Poynter's claim that Bentham argued for less eligibility for his paupers. I do not find this argument in any of the published *Pauper Management Improved* material. Yet Professor Poynter is correct in quoting from an unpublished MS. a statement by Bentham that from the point of view of a free labourer 'it was to be wished that the public provision appear less eligible to him than the provision resulting from his own labour'. Poynter adds: 'but for those who really needed relief it should be and appear to be as eligible as possible. To resolve this conflict he clung to less eligibility but incorporated in his plan a host of collateral aids'.⁵⁴ Once again this seems to me questionable. I think Bentham's basic position was that the condition of his paupers should not be more eligible than that of the independent poor but that he varied this on at least two occasions. First, in the case of Industry House non-adults at least, it would be more eligible especially psychologically and morally, and, secondly, in the case of the free labourer it would appear less eligible for various reasons and thus he would prefer to stay out of the Industry House. It seems to me that by qualifying the two variations it is possible to make Bentham's position reasonably consistent although on the surface it appears quite inconsistent.

The last two books of Bentham's proposed *Pauper Management Improved* were not published in Young's *Annals* or in Bowring but there are MSS. for most of what he planned to cover in these two books. Book V is entitled 'Financial Grounds' and consists basically of a detailed analysis of why he thinks his proposed plan is financially feasible.⁵⁵

Book VI is entitled 'Constitution Defended' and consists of three chapters.⁵⁶ The most interesting of these is Chapter II which is entitled 'Management, Why in a Company, not Government'. Here he argues that there ought to be a check on the operators and if government itself were the operator this check would be inadequate. On the other hand, if an independent company were operating the system, then Parliament could check it much more effectively and thus exercise more control over it. In this situation there would really be a double check, the Company checking on what was going on in its various Industry Houses and Parliament checking on the Company. A second reason for having an independent company is that in government there is a lack of strict discipline and an accompanying favouritism, improbity, negligence, and incapacity that business would not tolerate. In government there are sinister interests, sinecures, and other forms of corruption which result in general inability to resist sinister influence and make decisions in the public interest.⁵⁷ This is obviously his most critical attack on government in the Poor Law MSS.

The thing that impressed me the most about the *Plan* is that in spite of his change from governmental to company management his basic position on most important points is essentially the same as it had been all along.

What makes the *Plan* different is that everything is spelled out in such great detail, especially with regard to management. This has several interesting results. For one, everything is much more carefully planned than in other works. When Bentham plans he 'plans with a vengeance'. Every activity, every hour of the day, even Sunday's recreation, is carefully prescribed. The result is that the reader gets a feeling of much greater regimentation and, in some cases, of greater loss of freedom than in the earlier works. We will return to this later when we discuss this problem. A second, closely related result is that in spelling out the powers of managers he has to get into specifics about such things as 'coercive powers' and in doing so clearly gives them very great powers. For example, they have 'powers of *apprehending* all persons, able-bodied or otherwise having neither visible or assignable property, nor honest and sufficient means of livelihood, and detaining and employing them till some responsible person will engage for a certain period of time to find them in employment'.⁵⁸ Clearly this is a very broad power and means that even able-bodied persons would be forced to be in the Industry Houses, something he had not proposed earlier. With regard to young people he says: 'Power for apprehending non-adults of diverse descriptions, being without prospect of honest education, and causing them to be bound to the company in quality of apprentices'.⁵⁹ Other examples are in his detailed treatment of what to do about beggars, habitual depredators, the families of disreputable classes, and so on.

A closely related third point is that at times he seems less humanitarian than he did, say in the *Essays*. For example, in the earlier work he indicates that work will be required but does not go into details such as those in *Pauper Management Improved* under the heading of the 'earn-first principle'. Here he says, *inter alia*: 'when ability adequate to the task is certain, and laziness apprehended, no meal given, till the task by which it is earned is first performed'.⁶⁰ To Bentham this might seem to be 'true humanity' but to some it might seem quite harsh, especially in certain cases. Another example is in his spelling out the idea of not having the paupers' condition 'more eligible' than that of the independent poor. In *Pauper Management Improved* when he specifies what he means by this with regard to such things as diet it can be argued that his diet seems so sparse that it appears inhumane.⁶¹

One final point of a different nature: In the *Essays* he argued for gradual piecemeal changes but in *Pauper Management Improved* in the chapter on 'Prospects for Success' he argues against those who believe that he wants too much change too rapidly and that instead only minor changes here and there should be undertaken.⁶² He says that this approach will not work, that it lacks the advantages that make large change necessary. As he sees it, his plan is the only practical solution since it is based on the proper relation between cause and effect - in particular, the duty and interest junction principle. In this sense, it was not Utopian; rather it was quite realistic but it would not work unless the entire proposal was adopted.

I would like now to summarize briefly Bentham's Poor Law proposals as a coherent body of ideas. This is the second sense in which the term 'proposal' is used in the paper. Most of what will be said has already been pointed out but in a different manner. First, he believed that public relief for the indigent was essential. Private charity was inadequate; without public assistance there would be unnecessary suffering, even deaths, which could not be tolerated on humanitarian grounds. His most basic argument here was humanitarian; respect for humanity demanded public relief. In addition, the indigent had a legal right to relief of some 200 years standing. I think that implicitly he also believed that they had a moral right to it. Of course, for him this moral right

could not be based on natural law, it had to be based on utilitarian principles. I realize that he did not state this, but I think he clearly implied it.

Bentham's second basic idea was that public relief must be conceived in national terms. There must be a central authority with a uniform body of rules to provide the relief. Perhaps the worst feature of the existing system was its parochialism, its focus on parishes and all that went with this - for example, Settlement Laws. Only inefficiency, inequity, and chaos could result from such an approach. To get efficiency, equity, and order a centralized rather than a decentralized approach was essential. Of course, within the centralized system local variations of a minor nature were possible, even desirable, but the main emphasis was on the central authority with its uniform body of rules.

Thirdly, as he thought more about it he became convinced that the best type of central authority was an independent organization, a National Charity Company similar to the East India Company, rather than a governmental institution. He had many reasons for thinking that this would provide the most efficient, economical, responsible, and even equitable or just type of management, but the most basic was the duty and interest juncture principle. It was in the pecuniary interest of management to perform its duties well under such a system. These duties were of two types, those to the paupers where the principal consideration was humanity, and those to the Company where the principal consideration was economy. As I see it, Bentham was convinced that these two duties were compatible; it was not necessary to sacrifice the one in order to get the other. True humanity was economical, not profligate. There were other reasons for preferring an independent company, perhaps the most important being that given the shortcomings of government a businesslike organization would be more efficient. Moreover, government could check an independent company and thus make it responsible much more effectively than it could a governmental institution.

Fourthly, with regard to management itself, it seems to me that his main concern was with providing it with broad powers so that it could accomplish its goals, yet at the same time instituting significant checks so that the powers would not be abused. Some of these powers were coercive since Bentham believed that apprehending certain types of paupers and placing them in one of his Industry Houses was essential to the successful achievement of his goals. Whether he had to go as far as he did is a question that we will return to. In general the powers were designed to give management effective control so that it could exercise its responsibilities efficiently. As for the checks on management to make sure that its powers were not abused but rather were exercised responsibly, Bentham's main focus was on publicity. Records would be kept of everything that went on in the Industry Houses - hence his great emphasis on book-keeping - and would be made available not only to those in the Industry Houses and the Company management but also to the general public and to Parliament. Special emphasis was placed on having visitors come to the Industry Houses to check on what was going on and, in particular, to check the 'Complaint-books' of the paupers.

Fifthly, with regard to relief, it must be given in a large-scale establishment rather in a small-scale establishment or in the home through some system of out-allowances or home-provision. Basically, the reason for this was that only in a large-scale establishment could Bentham's combination of goals be achieved. As pointed out previously, he wanted to combine humanitarian goals with those of efficient management, and I think that it was probably the inability of any system other than one based on large-scale establishments to achieve his goal of efficiency that was primarily responsible for his rejecting other systems.

Sixthly, and closely related to the fifth point, the best type of large-scale establishment was one based on his Panopticon principles of architecture. An Industry House so designed not only provided for better inspection and control, it also benefited the paupers themselves through its provisions for separation and aggregation, ventilation, work, and so on. And since each Industry House was walled in, it made it possible for each to be a self-contained unit. This was essential for Bentham's experiment - for his planned economy within but separate from the national free economy.

Seventhly, relief was only to be given in return for labour. One of the worst features of the existing system was that it encouraged idleness which to Bentham was a great vice. Labour, on the other hand, was a great virtue both in itself and in that it made possible other virtues such as self-reliance, self-maintenance, frugality, and the like. Consequently everyone in the Industry House had to work unless it was not possible to do so. This meant that even the infirm, the sick, and the aged had to do such work as they were capable of doing. The kind of labour would vary not only with ability but also with the job market - the inmates being taught how to do the jobs with the largest number of employment openings.

Eighthly, the condition of the paupers in the Industry Houses was to be no more eligible than that of the independent poor. One of the great evils of the existing system was its prodigality; paupers were frequently given meat and other luxuries that the independent poor could not afford. This was unjust and an encouragement to go on relief. It was also uneconomic in that it increased the cost of maintaining the pauper to the point where the Company could not make a profit and Bentham's proposals depended for their success upon the profits of the Company. We discussed earlier two exceptions to the 'no more eligible' principle: (1) the situation should *seem* 'less eligible' to the independent labourer so that he would remain independent if possible and (2) the situation at least of the minors in the Industry House was really 'more eligible' than that of the minors among the independent poor in that they were physically, mentally, and morally better off.

Ninthly, partly because of his humanitarianism and partly to compensate for their having to leave home and come into the Industry House where they would have to work and follow a rather stringent regimen, Bentham provided his paupers with a number of 'pauper comforts'. I think that he really believed that in many areas which he listed as 'comforts' his paupers would be better off than the independent poor. They would be more healthy, live longer, be more secure against want, and so on down his list.

This brings us to the tenth point, the multiple purposes or functions of the Industry Houses. They served not only to provide relief for the able-bodied who needed it, say, because of stagnation, but also to educate the young; to care for the sick, infirm and aged; to extirpate mendacity and habitual depredation; or even to 'render imprisonment unexpensive and reformative'. I think that the reformative concept should probably be universalized since from Bentham's point of view everyone would be reformed at least to some extent. Many of these functions were referred to as 'collateral uses' or 'collateral benefits' of the system and were considered impossible under any other system. Moreover, collateral benefits would help not only those in the Industry Houses, but also the independent poor and the nation at large. For example, the *Employment Gazette* would help everyone in need of a job, whether dependent or independent poor, to find one, as would Bentham's facilities for travelling to the job. He would also provide loans for the independent poor to keep them independent, as well as banking facilities to encourage frugality, and superannuation annuities to provide for old age. As for the nation as a whole, the

produce of the labour of the Industry House inmates would add to its wealth. In particular, since the Industry Houses would produce their own food, they would add to the national food supply. Moreover, the national economy would in no way be adversely affected by relief measures since the Industry Houses would be separate and self-contained. Ideally, the planned economy of the Industry Houses would not interfere with the free economy of the outside world. Another benefit to the nation would be the augmentation of useful knowledge as a result of Bentham's experiments and book-keeping. Still another would be the strengthening of the national forces without expense to the nation because of the military training the young would receive. One final benefit of the many to the nation as a whole would be that the danger of revolution being brought about by the dissatisfied poor would be obviated once Bentham's proposals for satisfaction were instituted. Within the nation other than the independent poor there was one other group that would have benefited enormously - the ratepayers. Once the National Charity Company was established the rates would be decreased. Eventually (on one occasion he said in twenty years) they would be eliminated altogether if things worked out the way he anticipated.

These, then, are the most essential aspects of Bentham's Poor Law proposals as a coherent body of ideas. Put differently, this is what I think Bentham really meant. Obviously any number of points have been omitted, many of which were discussed earlier in the paper. As for my reaction to his proposals, in general it is favourable, but I do not think things would have worked out as well as he thought they would. As Professor Poynter has pointed out, there is an utopian element in Bentham's thought. Indeed, Bentham himself recognized this in his letter to Young when he referred to his *Pauper Management Improved* as his 'Utopia'.⁶³ To illustrate this point, I think it would have been more difficult to combine humanity and economy than Bentham seemed to believe. In discussing *Pauper Management Improved* I pointed out that once he got involved in spelling out economy he seemed to invade humanity on occasion. But on balance I think that he would have been able to reconcile the two largely because his basic motivation was humanitarian. He himself says in that same work: 'Charity is the *end*; economy but the *means*'.⁶⁴

My most important criticism of Bentham centres around the broad coercive powers given to management in *Pauper Management Improved*. 'All persons, able-bodied or otherwise', that did not meet certain standards were to be 'apprehended' and 'detained' and 'employed' in an Industry House. In his earlier works he had not proposed this; instead he had made entry into the Industry House voluntary at least for the able-bodied needy. The earlier position seems to be justified, the latter, a highly questionable invasion of freedom. For the same reason I am inclined also to question the power of apprehending non-adults and binding them as apprentices. Closely related to this is his later proposal that not only beggars whom he had included all along but also 'habitual depre-dators' of various types be put in the Industry Houses. He would also have put prisoners there. Obviously what he is proposing is that his Industry Houses perform nearly all of the various functions that the Panopticons were designed to perform. He justifies this as a 'collateral benefit' of the system. But I question it. At the very least I think that it would have had bad psychological effects on the poor to know that they were being put in an institution with criminals, potential criminals, and disreputable classes generally. True, Bentham has different classes separated, but they are in the same building. To summarize this part, I think the proposals would have been better if admission to the Industry Houses had been voluntary, or largely voluntary, rather than compulsory,

and if those admitted had been confined to the people traditionally aided by the Poor Laws rather than expanded to include so many others. When I use the term 'voluntary' I mean that the Company would not be given the power to coerce the pauper and in this sense his entry would be voluntary. Put differently, there would be no positive action to apprehend and detain him. If he came, he would come because he felt the need and the law required that in order to get relief he had to go to an Industry House and work.

One further criticism concerns the extensiveness of Bentham's planning. As I pointed out earlier, when he planned he planned 'with a vengeance'. This was probably characteristic of almost everything he did; when he did it he did it thoroughly. While I think that in general the planning was desirable, I do not think he had to go as far as he did. It was not necessary to prescribe in such detail every aspect of the pauper's life. There could and should have been more 'free time'.

In my view the changes that I have suggested would have removed the most important objection to Bentham's proposals on the ground that they are repressive or even tyrannical and show little or no concern for the freedom and dignity of the inmates of the Industry Houses. But I am convinced that they would not have satisfied Professor Bahmueller since his interpretation of Bentham is so different from mine. If mine is on the whole favourable and positive, his is unfavourable and negative.

In the 'Introduction' to his dissertation he says that although there are progressive features in Bentham's proposal 'because it entailed a single national administrative policy for Poor relief' he is going to try to show that the evils associated with it far outweigh the good. He then states:

Bentham's Poor Law Reform was replete with the repressiveness so pervasive, so soul destroying, and with so little regard for either the civil liberties or the emotional sensitivities of those whose health (moral as well as physical) and happiness it set out to promote and protect, that its administrative progressiveness pales in the comparison. Left in Bentham's hands, the Poor would, in respect of those who refuse to travel 'beyond freedom and dignity', be worse off by far than they in fact were.⁶⁵

As he proceeds throughout the dissertation to make his case for an interpretation which turns out to be more negative than the above quotation would indicate, we find him making the following claims: First, Bentham's reasoning was in either-or terms, 'either humanitarian concern would utterly suffuse a relief system (and therefore run the risk of rendering it unpractical) or it must be removed entirely, replaced with a muscular and unbending pragmatism, rule governed to the last.... There was no middle ground. For Bentham sentiment had no standing'.⁶⁶ Secondly, Bentham's condescending paternalism is partly responsible for his repressiveness, for his attempt to control the poor-panopticon inmates totally, and, if 'that truth were known, we would soon suspect that it wasn't only the indigent that Bentham wanted to control, but us too - *all* of us'.⁶⁷ Thirdly, with regard to 'the charge that the farmed-out poor were little better than the slaves of their master', Bahmueller says: 'Bentham had little respect for such arguments; human dignity figured scarcely at all in his scale of values'.⁶⁸ Fourthly, Bentham thought of the poor as 'hands' and Bahmueller observes: '"People" produce and consume; hands only produce and Bentham's poor-panopticons were inhabited by hands'.⁶⁹ To me this clearly implies that in Bahmueller's

opinion the poor really were not considered full-fledged human beings by Bentham. Bahmueller states this later. Fifthly, with regard to Bentham's statement that charity is the end, economy the means, Bahmueller says: 'The statement was thoroughly disingenuous; the search for saving every farthing that might be saved and for gathering together every fragment of labour took on a life of its own'.⁷⁰ Sixthly, in referring to liberty Bahmueller says Bentham 'granted that his plan entailed an infringement of liberty; but what of it? Liberty necessarily is circumscribed in direct proportion to the increase of security; the liberty which this plan would in fact destroy is the liberty of doing mischief'.⁷¹ Bahmueller continues with examples of Bentham's sacrifices of liberty and concludes with the following: 'He justified the rigours of this regime in a very odd (not to say dishonest) way, for he claimed that, so far from destroying liberty, his system actually enlarged it:

If security against everything that savours of tyranny be liberty, liberty in the instance of this hitherto luckless class of human beings can scarcely every have yet existed in anything near so perfect a shape'.⁷²

Seventhly, in his 'Conclusion' after discussing Bentham's positive contributions, he returns to the negative approach of the dissertation. Bentham's reforms necessarily entail the 'obliteration of the dignity of the human spirit'; he makes 'ciphers of the poor themselves, considers them not as human personalities, but as "stock", as "hands",...as less than fully human'. Then we find the *coup de grâce* in the following summary statement: To imagine as in any sense good a society whose weakest members are stripped of the most basic civil liberties and locked up in institutions suffused with inescapable, ever watchful authority, with web upon web of absolute rules is witless. Perhaps enough has been said of the repressive and exploitative nature of many of the features of Bentham's Poor Law reform to see that to call it historically 'progressive' would be to make a⁷³ mockery of any notion of progress worthy of the name.

He adds that happiness cannot be found in ascetic conditions such as those imposed by Bentham where 'even the smallest pleasure was denied'. Bentham's vision was one 'of life without either joy or spontaneity; both were too dangerous to be sanctioned'.⁷⁴

Professor Bahmueller's interpretation of Bentham may be correct but if it is mine is obviously incorrect. I have already indicated that I consider Bentham a genuine humanitarian who placed a high value on individuals and their physical, mental, and moral development. I have also indicated that I thought he successfully combined humanity with economy with the former as the end, the latter as the means. I have also argued that he believed that he needed controls not for their own sake but rather in order to accomplish his goals. Moreover, I claimed that he placed checks on the controls that seemed to me reasonably effective.⁷⁵

I would like to conclude with a consideration of something that I have referred to several times but have not developed: Bentham's conception of and attitude towards liberty. Unlike Bahmueller I think he was very concerned about liberty. One of the main arguments against his proposals was that they involved the loss of the liberty of remaining at home, coming and going as one pleased, or in general, doing what one pleased. His answer was that these losses in liberty were more than offset by the gain that his paupers would receive when they became free from want. Under his proposed system this would be true for the first time. They would have a sense of

security that they had never had before, a peace of mind that they had never had.⁷⁶ Not only would they have security in this sense, they would also have security against oppression on the part of management and against annoyance from fellow inmates.⁷⁷ I submit that this is what Bentham is thinking of in the quote that Bahmueller considers 'odd (not to say dishonest)'. When Bentham says, '*If security against anything that savours of tyranny be liberty*', he means by this, *security against the tyranny of want, the tyranny of officials or government, and the tyranny of society.* And since he believes that his paupers will have freedom or security in these senses to a greater extent than they have ever had before, he makes his extravagant claim that liberty in these senses 'can scarcely ever have yet existed in anything near so perfect a shape'. One may not agree with this claim, but in my view whether or not it is valid, *it certainly indicates a concern for liberty, at least in the negative sense of freedom from want and from oppression by government or society.* Although the concept of freedom in the positive sense, or the freedom to become one's best self, as T.H. Green put it, had not yet been developed, I think it can be argued that it is implied in Bentham. For he believed that his paupers, especially the non-adults raised in his Industry Houses, would be better off physically, mentally, and morally than other paupers. They would thus be *free to realize their potentials as moral beings* in a way which other paupers would not. I realize that I am reading this into Bentham, but I think that if what I have said previously is correct, I am justified in doing so. On this point, one that I am sure that Professor Bahmueller will consider my most fantastic example of wishful thinking, I will let my defence rest.

NOTES.

1. Other treatments of Bentham's Poor Law proposals include those by M.I. Zagday, 'Bentham and the Poor Law', in G.W. Keeton and George Schwartzenberger (eds.), *Jeremy Bentham and the Law* (London, 1948), 58-67, and Gertrude Himmelfarb, 'Bentham's Utopia: The National Charity Company', *The Journal of British Studies*, vol.10, 80-125. Excellent bibliographies are to be found in both Poynter and Bahmueller.
2. The following are the most important in other boxes: xcv. 143-145, cxlix, 47-145, clv. 17-22, 39-40, 120, clvii. 5-7.
3. For an account of what Bentham read, the people he contacted, etc., see Bahmueller, *op.cit.*, 197ff.
4. *Bowring* viii, 361-8.
5. *Ibid.*, 361. There is a considerable amount of material on 'Population Tables' in the MSS. in cxxxiii, 350-380, and cliiia, 155-156. The MSS. that are dated have dates as early as 1796 and as late as 1798. Most seem to be 1797.
6. The only two MSS. on this that I can positively identify are xccci. 4 (dated '12 Feb 1796') and cxxxiii. 91-92 (headed 'Additional Cases' and dated 'Dec. 1797').
7. *Bowring* viii, 365.
8. *Ibid.*, 365-8. I have found no MSS. designed specifically for this, but the subject is treated in the material for the chapter on 'Pecuniary Estimates' in *Pauper Management Improved* in cliib. 315-329.
9. The MSS. for the *Observations* are to be found in cliiib. 352-478, cli. 454-472, clv. 120. There are several versions used for circulation. Most of Bentham's critique is published in *Bowring* viii, 440-61. This begins with a 'Note' by Chadwick for an edition edited by him and printed for private circulation in 1838.
10. Although the Hammonds, Chadwick, and Poynter believe this, Bahmueller on 59-60 doubts it.

11. The ensuing brief critique may be found in the published version of *Bowring* viii, 441-61.
12. The MSS. for the *Essays* are in cliia. 1-262 and cliiia. 1-77.
13. cliia. 59. Moreover, surrounding Bentham's original material for part of the third essay is a small folder headed 'Collateral Uses' and dated '1796'.
14. Rearranged in the proper order this is located as follows: cliia. 57-67, 196-197; cliiia. 32-54; cliia. 201-204, 215-218. The copyist has used the shorter of two versions of the second essay and Bentham has suggested that the longer should be appended in the form of 'Notes'. (The longer is to be found in cliia. 221-262.) The longer contains his reasons for holding his 'fundamental positions' and, in my opinion, is more important for a clear understanding of Bentham than the copyist's version.
15. cliia. 57.
16. Essay II is found in cliia. 59-67.
17. cliia. 61-62.
18. Poynter, *op. cit.*, xxv. 125-127. Other references to less eligibility are on 108, 139, 283, 320, and 327. Incidentally, Professor Bahmueller agrees with Professor Poynter on this point but since Professor Poynter is cited in his evidence and the same MS. reference is also used, I am focusing my criticism upon Professor Poynter. Bahmueller, *op. cit.*, 149-151, 258-259. Moreover, it is a major point for Poynter.
19. The third essay is located as follows: cliia. 196-197; cliia. 32-54; cliia. 201-204, 215-218.
20. cliia. 65.
21. These arguments are found in cliia. 61, 225, 8-24.
22. cliia. 18.
23. cxxxiii. 10. The term *Poor* is used to head the MSS. for this work.
24. cliib. 356. This is dated '6 January 1797'.
25. They are entitled 'Management: 1. Employment, 2. Supply, 3. Place, 4. Official Establishment, 5. Collateral Uses'.
26. Those that we have are so scattered in all four boxes that it seems better not to list them all here. Instead we will refer to the more important ones as we proceed.
27. The MSS. for this include: cxxxiii. 5-9, cli. 171-222, clivb. 278-406. There are number of starts here and more MSS. than on any other topic treated in the *Principles*. Many of these are dated May, 1796.
28. The 'Table of Contents' for this is in cliia. 78. It is dated '5 May 1796'. The body is not complete, but parts are found in cliib. 377-387, 453-528.
29. The following MSS. deal with the independent poor: cliiia. 214; cxxiii. 13; cliiia. 218-226, 235-236, 248-249, 237-247, cli. 289-298.
30. On one occasion he indicated a sub-title: '*or exhibiting a Comparative View of the Several Systems establishable as well as established for the Management of the Concerns of the Poor*', cxxxiii. 2. Most of the material for this is headed *Poor View* and is to be found in cliib. 365-564. The material is not dated but in his preface (clivb. 414) he states that he first began writing in this field in 1778 about 19 years ago which would place it in 1797. Incidentally, the earlier material on Pitt was labelled *View* but once the title of the Pitt work was changed from *View of the Poor Bill* to *Observations on the Poor Bill Introduced by Mr. Pitt* and the decision was made to publish *Pauper Systems Compared*, the former was referred to as *Poor Bill*, the latter, as *Poor View*.

31. See cxxxiii. 2, cliva. 75-78. Some sections were completed and placed in folders with labels by Bentham.
32. cliib. 430-438. Presumably he planned to write about each of these but unfortunately did not do so.
33. *Ibid.*, 453-515.
34. *Ibid.*, 516-528.
35. *Ibid.*, 447-452, 530-564.
36. In the proposed advertisement for the *Plan* he refers to his plans to publish the *Principles*, cli. 106. Apparently at that time he planned to go back to the *Principles* after finishing the *Plan*, but turned to *Pauper Management Improved* instead.
37. The *Plan* 'Table of Contents' is found in cliva. 68-69. The precise title for the projected work is in cliva. 12.
38. There is a complete MS. for Part I. All but Chapter 2 is in cliva. 14-26. Chapter 2 is in cxxxiii. 81-82.
39. To simplify the checking of references, where materials have been published in Bowring's *Pauper Management Improved* Bowring will be cited. Otherwise the MSS. will be cited. The reference here is to the 'Constitution' of the Company, *Bowring* viii, 370.
40. *Ibid.*, 380.
41. *Ibid.*, 381.
42. This is from *ibid.*, 380 where he is discussing the duty and interest junction principle. Later (*ibid.*, 391) in discussing book-keeping he refers to the obligations of the Company to the paupers, their individual friends, the rateable parishioners, the stock-holders, government, and the public at large.
43. The chapter on book-keeping is published in *ibid.*, 391-394.
44. *Ibid.*, 393.
45. *Ibid.*, 369-372.
46. *Ibid.*, 372-395.
47. *Ibid.*, 395-397. Bentham had been concerned about education from the beginning and planned to deal with it in one version of the *Principles* but did not do so. The MSS. on education are dated 1797 or 1798. Most seem designed to go with the *Plan*. The published portion is rather limited. The most important unpublished MSS. are the following: cxxxiii. 99-106 and cliia. 79-141.
48. cxxxiii, 102.
49. *Bowring* viii, 397-430.
50. This proposal is mentioned briefly in the published *Pauper Management Improved* but unlike the other proposals is not developed at length and I have found no unpublished MSS. on it.
51. This is to be found in *ibid.*, 430-439. Unpublished MSS. are in cliib. 251-265 and cxxxiii. 93-97.
52. *Bowring* viii, 422.
53. *Ibid.*, 384.
54. Poynter, *op. cit.*, 126-127.
55. The MSS. for this Book are as follows: Ch.I, clivb. 396-514, cli. 267-272; Ch.II, cliib. 317-329, clivb. 526-545; Ch.IV, cliib. 334-340; Ch.V, cli. 293-400, clivb. 546-584, plus several fragments; and Ch.VI, cli. 293.
56. The MSS. for this Book are as follows: Ch.I, cxxxiii. 34; cliib. 298-332; and Ch.II, cliva, 79-80, cxxxiii. 19, cliib. 267-297. I could not find the MS. for Ch.III.
57. cliib. 267ff.
58. *Bowring* viii, 370.
59. *Ibid.*
60. *Ibid.*, 383.

61. *Ibid.*, 387-388.
62. *cli.* 396-400.
63. *Bowring* viii, 362.
64. *Ibid.*, 430.
65. Bahmueller, *op. cit.*, v-vi.
66. *Ibid.*, 72.
67. *Ibid.*, 191.
68. *Ibid.*, 198.
69. *Ibid.*, 227.
70. *Ibid.*, 251.
71. *Ibid.*, 277.
72. *Ibid.*, 279.
73. *Ibid.*, 367.
74. *Ibid.*, 368.
75. Incidentally, Bahmueller goes even further than I do on this by claiming that Bentham provided a system of management that was 'thoroughly responsible - and it ensured that mistreatment of wards would be well-nigh impossible'. *Ibid.*, 366.
76. Bentham refers to this on a number of occasions. In the published *Pauper Management Improved* he lists 'security against want of every kind' and a 'consciousness of security against want' as two of his 'pauper comforts'. *Bowring* viii, 430. Tranquillity is later added to the list. *Ibid.*, 432. He also goes into this in the unpublished MSS. for *Pauper Systems Compared* when he discusses objections to his proposed Industry Houses and answers each. He says at one point that the hardship objection is not really valid, that rather than focusing on the comforts of home that paupers would lose, one should focus on what they would gain, the chief comfort of all, security from want. *cliib.* 541-542.
77. *Bowring* viii, 431.

JEREMY BENTHAM AND DEMOCRATIC THEORY*

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In contemporary discussions of democracy, Jeremy Bentham usually appears as an exponent of a version of 'classical' democratic theory along with such diverse writers as Paine, Rousseau, Kant, James and J.S. Mill and the authors of the *Federalist*. Until recently, many writers have been somewhat scornful of these 'classical' theorists for placing too great an emphasis on the individual voter, majority rule and the common good and too little on elites, groups and the importance of power and influence outside the electoral system.¹ Nevertheless, some recent writers have begun to take a more favourable view of the 'classical' theorists. Carole Pateman has attempted to revive a theory of democratic participation based on Rousseau and oppose it to modern theories.² Dennis Thompson has recently reconsidered favourably John Stuart Mill's contribution to democratic thought,³ in light of modern developments and criticisms of his doctrine and method. But Bentham's contribution to democratic theory has never been properly assessed. The massive *Constitutional Code* has not received much detailed attention either by friends or by critics.⁴ There are very few scholars who have reached the actual text of the *Code* as opposed to the⁵ introductory essays collected by Richard Doane for the Bowring edition. In this paper, I shall briefly present an account of the first volume of the *Code* as a theory of democratic administration. Secondly, I shall consider Bentham's contribution to several problems of interest to students of modern democratic thought. The first of these concerns the definition of democracy and the role of 'the people'. The second concerns two related problems: the criticism that 'classical' theory is unrealistic; and the criticism that Bentham provides for the 'tyranny of the majority'. I shall argue that for each of these problems Bentham has a distinctive and important contribution to make and that this contribution may be found through the study of the often exasperating but also insightful *Constitutional Code*.

I

Bentham's analysis of democracy which appears in the *Constitutional Code* might best be approached in terms of four systems: (a) a system of aptitude and economy; (b) a system of authorities and functions; (c) a system of subordination; and (d) a system of securities. Although Bentham's provisions concerning these systems are justified ultimately in terms of the greatest happiness principle, this ultimate justification is treated fairly superficially. He is more concerned with an analysis of the constituent parts of the four systems, and in this respect we shall follow Bentham.

a) System of Aptitude and Economy. The student of the *Constitutional Code* is soon aware that Bentham does not concentrate on subjects usually associated with 'classical' democratic theory such as majority rule, universal suffrage and equality. If the greatest happiness of the greatest number is the 'all-comprehensive object, or end in view', the principles of maximising aptitude and minimising expense are the means to achieve this end.⁶ By maximising aptitude Bentham means primarily the process of education, examination and appointment which he has devised in the *Code*, and this process deals with the task of acquiring for public office what would today be called an educated elite or leader-

*This paper was read at the Bentham Studies Conference, 9 July 1979. I am most grateful for the helpful suggestions and criticisms made during the discussion. Although the paper remains largely in its original form, these suggestions will be developed elsewhere.

ship.⁷ On the one hand, Bentham seeks to define the qualifications for each position. The Health Minister and his subordinates, for example, must be expert especially in medicine and chemistry, and in addition, know enough about geography to deal with problems of climate, temperature and disease in various parts of the world where citizens would travel.⁸ The Foreign Minister (and his subordinates), in addition to a knowledge of Political Economy, History, Geography, Statistics and International Law, qualifications he shares with the Finance⁹ Minister, must also be able to read, write and speak several languages. On the other hand, Bentham is not simply concerned with qualifications. The official must possess more than intellectual aptitude. Bentham calls this additional factor 'active' aptitude which makes a person suitable for public office. We can obtain some insight into what Bentham means by active aptitude from an interesting reply he makes to a possible objection to his arduous examination system, that 'timid merit' would be effectively excluded from office (is Bentham referring to himself?).¹⁰ Bentham admits that this sort of person would be excluded but replies that he would nonetheless be able to find employment in private life and in addition achieve a public reputation through the alternative of writing for the press. Thus, Bentham is willing to see a minority of talented but timid persons unable to enter public life in order that the system successfully enlists the talents of active personalities.

Bentham's treatment of moral aptitude reflects his long held association of morality with popular opinion.¹¹ To maximise moral aptitude the first rule is to place sovereign power in the people and the second, to hold public officials responsible to this sovereign power.¹² Legal punishment is deemed the best means to prevent corruption and the abuse of power in office, and the fear of punishment leads officials to do their duty to act to promote the greatest happiness. However, this account of morality does not provide much insight into the character which Bentham thinks public officials should ideally possess. He takes up this theme when setting out the institutions of the appointment system.¹³ Moral aptitude is treated very differently from intellectual aptitude. Bentham seems anxious to limit the range of topics on which a candidate may be interrogated concerning morality. He leaves it to the legislature to make this limitation but adds some advice that 'irregularities of the sexual appetite' should not be scrutinised, as being irrelevant and also annoying to third persons.¹⁴ Members of the appointment judicatory question the candidates about morality. The results are entered into a register which Bentham calls the 'Candidates Character Book' with legal penalties for false remarks.¹⁵ The judges, however, do not vote on the moral aptitude of candidates as they do on their intellectual aptitude. The information obtained is simply passed on to the official who makes the final appointment to take into consideration when he makes his choice. It is clear that Bentham has no conception of moral virtue (in the Aristotelian sense) which would be a condition for office. Even today appointments depend largely on references concerning character from previous employers. Bentham does not require candidates for public office to provide such references, although it is fair to say that he does not preclude their being requested.

Bentham takes up the subject of morality at several other points in the *Code*. He refers to the Legislator's Inaugural Declaration as a 'moral code' but means by this a set of principles to which the legislator must subscribe in order to maximise the greatest happiness.¹⁶ Later in the *Code* he considers the problem of codes of conduct for officials.¹⁷ While he allows for procedural rules of deportment for

both officials and 'suitors' who deal with the officials, he decides in the end to exclude more generally framed codes of good manners as appeared in the Articles of War and Mutiny Act.¹⁸ Thus, we see that Bentham tends to minimise the importance of a personal morality or character generally as a condition for public office.

Bentham's system of pecuniary competition in which equally qualified persons compete to gain positions by accepting the lowest salaries provides a further insight into his conception of the sort of person who should hold public office.¹⁹ Pecuniary competition enables the operations of government to be carried out with considerable economy. However, it also excludes the poor from public office. Bentham readily admits this consequence of his system but believes that even the poor can benefit from such an exclusion. Although a poor man might initially be excluded from holding office, if talented, he has the alternative of first earning his fortune in private life before entering public service. In addition, being poor, he would be more highly motivated to achieve success than the rich man who already possesses wealth and position. But to abandon the pecuniary competition principle in order to admit what Bentham calls the 'unopulent' to office would require an increase in taxes which would fall hardest on the poor.²⁰

The system of aptitude and economy pervades the whole of the *Code*. Through it Bentham provides in rich detail for a government service of active talent, independent wealth, and considerable economy. This is the human 'motor' of the *Code* without which the institutional structure would be an empty shell. Through Bentham's treatment of aptitude and economy, we can also approach the very important problems of competence and leadership in public office.

- b) System of Authorities and Functions. Bentham's distinction of the four authorities in the state (Constitutive, Legislative, Judicial, and Administrative) is connected with his elaborate delineation of a multiplicity of functions through the way that both are concerned with defining and limiting the exercise of power.²¹ In a later section I shall examine more closely the importance of Bentham's distinction between constitutive and legislative authority for a definition of democracy. At this point it will suffice to note that in distinguishing between the various authorities we must pay as much attention to the limitations on the exercise of power as to the enumeration of the powers. Although the other three authorities are subordinate to the constitutive authority, by their very existence in the state they effectively limit the power of the constitutive authority. The 'omnicompetence' of the legislative authority is carefully balanced against the sovereign power of the constitutive authority.²²

Bentham's analysis and classification of the functions exercised by various officials ('functionaries') in the state is perhaps his greatest achievement in the *Code*.²³ This achievement has largely been obscured by Bentham's use of technical language and burdensome detail. In his detailed delineation of the various functions, it is tempting to think of Bentham as trying to apply the principles of the division of labour to politics in order to achieve more efficient government. But he does not proceed in this manner, that is to say, of simplifying tasks or organising them so that each functionary performs a small part of the whole and the whole is more productive. On the contrary, individual officials perform a wide range of functions. Bentham's object is rather to define the power of officials in terms of a number of distinct functions so that the officials can be held responsible for their exercise. While Bentham is concerned with efficiency, especially in preventing waste, it is not his preoccupation; he is more concerned with democratic accountability which his system of functions helps him to achieve.

The system of bookkeeping, for example, serves not only to overcome inefficiency in government practice but more importantly to provide for 'open' government.²⁴ Unless books and records of various government departments are clearly and logically organised, no amount of scrutiny by the press or interested citizens can uncover subtle forms of corruption as well as waste. Bentham's awareness that successful democratic government depends on a system of records that is 'clear, correct and comprehensive' is an insight which, I believe, no other 'classical' democratic theorist possessed and even some modern administrative theory seems to assume that arrangements for simple efficiency fulfil the requirement of accountability.

In this analysis of functions, Bentham attempts a comprehensive statement of all the functions which government officials (and citizens) need perform, assigns particular functions to particular officials, and devises means to hold them responsible for exercising them. Bentham believes that with this comprehensive plan, it is then possible to hold officials responsible, but without it the most enlightened government can not succeed.

- c) System of Subordination. A number of important sections of the *Code* are devoted to relations within administrative hierarchies and the protection of both officials and the public from inefficiency, corruption and oppression.²⁵ Bentham's main aim is to establish clear lines of responsibility within government departments. Both his well known opposition to decision by committees and boards and his somewhat extreme requirement of continual attendance arise from his desire to hold specific officials responsible for administrative decisions.²⁶ For the same reason, Bentham pays close attention to relations between various levels in administrative hierarchies. But he is concerned with more than arranging the various grades and assigning functions to each. He needs to ensure that superiors ('superordinates') have sufficient power to be able to render them responsible for their subordinates, and that subordinates comply with directives of superiors and generally discharge their assigned functions. Bentham is sensitive to the position of the subordinate official in both his relations with superiors and members of the public. If the public needs protection from the corrupt and inefficient official, so the subordinate official needs protection from his unscrupulous supervisor. Bentham notes at one point that the official needs protection from more than unfair dismissal; superiors can make life so unpleasant for a subordinate that he seeks refuge in resignation.²⁷ The remedies which Bentham provides are both legal and non-legal. He relies a good deal on publicity to government proceedings and the ameliorating influence of public opinion. Bentham is also sensitive to the human problems which bedevil large-scale organisation. In one example he refers to the pain of humiliation which should be taken into account when promoting a subordinate to a superior position over someone who has held this position for a long period of time.²⁸

Bentham sees as his main task, however, the prevention of waste and corruption both within the public service and in its relations with people and firms outside government. He realises, perhaps more than any other student of democracy in his day, that the great enemy to democracy is widespread corruption in government and that democracy can only succeed if corruption is kept to a minimum. The sections of the *Code* entitled 'Insubordination Obviated', 'Oppression Obviated', 'Extortion Obviated', and 'Peculation Obviated' testify to his emphasis on this theme.²⁹ He uses the word 'corruption' in a broad sense to include inefficiency and waste in government as well as criminal delinquency. His discussion, for example, of whether to use permanently employed staff or outside contract labour in construction and maintenance

work remain matters of importance today. His most striking suggestion is that in a society where corruption is endemic it would be better to appoint officials by lottery than to attempt to establish the system of appointment he proposes.³⁰

- d) System of Securities. Bentham's treatment of securities for good and responsible government might be seen as the anchor of the *Code*.³¹ He brings together a variety of means elaborated in the *Code* by which aptitude in all of its forms - moral, intellectual (cognitive and judicial) and active - is to be secured. The system of securities was intended to prevent the misuse and abuse of power more effectively than any other constitutional system known at the time and especially the U.S. Constitution. Bentham could also claim that his system dealt with the additional malaises of inefficiency and non-performance of duty. In seeing this formidable arsenal of securities brought together, the reader of the *Code* can appreciate Bentham's considerable analytic skill. The securities operate on so many different levels that it is difficult to see how officials could conspire to avoid their force.

Let us consider as an example the securities (or 'checks' as Bentham calls them) which are brought to bear on the Prime Minister.³² In the first place there are a number which arise from external sources such as the electorate, legislature and judiciary. Although the Prime Minister is appointed by the legislature, he can be removed from office both by the electorate and the legislature. He is also liable to be tried by a special judicatory for any criminal act. He has a number of duties to perform in relation to the legislature for which he is held responsible, and he can be removed from office for failing to perform them. He also faces loss of office if he accepts another office in the state or accepts office, gift or honour from a foreign state. Secondly, there are a number of checks which arise from the way he is required to organise his and his subordinates' activities. For example, he is required to keep full records of all business with copies of documents distributed both within and beyond his office. He is required to make fully public all business unless a special case for secrecy can be established. He must appoint a 'depute' who will act as a substitute if he is absent, and he is responsible for the depute's acts. Thirdly, he has a special responsibility for his subordinates. This includes following the system of examination and appointment and exercising a wide range of functions (including dismissal) for waste, inefficiency or corruption. At this point, Bentham incorporates the whole of the securities exercised by superiors in the administrative branch generally into the Prime Minister's responsibility for subordinates. Finally, the Prime Minister is subject to the functions exercised by the Public Opinion Tribunal, which keeps track of his activities and reports and criticises them.

Through these four systems - aptitude, authorities and functions, subordination and securities - Bentham's theory of constitutional government can be best approached and understood. By approaching it in this way, both the scope and design of his enterprise are more fully revealed. These systems, of course, serve the ultimate end of maximising the greatest happiness of the greatest number.

II

It is generally agreed that a definition of democracy must be concerned with the role of 'the people' in ruling and being ruled. In *The Nature of Democracy*, Barry Holden writes: 'A democracy is (or the term 'democracy' connotes) a political system of which it can be said that the whole people, positively or negatively, make and are entitled to make, the

basic determining decisions on important matters of public policy.'³³ In discussing his definition he firstly underlines the importance of the 'whole people' by which he means virtually the entire adult population; and secondly, he insists that the people make basic decisions on policy. These characteristics are then used in a rough manner to distinguish democratic from non-democratic regimes and theorists. Holden admits that his definition faces some difficulties. 'It may be', he writes, 'that this way of thinking is newer than the idea of democracy itself.' Because of his emphasis on the entire adult population as participants in a democracy, he seems to deny that Locke and J.S. Mill are democratic theorists and that ancient Athens and Switzerland (before women were given the vote), are democracies. But the main difficulty with Holden's analysis is that he conceives of the role of the people in a democracy as primarily one of participation and essentially participation in the electoral process. He attempts to defend a 'radical' view of democracy against both some modern democratic theorists who deny a major role to popular participation, and traditional liberal democratic theorists such as Locke and J.S. Mill who are not concerned with an extensive, equal suffrage. But to do so, he is forced to define the role of 'the people' largely in terms of participation in decision-making through elections. This approach is fraught with difficulty in that one obvious objection to it is that in modern democracies 'the people' in elections do not make decisions on public policy. Holden attempts to deal with this sort of objection on a number of planes, but his definition, though reflecting the premise that democracy must be concerned with 'the people', assigns to 'the people' a role difficult to perform in a modern industrial state.

Jack Lively's view of the role of the people seems at first more satisfactory, but leads in the end to a similar difficulty. For Lively, a democracy must include either a participatory element or it must allow for the accountability of the rulers to the ruled.³⁵ Lively conceives this accountability as expressed largely through electoral decisions on the part of the people. In order for responsible government to be achieved several conditions must be met. These include free elections, freedom of association, freedom of speech, but, most important of all, parties which present coherent alternatives.³⁶ Lively is aware that there are a number of difficulties in stating the conditions for responsible government and that among the most difficult is stating the conditions for competing parties which provide genuine alternatives.³⁷ Again, we see that the role of the people is conceived purely (though indirectly) in terms of elections. The main objection to this sort of view is that the role of the people in securing accountability through elections is just as limited as their participation in decision-making.

By insisting on the importance of the people in a discussion of democracy, Lively and Holden at least avoid the paradoxical view of many modern writers that democracy can be discussed without much reference to any role for the people, but rather in terms of competing Elites. But having avoided this paradox, their conception of the role of the people lacks sophistication, a sophistication which perhaps surprisingly can be found in Bentham.

The people exercise sovereign power through what Bentham calls the constitutive authority. By the 'constitutive authority' Bentham means essentially the electorate, and the phrase 'the people' becomes a technical phrase in the *Code* equivalent in meaning to the electorate.³⁸ Those excluded from suffrage (women, non-adult males, illiterates, transients) are not considered part of the people or the constitutive authority.³⁹ Although in modern democracies nowadays some of the exclusions no longer exist (notably women, and this is a change to which Bentham would not have objected), Bentham seems close to writers like Holden and Lively in conceiving the people as exercising power largely through elections.

However, Bentham's discussion develops in an important and novel way with his introduction of the Public Opinion Tribunal. The Public Opinion Tribunal differs from the electorate in including those excluded from suffrage and not being limited to those actually living in the country.⁴⁰ Thus, a Frenchman who writes a book about the politics of England which is read or discussed in England becomes a member of the English Public Opinion Tribunal. Besides this broader base for membership, Bentham's Public Opinion Tribunal differs considerably from what is meant by public opinion today. Most importantly, he emphasises that it is a judicial authority. We tend to identify public opinion with the electorate and consult public opinion (by polls and other means) to obtain an advance view of what the electorate will do. But Bentham wants us to see the importance of public opinion from a different perspective. As a judicial body it has different functions from those exercised by the electorate: (a) to keep records of what is going on in government; (b) to investigate waste and corruption, etc.; and (c) to suggest improvements for future legislative or executive action.⁴¹ These functions are obviously related to the functions of the electorate, but they can be exercised independently of the electorate. Bentham sees a variety of institutions which can be viewed as 'committees' of the Public Opinion Tribunal, such as audiences at public meetings, in the courts, or before officials, and especially the press.⁴² Although today many members of the press believe that their work is essential for the functioning of a democratic society, it is worth noting that few contemporary writers on democracy discuss the press as an important aspect of democracy.⁴³ In my view the theoretical importance of the press has diminished because public opinion has become associated with the electoral side of the role of the people. As such, the press is considered 'unrepresentative' of the electorate in not reflecting a wide range of electoral opinion. But Bentham elevates the importance of the press when he sees the function of public opinion as being fundamentally different from (and no less important than) that of the electorate.⁴⁴ Indeed, throughout the *Code* the Public Opinion Tribunal plays a very important role especially in attending to the day-to-day operations of government. Because it plays an active role in a wider range of government activity than the electorate can perform at elections, the Public Opinion Tribunal plays a key role in Bentham's system of securities. Public opinion best secures a government accountable to the governed and does so outside the electoral system. Bentham's account of the role of the people is thus freed from the overemphasis placed on elections, and, especially, on an active participation in decision-making through elections.

A second way in which Bentham defines and clarifies the role of the people is by distinguishing between the sovereign power of the constitutive authority and the 'omnicompetence' of the legislative authority. By omnicompetence Bentham means that within its sphere of authority, no prior restrictions (as in the Separation of Powers and Bill of Rights in the U.S. Constitution) should be placed on legislative power.⁴⁵ We might best understand the significance of the distinction for a conception of the role of the people by considering a contemporary example, one not specifically discussed by Bentham, the recent use of the referendum over British membership of the EEC. A question which arose at the time and remains of interest is the nature of the decision supposedly made through the use of the referendum. Is a vote in a referendum similar in character to a vote at a General Election? Is it merely an expression of popular sentiment? Or does it resemble an act of legislation?

A referendum might at first seem a good way to strengthen the role of the people in the state. But Bentham might well have been suspicious of this analysis. If a decision in a referendum is considered similar in character to a decision by members of a legislature (as might have been

argued in the case of the EEC referendum), for Bentham the constitutive authority would be taking on legislative power which it could not effectively exercise. Bentham thinks that by rendering the legislature omniscient, he is ultimately strengthening not just the legislature, but especially the people by enabling the legislature to advance the interests of the people and be clearly responsible to them. From Bentham's position, a referendum might be seen as weakening the power of the people by confusing their authority with legislative authority. If those in the legislature want to avoid exercising power (for example, for fear of splitting a party), they can pass this responsibility to the people by means of a referendum. But they are also weakening the power of the people which is to hold the legislative authority responsible for the exercise of its particular power. In this example, we can see how Bentham, by clearly distinguishing legislative and constitutive authority, also defines the nature and limits of popular power.

III

In discussions of democracy Bentham's account of the role of the people has been subject to two major criticisms. Firstly, according to Schumpeter, the account of the people is unrealistic, because, in practice, the 'common good' does not exist and cannot be realised by the exercise of a 'common will'. Furthermore, for Schumpeter, the account unrealistically assumes that the individual is rational and the best judge of his own interests.⁴⁶ Secondly, a criticism which is generally associated with J.S. Mill is that Bentham gives too much power to the people and his account leads to the absolute power of the majority.⁴⁷ The two criticisms seem contradictory in that one sees the power of the people as unrealistic and the other, as dangerous, but they share the belief that Bentham has wrongly elevated the power of the people.

In this section I shall argue that neither view appreciates the careful way that Bentham defines the role of the people and balances that role against competence in public office. John Plamenatz has effectively argued that no writer on democracy has held the view of the common good which Schumpeter has ascribed to classical writers and least of all Bentham who was an unfortunate choice for Schumpeter to have made the object of his criticisms.⁴⁸ I largely agree with Plamenatz's critique of Schumpeter and will not cover similar ground here. Furthermore, Schumpeter clearly had little or no detailed acquaintance with Bentham's theory and certainly no acquaintance with the *Constitutional Code*. He simply reads into such phrases as 'the greatest happiness of the greatest number' and that 'each man is the best judge of his own interests' his own version of 'classical' democratic theory. He is unaware of the technical definition that Bentham provides for 'the people' in a democracy and this is reflected in his own use of the term. He initially speaks of democracy purely as a method (without substantive significance) for reaching legislative and administrative decisions.⁴⁹ A page later in arguing that democracy will not safeguard freedom of conscience, he refers to the mob⁵⁰ (as opposed to Pilate) who sought the execution of Christ, as a democracy. For Bentham this way of talking about democracy would be confusing. In the first place, while he would accept that democracy is a method, he would reject the view that its adoption does not entail a commitment to other values, such as the minimisation of expense and the maximisation of aptitude, and even freedom of speech and conscience. These are embedded in the institutions of the Public Opinion Tribunal, the aptitude system and the remarks on religion in the *Code*. Without freedom of speech, the Public Opinion Tribunal could not function and without freedom of conscience, the aptitude system would not be able to select the best people

for public office. One can easily take the argument much further and show that Bentham's conception of democracy requires a commitment to a whole set of substantive principles such as those discussed in the Legislator's Inaugural Declaration.⁵¹

Secondly, for Bentham, the people do not, as Schumpeter suggests, use the democratic system to make legislative and administrative decisions. The democratic system has a less exalted but no less important role to play in making the rulers accountable to the ruled. This less exalted role is a more realistic one for the people to play, and, as we have seen, Bentham carefully distinguishes constitutive from legislative and administrative authority. Thus, for Schumpeter to define democracy as a method for reaching legislative and administrative decisions is to start with a view of democracy which gives the people a role they cannot perform. It is not a view held by Bentham.

Finally, Bentham has a clear notion of the role of the people in a democracy. Schumpeter speaks of democracy without appreciating that membership of the electorate would be strictly limited by residency and literacy qualifications. 'The people', for Bentham, is not equivalent to the mob. We have already seen how Bentham defines the role of the people in terms of the electorate and the Public Opinion Tribunal, and clarifies that role in terms of the other authorities in the state. This aspect of Bentham's theory of democracy is entirely overlooked by Schumpeter.

It is fair to say, then, that much of the criticism levelled by Schumpeter at 'classical' (Benthamite) democratic theory is either confused or irrelevant. And even though there is some truth in his criticism of Bentham's assumption that the individual is the best judge of his own interests from the perspective of modern psychological theory, he fails to see how Bentham escapes the full force of this criticism.⁵² For the interests of the individual within the democratic system are fairly clearly defined by the objects and structure of the system. All citizens, for example, have an interest in preserving security and enhancing prosperity. And although knowing the precise means to achieve these ends may lie beyond the competence of the individual citizen, he can grasp that it is in his interest to regard security and prosperity as ends to be secured by the system, and can express this interest through the electoral system and Public Opinion Tribunal. Bentham does not propose ideals for citizens which cannot be clearly conceived and accepted as being in their interest. While it is possible that the people can be deluded as to the best means to achieve the ends they seek (as they are confused and deluded in monarchies and aristocracies), Bentham's aptitude system is designed to bring into office those best able to provide the means to secure and realise the interests of the people. Thus, while modern psychological theory can demonstrate the difficulties inherent in knowing rationally one's interests, Bentham's argument minimises the force of this difficulty by seeing the ends sought by the people as their interests on the one hand as capable of being understood and on the other hand best secured through the system of representative democracy.

The second criticism of Bentham, that he gives absolute power to the majority, appears in J.S. Mill's essay on Bentham published in 1838 as a review of the Bowring edition.⁵³ I shall argue here that there are a number of aspects of Bentham's theory which reduce considerably the force of Mill's criticism. We might start by noting that for Bentham government is strictly limited in its aims and is, in addition, clearly separated from an extensive private sphere of economic and social life. Mill is clearly aware of this and admits that he is not speaking of the political authority of the majority but more generally of the 'despotism of Public Opinion'.⁵⁴ We have seen, however, the way Bentham defines public opinion as a judicial

power and conceives the press as an important institution. From Bentham's point of view, it is difficult to conceive of despotic public opinion. There is considerable merit in his argument that the Public Opinion Tribunal is a crucial factor in avoiding despotism.

Nonetheless, Mill would still say that when power is given to the majority a kind of despotism is likely to result, and for Mill this despotism will be directed against the individual's personality and against 'deference to superiority of cultivated intelligence'.⁵⁵ Mill criticises Bentham for not providing for institutions to secure these ends as well as those to secure the accountability of the rulers to the ruled. At times Bentham does write of the people collectively as if they need not be deferent in any sense and are not deficient in any manner. 'Considered by itself and without reference to any other,' Bentham writes, 'this greatest number, say, for shortness, *the people*, cannot on any just grounds be considered as deficient, in respect of aggregate appropriate aptitude'.⁵⁶ But even here, Bentham is referring to the people in a technical, legal sense as the electorate, and his remarks should be seen in this context. Furthermore, as Sidgwick has noted, any prior constitutional limits to the power of the people to make and change laws might have mischievous consequences which are disadvantageous to the people.⁵⁷

It may be thought that I am missing Mill's point. He believes that the people need education in order to make wise choices, and he wants the educated minority in society to have power both to offset the uneducated majority and to provide for their education. Bentham evinces no concern with the educative effects of mass participation or with the educative effects of a competent minority in political education. However, Bentham does give considerable power and scope to the educated minority in political office and it may be that he provides a greater role for competence in office than Mill.⁵⁸

In his recent book on Bentham, James Steintrager takes up the problem of the 'tyranny of the majority' and provides a defence of Bentham's position. He emphasises both that the electorate was intended to be an informed electorate and the legislature was to be independent in a 'Burkean' sense as well as 'filled with men like himself (Bentham), relatively wealthy, educated and independent of mind'.⁵⁹ Steintrager concludes that it would be possible to see 'such legislators as the elected educators of the people'.⁶⁰ Steintrager's useful argument may be developed in a number of ways. Firstly, we can point to the aptitude system where the whole of the administration passes through a system of education and examination. These officials, as we have seen, bring competence, even expertise, to government office, and they do not owe their appointments directly to the people (although they can be removed from office by the electorate). Secondly, all government officials (with some exceptions like the Army) must exercise what Bentham calls the self-suppletive function and appoint substitutes or 'deputes' who act in their place when ill, incapacitated, dead, or assist when the principal is overburdened with work. Bentham places considerable emphasis on the institution of deposes not only for maintaining efficient and responsible government and minimising expense (the deposes are unpaid), but also for bringing new and perhaps different people into government service.⁶¹ The deposes in the administration (at least the permanent ones) must be taken from the 'Locable List' and hence have passed through the education and examination system.⁶² Bentham views these deposes as functioning as apprentices gaining experience in public office before obtaining a permanent official post. The legislative deposes are discussed in different and more interesting terms. Bentham notes that as the seat of the legislature will be the metropolis of the state, there will be a great number of men in the capital city or who come to it who will be eager to have the jobs.⁶³ Bentham can see that because many legislators will have

come from the provincial districts from which they are chosen, the deputed will have a different, more metropolitan background. Bentham developed this argument by noting that a number of people otherwise excluded from office might be admitted as deputed. He lists the old and infirm who are interested in politics but would not be able to keep up with the demands of office, and the rich who, though recommended to the electorate, are 'by the indolence naturally attendant on opulence' not willing to seek office, and 'new men' whose aptitude would not be appreciated by the majority of electors.⁶⁴ Thus, in this revealing discussion of the legislative deputed, Bentham has devised a means of bringing men of special promise and competence into public life who would otherwise neither offer themselves nor be chosen by the electorate.

Let us now look at the legislators themselves. It may be thought that with annual elections and the 'temporary non-relocability system' the legislature is under the firm control of the majority of the electorate. The well-known passage where Bentham says that the legislator can speak in support of an arrangement according to his own conviction but vote against it in following the opinion of his constituents might be interpreted as emphasising the dependence of the legislator more than his independence.⁶⁵ This apparent dependence of the legislator on his constituents need not, however, preclude high competence among the legislators. And the competence of the legislator, together with his wealth, is an important source of independence for the legislator from the electorate. We have seen how Bentham carefully builds competence into the administrative system and employs the institution of legislative deputed. But does he provide for the ability of the legislators beyond the assumption (which Steintrager makes) that those who run for office will be wealthy, educated and independent? I wish to refer now to a passage in the *Code* which, so far as I know, has been hardly discussed.⁶⁶ In listing the securities for the intellectual ability of members of the legislature, Bentham writes:

2. After the expiration of the preparation period, as in the case of Ministers and other functionaries belonging to the Administrative Department, as per Ch ix. **MINISTERS COLLECTIVELY**, section 16, *Locable who*, - sole persons locable, those by whom proof of appropriate aptitude has been given; namely by means of the Examination Judicatory thereby organised.⁶⁷

This brief passage seems to require that once the constitution is established, all candidates for the legislature must have passed through the system of education and examination prescribed for the administration. The obvious consequences of introducing this requirement for legislators are to restrict severely those who might be chosen by the electorate as their representatives and to ensure that those who are chosen are of high competence. But Bentham, I believe, does not take up this passage at any other point in the *Code*. Nor does he spell out what qualifications are relevant for legislators. We might expect that so momentous a proposal which would completely alter the relationship between electorate and legislature, would be discussed in some detail.

However, it does appear that Bentham was well aware of what was at stake. Not much manuscript remains for this part of the *Code*, but one surviving sheet is of special interest:

Art.23 To the head of securities *antecedent* belong those composed of the several attainments, employed as *qualifications*, necessary to confer on the individual the quality of *locability*, with reference to the situation in question, as per Ch. IX *Ministers Collectively*, §16. *Locable who*; and

Ch. XII *Judiciary Collectively*, §26 *Locable who*. For some time after that, at which, by the conclusion of the preparation period, restriction in this shape would be rendered practicable, any application made of it, to the situation of Deputy of the people, may in some eyes be too great a liberty taken with their power of choice. But, should ever the time arrive, when those same attainments are in the possession of all subordinate functionaries, the legislature will have to consider whether it be consistent or upon the whole justifiable, that the possession of these same elements of appropriate aptitude should in the situation of those functionaries on whose will the conduct of all others depends, be left to chance.⁶⁸

The first sentence (ending with the cross references) was crossed out and the remaining part simply left. Both parts were 'queried' but in the end Bentham decided 'not to print' the sheet. The material in the passage which is deleted is covered by the passage in the printed text. The remaining undeleted part is of great interest. Bentham here leaves it to the legislature to decide if restrictions on choice are to be introduced. In the printed version the requirement is simply stated as a constitutional provision without any reference to legislative deliberation. In this sense, the printed version is stronger than the one in manuscript form in that the printed text simply applies the provisions of Chapter IX, §16 to the legislature. It may be that given the omnicompetence of the legislature Bentham thought that the matter could still be deliberated, but he does not draw attention to the matter.⁶⁹ Furthermore, we can see that Bentham is well aware that his proposals represent an important limitation on the freedom of choice of the electorate, and it is interesting to note that he chooses not to develop his position with additional comment. He considers whether or not to print the undeleted part of the sheet in a 'Supplement' - possibly one of the supplements to the already printed Chapter IX §§16 and 17. On its own, the undeleted part would read well as a comment on the applicability of §16 to the legislature. But in the end Bentham decides to apply the material to the legislature by a simple cross reference.⁷⁰

Bentham clearly intends to provide for high competence in all spheres of public life. But in fairness to Mill and contrary to Steintrager's conclusion, it does not follow that Bentham thought that legislators would be 'the elected educators of the people'.⁷¹ Bentham displays no such sentiment in the *Code* and creates no institutions for this purpose.⁷² Although the provisions for competence in the legislature imply or suggest a measure of independence also among the legislators, it does not follow that by virtue of their competence and independence they would become 'educators'. Perhaps it is not clear what is meant by legislators educating the people. Obviously, through debates and example, they have an impact on the people who follow legislative proceedings. And more generally the educated few in society play a role in informing the larger majority in books, journals and newspapers. Beyond this, Bentham has no contribution to make. Yet, he has made an important contribution in bringing into balance within a constitutional system the sovereignty of the people and a highly competent government. Such an arrangement may well obviate the charge that Bentham provides for the tyranny of the majority.

It might be argued that Bentham's *Constitutional Code* represents more than a contribution to 'democratic theory' and to abstract this contribution from his philosophy or to ignore his 'scientific' methodology may not do him much service.⁷³ Admittedly, some part of the *Code*, for example, some aspects of his careful and precise use of language, cannot be fully appreciated on the level of democratic theory. The way he carefully justifies a number of practices in terms of the greatest happiness of the greatest number may not have been sufficiently stressed. I might have dwelt more upon the way the whole of his argument about democracy is based on utilitarian principles. Nevertheless, I have intentionally avoided some of the more familiar aspects of Bentham's philosophy in order to bring out his contribution on another level to a range of problems with which the *Code* is concerned. Too often this 'middle range' of Bentham's theory is overlooked.

Even at the level of democratic theory, however, it may be said that I have been too content to stress the strengths of Bentham's theory rather than the weaknesses. Sidgwick thought that Bentham's view of man as primarily selfish would defeat the task of ever combining a group of egoists into a democratic government. 'The difficulty that Hobbes vainly tried to settle summarily by absolute despotism', he writes, 'is hardly to be overcome by the artifices of his more inventive successor.'⁷⁴ Even though Professor Lyons has shown that Bentham's limited altruism places him closer to Hume than to Hobbes, it is difficult to deny the force of Sidgwick's comment.⁷⁵ Bentham not only finds little place for altruism in politics but he also finds no place at all for a conception of virtue (in the Aristotelian sense). Public officials are not to be admired or rewarded for their virtue; rather Bentham urges the maximisation of distrust and suspicion of officials and the minimisation of confidence in their abilities or trustworthiness. Bentham's systems of aptitude and securities might be seen as substitutes for a theory of virtue. But it is difficult to conceive of the complex constitutional system working without the efforts of highly selfless, devoted men, educated to serve the democratic polity.

Nevertheless, one of the strengths of Bentham's *Code* is the pessimistic view of mankind and rulers which pervades every article. Bentham avoids the optimism of some writers on democracy who assume that majority rule and increasing equality can resist corruption and that increased participation can transform character. He seeks only the accountability of rulers to the ruled and the promise of aptitude amongst the rulers. In this sense, Bentham seeks ends which are within the grasp of democratic man.

NOTES

1. See, for example, G. Sartori, *Democratic Theory* (New York, 1965), p.124. The most influential work in this vein which will be discussed in a later section, is J.A. Schumpeter, *Capitalism, Socialism and Democracy* (London, 1943).
2. Carole Pateman, *Participation and Democratic Theory* (Cambridge, 1970).
3. Dennis F. Thompson, *John Stuart Mill and Representative Government* (Princeton, 1976).
4. Recent discussions of democracy, such as, for example, in Sartori, *op.cit.*, and J. Plamenatz, *Democracy and Illusion* (London, 1973) refer to Bentham but do not mention the *Code*. An exception is Pateman's *Participation and Democratic Theory*. For brief accounts of some features of the *Code*, see Thomas P. Peardon, 'Bentham's

- Ideal Republic', *Canadian Journal of Economic and Political Science* XVII (1951), 184-203, reprinted in B. Parekh (ed.), *Jeremy Bentham* (London, 1974), 120-44; E. Halévy, *The Growth of Philosophical Radicalism*, trans. Mary Morris (London, 1928), 403-32; James Steintrager, *Bentham* (London, 1977), 97-116; C.W. Everett, 'The Constitutional Code of Jeremy Bentham', *Jeremy Bentham's Bicentenary Celebrations* (London, 1948), 1-29. None of the discussions attempt to supply a comprehensive view of the *Code*. The whole of the *Code* is printed in *Bowring* ix. Bentham published only one volume during his lifetime: *Constitutional Code; for the use of all nations and all governments professing Liberal opinions*, Vol i (London, 1830), *Bowring* ix, 146-333.
5. The actual text of the *Code*, more or less as Bentham intended, appears in *Bowring* ix, 146-647. The introductory material, some of which was not intended for the *Code*, is printed as 'Book I' (*Bowring* ix, 1-145). For a discussion of Bentham's original plan of the *Code* and the *Bowring* version, see F. Rosen, 'The Constitutional Code: The New Version', *The Bentham Newsletter* (March, 1979) 40-3. In this paper I shall refer to the main text of the *Code* by Chapter, section and article plus the *Bowring* reference. The introductory material will be cited by the *Bowring* reference only.
 6. Ch.II, Arts.1-2, *Bowring* ix, 150. That Bentham intended to emphasise maximising aptitude and minimising expense may be seen in the titles he gives to an extract from the *Code* and to a *Code*-related volume: *Extract from the proposed Constitutional Code, entitled 'Official aptitude maximised, expense minimised'*. (London, 1816 [really 1826]); and *Official aptitude maximised, expense minimised, as shewn in the several papers comprised in this volume*, (London, 1830).
 7. See Ch.IX, §§ 15-17, *Bowring* ix, 266-94.
 8. Ch.IX, § 16, Art.15, *Bowring* ix, 273.
 9. *Ibid.*
 10. Ch.IX, Supp. to § 17, Art. 50 or 9, *Bowring* ix, 288-9.
 11. See, for example, *An Introduction to the Principles of Morals and Legislation* (C.W., ed. J.H. Burns and H.L.A. Hart), (London, 1970), 35.
 12. Ch.II, Art.16 and n, *Bowring* ix, 151.
 13. Ch.IX, § 16, Art. 34ff, *Bowring* ix, 276ff.
 14. Ch.IX, § 16, Art.34, *Bowring* ix, 276.
 15. Ch.IX, § 16, Art.36, *Bowring* ix, 276.
 16. See Ch.VII and n, *Bowring* ix, 198-204; esp. Ch.VII n, *Bowring* ix, 198.
 17. Ch.IX, § 21, Arts. 21ff, *Bowring* ix, 307ff.
 18. Bentham's reasons are worth noting: (a) the *Constitutional Code* is not the place for a minutely detailed code of manners; (b) the 'art-and-science' is not sufficiently advanced; (c) sentiments, manners and customs differ in different regions and societies; and (d) 'as the public mind matures itself, the matter of *private*, will be removed from the field of political, *deontology*'. Ch.IX, § 21, Art.32, *Bowring* ix, 309.
 19. See Ch.IX, § 17, *Bowring* ix, 283-93.
 20. Ch.IX, § 17 Supp., Arts.51 or 10-52 or 11, *Bowring* ix, 289-90.
 21. Bentham uses 'power' and 'authority' synonymously throughout the *Code*. Although arguably the two notions should be distinguished, I have followed Bentham's practice in this paper.
 22. This is not to say that Bentham believed in the doctrine of the Constitutional Separation of Powers. See Halévy, 409.
 23. See esp. Ch.IX, § 4, *Bowring* ix, 219-26.
 24. Ch.IX, § 7, *Bowring* ix, 232-53.
 25. See esp. Ch.IX, §§ 2, 3, 5, 19-23, *Bowring* ix, 213-19, 226-31, 294-316.

26. See Ch.IX, §§ 3, 14, *Bowring* ix, 214-9, 265-6.
27. Ch.IX, § 21, Art.8, *Bowring* ix, 306.
28. Ch.IX, § 17, Art.20, *Bowring* ix, 284-5.
29. Ch.IX, §§ 20-23, *Bowring* ix, 302-16.
30. Ch.IX, § 19, Art.36, *Bowring* ix, 301.
31. See esp. Ch.V, § 6; Ch.VI, § 31; Ch.VIII, § 12; Ch.IX, § 25; *Bowring* ix, 159-60, 191-8, 212-3, 316-24.
32. Ch.VIII, § 12, *Bowring* ix, 212-3.
33. (London, 1974), 8.
34. *Ibid.*, 16.
35. J. Lively, *Democracy* (Oxford, 1975), 40.
36. *Ibid.*, 43.
37. *Ibid.*, 49.
38. 'By the term *the people*, is meant the whole number of persons, existing in any part of the territory of the State - such as are, at the moment of the time in question, admitted to act in the capacity of *electors*.' *Bowring* ix, 97. See also Ch.V, § 1, Art.2, *Bowring* ix, 155.
39. Ch.V, § 1, Art.3, *Bowring* ix, 155. In *Bentham's Radical Reform Bill, with Extracts from the Reasons* (London, 1819), *Bowring* iii, 558-97, Bentham presents a more elaborate discussion of the various exclusions and defines literacy and residency. This work is incorporated into the *Code* as *Bentham's Election Code*. See Ch.VI, §§ 4-17, *Bowring* ix, 162-3.
40. Ch.V, § 4, Art.2, *Bowring* ix, 157.
41. Ch.V, § 5, *Bowring* ix, 158-9.
42. See Ch.V, § 5, Art.3; Ch.IX, § 25, Arts.29-30; *Bowring* ix, 157-8, 320. On Bentham's attitude toward freedom of the press generally, see D.G. Long, *Bentham on Liberty: Jeremy Bentham's idea of liberty in relation to his utilitarianism* (Toronto, 1977), 198-206.
43. Holden, Sartori, Pateman, Plamenatz, and Schumpeter, to name a few, pay virtually no attention to the press. An exception is Lively, *op.cit.*, 43, who emphasises freedom of speech as a condition of democracy.
44. 'To the pernicious exercise of the power of government, it is the only check; to the beneficial, an indispensable supplement.' Ch.V, § 4, Art.4, *Bowring* ix, 158.
45. See Ch.VI, § 1, Art.1, *Bowring* ix, 160. See also *Bowring* ix, 119-24.
46. Schumpeter, *op.cit.*, 250ff.
47. See J.S. Mill, "Bentham", in *Jeremy Bentham*, ed. Parekh, 1-40.
48. Plamenatz, *op.cit.*, 95ff.
49. Schumpeter, *op.cit.*, 242.
50. *Ibid.*, 243n.
51. See Ch.VII, *Bowring* ix, 198-204.
52. I take up this problem in a way which is more critical of the sort of position Bentham takes, in a paper 'Nature and Convention' forthcoming in the *Independent Journal of Philosophy*, Vol.IV (1980).
53. J.S. Mill, *op.cit.*
54. *Ibid.*, 29.
55. *Ibid.*, 31.
56. *Bowring* ix, 97.
57. H. Sigdwick, *Miscellaneous Essays and Addresses* (London, 1904), 160. See Halévy, *op.cit.*, 408.
58. For an estimation of Mill's achievement in this respect, see Thompson, *op.cit.*, 90: '...the institutions of representative government formally give the competent minority only slightly more political power than that to which their numbers would entitle them

- anyway, never permitting them to outvote the numerical majority in elections or in the legislature'.
59. Steintrager, *op.cit.*, 107. That Bentham himself in his later years would attempt to hold public office is doubtful. I have suggested that he might rather think of himself as possessed of 'timid merit' or, perhaps, might serve as a depute.
 60. *Ibid.*, 109.
 61. Bentham provides a brief account of the evolution of the principle of 'self-supply' in his thought. See Ch.VI, § 25, Art.55n, *Bowring* ix, 180.
 62. Ch.IX, § 6, Art.8, *Bowring* ix, 232.
 63. Ch.VI, § 23, Art.15, *Bowring* ix, 168.
 64. Ch.VI, § 23, Arts.23-25, *Bowring* ix, 169.
 65. Ch.VI, § 1, Arts.10-11, *Bowring* ix, 160-1. Cf. Steintrager, *op.cit.*, 108 and Bentham's own remarks at the close of the Legislator's Inaugural Declaration, Ch.VII, § 14, *Bowring* ix, 204.
 66. See the brief reference by T. Peardon, *op.cit.*, 139. I have discussed this passage, as well as many others in the *Code*, with Professor J.H. Burns, and these discussions have added greatly to my insight.
 67. Ch.VI, § 31, Art.44, *Bowring* ix, 197.
 68. U.C. xxxix. 46. 25 February 1826.
 69. As all of the Securities entries are headed 'Instructional', Bentham may have felt that by this device he was allowing the legislature to debate and choose whether or not to adopt the proposal.
 70. This decision may well provide an explanation for Bentham's treating this important subject as he does. The material on the aptitude system in Chapter IX was already in print when Bentham was completing the earlier Chapter VI on the Legislature. With a simple cross reference, Bentham then applies the whole of the later material to the earlier chapter. What may have appeared to Bentham as an economical way of dealing with the matter seems strange to us as we approach the subject according to the correct order of the chapters.
 71. Steintrager, *op.cit.*, 109.
 72. See, for example, the Legislator's Inaugural Declaration, Ch.VII, *Bowring* ix, 198-204 where no such sentiment is expressed.
 73. D. Long, *op.cit.*, has recently discussed this aspect of his thought.
 74. Sidgwick, *op.cit.*, 163.
 75. D. Lyons, *In the Interest of the Governed* (Oxford, 1973), 64-9.

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