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EDITORIAL

The 1983 Shearman Lectures at University College were devoted to Jeremy Bentham, and three noted Bentham Scholars, Professor J.H. Burns, Dr. J.R. Dinwiddy and Professor W.L. Twining, informed and entertained large, attentive and even enthusiastic audiences on 3rd, 8th and 15th November. Although the lectures were intended to appeal to a wide audience, it was felt that there was a good deal in them of interest to the more specialised Bentham scholar to justify their inclusion, as the main articles, in this number of The Bentham Newsletter.

The lectures coincided with the publication in 1983 of three major works: Constitutional Code, Volume I, ed. F. Rosen and J.H. Burns; Deontology together with A Table of the Springs of Action and Article on Utilitarianism, ed. A. Goldworth; and Chrestomathia, ed. M.J. Smith and W.H. Burston. These are the first of the volumes to be published by Oxford University Press and form handsome additions to the Collected Works. Reviews and sales have been most encouraging, and the volumes were soon sold out. This (among other factors) led to some delay in the dispatch of some volumes to those who took advantage of the special offer in the last Newsletter, but all volumes have now been sent out and the works have been reprinted. In late 1984, Volume 6 of Bentham's Correspondence, ed. J.R. Dinwiddy, will be published by Oxford University Press. This volume covers the period from 1798 to 1801 when Bentham's heroic attempts to establish Panopticon were being most strongly resisted. The detailed account of Bentham's various manoeuvres is itself fascinating to read, but the volume covers a good deal more of Bentham's life and thought than Panopticon. The majority of the letters have never been previously published. A special offer for all of the Correspondence volumes is planned for this issue, the details of which will appear on a separate sheet to accompany the Newsletter.

Another event of note occurred on 1st February of this year when twenty-two Bentham friends and colleagues gathered for dinner at Bertorelli's Restaurant to thank Herbert Hart and John Dinwiddy for their dedicated service as Chairman of the Bentham Committee and General Editor respectively. The evening will be remembered as a warm, friendly occasion.

As the Newsletter was about to be printed, news of the death of Lord Robbins was received. A brief obituary appears at the end of this issue, but a fuller appreciation is planned for the next number.

JEREMY BENTHAM: FROM RADICAL ENLIGHTENMENT TO PHILOSOPHIC RADICALISM

J.H. Burns
University College London

I must begin by emphasising that my concern is to relate Bentham's ideas to 'radical enlightenment' in general, not - or not preponderantly - to 'the Radical Enlightenment'. The rationale (as Bentham himself would have said) of that piece of pedantry is this. For some historians the phrase 'the Radical Enlightenment' has acquired a rather specific and limited connotation. Here we find what would nowadays, I suppose, be called the alternative Enlightenment, prepared to question the unquestionable, to mention - sotto voce no doubt - the unmentionable, even to print the unprintable. In such circles, as Roy Porter has recently said, we

see the Enlightenment in another light altogether: one amplifying, distorting, vulgarizing, parodying the refrains of the High Enlightenment in shriller or frowsier cadences.¹

Now certainly Bentham is not a total stranger in such a world. There was always to some extent a submerged, clandestine element in his thinking and writing. This is perhaps best exemplified in his writings on sexual matters, where he carried permissiveness and libertarianism to a considerable pitch. None of this material, of course, saw the light of print until C.K. Ogden published some of it in the 1930s; and even now it has not appeared publicly in extenso. And indeed it may seem that even the phrase sotto voce is inadequate to convey the privacy of Bentham's reflections on these topics: la parole intérieure might be more appropriate. Yet there is, I think, just enough evidence in the manuscripts to suggest that ideas of this kind were exchanged in at least some of the circles in which Bentham moved in the 1770s.

For both the high and the low Enlightenment religion was of course a crucial issue. Nor need there be even a moment's doubt as to where Bentham's sympathies and prejudices lay. From a family background of what he himself was later to call 'Church-of-Englandism' (though it may be worth recalling that his maternal uncle George Woodward Grove published an edition of the deist Matthew Tindal's Christianity as old as the Creation) Bentham soon moved to the radically anti-religious position from which he was never to waver. Organised religion was symbolised by the juggernaut (commonly abbreviated by Bentham as 'Jug'). It might indeed provide at times a useful sanction for the legislator to apply for the purposes of social control; but what Bentham took to be its essential and pervasive falsity made it a dangerous instrument of delusion and corruption. The trauma Bentham experienced as a result of his having had to submit to the established religious tests at Oxford illustrates the fact that this was not for him the kind of formality which could simply be shrugged off. Religious establishments he plainly saw as morally and politically vicious; and when he embarked in his late 'teens upon what was to be a lifelong dialectical confrontation with Sir William Blackstone, nothing elicited from him more contemptuous hostility than the great commentator's complacency in regard to the law of England on ecclesiastical matters. Behind Blackstone he saw 'the equivocator Sanderson' - Bishop Robert Sanderson with his slippery defence of the Oxford statutes; behind Sanderson, Laud; and behind Laud the whole hierarchy of juggernaut religion.²

Much of this, it is true, was to remain for a hundred and fifty years or more hidden in the obscurity of unpublished manuscripts. Much of it, but not quite all. Anonymously, indeed, but publicly enough, Bentham expressed in the 1776 Preface to his Fragment on Government his scorn for Blackstone, who

after relating the Laws by which peaceable Christians are made punishable for worshipping God according to their consciences, ... pronounces with equal peremptoriness and complacency, that every thing, yes, 'every thing is as it should be.'³

Even so, to say this sort of thing in England in the 1770s was hardly to enlist in the ranks of an underground protest or resistance movement. Not for another forty years and more would Bentham 'go public' in the expression of his more radical rejection of orthodox Christianity and of supernatural religion as such; and even then he would proceed pseudonymously and in large measure vicariously. At the time when it is most appropriate to evaluate his ideas in the context of the Enlightenment, his caution and circumspection were even greater. When preparing the ground for his projected (but never completed) entry for the competition in which the Oeconomical Society of Bern invited proposals for a code of penal law, he made careful preliminary enquiries as to whether, and if so how, the subject of religion should be treated.⁴ And in the introduction of his projected code - which eventually became the published work An Introduction to the Principles of Morals and Legislation - we find Bentham handling the religious problem with a cool and cautious scepticism which, however, falls deliberately far short of anything remotely resembling a destructive attack on religion as such. The question to which Bentham addresses himself here is the question whether there are 'offences against religion' which should be penally dealt with because of their tendency to undermine the efficacy of the religious sanction. Religion itself in this context is 'a kind of allegorical personage, feigned ... for convenience of discourse ...': it is, in a sense to which I shall have to return more generally later, a 'fictitious entity'.⁵

Some of this evidence may suggest caution in any placing of Bentham in a position of extreme radicalism as regards this crucial religious issue. Was he perhaps a militant atheist whose militancy was of the school of the Duke of Plaza Toro? Should we even regard him as one of those who - to quote Roy Porter again - 'wouldn't talk atheism in front of the servants'?⁶ One thing at least is clear enough. Bentham was exceedingly anxious to associate himself with the Enlightenment at its highest levels. In a letter of March 1776 he tells his brother that the author of 'a history of the Roman Empire from Trajan to Constantine' just published - 'a Mr. Gibbons M.P.' - 'is quite one of us';⁷ and again, later, that David Hume's posthumous autobiography 'will do service to the cause'.⁸ Drafting a letter to Voltaire (which was never sent) to accompany his Theory of Punishment (which he never completed), Bentham says: 'I have built solely on the foundation of utility, laid as it is by Helvetius'; and adds that Beccaria 'has been lucerna pedibus, or if you please manibus, meis'.⁹ (It is, in passing, entirely characteristic that he should quote scripture in this fashion - rendering the psalmist's words here in Latin, perhaps out of deference to Voltaire's Jesuit education). In the spring of 1778, with at least rather more substantial achievements by which to recommend himself, we find Bentham writing to d'Alembert, to Morellet, and to Chastellux - though only from the last of these (a second-eleven member of

the Enlightenment squad, no doubt) does he appear to have elicited any positive response.¹⁰

This then is the Enlightenment - the Enlightenment of Hume and Adam Smith, of Voltaire, Helvetius, and d'Alembert - with which Bentham seeks to align himself. It is a world remote indeed from the intellectual demi-monde (to rate it no lower) where, we are now invited to suppose, the truly radical enlightenment made its way. There may have been more than a little, in Bentham's aspirations, of that element of fantasy without which most of us would find it hard to trudge from the cradle to the grave. Yet if the vision of his becoming the grey eminence to the Empress of all the Russias dissolved in a total loss of nerve when his one real opportunity of even meeting Catherine the Great came along, he did at least allow himself to be drawn into the world of high politics with his entry into the Shelburne circle in the 1780s. Bowood and Berkeley Square may have been a poor substitute for the Winter Palace and Tsarskoye Selo; but at least they brought Bentham near the corridors of power and far away from those underground passages where one might sap and mine to subvert the establishment.

It has taken me a laboriously long time to suggest that 'the Radical Enlightenment', while by no means irrelevant to our understanding of Jeremy Bentham, is marginal rather than central to that endeavour. What I must now attempt is to establish that, nevertheless, the concept of 'radical enlightenment' is an important clue and that it will, among other things, tell us something about the relationship between Bentham's Enlightenment thinking and the philosophical radicalism to which his ideas are supposed to have given rise in the 1820s and 1830s.

What has been said so far indicates that Bentham's views on sexuality, while unquestionably radical, remained almost totally submerged, playing no part whatever in his public achievement or influence; and that his religious - or rather anti-religious - position, while undoubtedly radical in its essence, was, so to speak, existentially ambiguous. Hardly anything as yet has been said about politics; but that little which has been said may be of greater significance than might at first appear to be the case. The fantasy of Bentham's Russian ambitions and the reality of his entry into aristocratic politicking (if I may indulge in a convenient if cacophonous Americanism) have this at least in common: they demonstrate that Bentham was prepared to work with and through the mechanisms of existing political systems without seeking their subversion or radical transformation. So much was this the case that, in one of the longest letters written by anyone since the days of St Paul, he reproached Shelburne - by then Marquess of Lansdowne - for having failed to find Bentham a seat in parliament among those he controlled.¹¹ A dozen years earlier, for that matter, Bentham had happily looked forward to the purchase of a parliamentary seat which would have been possible if he had succeeded in marrying the wealthy heiress Sarah Stratton, his curious courtship of whom enlivens the first volume of his published Correspondence.¹² It is not my intention here to reopen the much-debated question of Bentham's political radicalism and his conversion or transition thereto. I limit myself to saying that, on my reading of the evidence, it is only in the last twenty-five years or so of his long life that we can regard Bentham as in any sense a committed radical in political terms. That the seeds of that radicalism had been sown and had even begun to sprout many years earlier it is neither possible nor

necessary to deny. The fact remains, I believe, that throughout his early and middle years Bentham's effective political stance was one which I would regard as not untypical of Enlightenment thinking: he was prepared to seek means of working with and within any political system which seemed to be susceptible of conversion to his principles. And such a position, doubtless precluding reaction and far removed from inert conservatism, is not (I submit) conducive to radical politics.

Are we then to conclude that the young and middle-aged Bentham was a concealed radical in regard to sexual relationships and behaviour; a cautious and ambivalent radical in matters of religion; and at most a potential radical in politics? If so, it might well seem that 'radical enlightenment' is some way from being an appropriate phrase in his regard; nor will it be surprising to find him taking a strongly anti-American line in the crisis of the 1770s and, after some initial optimism, withdrawing hastily from the revolutionary extremes of France in the 1790s. But this would, I think, be an inadequate assessment; and I want now to argue that there are several important ways - of which I shall concentrate on two - in which Bentham's thought as it takes shape between the 1760s and the end of the eighteenth century can be regarded as genuinely radical in character.

First of all, I want to consider - obviously in an extremely summary fashion - the nature of Bentham's lifelong enterprise as a thinker and as a would-be reformer or improver: as one who emphatically saw the business of philosophy as being concerned with practical application and who would have agreed with Karl Marx at least in holding that the point of philosophy is to change the world and not simply to interpret it. For Bentham that change depended fundamentally on the 'science of legislation'. From the age of twenty-one until his death a few months after his eighty-fourth birthday, convinced that he possessed 'genius for legislation', he set as his goal the drafting and the establishment of 'a code of law complete in all its branches'. It is much more than a point of lexicography to note that Bentham coined the word 'codification' and once - probably more than once - described himself as engaged in 'codifying like any dragon'. This is not, of course, to suggest or to claim that the process of codification, as distinct from its name, was specifically or exclusively Benthamic. Indeed the importance of the point here is enhanced, not eroded, by recognising - as Bentham himself certainly did - that the drafting and revision of 'codes' was characteristic of the whole period through which he lived. The great Napoleonic code is only the most substantial and influential instance of that process at work. To judge only from Bentham's own references in letters and footnotes, there were perhaps few European states which could not in this period point to some kind of code in which their laws were set out. (That one of the few was England simply sharpened some of Bentham's polemical weapons in the campaign he was conducting.)

Equally, if less strikingly, the notion of a 'science of legislation' is widespread, almost commonplace, in late eighteenth-century Europe. We find it in Rousseau; Adam Smith - to whom I shall return briefly in a moment - has his 'science of a legislator'; and la scienza della legislazione is a concept of importance in that Italian Enlightenment to which Franco Venturi and others have directed our attention in recent decades. Such a phrase, it may well be argued, of itself tells us little or nothing until we know what substantive content is being offered to fill

it. None the less I would want to argue that there is, in this period, a genuine and general preoccupation with the need to represent law as something capable at least of ordered, rational, systematic analysis and application. It is not merely accidental that when, in the 1790s, efforts were being made in France to classify and organise institutionally the various branches of human knowledge, not only did those primarily responsible follow the lead of the Abbé Siéyès in coining the term science sociale, they also associated this science of society very closely with législation.¹³ Some of them may have been, in a limited degree, aware of Bentham and his work; many of them would have endorsed the enterprise to which he was dedicated and which he expounded in the 1789 Preface to what had now become An Introduction to the Principles of Morals and Legislation.

The object of that enterprise was, in Bentham's own words, 'to rear the fabric of felicity by the hands of reason and of law'.¹⁴ So expressed, it was an object which would have been unanimously and cordially endorsed by a large cohort of Enlightenment thinkers, both among Bentham's contemporaries and among their predecessors. Its rhetoric, indeed, is impregnated with the spirit of the Enlightenment itself. What matters, as I have already suggested, is what happens when one exclaims - again with Bentham himself - 'Enough of metaphor and declamation: it is not by such means that moral science is to be improved';¹⁵ and asks instead by what means such improvement is to be achieved. To pose that question is to invite answers which very soon reveal how diversely the fabric of felicity may appear from different points of view; how varied its raw materials can be for different builders; and what incompatible construction techniques may be recommended by those who may seem to have set out with identical aims.

For Bentham the essential process is one of analysis - an analysis which leads to a reductive but ostensibly exhaustive classification of the elements in human experience - knowledge of the material world through the senses together with susceptibility to feelings of pleasure and pain; and the ordering of that experience through the proper use of language. To language I shall turn later, for it is the second of the two ways in which I hope to illustrate Bentham's radicalism. Staying for the present with his science of legislation, we find that its function is to apply that analysis to the regulation of human behaviour in such a way as to maximise for the greatest possible number of people that happiness which itself consists in the largest possible surplus of pleasure over pain. This in turn can be achieved only by the systematic and exhaustive classification of such relevant entities as human motives, the kinds of pleasure and pain, and the genera and species of those actions which are to be regarded and treated as offences. Already by 1789 Bentham saw his undertaking as issuing eventually in principles of legislation relevant to ten different types or categories of law, ranging from civil and penal law to matters of finance and political economy.¹⁶

The scope and systematic range of the enterprise would in themselves justify the use of the term radical to characterise it. Yet in fact the thing is more radical still. While writing the Introduction which he eventually published (avowedly incomplete) in 1789, Bentham had become, in his own words, 'unexpectedly entangled in an unsuspected corner of the metaphysical maze'.¹⁷ This entanglement - from which perhaps Bentham never wholly or finally escaped - arose from a fuller and clearer

awareness of what had been implicit from an early stage in Bentham's thinking and writing in the 1770s. Many issues were involved; but the essential problem was that of the nature of law itself. Crudely expressed - and Bentham's most formidable piece of legal philosophy, Of Laws in General, is there to show what complexity and subtlety lie beneath the crudity of my formulation - the point is to establish just what is logically involved in the notion of law as being made, in the words of Jean Bodin two centuries before Bentham, 'by will and commandment'. What I want to suggest now - sidling round matters I am incompetent to expound - is the sense in which this entails not merely a radical analysis in intellectual terms but also an analysis which has radical consequences in - if I may be allowed the term - the real world.

The point can be explained, in terms which many (myself included) will find easier to understand than Bentham's 'logic of the will', by reference to his polemic against Blackstone in the mid-1770s. Inevitably, a very large part of Blackstone's Commentaries on the Laws of England, published in the late 1760s, was concerned with the common law; and in terms of what Bentham called expository jurisprudence this could not be faulted. What could be and was attacked by Bentham was - I choose the word advisedly - a radical deficiency in Blackstone as a censorial or critical jurist. Not only did he praise the common law at points where Bentham was sure it should be damned; not only did he exalt it, in a vicious perversion of the true order of things, above statute law: more than in these respects, his error lay at the very root - for he persisted in treating common law as law; and that, according to Bentham's analysis, was precisely what it was not, since it could not be shown to be the determinate command of a specific and identifiable sovereign.

I need not labour the truly radical character of a theory which resulted in the dismissal of the greater part of the legal structure in eighteenth-century England as not being law at all - and which was linked to a programme of systematically enacted and codified law to replace it. But I do want to throw the point into sharper relief by drawing attention to an interesting comparison and contrast here. Adam Smith was very much part of that high Enlightenment with which Bentham wished to be associated. The two shared a significant area of common ground: both for one thing acknowledged an important debt to the creative scepticism of David Hume. Smith, as I have already mentioned, had his own notion of 'the science of a legislator'; and Bentham would have had no difficulty in agreeing with Smith that this science should have political economy as one of its principal concerns. Yet when we consult the evidence afforded by Smith's lectures on jurisprudence - unpublished in his lifetime and of course unknown to Bentham - we encounter a strikingly different view of the common law and the contribution it makes to a rational basis for the administration of justice. For Adam Smith - lecturing very near the time when Bentham was listening impatiently to the lectures which were to become Blackstone's Commentaries - the excellence of English law (no exaggeratedly perfervid Scot he) rested to a great extent upon its being so largely embodied in common law - which, 'founded on practice and experience', 'is found to be much more equitable than that which is founded on Statute only'.¹⁸ The roots of this crucial divergence lie deeper and further afield than I can consider here; but the comparison may suffice to support in some measure the contention that the element in Enlightenment thought which Bentham exemplifies is in this aspect one of counter-historical radicalism looking to the deliberate and systematic

construction of a rational social order.

Rational is of course the key-word in what has just been said - and indeed throughout any attempt to identify and characterise Bentham's radicalism. Near the outset of this lecture I used, casually, the word rationale; and this is indeed a characteristically Benthamic word, which reflects a recurrent and central theme in his thinking. A further illustration of this preoccupation with rationality is to be found in the format in which Bentham chose to present the magnum opus of his later, and by now politically radical, years: his Constitutional Code for the Use of All Nations and All Governments professing Liberal Opinions. The enactive articles of this massive Code are accompanied not only by articles of what Bentham calls an expositive and an exemplificative character, but also, and for Bentham above all, by what he calls ratiocinative articles. Here, in the desire to establish and demonstrate the rational character and justification of what is being proposed, we have the very heart of Bentham's radical enterprise. It is tempting, but might be misleading, to say that this is Bentham's version of the unity of theory and practice: certainly it illustrates his basic conviction that effective and beneficent practice must be grounded in rational analysis.

To ask what such rational analysis entails for Bentham is to approach the second aspect of his radicalism with which I am specifically concerned in this lecture. At this point it will be helpful to quote a striking passage from the material which Bentham assembled in 1774 or 1775 for the preface to his never-completed Comment on the Commentaries:

To purge the science [of jurisprudence] of the poison introduced into it by him [Blackstone] and those who write as he does, I know but of one remedy; and that is by Definition, perpetual and regular definition, the grand prescription of those great physicians of the mind, Helvetius and before him Locke.¹⁹

This brings us to the consideration of Bentham's virtually lifelong preoccupation with the use and abuse of language - the area in which, philosophically, his thought cuts deepest. It has been one of Bentham's misfortunes to have been so often judged as a philosopher on the basis of the crude exposition of the essentials of his utilitarianism which disfigures the early pages of An Introduction to the Principles of Morals and Legislation. His far more original investigations into the problems of logic and language have lain concealed from most readers in the eighth volume of Bowring's edition of his Works - rather like the bones of St. Peter buried deep beneath the Vatican basilica. And indeed it was, as in St. Peter's case, in the 1930s that the first significant excavations took place - C.K. Ogden's Bentham's Theory of Fictions representing a decisively important exploratory trench across the site. Since then, indeed, it has been increasingly realised that this, if anywhere, is where we shall disinter Bentham's reputation as a philosopher and at least counterbalance the constantly repeated assertion that he is to be judged essentially as a practical reformer. To Bentham, I think, this would have been a distinction without a difference.

This is not the place, even if I had the competence, to expound the scope and limits of Bentham's linguistic philosophy, centred as it is upon the fundamental distinction between real and fictitious entities and

leading to his sustained critique of the use of fiction in various forms of discourse. My more restricted concern, in terms of my title, is twofold. First, I want to underline how this kind of philosophical enterprise, original though Bentham's contribution to it may have been, is very much part of the wider endeavours of Enlightenment thought. In the passage on definition which I quoted a few moments ago, Bentham explicitly invokes the authority of Locke and of Helvetius. And one of the earliest attempts he made to expound his theory of fictions was embodied in a long (though, it would seem, neither completed nor despatched) letter to d'Alembert.²⁰ This was, emphatically, an Enlightenment undertaking; and it was an undertaking which could have profoundly radical implications and consequences. It was, for instance, not just the time-hallowed edifice of English common law - Blackstone's 'old Gothick castle' - that was undermined by insisting upon definition by reference to real entities understood in ultimately empirical and materialist terms. It was also the concept of natural law, which had defined a whole universe of discourse in European thinking for centuries if not for millennia. And this is a point which enables us to identify Bentham's position with an element of radicalism within the Enlightenment itself; for natural-law thinking had, in various forms, continued to figure prominently in the work of many philosophes and jurists with Enlightened credentials - even, arguably, in one so pervasively sceptical as David Hume. Bentham, however, would have none of it.

By the latter part of the eighteenth century, the natural-law tradition had given rise to an ideology of natural rights - the ideology enshrined in the American Declaration of 1776 and the French Declaration of 1789. Bentham's attitude to this kind of thing is much more familiar than his more fundamental critique of natural law as such. 'Natural rights' he wrote, 'is simple nonsense; imprescriptible natural rights is rhetorical nonsense, nonsense upon stilts'.²¹ To quote this is not just to illustrate the radical consequences of Bentham's critique of the language of fiction - a phrase such as 'natural rights' is, literally, nonsensical, with no genuine meaning at all; it is also to raise a problem - to which I want to devote the last part of this lecture - in regard to the character and foundations of Bentham's political radicalism. The problem arises at this point because by the mid-1790s, when Bentham wrote the sentence just quoted, the ideology of natural rights had become an essential part of the equipment of political radicalism. Now at that particular stage in Bentham's development there was no great problem in this. He was then near the climax of his counter-revolutionary revulsion against the excesses of the French Revolution: prepared to offer his polemical attack on the natural-rights ideology to the Anti-Jacobin Review under the title Pestilential Nonsense Unmasked. When, a dozen years or so later, he himself was to acquire a commitment to fundamental political change, his radicalism must have had its own distinctive character. It was, in some sense, what John Stuart Mill was later to call philosophic or philosophical radicalism. It was almost, but not quite, - certainly it was in part - what Mill in 1836 was to refer to as

A Radicalism ... which is only to be called Radicalism inasmuch as it does not palter nor compromise with evils, but cuts at their roots.²²

The problem I want finally to consider here is whether, and if so how, this kind of radicalism in Bentham's later thinking - specifically now his political thinking - can be related to what I have tried to exhibit as the radical enlightenment ideas of his early years.

That there is indeed such a relationship is, I think, beyond doubt. Bentham was not mistaken in judging it appropriate, for example, to republish in 1823 - when his political radicalism was as unmistakable as his counter-revolutionism had been thirty years earlier - both the major products of his early work - A Fragment on Government and An Introduction to the Principles of Morals and Legislation. He now accused himself, it is true, of a degree of political naiveté in those earlier years; but the opening of his eyes to the realities of the political struggle did not cloud over the light of rational analysis and critical jurisprudence. The reality and the character of this basic continuity in Bentham's radicalism can be illustrated in several ways. One is precisely to examine the relationship between Bentham's politics and his linguistic philosophy; and this has in fact been done in an extremely illuminating way by L.J. Hume in an article published four years ago in The Bentham Newsletter.²³ For my own part I turn rather to a related but less technical exemplification, and one already adumbrated in what I have said here.

The polemic against natural rights from which I have already quoted forms part of a broader campaign, in which (I want to argue) we can see some of Bentham's major philosophical concerns in their bearing upon the world of political controversy. This is the attack upon political fallacies - upon the corruption of political discourse by the deliberate employment of sophistical arguments and delusive concepts. The attack on natural rights, already foreshadowed in the 1770s, was fully developed twenty years later in the work which became known in English as Anarchical Fallacies (a translation of the French title used by Etienne Dumont when publishing his version of the work in 1816). With the emergence and development of Bentham's own political radicalism, the target for his attack moved - as we might put it - from the Left to the Right. Increasingly, over the eighteen or twenty years before the eventual publication, in 1824, of the The Book of Fallacies (edited from Bentham's accumulated manuscripts on the subject by Peregrine Bingham), the attack is directed against the use of fallacy to defend a corrupt and oppressive establishment - to defend the privileged position of 'the ruling few' against the rising aspirations of 'the subject many'. Within that period fall the years of Bentham's most sustained work on the philosophical foundations of his critique of fiction; and L.J. Hume has shown that this analytical concern is not detached or remote from Bentham's increasingly active involvement in radical politics. In the satirical onslaught upon the fallacies of everyday political discourse, however, we see Bentham's thought engaged at close quarters in the political struggle itself.

What Bentham is trying to do here can best be understood in terms of the metaphor of poison and purgation which we have seen him apply to the science of jurisprudence. But the science - the body of ordered rational knowledge and judgment - now to be purged is no longer a relatively arcane and in some sense technical matter: it is the science of politics itself

applied in the context of a radically democratised society. In such a society - the society to which Bentham now looks as the only setting in which the utilitarian goal, the greatest happiness of the greatest number, can be securely realised - public men and public measures will be judged at the bar of public opinion. That opinion had always been of importance to Bentham. Already in his Fragment on Government, he had identified the essential duty and right of the good citizen as being 'to obey punctually; to censure freely';²⁴ and when, around 1790, he was disposed to argue that, whatever might be the case in France, radical political transformation was not required in Britain by the principle of utility, it was in large measure because he believed that the freedom of 'censure' - of 'public opinion' - effectively provided security against misrule. Twenty, thirty, forty years on, as a fully committed radical reformer, he still saw what he now called the Public Opinion Tribunal as an indispensable factor in the solution of the utilitarian equation.²⁵

Already, in a political world still at best falteringly on its way towards the full achievement of such objectives, Bentham recognised and insisted upon the essential importance of opinion. What must also be recognised, he insisted, was the extent to which the jury in this ultimately supreme court was liable to be hoodwinked or hectored, muddled and misled, by skilful but unscrupulous advocacy. It was Bentham's task to provide the impartial and objective judicial summing-up, in which the weight of evidence would be assessed and the irrelevancies of fallacious rhetoric discounted.

Once again, however, I seem to hear Bentham's admonitory words - 'Enough of metaphor and declamation!' Lest the substantive point be lost amid figures of speech, let me end by restating it more directly and in relation to what I have been trying to say in this lecture. The point, as I see it, is this. In making fun, as he does, of such ploys and rhetorical contrivances as the Chinese Fallacy ('the wisdom of our ancestors'), the Procrastinator's Argument ('wait a little, this is not the time'), or the Fallacy of Distrust ('what's at the bottom?'), Bentham is pursuing a profoundly serious purpose. His aim is to bring into being a language for political discourse at once accessible to a democratic electorate and free from the corruptions of sophistry and misapplied fiction. It seems to me that such an enterprise was directly continuous with Bentham's concerns as a representative figure of the late Enlightenment. Perhaps it was also an enterprise foredoomed to failure. That both these statements should be true is, I fear, neither impossible nor surprising.

NOTES

1. History of Political Thought, iv (1983), p. 191.
2. A Comment on the Commentaries and A Fragment on Government, (CW) [hereafter Comment/Fragment], pp. 80-81 & n.
3. Comment/Fragment, p. 407.
4. Bentham to Franz Ludwig Tribolet, 30 March 1779: Correspondence, (CW) ii. 252.
5. An Introduction to the Principles of Morals and Legislation, (CW) [hereafter IPML], p. 202 and n.
6. Loc. cit., n.1 above.
7. Correspondence, (CW), i. 305.
8. Correspondence, (CW), ii. 38.
9. Correspondence, (CW) i. 367.
10. Correspondence, (CW), ii. 115-22, 139-41, 143-52.
11. Correspondence, (CW), iv. 145-70.
12. For the courtship cf. Correspondence, (CW), i. 294-365 passim: the reference to a parliamentary seat is at p. 297.
13. See K.M. Baker, 'The Early History of the Term "Social Science"', Annals of Science, xx (1964), pp. 211-26; B.W. Head, 'The Origins of "La Science Sociale" in France, 1770-1800', Australian Journal of French Studies, xix (1982), pp. 115-32.
14. IPML, (CW), p. 11.
15. Ibid.
16. IPML, (CW), pp. 5-6.
17. IPML, (CW), p. 1.
18. Lectures on Rhetoric and Belles Lettres, quoted in K. Haakonsen, The Science of a Legislator: the Natural Jurisprudence of David Hume and Adam Smith, Cambridge, 1981, p. 152. A similar view was expressed by Smith in his jurisprudence lectures a few years later: cf. Lectures on Jurisprudence, ed. R.L. Meek, D.D. Raphael and P.G. Stein, Oxford, 1978, p. 42.
19. Comment/Fragment, (CW), p. 346.
20. UC clxix. 50-66.
21. Bowring, ii. 501 (Anarchical Fallacies).
22. Mill to Edward Lytton Bulwer, 23 November 1836: The Earlier Letters of John Stuart Mill, ed. F.E. Mineka, Collected Works, xii, p 312.
23. 'The Political Functions of Bentham's Theory of Fictions', Bentham Newsletter, 3 (December 1979), pp. 18-27.
24. Comment/Fragment, (CW), p. 399.
25. Cf. Constitutional Code, vol. I, (CW), as index, but esp. pp. 35-9; also F. Rosen, Jeremy Bentham and Representative Democracy, Oxford, 1983, as index, but esp. pp. 24-8.

BENTHAM AND THE EARLY NINETEENTH CENTURY

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In July 1832, a month after Bentham's death, Thomas Babington Macaulay published an article in the Edinburgh Review about a work by Etienne Dumont, the Genevan who had devoted much of his life to editing Bentham's works and translating them into French. Macaulay said in this article:

If M. Dumont had never been born, Mr Bentham would still have been a very great man. But he would have been great to himself alone. The fertility of his mind would have resembled the fertility of those vast American wildernesses, in which blossoms and decays a rich but unprofitable vegetation... His speculations on laws would have been of no more practical use than Lord Worcester's speculations on steam-engines. Some generations hence, perhaps, ...an antiquarian might have published to the world the curious fact, that in the reign of George the Third, there had been a man called Bentham, who had given hints of many discoveries made since his time, and who had really, for his age, taken a most philosophical view of the principles of jurisprudence.¹

There are, perhaps, two Benthams (excluding the auto-icon). One of them survives in the 176 boxes of manuscripts in the library of this college. This is, if you like, the esoteric Bentham, many of whose speculations do resemble in some respects those of the seventeenth-century Earl of Worcester on steam-power or those of Bentham's near-contemporary Charles Babbage on mechanical computing. These speculations of Bentham - unpublicized in his own time, but receiving attention from scholars in the twentieth century - include his great work on what he called the 'metaphysics' of law, Of Laws in General, which he regarded as too abstract and abstruse to be worth publishing in his own time. They also include some of the works that Professor Burns was mentioning last week on logic and language, and those in which Bentham attacked the current laws and prejudices against homosexuality and other forms of 'sexual nonconformity'. The other Bentham is what might be called the historic Bentham: the one whom people actually read, and who influenced the contemporary climate of ideas; and it is on this Bentham that, as a historian, I wish to concentrate this evening, looking at the ways in which his ideas circulated, the places they reached, and the sort of impact they made, in the early nineteenth century.

At the beginning of the century Bentham was little known, in England or abroad. Of the people who had then heard of him, a high proportion would probably have associated him with his Panopticon prison scheme, for his efforts to get this implemented had attracted a certain amount of public attention. But in fact his central preoccupation had been -and was to remain for the rest of his life - legislation and the codification of law. As we were hearing last week, what he wanted above all to do (though he often got side-tracked onto peripheral or topical matters) was to produce a 'pannomion' or complete body of laws - a comprehensive code, or set of codes, which he thought would be applicable (with a certain amount of modification and filling-in of detail) to virtually any society. In most of his writings in the 1770s and 80s he had been trying to lay the

foundations of this panomion; and he had actually published, in 1789, a preliminary exposition of its underlying principles, called An Introduction to the Principles of Morals and Legislation. This is of course the work by which he is best known today in the English-speaking world. But it was little read in his own time. Only 250 copies of the original edition were printed, and half of those were destroyed by rats or damp at the printers;² and references to the work in contemporary literature are very sparse. It was Dumont who, by taking over and digesting Bentham's writings (most of them in manuscript), presented the fruits of his work to an international public, and was thereby largely responsible for giving Bentham the reputation in the early nineteenth century of being the greatest living expert on legislation.

It is worth saying a little about Dumont, as Bentham's debt to him was so great. He started life as a pastor in the Calvinist church, but he found himself at odds with the political régime in Geneva in the 1780s, and went abroad. He came in due course (via St. Petersburg) to England, and was engaged as tutor to a son of Lord Lansdowne, who had formerly been prime minister as Lord Shelburne in 1782-3. Within a few years, a sinecure was found for him as a nominal clerk in the office of the Clerk of the Pells, who was then Lansdowne's friend Isaac Barré. This was strictly speaking irregular, as Dumont was not a British subject, and he appears in the official lists as Stephen Dumont. The post, and the pension he received after its abolition, brought him four or five hundred pounds a year for the rest of his life and (ironically, as Bentham was a strong opponent of sinecures) it was an important factor in enabling him to devote so much of his time to editing Bentham.³ Dumont and Bentham first came into contact with each other as members of the Lansdowne circle on the eve of the French Revolution. Dumont was directly involved in the revolution for a time, as an associate or assistant of Mirabeau. But by 1793 he was back in England, disillusioned with revolutionary politics, and he lived mainly in this country during the French wars. He was a very sociable and agreeable person, and the novelist Maria Edgeworth, who knew him very well, wrote after his death: 'I think he was, take him all in all, the man of the coolest judgment and of the warmest heart I ever knew, and therefore he had the most attached friends who loved him with all their souls.'⁴ His wide circle of friends included a number of people in aristocratic whig society, and he spent a considerable amount of time at great houses like Bowood and Holland House. Meanwhile, he occupied himself with editing and translating Bentham's chaotic manuscripts.

The first major publication which he based on these manuscripts - and which always remained the most important of his recensions - was the Traité de législation civile et pénale, published in three volumes in Paris during the Peace of Amiens in 1802. There were second and third editions in 1820 and 1830, and it was translated into Russian in 1805, Italian in 1819, Spanish in 1821-2, German in 1830. Also, Dumont produced four further publications based on Bentham's writings, which were all translated into Spanish and other languages; and a collected edition of Bentham's works as edited by Dumont appeared at Brussels in 1829-30. One should add that even in the English-speaking world it was largely through Dumont's versions that Bentham came to be read. For one thing, these publications were quite extensively reviewed in British periodicals - especially in the Edinburgh Review, the great liberal periodical of the day. Also, several of Dumont's versions were translated back into English. For example, the Traité des preuves judiciaires, published in 1823;

appeared in an English translation as A Treatise on Judicial Evidence two years later; and this remains in many ways the clearest and most useful presentation of Bentham's views on evidence. Similarly, there were two American translations of the Traité de législation, and it was primarily through these that Bentham's ideas circulated in the United States in the nineteenth century.

By contrast, the works which Bentham himself brought out in England tended to be published in a haphazard and often restricted way. It is extraordinary that someone as vain and concerned about his own reputation as Bentham was should have been so casual about the way in which his works were made available to the public. What he really liked doing was following trains of thought on paper; the business of revising his own material and seeing it through the press was something he found extremely tiresome, and whenever he could he left it to other people. Also, his attention tended to veer about from subject to subject, and he rarely managed to complete anything before moving onto something else that had caught his interest. Consequently, one finds that some of his works were printed, or partially printed, but never published. Also, some of those that were published appeared in very small editions: the 'in-letters' in Bentham's correspondence in the early nineteenth century contain many complaints about how difficult his works were to get hold of. One can say quite confidently that none of his works sold at all extensively in English during his lifetime; and one may add that the collected edition of his works in eleven volumes, which his disciple and literary executor John Bowring produced in the early 1840s, did not do much to disseminate his work further. The Edinburgh Review said of these volumes when they were published that they were 'incomplete, incorrect and ill-arranged', and that with their close print, small type and double columns they had 'typographically interred' the opinions of the author; and Bowring's son admitted in the 1870s, in a memoir of his father, that the publication 'did not attain extensive popularity'.⁵ Yet Bentham has been described recently - by the author of a book on Benjamin Constant, his only possible rival in this respect - as 'the most widely-read liberal thinker of his time'.⁶ Whether he was a liberal or not is debatable: but he was widely read, thanks to Dumont. A Paris bookseller estimated near the end of Bentham's life that 50,000 copies of the Traité de législation had been sold in Europe, and that another 40,000 volumes of Bentham's works edited by Dumont had been sold in South America.⁷ There was some truth in what William Hazlitt wrote in the essay on Bentham which he published in 1824: 'The lights of his understanding are reflected, with increasing lustre, on the other side of the globe. His name is little known in England, better in Europe, best of all in the plains of Chili and the mines of Mexico.'⁸

I want to say a little more in a moment about Bentham's influence in the Iberian world. But first it may be worth making one or two general points about the differences between what one may call 'Bentham-Dumont' and the unprocessed Bentham of the early nineteenth century. One very obvious difference is in regard to style. Bentham's style had at one time been rather good, and Henry Brougham and Sir James Mackintosh both commented on the lucidity and even elegance of some of his early works (such as his Defence of Usury, published in 1787), in contrast to the obscurity and ungainliness of the style he had since developed.⁹ Paradoxically, it was partly as a result of his efforts to be completely unambiguous that his style became so convoluted and opaque. A former secretary of his, Walter Coulson, wrote in the Examiner in 1817: 'He seems

every where to have laboured to express his opinions with a degree of accuracy, and a number of reserves, quite inconsistent with fluency. He has parenthesis within parenthesis, like a set of pill-boxes; and out of this habit have grown redundancies which become tiresome to the reader.'¹⁰ I thought of reading you as a specimen of his later style a 260-word sentence from a letter of his to the Examiner in 1814,¹¹ but it would have taken up too much of the lecture (besides exhausting the lecturer). Suffice to say that Cobbett described Bentham's style in 1818 as 'puzzling and tedious beyond mortal endurance', and William Empson, professor of law at Haileybury, wrote in a review of Bentham's Rationale of Judicial Evidence: 'Even the cabinets of diplomacy can scarcely ever have witnessed so successful an employment of words for the concealment of thoughts, as is here exhibited.'¹² Even Dumont sometimes had difficulty in understanding what Bentham wrote. On the manuscripts which Bentham passed on to him there are occasional comments in Dumont's hand such as 'J'ai lu dix fois le ms sans le comprendre'; 'J'ignore pour quelle planète l'auteur a écrit'; and on one occasion the single word 'Hébreu!'¹³ But in general Dumont did a remarkable job in understanding Bentham and making him comprehensible -and readable - for others. This involved a certain amount of pruning and simplification. Bentham, for example, had a passion for classification. He was a great admirer of Linnaeus and believed that his method of classifying botanical phenomena by division and subdivision could be fruitfully applied to human behaviour in order to produce an exhaustive classification of, for example, the offences which people might commit and which the author of a penal code would have to consider and provide against. There was a lot of this sort of classification in An Introduction to the Principles of Morals and Legislation, and Bentham himself recognized that it could be very tedious to the reader.¹⁴ Dumont included a certain amount of it in his recensions, but he explained in his introduction to the Traités that he had tried to avoid the things that had hampered the success of Bentham's own work: 'les formes trop scientifiques, les subdivisions trop multipliées et les analyses trop abstraites.'¹⁵

There were also important ways in which Dumont's recensions differed in tone and content from the work that Bentham himself was producing in the early nineteenth century. The versions of Bentham's thought, in fact, which circulated most widely in the early nineteenth century represented the eighteenth-century Bentham. The Traités de législation was based mainly on manuscripts written in the 1780s. As we were hearing last week, the Bentham of the late eighteenth century was radical in his approach to law reform, and in his hostility to various widely accepted theories such as those of natural law and social contract. But he was not, except for a brief period in 1789-90, a radical in politics. Dumont was able to say correctly enough in his introduction to the Traités that Bentham was not exclusively attached to any particular form of government, and that he considered that if a people had good laws it could achieve a high degree of happiness without possessing any political power.¹⁶ During the early years of the nineteenth century, however, Bentham became convinced that the vested interests of lawyers, which were the most immediate obstacle to any reform of the English legal system, were closely linked with the vested interests of other sections of Britain's ruling élite, and that a whole ranged of abuses, in the governmental system and the established church as well as in the law, were being sustained and protected by a corrupt and unrepresentative legislature. From 1809 onwards he was developing a set of arguments in favour of parliamentary reform, and in

his first published work on the subject in 1817 he called for annual elections, secret voting, and the enfranchisement of all adult males capable of passing a literacy test.¹⁷ Privately, he seems to have believed at this time that a revolution might be desirable. In 1817 he was in the habit of going for walks in Hyde Park and Kensington Gardens with John Quincy Adams, then American minister in London and later President of the United States; and Adams, in his diary, recorded Bentham as saying on one of these occasions: 'Upon the whole, it was likely that no great and real reform could be effected in England without a civil war. Corruption had so pervaded the whole mass of the Government, and had so vitiated the character of the people, that he was afraid they could be purified only by fire.'¹⁸ While he never displayed this degree of militancy on paper, he did insist on the need for 'democratic ascendancy'; and this distanced him to some extent from people who might have been regarded as his natural allies, such as the whig law reformers Sir Samuel Romilly and Henry Brougham, who were liberals but not democrats.

Such people disapproved not only of the substance of Bentham's radical views, but also of the strident and vituperative tone which he adopted in attacking the legal and political and religious establishment. Romilly, who was a personal friend of both Bentham and Dumont, wrote to the latter in 1817 saying that the 'asperity' with which Bentham was attacking the English system of government was 'very injudicious';¹⁹ and indeed the conservative Quarterly Review was able to write dismissively of his 'rancorous abuse' and 'vulgar scurrility' and 'indiscriminate railing'.²⁰ Dumont never adopted this sort of style, and Empson wrote in 1828 that he had obtained a hearing for Bentham's ideas by adopting 'the tone of civilized debate'.²¹ One or two of the volumes Dumont produced in the post-war period did draw on recent writings of Bentham - that is to say, on writings of Bentham in his radical phase. But Dumont tended to soften or qualify Bentham's most provocative statements. For example in presenting his views on codification in a volume published in 1828, Dumont reproduced a remark of Bentham's to the effect that those who opposed the codification of law could be divided into two classes: they were either impostors, or dupes. But Dumont added a footnote saying that in his opinion this classification was not complete, as there were some men of intelligence and good faith who opposed codification on the grounds that it was difficult if not impossible to do it satisfactorily.²²

Dumont also differed, more fundamentally, from the later Bentham in that he himself was never a democrat. When Bentham published his parliamentary reform pamphlet in 1817, he knew Dumont would not like it, and did not send him a copy: Dumont had to write and ask for one, saying that although he himself did not believe in universal suffrage he wanted to see Bentham's views on the subject fully set out.²³ But those views were not reproduced in any of Dumont's recensions: his volumes contained nothing about Bentham's ideas on representative government and constitutional law; and Bentham went so far as to say in a letter to his Spanish disciple and interpreter Toribio Nuñez in 1821 that in knowing only such works of his as had found 'a French elaborator and editor in Dumont', Nuñez scarcely knew half of him.²⁴ However, as Dumont himself pointed out in a letter to Bentham in the following year, the fact that constitutional matters were not discussed in the work was one of the reasons why the Traité de législation had been able to circulate so widely and exert an influence under various political régimes.²⁵

That is not to imply that the Traités was, an uncontroversial book. It was, in fact, despite its avoidance of politics, highly controversial and from a certain point of view very subversive, because it challenged the basis of most accepted systems of morality. Bentham himself was fundamentally anti-religious, partly because he believed that in practice religion had proved to be on balance damaging to human happiness, and partly because he was an empiricist who did not see any substantial evidence for the existence of God. He refers in one of his early manuscripts to 'Religion, or if the term please better Superstition'.²⁶ Dumont, in the Traités, was careful not to present Bentham as explicitly hostile to religion. But he did not conceal that fact that Bentham's utilitarianism was basically secular: that it was a system of morality which depended not on God-given notions of right and wrong, but on the simple principle (which, in Bentham's view, nobody who really thought about it could deny) that society should be organized in such a way as to maximize the happiness of its members. It followed from this that the basic moral criterion by which all institutions and policies and human conduct should be judged was their conduciveness to the maximization of happiness - and this criterion provided, according to Bentham, an external, non-mystical standard such as was not provided by other moral systems which purported to be derived from natural law, or divine ordinance, or intuitive moral sense. Such arguments being set out in the Traités de législation, it was clear that the work could not be reconciled with traditional Catholic theology, and in 1819 it was placed on the papal index of prohibited books.²⁷ It is also worth noting that two of the fullest attempts to criticize and refute Bentham's doctrines in the early nineteenth century were written by Spanish ecclesiastics. (One of them, José Vidal, was a theologian at the University of Valencia; the other, Martínez Marina, was a liberal in politics and a member of the Cortes in the period of constitutional government in the early 1820s, but he was also a firm believer in natural law.)²⁸

One of the main reasons, of course, why two of the major attacks on Bentham's philosophy were written in Spain was the great impression his ideas had made there; and I want to move on to talk about his influence in the Peninsula and Latin America, because this is one of the most striking features of his impact - or rather the impact of Bentham-Dumont - on the early nineteenth-century world. In early nineteenth-century Spain there were two periods of liberal or constitutional government - one in 1808 to 1814 and the other in 1820 to 1823. By the time of the first of these, Bentham's work had begun to circulate in Spain. Three hundred copies of the original edition of the Traités de législation had been sent by the Paris publisher to Spain, and Nuñez first obtained a copy in 1807, when he bought one from a pedlar who was travelling with the French army through Spain on its way to fight the English in Portugal.²⁹ Between 1810 and 1814, several articles on Bentham's ideas appeared in El Español, a periodical edited in London by the Spanish expatriate Blanco White, which had a considerable circulation in the Peninsula. But it was in the second period of liberal government, the 'triennium' of 1820-23, that Bentham's ideas were most widely and warmly discussed. Nuñez, who was librarian at the University of Salamanca, produced in this period two volumes which were not so much translations of Bentham as attempts (based on the material published by Dumont) to present the essence of his ideas in a systematic way; and Ramón Salas, professor of law at the same university,

was responsible for the first Spanish translation of the Traités de législation. Nuñez and Salas both became members of the Cortes, and another leading propagator of Bentham's ideas, the Madrid journalist José Joaquín de Mora, wrote in an article for an English newspaper in 1821: 'I have been delighted with the enthusiasm and the reverence with which the most illustrious men in this country speak of Bentham.'³¹ In that year Bentham was consulted by the Minister of the Interior about trial by jury, and the President of the Cortes, Count Toreno, sent him the draft of a new penal code which had been drawn up by a committee of the Cortes and asked for his comments on it.³² The Portuguese Cortes went one better than that. Bentham was always hoping that some head of state or sovereign body would invite him to draw up a complete code of laws for the state concerned, for he felt that such an invitation would give him the stimulus he needed to settle down to the very onerous task of substantive codification. When Portugal (like Spain) had a revolution in 1820, Bentham sent over a collection of his works and an offer to draw up and submit a code of laws for the new régime. The Cortes responded by ordering that his works should be translated into Portuguese, and accepted his offer to submit a code of laws.³³

In fact, Benthamic codes did not materialize in either Portugal or Spain. The encouragement from the Portuguese Cortes did lead Bentham to start serious work on his constitutional code³⁴ (which was intended to be one of the component parts of his pannomion). But in 1823 the liberal régime in Portugal was overthrown. Meanwhile, in regard to Spain, Bentham did respond to Toreno's invitation by writing him a series of letters, amounting in all to a pamphlet of 120 pages.³⁵ But this work is an example of the later Bentham at his worst. It is a very polemical and destructive critique, unnecessarily caustic and even facetious about the draft code and those responsible for it; and the essence of his argument is that the whole thing should give way to a code of his own making. Not surprisingly, although parts of the pamphlet were translated into Spanish and published in Madrid, little or no attention was paid to it in practice;³⁶ and in any case, in Spain as in Portugal, the restoration of absolutist government in 1823 put a stop to projects of legal reform. Nevertheless, Benthamism had become, and was to remain for some decades, a major strand in Spanish liberalism: a Spanish scholar has written that between 1820 and 1845 no other foreign author exercised so great an authority in Spain.³⁷ In 1837 (after constitutional government had been again restored) George Borrow, the novelist, was travelling in the north-west corner of Spain as an agent of the British and Foreign Bible Society, distributing copies of the New Testament. At Finisterre he was arrested as a suspected Carlist (a supporter of the absolutist pretender to the Spanish throne), and was even suspected of being the pretender Don Carlos himself. He was taken before the alcalde, the local mayor, who on finding that he was an Englishman became very friendly. This, according to Borrow, is how the conversation went:

Alcalde. - Allow me to look at your passport. Yes, all in form. Truly it was very ridiculous that they should have arrested you as a Carlist.

Myself. - Not only as a Carlist, but as Don Carlos himself.

Alcalde. - Oh! most ridiculous; mistake a countryman of the grand Baintham for such a Goth!

Myself. - Excuse me, sir, you speak of the grand somebody.

Alcalde. - The grand Baintham. He who has invented laws for all

the world. I hope shortly to see them adopted in this unhappy country of ours.

Myself. - Oh! you mean Jeremy Bentham. Yes! a very remarkable man in his way.

Alcalde. - In his way! in all ways. The most universal genius which the world ever produced...

Myself. - I have never read his writings...

Alcalde. - How surprising!... Now here am I, a simple alcalde of Galicia, yet I possess all the writings of Baintham on that shelf, and I study them day and night.

Myself. - You doubtless, sir, possess the English language.

Alcalde. - I do, I mean that part of it which is contained in the writings of Baintham. I am most truly glad to see a countryman of his in these Gothic wildernesses.

The alcalde set Borrow free and found a lodging for him for the night, though on discovering that his mission was to distribute copies of the New Testament he expressed surprise that 'the countrymen of the grand Baintham should set any value upon that old monkish book'.³⁵

Even more remarkable than the diffusion of Bentham's writings in Spain was their diffusion over Latin America. Bentham corresponded personally with a number of the great figures of the age of liberation, including Bernadino Rivadavia, the first president of what was to become Argentina, Francisco de Paula Santander, vice-president of Gran Colombia in the 1820s and later president of New Granada, and the great Simón Bolívar. But it was through his works (through Dumont's recensions translated into Spanish), rather than through his letters, that his influence was mainly disseminated.³⁹ A civil servant who worked under Santander records that even in the days before he had any contact with Bentham, Santander always had a copy of the Tratados de legislación open on his desk.⁴⁰ Several scholars working independently on the history of different parts of Latin America, from Chile to Mexico, have commented on how frequently Bentham's work was cited in newspapers and debates.⁴¹ Members of the Colombian Congress in the mid-1820s were quoting Bentham at each other much as eighteenth-century Englishmen had quoted classical authors in the House of Commons; and one remarkable member of the Mexican Congress (José María de Jáuregui) claimed to have started reading Bentham at the age of eight.⁴² Such precocious Benthamism was rare even in Latin America, but there were a number of places in which Bentham's works were adopted as texts at university level. For example, the man appointed by Rivadavia as first professor of civil law in Buenos Aires, Pedro Somellera, produced in 1824 a course-book on the principles of civil law which was entirely founded on the Tratados; and in Chile the great humanist and jurist Andrés Bello, when he started teaching 'universal legislation' at the Colegio de Santiago in 1829, used the Tratados as the basic text for three-quarters of his course.⁴³

In Colombia a major controversy developed over the use of Bentham's work as a prescribed text. In 1825 Santander, who was ruling Gran Colombia in Bolívar's absence, issued a vice-presidential decree ordering that professors of law in the republic should teach the principles of legislation from Bentham. Some churchmen and conservatives saw this as a very provocative move, and as part of a general plan to undermine Catholicism in Colombia; several priests publicly attacked the work, and some educational authorities followed suit. For instance, the

departmental subdirección for Panama (which was then part of Gran Colombia) said in a report to the Director-General of Studies in Bogotá, with regard to Bentham's denial of the existence of natural law:

The doctrine involves, in the opinion of this subdirección, the ruin of the foundations upon which the science of law rests, and the complete subversion of morality as well. Pernicious and melancholy doctrine, against which the human species raises a cry of indignation! His false philosophy has invented for the present generation a system improperly called moral, based upon the ignoble and disreputable base of interest or individual pleasure - well or ill understood. It is capable of engendering in the hearts of Colombians a sad egoism."⁴

Bentham also had enthusiastic defenders - such as Vicente Azuero, a lawyer, journalist and public servant who wrote that the Tratados was more valuable than thousands of other volumes, and that from it one could learn 'at one time the elements of public law, private law, and international law, and of the purest morality, most conformable to the principles of the Gospel'.⁴⁵ However, Bolívar, when he returned to Bogotá from Peru at the end of 1826, had become convinced that what post-liberation conditions required in South America was strong, authoritarian government; and he was anxious not to antagonize the Church and the landowners. In 1822, he had written flatteringly to Bentham (from what is now Ecuador) saying that 'the name of the preceptor of legislators is never pronounced, even in these savage regions of America, without veneration nor without gratitude'.⁴⁶ But in 1828 he put a stop to the public debate over the use of Bentham's work, by issuing a decree saying that the Tratados should no longer be used as a prescribed text in universities. Later in the year, after an assassination attempt on Bolívar in which a number of liberal intellectuals were involved, the plan of studies in universities was completely revised, and (by an irony of history which Bentham would not have relished) the funds formerly used to finance courses in the principles of legislation were transferred to finance new compulsory courses in the Roman Catholic religion. A few years later, however, when Santander was elected president of New Granada after the disintegration of Gran Colombia, he reinstated Bentham in the university curriculum.⁴⁷

What sort of function, one may ask, did Benthamism perform in Latin America? Bentham cannot in general be said to have had a major substantive influence on the institutions and legal systems of the new Latin American states, though one such case is worth mentioning. His Political Tactics, a work on the procedure of legislative assemblies written at the time of the French Revolution and published by Dumont in 1816, was used by Rivadavia as the basis for the rules he drew up for the Chamber of Deputies in Buenos Aires in 1822; and these rules, with amendments, have continued ever since to govern the proceedings of the Argentinian legislature.⁴⁸ For the most part, however, what Bentham did was to provide a source of legitimation for liberals in their conflict with various conservative forces: with the Church and ultramontaniam, in particular, but also with other privileged groups and vested interests surviving from the colonial period. As Professor John Lynch has put it: 'Seeking an alternative authority to absolutism and religion, liberals seized upon utilitarianism as a modern philosophy capable of giving them the intellectual credibility they wanted.'⁴⁹ Most of them were not democrats or egalitarians, and in this sense the moderate brand of Benthamism available to them in Dumont's

volumes, with its strong emphasis on the need for order and security, suited them quite well. At the same time, they liked Bentham's uncompromising rejection of prescription and his determination to subject all institutions and practices to the test of public utility. Also, whereas Montesquieu and Savigny regarded laws as largely a product and reflection of the societies in which they were found, Bentham had a basic belief in the power of legislation to alter society, and to change people's attitudes and promote progress. One feels that this main contribution in Latin America was to encourage, in those who paid close attention to his works, a modernizing, innovatory spirit, impatient - perhaps too impatient - of what they regarded as outmoded views and practices. It is certainly arguable that men such as Rivadavia and Santander tried to modernize too fast, and that this largely accounts for their frustrations and limited success.

I should like to glance now at Bentham's impact on some other parts of the early nineteenth-century world, though it will not be possible to cover all the countries in which he had a significant influence. The country he himself most admired was undoubtedly the United States: he described the American political system, in a letter to Dumont in 1817, as a 'species of government in comparison with which the least ill-conducted of all other governments are but nuisances'.⁵⁰ But one great blemish on the American system in his view was its retention of the common law. There were various reasons why Bentham disapproved so much of case-law; but perhaps the most basic one was that it did not tell people in explicit, unequivocal terms what they ought not to do. It was the judge who, in the light of the precedents, pronounced on the legality of an action after the action had taken place; and according to Bentham this was how a man made laws for his dog: 'When your dog does anything you want to break him of, you wait till he does it, and then beat him for it.'⁵¹ Moreover, the volume and complexity and uncertainties of the common law meant that it could not possibly be comprehended by the layman in the way that codified law might be; and this of course very much favoured the interests of the legal profession at the expense of the community at large: Bentham said that the lawyers loved the common law for the same reason that the Egyptian priests loved hieroglyphics.⁵² In the years after 1815, Bentham did his best to get his ideas on codification, and his criticisms of the common law, publicized in the United States.⁵³ There was a considerable codification-movement in North America in the early nineteenth century, and one of its leading figures, Edward Livingston, who drew up a remarkable set of codes for the state of Louisiana, told Bentham in 1829 that many years earlier Dumont's volumes had helped to stimulate his interest in the subject; also, he referred to Bentham (in one of his own works) as 'a man to whom the science of legislation owes the great attention that is now paid to its true principles, and to whom statues would be raised if the benefactors of mankind were as much honoured as the oppressors of nations'.⁵⁴ In general, however, the ideas that Bentham was trying to put across were rejected by the legal establishment in North America, and his name was mentioned surprisingly little in the debates that took place on codification. It appears that legal reformers in the United States, although they did make some use of Bentham's arguments, were anxious to dissociate themselves from his sweeping radicalism; and an article in the whiggish North American Review in 1825, while cautiously recommending codification, referred disparagingly to Bentham as a visionary foreign philosopher who was as much distinguished for his zeal in politics as for his learning in jurisprudence.⁵⁵

In continental Europe, much more attention was paid to Bentham's ideas in France than in Germany. In Germany, the main currents of thought were dominated either by Kant's ideas - and Kantian ethics was and has remained one of the most powerful systems of moral philosophy opposed to utilitarianism - or by the 'historical school', whose approach to jurisprudence was quite different from Bentham's analytical approach.⁵⁶ In France, on the other hand, (as Bowring put it in his Autobiographical Recollections) Bentham's name was 'universally known to the learned through Dumont's translations of his writings'.⁵⁷ He had some notable French followers, including the economist Jean-Baptiste Say and the historian and politician Félix Bodin; the Revue Encyclopédique, the equivalent in France of the Edinburgh Review in Britain, reviewed his work almost as extensively as the Edinburgh did; and when he paid a visit to France in 1825 (at the age of 77) he was very flatteringly received. A bust of him - a copy of which stands by the issue-desk in the University of London Library - was sculpted by David of Angers, and when he was taken to see the law courts all the advocates present stood up in his honour.⁵⁸ The experience went to his head somewhat, and he said in a letter to Peel shortly after his return to England: '...for one disciple (so to speak) in this country, I have fifty at least in France.'⁵⁹ One should add that his ideas also provoked a lot of criticism there. France - unlike Latin America - had developed its own liberal ideology in the eighteenth century; and compared with the doctrine of natural rights, to which the French were attached, Benthamism seemed to many people a rather uninspiring philosophy. Many French and French-speaking intellectuals, such as Constant and Madame de Staël, disliked the emphasis on calculation and prudence in utilitarianism, and favoured an ideology which was more uplifting and more capable of producing what Madame de Staël called dévouement.⁶⁰

There are three other places I should like to mention before we return to England. The first - on which I shall touch very lightly in deference to the chairman of this meeting,⁶¹ who is writing a book on the role of the Benthamites there in the 1820s - is Greece. During the struggle for independence Bentham was invited by representatives of the Greek provisional government to submit codes for the use of the new state; this encouraged him to press on with his constitutional code, and he actually dispatched a draft of it to Greece in 1823-4. The Greek Senate thanked him in a very complimentary letter, saying among other things: 'The children of friendly Greece, gathering flowers from the flowery meadow of your works, are continually soaring to a height which they have not as yet been able to attain.'⁶² That may have been a tactful way of saying that Bentham's code, envisaging as it did the creation of an extremely elaborate bureaucracy, was hardly suitable for a not very developed country in the throes of a war of independence. Certainly, Bentham's offerings in the field of constitutional law were shelved; and in civil law, although a Greek translation of Dumont's Traités was published in Athens after Bentham's death, the new Greek state opted for traditional Byzantine law, with some borrowing from French codes.⁶³

The other two places, in both of which Bentham's influence was more substantial, are the tiny republic of Geneva, and the great Indian sub-continent. In the former, after the fall of Napoleon and the restoration of Geneva's independence in 1814, there was a notable period of reform, and Dumont, returning from England, played a crucial role in this as a leading liberal in the Representative Council. Indeed, Geneva became a

sort of laboratory or testing-ground for the application of Bentham's ideas. Dumont, in the first place, was responsible for drawing up a set of rules for the proceedings of the Representative Council; these rules, like those drawn up by Rivadavia in Buenos Aires, were largely derived from Bentham's work on 'Political Tactics', and (again like Rivadavia's) they have remained substantially in force ever since in Geneva's cantonal parliament.⁶⁴ Secondly, a new code of civil procedure was adopted in Geneva in 1819 which was drawn up by Dumont's friend Pierre-François Bellot, who made use of both published and unpublished writings of Bentham on procedure.⁶⁵ Thirdly, Dumont himself drew up a code, or régime, for the Geneva penitentiary, which was adopted in 1825. The prison itself was not built on the architectural model of Bentham's Panopticon, but Dumont's prison régime was closely based on that recommended by Bentham, with its emphasis on constant surveillance, regular work, the reform of character, and the separate treatment of different classes of prisoners.⁶⁶ Lastly, Dumont tried to introduce a new penal code in Geneva. But this ran into considerable difficulties, and the episode throws some interesting light on the problems of Benthamic codification in a democratic political system. Pierre-François Bellot went so far as to say, shortly after Dumont's death: 'The construction of codes is almost incompatible with the forms of a representative government. Experience proves that almost everywhere where codes exist, they have been passed by bodies which did not have the right to amend, and sometimes not even the right to discuss, and which were forced to obey a strong impulse issuing from a single, all-powerful will.'⁶⁷ Bentham indeed believed that the sort of systematic, comprehensive, internally consistent code he envisaged would have to be the product of a single mind, and would then have to be either accepted or rejected by the sovereign legislative power. But Dumont's projected code had to be considered and debated in detail by a succession of committees and commissions and councils;⁶⁸ he had to accept a series of modifications and compromises; and when he died in 1829 the project was still some way from final acceptance, and it died with him.

As for Bentham's influence in India, or on British policy in India, this was had a key post in the East India Company's administration in London - through Macaulay, who was law member of the Governor-General's Council between 1834 and 1838 - and through lesser-known Benthamites such as Alexander Ross and Holt Mackenzie, who served in important judicial and administrative posts in India. Macaulay, though a sharp critic of the utilitarian theory of democracy, was a very well-informed devotee of Bentham's ideas on law. He wrote in the article I quoted from at the beginning of this lecture: 'Posterity will place in the same rank with Galileo and with Locke, the man who found jurisprudence a gibberish, and left it a science'; and in 1835 he wrote in a private letter from India: 'I have immense reforms in hand...such as would make old Bentham jump in his grave.'⁶⁹ In fact, Macaulay's attempt to introduce a new system of judicial organization and procedure on Benthamic lines was frustrated; but he did succeed (unlike Dumont, and of course in different circumstances) in producing a new penal code for India, which reflected Bentham's influence in a number of ways: for instance in the abandonment of 'technical' terms such as felony and misdemeanour, and the substitution of what Bentham called a 'natural' classification of offences; in the precise definition and consistent use of terms; and in the clarity of the

arrangement, particularly in the way in which each law was initially stated as a simple command, and then followed by subsidiary matter such as explanations and exceptions.⁷⁰

After that round-the-world-in-fifty-minutes, we return to Queen's Square Place, Westminster, and to Bentham in his early nineteenth-century English context. Probably the happiest period of his life was his last twenty years or so. He was comfortably off, especially after parliament voted him £23,000 in 1813 to compensate him for the non-implementation of his Panopticon scheme. Also, in contrast to his frailty as a child, he enjoyed a vigorous old age, still playing fives and badminton at the age of 70, and jogging for the sake of his health. (In this respect as in several others he was a pioneer: John Neal, a young American who was staying with him in 1826, recorded in his diary one day in August of that year that Bentham, then 78, had just 'trotted' all the way from Fleet Street to Queen's Square Place on the edge of St. James's Park.⁷¹) Also, as we have seen, Bentham had acquired an international reputation, which gratified him very much; and he had attracted a circle of devoted followers in England. In these later years he was light-hearted, whimsical and egocentric. He had a favourite walking-stick called Dapple (after Sancho Panza's mule) and an ancient cat called the Reverend Dr John Langborn; and he had a joky vocabulary for use in his own circle, which was a sort of parody of the style in which he wrote. Lady Romilly, staying at Forde Abbey (the country house Bentham had rented) in the autumn of 1817, marvelled at some of the expressions current in his household: 'post-prandial vibration' (a stroll after dinner), 'circumgyration' (a walk round the grounds), and 'the grandmother-egg-sucking-principle'.⁷²

Some people, at this stage of his life, found him very engaging and regarded him with great affection - as did John Neal, for example;⁷³ others found him tiresome and even unattractive. He certainly had considerable faults. He was extremely vain; and he could be ungenerous and ungrateful to individuals - as he was towards Dumont, who applied to him for help over the proposed penal code for Geneva, but found him very unresponsive, because he apparently regarded Geneva as too small and unimportant to claim his attention when he was busy with other schemes of greater potential scope.⁷⁴ Brougham, in an assessment of Bentham published in 1838 which did full justice to his greatness as a legal philosopher, wrote: 'His impatience to see the splendid reforms which his genius had projected, accomplished before his death, ...made him latterly regard even his most familiar friends only as instruments of reformation, and gave a very unamiable and indeed a revolting aspect of callousness to his feelings towards them.'⁷⁵ Still, there was something rather splendid about Bentham's egotism: about his pride in the range and importance of his efforts to increase human happiness, and his ambition to be remembered as the most 'effectively benevolent' person who had ever lived.⁷⁶

In any case, whatever his shortcomings as a man in his later years, one can say with confidence that few people, between the ages of 54 and 84, have shown as much intellectual vigour and creativity as Bentham did between 1802 and 1832. In the early years of this period he wrote the work which was to be edited by J.S. Mill and published in five volumes in 1827 as the Rationale of Judicial Evidence - a work which was described by Elie Halévy as 'without doubt the most important' of all Bentham's works.⁷⁷ In the years after 1808, he developed a whole new utilitarian theory of democracy; and he also developed along with it a sophisticated analysis of

the structure and operations of Britain's ruling élite, and anticipated to a large extent the modern Marxist notion of ideological hegemony. He showed how the élite maintained itself not only by relatively crude means such as coercion and corruption, but also by 'delusion' - by using education and various kinds of propaganda to instil into the mass of the people ideas and beliefs that were not in tune with their real interests.⁷⁸ Also, in the second decade of the century, Bentham did intensive and original work on logic and language;⁷⁹ and in the 1820s he produced his massive Constitutional Code, which is a quite remarkable intellectual achievement and (in Dr Rosen's words) a 'classic text of liberal democracy'.⁸⁰

How much impact was made in early nineteenth-century England by this later work of Bentham's? It must be said that much of it either belongs to the esoteric Bentham, or had a very limited circulation. We have seen what Empson wrote about the style of the Rationale; and he went on to say: 'Writings, in order to be useful, must be such as people will consent to read.'⁸¹ As for the Constitutional Code, only the first volume was published in Bentham's lifetime, in 1830 - and by the end of 1831 only thirteen copies had been sold.⁸² The Plan of Parliamentary Reform did have a wider circulation, largely because the radical journalist T.J. Wooler of the Black Dwarf brought out a cheap edition which was a sort of translation into ordinary language.⁸³ The most popular of Bentham's later works was The Book of Fallacies (in which he cleverly exposed the various types of specious argument that were used by opponents of reform); but probably most people who knew of the book were acquainted with it at second hand through the amusing review or précis of it which Sydney Smith wrote for the Edinburgh Review.⁸⁴ In general, one feels that it was less through the direct impact of his writings, than through the dissemination of his ideas by a limited number of followers and sympathizers, that his influence was exerted in England. To some extent this was done through the press; the Morning Chronicle, the Examiner, the Westminster Review, the Spectator, the Philanthropist, the Jurist, were all edited by people who were committed (or at least friendly) to Benthamism, and they all included quite frequent citations of Bentham's work. Also, as is well known, men who were avowed followers of his, such as Edwin Chadwick and Southwood Smith, got into important positions on commissions of inquiry and in government departments in the 1830s and 40s, and played a major role in publicizing abuses and framing legislation to remove them - in fields such as public health, poor relief, and the restriction of child-labour in factories.⁸⁵

It was unfortunate for Bentham's posthumous reputation that by an accident of history one of the principal measures that can be associated with his influence was the New Poor Law of 1834: Chadwick, who was largely responsible for shaping this measure, had worked on Bentham's published and unpublished writings of the 1790s on poor relief, in which the famous (or infamous) principle of 'less eligibility' was clearly expounded.⁸⁶ The Benthamites believed, as Joseph Hume told the Commons, that a generous Poor Law was an evil because it tended to destroy 'that habit of self-dependence and that spirit of self-reliance, upon which alone they could depend for the well-being of the people'.⁸⁷ But the harshness of the Act of 1834 did more than anything else to give rise to the conception of Benthamism which one finds in the works of Dickens and Disraeli - the conception that Disraeli summed up in the word 'Brutilitarianism'.⁸⁸ However, this should not overshadow the other more beneficial measures of

social reform which Bentham's followers helped to bring about; nor should it overshadow the long series of legal reforms in which his influence has been traced.⁸⁹

Of course, the total reconstruction of the English legal system which he would like to have seen never occurred. Nor were the political changes of the early nineteenth century such as to produce the sort of 'democratic ascendancy' which, according to his analysis, was the only thing that could break down the entrenched position of the 'ruling few' and open the way to extensive reform in every field.⁹⁰ What in fact happened was a process of infiltration and piecemeal improvement, and much of Bentham's influence in England was of a general and rather intangible kind. John Stuart Mill wrote in a famous essay published in 1838: 'Bentham has been in this age and country the great questioner of things established. It is by the influence of the modes of thought with which his writings inoculated a considerable number of thinking men, that the yoke of authority has been broken, and innumerable opinions, formerly received on tradition as incontestable, are put upon their defence, and required to give an account of themselves.' The Westminster Review had said ten years earlier that Bentham's influence was extending itself 'silently and gradually', and was affecting people who hardly knew the titles of his works. And the radical MP John Arthur Roebuck wrote similarly in 1847 of the 'silent revolution' that Bentham had produced in the mode of treating political and moral subjects. 'The whole body of political writers', Roebuck said, 'without for the most part knowing where the inspiration came from, were full of the new spirit.'⁹¹

A great deal has, of course, been written about the impact of Benthamism in England. The bulk of this lecture has been concerned with its impact in other parts of the world; and I should like to finish by recalling a tribute which was paid to Bentham by a foreigner who (as we have already seen) was not one of his followers. Madame de Staël once said that the early nineteenth century would be remembered not as the age of Bonaparte or the age of Byron, but as the age of Bentham.⁹²

FOOTNOTES

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4. Maria Edgeworth to Mrs. Marcet, 25 Oct. 1829, in H.W. Häuserman, The Genevese Background, London, 1952, p. 153. Lord Brougham wrote of Dumont: 'His manners were as gentle as they were polished and refined. His conversation was a model of excellence; it was truly delightful.' (Speeches of Henry Lord Brougham, 4 vols., Edinburgh, 1838, ii. 303-4.)
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21. Edinburgh Review, xlvi (1828), 462.
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24. Pedro Schwartz (ed.), The Iberian Correspondence of Jeremy Bentham: A Provisional Edition, 2 vols., London and Madrid, 1979, i. 515.
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 69. Edinburgh Review, lv (1832), 553; Eric Stokes, The English Utilitarians and India, Oxford, 1959, p. 213n.
 70. Stokes, pp. 203-17, 219-33.
 71. Neal, p. 95.
 72. Ibid., p. 64; Bowring, xi. 80; S.H. Romilly (ed.), Romilly-Edgeworth Letters 1813-1818, London, 1936, p. 176.
 73. Neal described him (p. 22) as 'a man whom it were impossible to know without loving and revering him'. Cf. [William Bridges Adams], 'Jeremy Bentham', New Monthly Magazine, July 1832, pp. 49-52.
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WHY BENTHAM ?

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For many people it would be a sufficient answer to the question: Why bother about Bentham ? to point to the fact that Herbert Hart, our leading modern jurist, has been willing to devote a considerable proportion of his attention over more than 30 years to editing, interpreting and criticising Bentham's juristic ideas. Hart's inaugural lecture in 1953¹ could be said to mark the start of a revival of interest in Bentham, not only in jurisprudence; as an editor, he has been responsible for the publication of three substantial and important volumes in the Collected Works, two of them in collaboration with James Burns;² his extensive writings about Bentham have cast a new light on many aspects of his thought;³ they also provide a direct link with contemporary debates in legal and political theory; and it was under his chairmanship that the Bentham Project was put on a basis from which it achieved a new momentum, with the result that we are now in a position to talk of completing this massive enterprise as a feasible objective.

Herbert Hart retired from the Chairmanship of The Bentham Committee in July 1983, but he still remains an active member of the Committee and its Executive. Dr. John Dinwiddy has also recently ended a conspicuously successful period, first as Joint General Editor with Professor Burns and, for the last four years, as General Editor. Like Jimmy Burns, John Dinwiddy's appointment was officially 'part-time' - but, as anyone connected with the Project knows, that is 'newspeak' for a position that has been considerably more demanding than many full-time posts. John Dinwiddy has maintained the very high standards of scholarship established by his predecessor and has presided over the process of accelerating the pace without compromising those standards. It is largely thanks to Burns, Hart and Dinwiddy that The Bentham Project has an established reputation and a new confidence about its future. This seems to be a fitting occasion on which to pay public tribute to all their efforts on behalf of The Bentham Committee.

And so to my subject. Let me start with a story. Once upon a time a Martian... for this is science fiction... decided to visit Bloomsbury. He was a typical Jamesian tourist, well-read, sensitive, fastidious and enquiring. He was also well-prepared; he had read carefully all the best guide books, and much else besides; he thought that he knew what to expect; as we shall see, that was somewhat different from what he found.

He alighted at Goadge Street station and, having climbed the stairs (good practice for visiting the Bentham Project), he decided to start with University College before proceeding to visit the haunts of Karl Marx, the Stephens and other local objects of curiosity. Almost immediately he stumbled on a feature not mentioned in his guidebooks: the only public house in the universe, or so I am told, named after a famous jurist. 'Why Bentham ?' he asked himself, 'Why not the Virginia Woolf or the John Maynard Keynes (perhaps to be re-named the Milton Friedman,) or the A.E. Housman, or the Bertrand Russell or even the Lord Annan ? Or, if it is to be a jurist, why not the John Austin or the Hans Kelsen or the Herbert Hart

? He entered. Inside, instead of jovial jurists or prattling philosophers, he found it full of baffled medics, two of whom were puzzling over a recent book in Dutch on Bentham's influence on medical thought and practice." Around the walls was an exhibition, more instructive than aesthetic. Such nineteenth-century kitsch might be a sign of the times; it might provide a clue perhaps but hardly a complete answer to his question. He left the pub and set out for the main entrance to the college.

To his dismay he found his way barred and evidence of more radical alterations than a mere change of name. Suppressing the unworthy thought that this might presage the erection of a new Panopticon, he hurried southwards, looking for the side entrance. Being a good Jamesian he was naturally diverted by the local bookshop. To his surprise he found scattered through several departments, from theology to history, from linguistics to law to remainders, no less than twenty works in English by or about Bentham published since 1973, either displayed - or not displayed, because they were already out of print. 'Why so many,' he wondered 'and why so expensive?'

Back on course, he entered the college. His guidebook did mention the D.M.S. Watson Library, where the great bulk of the surviving Bentham manuscripts are housed. It provided some not very reliable figures: over 60,000 pages of manuscripts in University College alone, most of them illegible to the untutored eye, some illegible to anyone; the Bowring edition is thought to contain approximately 5 million words, which may amount to not much more than a quarter of the known surviving verbiage. A recent and very rough estimate is that there are approximately 170,000 pages of extant writings, published and unpublished, amounting to more than 20 million words; of these some 60-70,000 pages have never been published at all and many more have only appeared in conspicuously defective editions. The guidebook did not tell our visitor that opposite the D.M.S. Watson Library is Foster Court, where the Bentham Project has recently regained some territory. This is near the personnel department, which according to the college magazine recently returned a football pools coupon addressed to J. Bentham, marked 'not known in personnel'.⁵ They will find out about him soon enough.

Our visitor now found himself in a subterranean passage and, like most other visitors to the college, he soon got thoroughly lost. It would be tedious, if it were possible, to recount the sequence or the full extent of his wanderings. We must be satisfied with a few jumbled images: in an underground cubby hole barely larger than those that house the auto- icon and the Project's research assistants, Bentham postcards on sale at a bargain price; a printroom that reported that it had recently had to prepare advertisements for no less than five intellectual events devoted to Bentham in a single term; students from French and the Bartlett school furiously debating Foucault's interpretation of Bentham's views on architecture in Discipline and Punish; a professor of statistics puzzling over Bentham's thoughts on probability; stores reputed to contain further Benthamiana and other relics; members of the Institute of Education (our Martian had got really lost) looking with beady eyes at the recently published edition of the Chrestomathia; linguists and vegetarians, feminists and engineers, planners (both family and urban), psychologists and historians of science, archivists and administrators, all of whom acknowledged some connection, more or less direct, more or less

significant, with the College's skeleton in a cupboard. I shall not dwell on such obvious departments as Philosophy, Political Economy or Psychology. Nor on English where he has not been much appreciated since his efforts, fortunately abortive, to obtain the first Chair of Literature for his disciple, John Bowring - Bowring whose reputation as a biographer and poet stands in the same class as the Scottish poet McGonagall, and Amanda Ros, the world's worst novelist.

Eventually our visitor surfaced near the Housman room. Outside he noticed a picture by Henry Tonks, in which lack of artistic distinction is overshadowed by historical inaccuracy: for it depicts Bentham as one of the four founders of the College involving himself in its construction.

He came at last to the main object of his pilgrimage: the auto-icon, one of the seven great conversation-pieces of the world. Many of you will know the story of Bentham's will, of how the gods whose existence he denied arranged for a thunderstorm during the dissection of his body by Southwood Smith; of his reconstitution and rehabilitation in his own clothes; and of the subsequent rather chequered history of this remarkable reconstruction, before it came to its present vantage-point, where it keeps an eye on the Provost during opening hours that seem to be governed by the principle of caprice.

Much of all this is in the guide books. What is lacking is a coherent interpretation of the significance of Bentham's treatment of his own corpse, although several theories have been advanced. The idea of leaving one's body to medical science looks like a combination of enlightened humanitarianism and down-to-earth practicality that does credit to utilitarianism as well as being ahead of its time. The idea that graves and cemeteries represent a wasteful use of land is more controversial; to suggest that embalmed bodies may usefully serve as household ornaments or objects of veneration seems at first to involve a worrying error of judgment; either a utilitarian miscalculation or an example of where utilitarianism leads us.

Let me digress for a moment: in August 1983 I visited the home of another great auto-icon, Lenin's mausoleum in Moscow. The most striking contrast between these two tourist attractions - numbers of tourists apart - is the difference in the arrangements for viewing them. In queueing to see Lenin, visitors are compelled to adopt a posture of reverence by a display of heavy authoritarianism that exceeds anything to be found at most religious shrines in the modern world. We were commanded at gunpoint to treat Lenin's body as a sacred relic. The somewhat more informal arrangements for viewing our local point of pilgrimage leave visitors free to react with amusement, wonder or distaste... or, as often as not, a mixture of all three. Those who, like Matthew Arnold or most recently Ross Harrison⁶, have pointed out the irony of treating Bentham's body as an object of piety have got the wrong auto-icon. But the essential meaning of our own relic remains ambiguous. Small wonder, then, that the Martian visitor, pausing before it, should have murmured: 'Why, Bentham, why ?'

His next stop was the History Department where some of the Bentham Project is still housed. To approach the Project's former headquarters is painful. Considerably more than 39 steps are involved, even if one does not get lost en route. At the top of the stairs, in a cupboard hardly

larger than that which houses the Master, he found a white-faced, haggard research assistant peering through a magnifying glass at a typical example of Benthamic script. The visit was not a success. The tourist was so exhausted by his journey, the researcher was so exhausted by his labours that no useful discourse ensued. One thing, however, was quite clear: editing Bentham is an activity calculated to maximise pain for the participants.

The case against:

The Martian at last found the Faculty of Laws, segregated from the rest of the College in a disused trade union building decorated with hetero-icons of workers rather than thinkers - more Blakean than Benthamite. It is called 'Thorne House'. 'What a relief,' said our visitor, 'but why Thorne?' He entered. He was disappointed to find a party of the Bentham Club in full swing around a recently unveiled reproduction of the Pickersgill portrait and much debate about whether the building should be renamed 'Bentham House', 'Blake House' or 'Bleak House'. Exasperated he climbed to the third floor to confront the newly arrived Professor of Jurisprudence, to find him sporting a Bentham tie and fiddling with a Bentham beermat as he drafted a grant application. The Martian exploded, as only Martians can:

'This is too much. This Benthamomania for Benthamiana can only lead to Benthamophobia, perhaps to a repetition of the nineteenth century Bentham riots in Latin America, with Benthamophobes and Benthamites locked in mortal combat in the front quad. Here is a man who wrote far too much in hand-writing that is almost indecipherable; when deciphered his writings are nearly always incomprehensible without the interposition of a middleman; where his ideas have been successful, like exploded shells, as Fitzjames Stephen put it⁷, they have been rendered obsolete by their own success; when they have been rejected or ignored, their failure has usually been deserved, for many of his proposals were Utopian or barbaric or just plain silly; others have been rendered obsolete by the passage of time. On many topics his ideas have been superseded by more sophisticated versions of the same theory, or they have been discredited. The gist of what he had to say on most subjects is already known. He often repeated himself with only marginal differences. Much of the unpublished material can only be of interest to antiquarians, pedants or specialists in the esoteric or the exotic; the enterprise of editing or re-editing all of his writings is laborious, painful and expensive and must show rapidly diminishing returns. Can you honestly say that the enterprise is likely to add to the sum total of happiness, judged by Bentham's own standard of utility ? Why not winnow out the few remaining grains of wheat from the chaff and then call it a day ? Why Bentham ? Why bother ?'

Enough of metaphor and declamation. The Martian did not stay for an answer. But I propose to try to respond to his challenge by giving a brief account of the activities and policies of the Bentham project and my own reasons as a jurist for thinking that his work is still worthy of continuing, detailed attention. Since this is an intellectual occasion, I shall concentrate on his intellectual significance, rather than on the case for devoting scarce resources to the Bentham Project, though such a case has to be made. The reason for doing this is not to reply to criticism or to silence sceptical outsiders. For these doubts largely emanate from within: the Martian's diatribe expresses the very doubts that most Bentham

scholars have to confront. They play a central role in the determination of the strategies and priorities of the project. Of course, as with any enterprise, one can have too much of a good thing - and one can clearly have too much of Bentham kitsch, for which I am personally not much of an enthusiast.

We can at the outset dispose of one canard; there is no danger of even metaphorical Bentham riots for the simple reason that there are very few Benthamophiles. There are, of course, Benthamophobes: for example, natural lawyers, Oakshotteans, Marxists, and aesthetes who do not accept that Pushpin is as good as poetry. A central theme of my argument will be that far from being a haven for fanatics and committed Benthamites, Bentham scholarship is striking for the almost universal ambivalence exhibited by its participants towards their subject. As we shall see, one, perhaps the most important, single reason, for claiming that Bentham is still worth studying is because of the challenges that he presents to what for many of us are deeply held beliefs - or are they prejudices? In short he may be at least as significant cast in the role of worthy opponent as of powerful ally. So let us turn then to the Bentham Project and its plans for the future.

The Project

The Bentham Project was instituted in 1959. Its primary objective has been to replace the Bowring edition of the Works with a comprehensive, definitive, but sparsely annotated, edition of all of his writings, including the correspondence.⁸ The enterprise was very modestly financed at first, with the General Editor and all principal editors part-time. This, combined with the fact that the task has proved more complex than was originally envisaged, meant that it got off to a rather slow start. I well remember when I first attended a meeting of the Bentham Committee some ten years ago, one of the members said: 'At the rate we are going only young Twining here will be alive when it is completed.' He then looked at me again and added 'I don't think he will make it either'. By 1982, 8 volumes had been published, but by then the original estimate that the total writings would fill about 45 volumes had been revised to a more realistic 65-68 - or their equivalent; for we are not committed to conventional publication in book form of the whole corpus of works. Rather the intention is to make available the text of all the writings in one form or another and to publish as books all the significant works and so much more as the market and our sponsors will support. Recently the project has gathered momentum. In 1983 three volumes have appeared. A further eleven are planned for publication by 1986-87; and provisional plans have been drawn up to produce a further 12-15 volumes in the period 1986-92.⁹ It is my personal ambition that the project should be satisfactorily completed by the end of this century, but this is a rather optimistic aspiration.

In drawing up plans for the completion of the edition, the Bentham Committee has been very conscious of all the factors enumerated by our sceptical Martian: the availability of quite adequate editions of some works, though fewer than one might suppose; the repetitiveness of much of the material; the relative intellectual or historical significance of different items, and so on. The aim is to make available in one form or another all of the text of all the writings. At present three main categories are envisaged: conventional publication in book form; fully

annotated texts made available on microfilm or microfiche or in such other form as new technology makes possible; and, for the lowest priority material, typed text only. Apart from pragmatic considerations, such as the availability of editors, in setting priorities, the main consideration has been how much each particular work will advance our knowledge of Bentham and of the subject of the work. Present high priorities include the completion of the Correspondence, the writings on logic and language, fallacies, adjective law, the remaining two volumes of the Constitutional Code and writings on the Poor Law. Some very important works, such as the Rationale of Judicial Evidence and the writings on Economics, have been given a lower priority for the time being because of the availability of usable, if not entirely satisfactory, printed editions. All priorities are provisional and can be adjusted in the light of new information or revised judgments about the importance of particular items. Our strategy is to take the most important or interesting works first. In order to achieve our present targets it will be necessary to make full use of modern technology and to increase the size of the operation at the centre. This will involve raising quite substantial sums of money from a variety of sources. The use of computers and word-processors and an increase in full-time staff will involve more expenditure in the short term, but will be very much more economical in the long-term than continuing to rely largely on part-time editors scattered around the globe. The objectives of the Bentham Project include advancing Bentham studies in other ways such as publishing The Bentham Newsletter, holding conferences and seminars, assisting scholars, and, we hope, offering one or two courses at postgraduate, or possibly even undergraduate level.¹⁰ But all of these are secondary; the first objective is to produce a definitive edition that meets the highest standards of scholarly excellence. This in a nutshell is what the Bentham Project is about.

How can one justify such an enterprise ? Some will consider that it requires no justification: to them the value of producing a comprehensive scholarly edition of the works of any significant figure is self-evident. And Bentham surely ranks as a significant figure. However, doubts on this score are not confined to Martians. There are sceptical intellectuals as well as hard-nosed financiers who need to be persuaded, especially in the present economic climate.

At a general level, it is, in my view, an easy matter to find a cogent argument both for undertaking the enterprise and for doing it properly. It goes like this: like Everest, Jeremy Bentham is there. He is one of the great figures in our intellectual history; his life, his ideas, and his writings present a monumental challenge to scholars from many disciplines; unless and until his works are made accessible in a reliable and usable form the scholarly community will not be satisfied; if the basic groundwork is not done to the highest standards and reasonably comprehensively, scholars will insist that it will have to be done again - as the Bentham Committee has insisted with the Bowring Edition and some economists have already argued with regard to the economic writings. To leave the matter to the efforts of individual scholars will, indeed it has already, involve much duplication of effort; not to do the job properly will result in its being re-done. Even by the most mundane standards that would be foolishly wasteful.

On its own 'the Everest argument' will not satisfy some doubters; if Bentham were capable of taking a detached view of the matter, he would probably conclude that by itself the argument does not satisfy his own standard of utility. One objection might be advanced along the following lines: the Everest argument merely establishes that if the job is worth doing, it is worth doing well; but that begs all sorts of questions, especially in respect of priorities. First, it says nothing about the relative priority that should be accorded to this kind of historical or exegetical scholarship in relation to other scholarly enterprises; second, it asserts Bentham's overall importance, but does not answer the question: how important and in what respects? Third, it does not adequately confront the issue of diminishing returns: how much will the project as a whole, and editing the works to which we have given a lower priority, add to existing knowledge?

These are all serious questions, deserving a reasoned response. I shall try to be brief. To the first question one simple answer is that a great deal of other scholarly work is dependent on the availability of reliable texts. Either that work cannot be done at all (in some cases it cannot even be imagined) or it will be done much more slowly and expensively. If such other work is worth doing, then the edition is likely to be either a necessary pre-condition or an extremely valuable aid and stimulus. Just to take a few almost random examples. There is as yet no definitive personal or intellectual biography of Bentham himself; in any enterprise in which he was an influential or otherwise significant figure, historical research is dependent on knowing what he said. By no means all such work is solely of historical interest. To give but two examples: the publication of Of Laws in General, edited by Hart, has not only led to a reappraisal of the work of John Austin, it has also contributed both directly and indirectly to contemporary debates in Jurisprudence.

On many issues of contemporary public debate, for example, cruelty to animals, the reform of the law of evidence, prison overcrowding, population control, codification, bills of rights, and the honours system, Bentham had provocative, stimulating and often rather fundamental things to say. Only when his thoughts are readily available will those best fitted to judge be able to form an opinion as to whether they are worthy of continuing attention. Thus one important reason for giving a reasonably high priority to this kind of editorial work is that so much other scholarly work is dependent on it.

As for the question of diminishing returns one needs to distinguish between quality and comprehensiveness: I have already dealt with the former. If the work is not done to the highest standards - and this kind of work is extremely laborious - there will be continuing pressure to have it done again. Comprehensiveness is a problem, for there is a great deal of material that is of marginal or almost no interest, because it is repetitive or trivial or says rather little at inordinate length; the trouble is that other scholars will rightly insist both on checking whether everything that Bentham wrote on a given topic has been included and on exercising their own judgment about its significance. Our overall strategy is based on a distinction between preparing reliable texts of virtually everything available to specialists and annotating and publishing material of wider potential significance. Our present, provisional plan is to aim for full editing and publication of about two-thirds of the surviving material. But that is open to revision either

upwards or downwards.

So we come at last to the central question: why and in what respects is Bentham worth studying in the last two decades of the twentieth century? If one poses that question of any thinker, it is susceptible to at least three kinds of answer: a thinker may be worth studying because he is a significant figure in the history of ideas, perhaps because he was original or influential on other thinkers or representative of the ideas of his time or a combination of these. Secondly, a thinker may be worth studying because he was, or was thought to be, influential on events, that he played some part on the stage of history. Thirdly, a thinker may be worth studying because he still has something to say to us, that what he wrote is still worth reading for one or more of a number of different kinds of reason: for example that he is subtle or penetrating or provocative or eloquent or just a pleasure to read.

Clearly Bentham has serious claims to be considered as significant in all three respects; but it is extremely difficult to give a sensible and informed general answer to the question 'how significant?', for fairly obvious reasons: he wrote about so many different subjects often at great length; he features as a historical figure in many different countries, as well as in a variety of arenas; even after all the basic textual and historical groundwork has been done - and we are a long way from that at this stage - it will still be difficult for any single individual to make informed judgments about all his contributions to, for example, prison design, Latin American politics, public administration in this country or law reform in Europe and the United States. English historians have in recent years debated how far numerous reforms in this country are attributable to the so-called 'influence' of Bentham and his disciples; rather less work has been done in some of the many countries in which his ideas were received and publicized at various times. There are many aspects of his work that have not yet been sufficiently researched to enable specialists to make informed judgments on his significance. And, of course, many of his ideas are open to reinterpretation and reappraisal in each generation.

Perhaps that is to be too cautious. In the last lecture, John Dinwiddy gave us a masterly survey of the reception of Bentham's ideas by his contemporaries in the early years of the nineteenth century. Several of the leading figures associated with the project have made general, but suitably guarded, appraisals of his historical and contemporary significance: Professor Hart in his splendid British Academy lecture in 1962¹¹ and again in his recently published Essays on Bentham;¹² Lord Robbins in a lecture delivered in this college in 1964¹³ and Professor Burns on a number of occasions.¹⁴

The gist of these considered judgments has been admirably restated by John Dinwiddy:

The case for producing a new edition of Bentham's works rests partly on the importance of his thought, and partly on the inadequate and incomplete fashion in which his works were previously published. His writings are remarkable for their range, originality and influence. He was one of the greatest reformers, perhaps the greatest, in the history of English law. He was a legal philosopher of major importance, being one of the

founders of the theory of legal positivism. In ethics he provided the classic exposition of the utilitarian theory which had been a major strand in moral philosophy since the eighteenth century. In political thought he was important both as a critic of established doctrines such as that of natural law, and as the originator of one of the main theoretical justifications for democracy. In the fields of public administration and social policy, he arguably had more influence than any other thinker on the process of administrative and social reform in Victorian Britain. In economic thought, his ideas about the measurement of utility lie at the root of modern theories of cost-benefit analysis and welfare economics. He has been recognized, too, as a pioneer in other fields ranging from international law and the birth control movement to motivational psychology and deontic logic. He has been described by C.K. Ogden as 'the greatest social engineer in history', and by A.J.P. Taylor as 'the most formidable reasoner who ever applied his gifts to the practical questions of administration and politics.'¹⁵

This represents a fair summary of what might be called the orthodox view from the inside. From such general appraisals one can extract a fairly broad consensus about Bentham's qualities of mind. In particular, the old image of a shallow, slapdash, derivative philosopher is seen to be quite misleading. This image had its basis in some less than happy passages in better known 'popular' works, such as the early chapters of An Introduction to the Principles of Morals and Legislation. But in his 'arcane' writings, on logic, epistemology, the philosophy of law, democratic theory, and even on utility itself Bentham emerges as a much more powerful and subtle thinker (to borrow Professor Raphael's words)¹⁶ than was formerly supposed. Furthermore, these commentators suggest, his claims to originality do not rest solely on his grand design for a science of legislation and on his proposals for practical reform. Much that is new flows from his insistence on systematic, rigorous and exhaustive analysis... what Mill called the method of detail. Hart points to the profound originality of his lengthy treatment of the classification of offences in An Introduction to the Principles of Morals and Legislation.¹⁷ Rosen makes a similar point about what many would regard as some of the most turgid passages in the Constitutional Code.¹⁸ This leads towards the uncomfortable conclusion that many of the most penetrating insights have to be extracted from some pretty dry material. The gems have to be dug out of arid, stony ground. In this view, some of Bentham's main claims to originality stem from his seemingly perverse passion for definition and classification.

On the whole I agree with such judgments. They are in part confirmed by my own rather modest attempts to wrestle with the detail of selected writings. Thus the attack on natural rights in Anarchical Fallacies seems at first sight to be marred by what looks like unnecessarily pedantic nitpicking at the wording of some casually drafted examples of popular rhetoric - the French Declarations of 1791 and 1795. Bentham justified his method as follows:

The criticism is verbal: - true, but what else can it be? Words - words without a meaning, or with a meaning too flatly false to be maintained by anybody, are the stuff it is made of. Look to the letter, you find nonsense - look beyond the letter, you find

nothing. . .

I happen to think that some of the notions underlying the French Declarations could have been rescued from Bentham's strictures by improved drafting. But it seems quite right that Anarchical Fallacies should be treated as one of the classic texts for the linguistic analysis of such fundamental legal and political concepts as rights, obligations, and liberty.²⁰

Again, if one turns to his quite shocking treatment of torture - on which more later - one finds the dictum: 'Torture ought not to be condemned any more than approved of in the lump'.²¹ At the core of his argument is the point that the concept of torture is much more complex than is commonly supposed and that it lumps together many very different kinds of treatment that are used for different purposes. These need to be unpacked and differentiated before they can be subjected to rational appraisal. Bentham admitted that he himself had been the victim of 'the delusive power of words'²² and he was led to the conclusion that there are some limited occasions when torture might be used with advantage despite its susceptibility to abuse. I find his argument as unpersuasive as his conclusion is abhorrent; indeed his treatment of torture reveals some serious errors of judgment - one might call them miscalculations within utilitarianism; it is equally revealing of some of the weaknesses and dangers of pure utilitarianism. But even here I have to concede that his points about the concept of torture are well taken; they are a good deal more sophisticated than anything I have found elsewhere in the literature, including modern discussions by judges and commentators on documents such as the European Convention on Human Rights.²³

Thirdly, the extensive and largely neglected writings on evidence seem to me to exhibit much the same strengths that have earned praise for his other writings. This body of material contains both a grand, well-integrated design and countless insights on specifics scattered through an extensive and generally forbidding landscape. The Rationale of Judicial Evidence alone takes up almost 3000 pages in the John Stuart Mill edition and that represents only about half of his extant writings on the subject. Much of the conceptual apparatus of this great work - such as the distinction between admissibility and weight of evidence - has become standard within legal discourse; the Rationale contains what is still by far the most comprehensive general theory of evidence ever produced; and evidence discourse - in its practical as well as its academic aspects - has been impoverished by its neglect, not least because Bentham's theory has the rare virtue of being fully integrated with a coherent theory of procedure and of adjudication. In respect of particulars, at first sight much of it appears to have been overtaken by events. Some of Bentham's recommendations - for example, about competency of witnesses, - have been fully accepted; others may no longer make sense in the different circumstances of modern litigation; a few, such as his notorious doctrine that 'silence is tantamount to a confession',²⁴ still linger on as ghosts in a debate that has become rather more sophisticated. There are, however, quite a few unexploded shells. To take but one example: until recently I had thought that Bentham's treatment of probabilities in relation to proof was at best a rather primitive version of the theory of non-mathematical or Baconian probability that has been elaborated with considerable sophistication by Jonathan Cohen.²⁵ However, at the prompting of Professor Gerald Postema and El Sayed Mohamed Abu Hareira, I have begun to

have second thoughts.²⁶ For Bentham raises a number of issues (though admittedly in a rather undeveloped way) that have been neglected in the current very extensive debate on probabilities in forensic contexts. In short, he may yet have a contribution to make to that debate and this is true of many other topics in the field of evidence. Here, as elsewhere, at the very least he is still worth reading.

Judgments such as these lend support to the view that the unread Bentham is potentially an enormously rich source of hitherto unexploited insights. They also feed the fear that what is most valuable is generally difficult to make accessible - in an intellectual as well as a physical sense - to ordinary readers. Thus such important writings as Of Laws in General, the Rationale of Judicial Evidence and the Constitutional Code are too long, too turgid and too difficult to be read in their entirety by all but a few dedicated specialists. This view was given classic expression by Sydney Smith in his review of the Book of Fallacies, ironically one of the most readable of the works:

Neither gods, men nor booksellers can doubt the necessity of a middleman between Mr. Bentham and the public. Mr. Bentham is long; Mr. Bentham is occasionally involved and obscure; Mr. Bentham invents new and alarming expressions; Mr. Bentham loves division and subdivision, and he loves the method more than its consequences... The great mass of readers will not purchase improvement at so dear a rate but will choose rather to become acquainted with Mr. Bentham through the medium of the reviews - after that eminent philosopher has been washed, trimmed, shaved and forced into clean linen.²⁷

Undoubtedly there is a good deal of truth in this - although the unreadability of much of Bentham is often exaggerated; and it provides one justification for the burgeoning of secondary literature. But the case is overstated and I wish to conclude by suggesting some reasons why and in what respects Bentham can and should be studied in the original, selectively of course, by undergraduate and postgraduate students, at least those in law, philosophy and politics. I proposed to do this by hanging the argument on two apparent paradoxes: first, that despite the ambiguity of his personality and the obscurity of much of his prose, Bentham is often accessible by virtue of his very clear and provocative positions on a number of important issues; second, that he is often at his most interesting when he is wrong.

Let us call this theme: Benthamic ambiguities.

Benthamic ambiguities

It is important to draw a sharp distinction between the deep ambivalences that characterise Bentham's personality and the ambivalence towards their subject that characterise the attitudes of most, if not all, Bentham scholars. When a full biography comes to be written I hope that it will help to explain some of the profound ambiguities of his character: the political equivocations that Professor Burns so illuminatingly explored in the first lecture in this series; his sexual ambiguity, which has been hinted at by some commentators; and, above all, his extraordinary ambivalence towards communication and publication; the failure to finish so many works; the unwillingness to publish others; the obfuscation of

some of his most important insights; even the illegibility of his handwriting when contrasted with his unceasing productivity - all of them hardly suggest rational behaviour. And then what of that marvellously ambiguous symbol: the auto-icon. For what does it symbolize ? Simple vanity ? a misjudgment about the utility of bodies as ornaments ? a mild joke that we are invited to share ? anticipation of the example later set by Lenin: a materialist's substitute for religious icons ? Or is it, as I suspect, a subtle but calculated act of disrespect to our sentimental attitudes towards corpses and death ?

Such ambiguities contrast sharply with the clear (too clear ?) often extreme intellectual positions that Bentham took on many issues. Consider just a sample (I paraphrase):

1. The only criterion of good and bad, of right and wrong is the principle of utility; all other supposed criteria are either meaningless or perversions of utility or utility disguised or pure subjectivism.²⁸
2. It is easier to justify torture than punishment.²⁹
3. Talk of non-legal rights is both meaningless and dangerous.³⁰
4. The common law is not really positive law at all.³¹
5. The interests of the legal profession are in all respects opposed to those of the community.³²
6. No rule of evidence devised by man can in the nature of things promote rectitude of decision.³³
7. Compromise, which being interpreted, is denial of justice.³⁴
8. The main evil of convicting the innocent is its tendency to promote alarm in others.³⁵

These are just a few examples of provocative positions or postures that Bentham adopted and defended, often but not always, with powerful argument. They are splendid pedagogical material. Each of them has to be interpreted in context and related to his more general ideas. If the main educational justification or purpose of exposing students to important thinkers is to stimulate them to clarify their own views on important issues on the basis of reasoned argument, then surely so provocative a thinker deserves to be high on the list of those worth studying. As often as not he will be cast in the role of worthy opponent; he would no doubt have seen it differently - as the light of reason shining down on sentimental, perhaps interest-begotten, prejudice. For Bentham is no respecter of intuitions.

On all these issues I personally disagree with him. I think that the notion of non-legal rights is neither nonsensical nor normally mischievous, though it is often associated with woolly thinking.³⁶ I think that it is both wrong and dangerous to suggest that institutionalized torture as we normally conceive it is justifiable at all, let alone easier to justify than punishment; I think that it is a bit of an exaggeration to suggest that 'the interest of men of law, with very inconsiderable exceptions, is in a state of irreconcilable hostility to the general welfare;'³⁸ I think that compromise is very often in the interests of justice, especially when there is a genuine doubt about the facts; and that it serves a number of valuable functions in processes of dispute-settlement;³⁹ I think that some binding rules of evidence do promote rectitude of decision in legal processes: for example, rules of exclusion about potentially prejudicial evidence;⁴⁰ and I do not think that utility,

however interpreted, is the only test of right and wrong. But I have to acknowledge a debt to Bentham both for undermining some of my prejudices and for helping me to clarify my views on points where we differ. I have learned as much from him as from any other jurist. As often as not he remains the most worthwhile opponent in view, not least because of his intellectual honesty and courage. But, perhaps more important, is the point that his position on all these issues fits with his overall vision.

There is one further respect in which Bentham is potentially important as a point of reference today. He is a rare example of a genuine radical who was not a revolutionary in politics. One of his main concerns in his attacks on metaphysical Natural Law and Natural Rights theories was to cleave a clear path between complacent conservatism, epitomised by Blackstone, and revolution and anarchy, as illustrated by the ideas and some of the practices of the French Revolutionaries. He was equally concerned to attack fallacies of what we would now call the far left and fallacies of conservatism. On the spectrum revolutionary - radical - reformist - conservative - reactionary he was, I would suggest, consistently a radical in almost all respects. It is only revolutionaries who call him a reformist. Much attention has been paid to his uncertainties and changes of mind about forms of government and to the nature and timing of his conversion to democracy. In an important sense this was secondary: he became concerned by such questions, as questions about the best means for getting his 'pannomion' adopted and for implementing his vision of the good society. For much of his life he was conspicuously indifferent to the nature of the regimes to which he tried to sell his ideas. How to govern rather than who should govern was his predominant concern. In all cases the protection of settled expectations, the giving of priority to security as a base value were vital... hence his fear of revolution. On almost all other topics except where the principle of security was involved, he was uncompromisingly radical, in two senses of that term. First, in the literal sense of going back to the roots, that is to first principles; secondly, in the sense that the application of his principles usually pointed to the need for very extensive changes. A great many specific changes and trends in the past 150 years have been in directions that he charted; how far these are attributable to his influence, direct or indirect, is a separate question. In the field of law reform, for example, one can point to the steady growth in importance of legislation at the expense of judge-made law; reforms in penal law; attempts to prune and streamline the statute book; the decline in resort to legal fictions; the steady contraction of the law of evidence - almost to vanishing point in civil cases; the decline of the jury; the streamlining and bureaucraticization of judicial administration... and so on. But if Bentham were to pronounce on these changes he would have some harsh things to say. Many he would almost certainly denounce as mere half-measures, introduced through a long process of half-hearted incrementalism and compromise. In this view, most such changes have not gone nearly far enough, and, even more important, the spirit and the processes of change have been far removed from rationalist radicalism.

This suggests two conclusions about the continuing significance of Bentham as a radical thinker: first, in the present climate of opinion there is a strong tendency to associate radical views with revolutionary strategies and non-consequentialist modes of thought: fiat justitia ruat caelum. Bentham is unusual in being a genuine radical who nearly always firmly dissociated himself from revolution, especially violent

revolution. This is summed up in the maxim 'radicalism not dangerous'.¹

Secondly, on this interpretation, Benthamic ambiguity resides far more in the reactions to him than in the positions he adopted on most issues. It is not entirely surprising that he is often treated dismissively by revolutionaries and reactionaries alike. What is perhaps more interesting is the suggestion that the truism that few Benthamists are committed Benthamites implies that the predominating spirit of Bentham scholarship is currently far less radical than our guru would approve.

In confessing to a deep-seated ambivalence towards Jeremy Bentham I am doing no more than associating myself with what is probably a large majority of Bentham scholars. It is a tendency that reaches back to his contemporaries: in the pages of the Edinburgh Review and even the Westminster Review one finds critics according him grudging admiration and disciples entering judicious caveats. Bowring bowdlerized him; Dumont watered him down; Romilly, Denman, Brougham and, above all, John Stuart Mill tempered their admiration with important reservations. In this generation the two leading Bentham scholars, Hart and Burns, display the same characteristic. Nowhere is this more apparent than in Hart's recent Essays on Bentham: here Hart reiterates his own position as a modified utilitarian, dissents from Bentham's views on criminal procedure, criticizes his benefit theory of rights and enters a number of explicit general reservations; yet in the last chapter the leading positivist critic of the command theory of law of Bentham and Austin suggests that there is an important core of truth to be rescued from the notion of command, that is to say the idea of a 'content-independent peremptory reason for action as being central to a general notion of authority in matters of belief as well as conduct'.²

The reasons for such deeply equivocal reactions to Bentham almost certainly lie much deeper than the mere fact of disagreements and differences on particular issues. This is not the occasion to try to provide a fuller explanation. The phenomenon of such widespread ambivalence contributes to the fascination of Bentham studies. Accordingly it is worth stressing that Bentham scholarship is not just a happy hunting-ground for committed Benthamites and that Bentham deserves to be treated as a thinker who still invites our attention as much for where he seems to go wrong as in respect of matters on which he has already been proved right. As Professor Hart put it, in connection with those perennial issues that today centre round the Police and Criminal Evidence Bill, at present before Parliament:

Bentham's utilitarianism has so long been a source of progressive social policy and the main intellectual support of the criticism of our law that we have not yet developed a theory of individual rights, comparable with utilitarian theory in clarity, in detailed articulation and in appeal to practical men. At present although we can point to institutions - like the presumption of innocence - which seem to embody such rights we have only the fragments of a theory. So it is true that on this subject as on others, that where Bentham fails to persuade, he still forces us to think.³

FOOTNOTES

1. H.L.A. Hart, 'Definition and Theory in Jurisprudence', Law Quarterly Review, lxx (1953), 37.
2. An Introduction to the Principles of Morals and Legislation, ed. J.H. Burns and H.L.A. Hart, London, 1970 (CW); Comment on the Commentaries and A Fragment on Government, London, 1977 (CW).
3. See especially, H.L.A. Hart, Essays on Bentham, Oxford, 1982.
4. H.A.M.J. ten Have, Geneeskunde en Filosofie: de invloed van Jeremy Bentham op het medisch denken en handelen, Lochem, 1983 (reviewed in The Bentham Newsletter, No. 7, 1983, pp. 49-50).
5. The Bulletin, University College, London, February, 1983; see also February, 1984.
6. Ross Harrison, Bentham, London, 1983, ch. 1.
7. J.F. Stephen, Digest of the Law of Evidence, 5th ed., London, 1899, p. xxii.
8. The official objectives of the Bentham Project are:
 - (i) to prepare and arrange for the publication of an edition of The Collected Works of Jeremy Bentham;
 - (ii) to make readily accessible to scholars as much as possible of the writings of Jeremy Bentham that are not included in the Collected Works;
 - (iii) to further Bentham studies in other ways.
9. See Bentham Executive Committee, 'The Bentham Project: Past, Present and Future' (memorandum, 1983).
10. See above, n.8.
11. H.L.A. Hart, 'Bentham', Proceedings of The British Academy, xlvi (1962).
12. See above, n.3.
13. Lionel Robbins, Bentham in the Twentieth Century, London, 1965.
14. E.g. J.H. Burns Bentham and University College, London, 1962; The Fabric of Felicity: the Legislator and the Human Condition, London, 1967.
15. Now incorporated in 'The Bentham Project: Past, Present and Future', see above, n.9.
16. David Raphael, 'Utilitarianism versus ipse dixitism', T.L.S. September, 1983.
17. London, 1982, pp. iii ff (Methuen paperback edition).
18. F.Rosen Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code, Oxford, 1983, pp. 1-18.
19. Bowring, ii. 497.
20. See further, William Twining, 'The Contemporary Significance of Bentham's Anarchical Fallacies', Archiv fur Rechts-und Sozialphilosophie, xli (1975), 325.
21. Ms. Published in W.L. and P.E. Twining, 'Bentham on Torture', in M. James (ed). Bentham and Legal Theory, Belfast, 1974, pp. 67, 71.
22. Ibid., p. 42.
23. Ibid., and W. Twining, 'Torture and Philosophy', Proc. Aristotelian Soc. lii (1978).
24. Bowring, vii. 39.
25. L. Jonathan Cohen The Probable and The Provable, Oxford, 1977.

26. G. Postema 'Facts, Fictions and Law: Bentham on the Foundations of Evidence' in William Twining (ed.) Facts in Law, Franz Steiner, Verlag, Wiesbaden (1983). M. Abu Hareira, private communication to the author.
27. 'Bentham's Book of Fallacies', Edinburgh Review, xlii (1825), 367 cited by H.L.A. Hart, Essays on Bentham, p. 1.
28. IPML (CW), chs. 1-2.
29. See above, n. 22.
30. Bowring, ii. 500-1.
31. E.g. Of Laws in General, ch xvi.
32. E.g. Bowring, iv. 495. In this passage Bentham qualifies the generalization with the phrase 'with very inconsiderable exceptions'.
33. E.g. Bowring, vii. 64; cf. A Treatise on Judicial Evidence, p. 180: 'To find infallible rules for evidence, rules which insure a just decision is, from the nature of things, absolutely impossible'.
34. Bowring, v. 35.
35. Bentham's position on this issue may be open to more than one interpretation. Compare, e.g. Bowring, vii. 591-3 with Treatise, pp. 196-7. Denman attributed the view stated in the text to Bentham and attacked it in the Edinburgh Review, (1824), p. 180.
36. See above, n. 20.
37. See above, nn. 21 and 23.
38. See above, n. 33.
39. Discussed in 'Bentham on Evidence' (forthcoming).
40. Ibid.
41. Bowring, iii. 599 ff.
42. See Ch. x.
43. Ibid., p. 39.

Frederick Rosen, Jeremy Bentham and Representative Democracy:
A Study of the Constitutional Code, Oxford, Clarendon Press, 1983.

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William Thomas, in an amusing though appreciative review of L.J. Hume's fine book Bentham and Bureaucracy, has compared the efforts of scholars working on the Bentham manuscripts to those of divers bringing up barnacled fragments of the Mary Rose.¹ The marine-archaeology metaphor may be appropriate for work on the manuscripts, but for a scholar who has been focusing on material of Bentham's that has long been in print a more suitable analogy may be the dedicated cartographer of some particularly forbidding tract of the earth's surface which earlier travellers have charted only in a rudimentary fashion. Professor Twining has recently survived a major expedition of this kind (the results of which should soon be available) through the Rationale of Judicial Evidence. The Constitutional Code is in my opinion even more rugged territory, and Dr. Rosen deserves the congratulations and thanks of all Bentham scholars for the detailed and lucid guide to it which his book provides. The book is far more than a valuable work of exegesis, however. It also contains - especially but not exclusively in the last four chapters - much evaluative discussion of Bentham's ideas and of various interpretations of them that have been offered by philosophers and scholars.

The part of the Constitutional Code which Dr Rosen describes and analyses most fully is the part which he and Professor Burns have recently edited and published as volume I of the new edition of the work. Choosing in this monograph to concentrate on the text of the Code itself, he pays little attention to the body of manuscripts from which Richard Doane constructed Book I of his edition of the Code prepared for Bowring. Also, although nearly one third of the substantive code is concerned with judicial organization, this part is dealt with fairly briefly. The topics that are treated more expansively are political and bureaucratic ones: those connected with the legislature and the ministries, and with the Public Opinion Tribunal, whose importance is brought out more clearly by Dr. Rosen than by any previous writer. In general, the aspect of the Code that he emphasizes most strongly is its democratic character² - and here he differentiates his approach to some extent from that of Dr. Hume. The latter's book was more extensively concerned with the evolution of Bentham's ideas on administration than it was with the Code itself, and he put somewhat less stress than Dr. Rosen does on the devices which Bentham incorporated in the Code to secure the accountability of all functionaries to the public. Dr. Rosen points out that in the Code democratic controls extended not only to the legislature but also to the administration and judiciary, since a large number of office-holders from the Prime Minister downwards could be dismissed by popular vote.

It is interesting that while he highlights the amount of power wielded by the people at large under the Code, Dr. Rosen is anxious to defend Bentham against the charge brought against him by John Stuart Mill and others that his system would lead to a 'tyranny of the majority'. The late James Steintrager, in his book Bentham (1977), made two related points in response to this charge: (1) that Bentham's legislature would

have been filled with men who were 'relatively wealthy, educated and independent of mind', and (2) that these deputies would have been 'the elected educators of the people', leading the latter to accept policies conducive to the general welfare of the society. Dr. Rosen, who has argued somewhat earlier in his book that Bentham was free of the kind of paternalism that characterized John Stuart Mill's theory of government, does not make much use of Steintrager's second point. But he takes up and develops the first point, maintaining that Bentham tried to 'build competence into his system' in such a way as to provide an effective counterpoise to the power of a majority. In particular, Dr. Rosen draws attention to a fact that has been little noticed hitherto: that under Bentham's Code no one would be eligible for membership of the legislature who had not passed through the system of education and examination prescribed for members of the civil service and judiciary. In Dr. Rosen's view, this proposal 'surpasses in scope and effect any of those made by Mill in his numerous attempts to offset a widespread suffrage with competent government'; and he concludes that the measures devised by Bentham for ensuring the competence and independence of the members of his legislature may well obviate the charge that he failed to guard against a tyranny of the majority.

Perhaps I may be allowed to express some reservations about this line of argument. It seems to me that however competent and financially-independent the members of the legislature were, they would not have, either individually or collectively, much independent power to resist the will of a majority of the electorate, if that majority were intent on implementing its wishes.³ It is true, of course, that a 'tyranny of the majority' is only likely to develop in a society that is for one reason or another sharply divided. But Sir James Mackintosh, in his Edinburgh Review article of 1818 on Bentham's Plan of Parliamentary Reform, gave several putative examples of such societies. If universal suffrage were established in Ireland, he suggested, the result would be a tyranny of the Catholic majority over the minority of Protestants; and in racially-divided societies a similar tyranny would be likely, either of a black majority over a white minority or vice versa.⁴ What Mackintosh also believed - as Macaulay and John Stuart Mill did somewhat later - was that English society was quite sharply divided, into rich and poor. The fear which all three critics of Benthamite democracy shared - that an unrestricted system of universal suffrage in England would entail a spoliation of the rich by the poor - was one that Bentham himself attempted to allay;⁵ and some reasons why the introduction of universal suffrage in England has not in fact produced as radical a redistribution of wealth as Bentham's critics anticipated have been suggested by C.B. Macpherson.⁶ Yet it surely remains likely that in a society which was, in Mackintosh's words, 'divided, by conspicuous marks, into a permanent majority and minority', more protection would be needed for the interest of the minority than Bentham's Code would provide.

I would not wish, by dwelling on the above difference of opinion, to give the impression that I disagreed with Dr. Rosen at all widely. Most of the interpretative sections of the book are very cogent and illuminating, and I should like to mention two of these in particular. One is the chapter on 'Constitutional Rights and Securities', which explains admirably how Bentham tried to establish a system of securities that would provide a substantial substitute for the declarations or bills of rights which formed part of certain eighteenth-century constitutions. The other

is the chapter on 'The Greatest Happiness Principle'. This produces some evidence from the Code to show that Bentham's principle was intended to be universalistic rather than, as David Lyons has argued, 'parochial'. It also throws some important light on Bentham's views on equality. As is well-known, one of the basic criticisms that have been levelled against classic, Benthamite utilitarianism by a number of distinguished thinkers, including Sir Alfred Ayer and John Rawls, is that it sets up the maximization of aggregate happiness as the criterion of the rightness of actions, but does not include any intrinsic case for equality or fairness in the distribution of happiness. Henry Sidgwick believed that Bentham did uphold the principle of equality;⁷ but a common assumption has been that although his recognition of the phenomenon of diminishing marginal utility led him to regard equality in the distribution of the means of happiness as (other considerations apart) conducive to the maximization of happiness in the aggregate, his greatest happiness principle did not in itself prescribe equality in the distribution of happiness as desirable for its own sake. However, Dr. Rosen has made an arresting discovery in a revised version of the Legislator's Inaugural Declaration (chapter VII of the Constitutional Code). This revised version, published in pamphlet-form in 1831 under the title Parliamentary Candidate's proposed Declaration of Principles (and not printed in Bowring), defines 'the only right and proper end of Government' as 'the greatest happiness of the members of the community in question: the greatest happiness - of all of them, without exception, in so far as possible: the greatest happiness of the greatest number of them, on every occasion on which the nature of the case renders the provision of an equal quantity of happiness for every one of them impossible...' Here, in what may have been the last considered formulation of the greatest happiness principle that Bentham produced, it is clearly indicated that the maximization of happiness should be linked wherever possible to equality in its distribution.

In conclusion, it should perhaps be said that this book is intended for the political theorist rather than for the historian. Dr. Rosen does not say much about the impact of the Code or of the ideas expressed in it, and he refers only briefly to the historiographical controversy about laissez-faire and collectivism and the influence of Bentham on the nineteenth-century 'revolution in government'. He makes one observation that is relevant to this controversy: that the Code itself gives no clear indication of the extent of government intervention which Bentham envisaged, as the sections of it devoted to the ministries are concerned with how the laws passed by the legislature are to be administered rather than with the content of that legislation. He also notes, however, (and is surely right to do so) that 'the range of functions performed by the ministers might be seen as considerable in terms of Bentham's day'.

NOTES

1. English Historical Review, xcix, no. 390 (Jan. 1984), pp. 204-5.
2. There is one point of some importance, however, on which he represents the Code as less democratic than it actually was. This relates to the Election Code, the essence of which Bentham published as his Radical Reform Bill, with Extracts from the Reasons in 1819, and which he intended to incorporate in the Constitutional Code. With regard to the qualifications for voting, Dr. Rosen says that the potential voter must have been a householder - an occupier of a household within the Election District - for a suggested period of four weeks; but, he adds, Bentham did not intend this householder qualification to exclude the poor. In fact, this qualification would have excluded most of the poor, as Bentham recognized. He wrote (Bowring, iii. 560): 'Qualification by householdership does involve exclusion: for it is not in every man's power to pay rent and taxes for a house.' He did not himself regard this kind of property qualification as desirable, and the requirement of householdership in the Election Code applies not to the elector but to the 'vote-maker' - the person who certifies (among other relevant facts) that the potential voter has resided within the Election District for four weeks.
3. A member could apparently vote against the wishes of his constituents if he regarded them as damaging to the national interest (though it is also suggested in the Code that he might vote in accordance with their wishes even if he felt and expressed dissent from them). But if he did go against their wishes in an important way he clearly ran the risk of being 'dislocated' even before the end of the finite one-year period for which he had been elected.
4. Edinburgh Review, xxxi. 184-5. J.S. Mill echoed these points in his Considerations on Representative Government (Collected Works of John Stuart Mill, ed. J.M. Robson and others, Toronto, 1963-, xix. 442).
5. Especially in 'Radicalism not Dangerous', Bowring, iii. 605 seq.
6. C.B. Macpherson, The Life and Times of Liberal Democracy, Oxford, 1977, pp. 64-9.
7. Henry Sidgwick, The Methods of Ethics, 7th edition, London, 1907, pp. 416-17.

ROBIN EVANS, THE FABRICATION OF VIRTUE:
ENGLISH PRISON ARCHITECTURE, 1750-1840,
Cambridge, Cambridge University Press, 1982

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Robin Evans approaches Bentham's Panopticon by the unusual route of the history of the architecture of English prisons from 1750 to 1840, a period of unprecedented innovation in the conception and construction of prison buildings. In this large, handsome volume, containing more than two hundred illustrations of various aspects of prison architecture (marred only by the absence of a bibliography), Dr. Evans presents, in a most lucid, even dramatic fashion, an account of what his title suggests: that in this period there was a close connection between the moral objects of the penal system and the architectural design of prisons, so close, in fact, that prison architecture could be seen as several attempts to 'fabricate' virtue. Bentham, as Dr. Evans recognises, played an important role in this development, but he neither originated the movement nor did he dominate it. While giving Bentham full credit for the originality of his ideas, Dr. Evans provides for the first time a useful account of the architectural context in which Bentham worked and the ways in which Panopticon represented a development of the reform movement begun by John Howard in the 1770s.

The causes of the extensive and expensive building and re-building of English prisons at this time (between 1775 and 1795 at least 45 reformed prisons were erected in England alone) were not simply an increased public awareness of the inadequate provision for various classes of offenders (and especially debtors). With the outbreak of the American War of Independence opportunities for penal transportation were drastically reduced and, at the same time, the conditions in English prisons led to an unexpected outbreak of 'gaol fever' which threatened the lives of prisoners, visitors, warders, court officials, judges, jurors and anyone associated with prisons and their inhabitants. Together with the mounting pressure for reform generally in society and particularly with the increasing emphasis on the use of prisons for reform, powerful incentives were established to transform completely the prison system in England. Dr. Evans shows with numerous illustrations and accounts of the ideas and activities of architects and builders, as well as reformers, the ways in which this transformation took place and the way architectural problems (separation of various classes, isolation of individual offenders, adequate light and ventilation, security, etc.) intermingled with moral problems (the reformation of the offender through solitude, work and avoiding contact with other criminals, etc.) to create a series of architectural solutions in the various prisons constructed throughout the country. This was not a coordinated effort but developed piecemeal from local authority to local authority. Some famous architects, such as Adam, Soane, Nash and Smirke, contributed to the building of various prisons; other architects (e.g. William Blackburn), became famous by building prisons. But most of the work was done by fairly minor architects for whom prisons would represent good commissions and with whom reformers could readily work. In addition, non-architects, such as Bentham, or Joshua Jebb, the military engineer, and even builders were able to make important

contributions.

Set against this background of considerable opportunity for the reformer who also had a strong interest in practical invention and applied science, Bentham's involvement in the Panopticon scheme was in fact far less exotic and eccentric than it seems today. If, for us, the idea of a philosopher running a prison (for profit) seems incredible, Dr. Evans enables us to see how Bentham, at the time, was uniquely qualified to make a contribution not only to prison reform but also to the architecture of prison reform. He especially criticises the commonly-held view of Bentham that while his philosophical views about punishment were sound, the Panopticon scheme for realising them was defective, and he argues that Bentham made at least two contributions of note which are relevant to the development of 'modern building technology' (p. 220). These are firstly the use of glass and iron in construction and secondly the design of an integrated system of heating and ventilation. Nevertheless, it was not these contributions alone which so definitely set Bentham's Panopticon apart from the numerous other prison designs. Although Bentham's design had much in common with previous schemes in the emphasis on the proper physical care of inmates, and on isolation, work and discipline, Dr. Evans suggests three ways in which his scheme was radically different: firstly, it attempted to create a model community and for the first time conceived of the prison as a kind of utopia; secondly, it gave clear prominence to the 'inspection principle' in the design of the building; and thirdly, it replaced the language of Christian redemption with a comprehensive psychological theory. Although others approached these ideas (Blackburn, for example, was apparently the first to use the inspection principle), Bentham, however, 'brought surveillance to a new perfection... [B]y orienting every aspect of design and construction to this one advantage and condensing the prison into a single volume, he changed the nature of the principle itself.' In the process, Dr. Evan argues, 'technology was not merely an aid to morality - it was a necessary precondition of the very morality it created' (p. 198). Similarly, what distinguished Bentham's 'utopia' from others developed at the same time (e.g. those of Owen, Fourier, etc.) was the careful use of architecture and design.

In spite of the fact that Bentham's Panopticon has become a fashionable subject in recent years, no full scholarly account has yet been written. The publication of volume 6 of the Correspondence in the Collected Works will add a good deal to that part of the story concerned with Bentham's extensive dealings with the political establishment and his innumerable frustrations in attempting to see his scheme established. L.J. Hume's writings on Panopticon also illuminate numerous aspects of this complex and important project. To these, the work of Robin Evans will make a useful addition which no full account of Panopticon should ignore. Furthermore, Dr. Evans has also contributed to an aspect of Bentham's life and thought which has been generally neglected, that is to say, his work as an applied scientist. It is this which formed a good deal of the intellectual bond between Jeremy and his brother, Samuel, both of whom worked in the early stages of what has become a vast field where science and technology are applied to human organisation itself.

H.L.A. Hart, Essays on Bentham: Studies in Jurisprudence
and Political Theory, Oxford, Clarendon Press, 1982

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This scholarly, readable and fascinating work contains nine essays, substantial parts of which were published during the period 1962 to 1980, in addition to one previously unpublished essay (Chapter X). Five chapters have been corrected, although otherwise they are substantially the same as when first published, but the remaining four have had a more significant revision with considerable additions. The volume accordingly offers more than just a convenient collection of Hart's previous writings. Hart is not only one of the most outstanding Bentham scholars but a political theorist and lawyer with a powerful and widely influential legal theory of his own expounded in its most concentrated form in The Concept of Law (1961). The result is that in his Essays there is much more than a careful and patient exposition of Bentham's often painfully obscure and tortuously detailed doctrines because Hart continually uses the numerous insights which Bentham provides to give impetus to his own thoughts. This lifts the importance of the work; it is an achievement of Bentham scholarship as well as a major contribution to contemporary legal theory.

The idea that theories should be developed so as to improve upon previously existing theories is quite commonplace in science: great minds think alike and just as importantly great minds make the more illuminating errors. Hart makes full use of Bentham's insights as well as his errors constantly to make more sense of the logical and practical structure of our thought about our political and in particular our legal institutions. It is clear that it is Hart's view that this is a fundamental use to which a study in the history of ideas should be put.

Like Bentham, Hart is refreshingly clear about his method of analysis and indeed the similarities in their respective approaches to the problems of jurisprudence are striking. They both use examples; they are both minded to produce practical, workable concepts in daily use; above all both appreciate the niceties of logic even where the consequences of logical analysis are unexpected. For example, both Hart and Bentham envisaged, as Austin could not (Hart is of the view that Austin's lack of clarity about method stultified the growth of Anglo-American jurisprudence), the possibility of two or more legally limitless legislative bodies each commanding acceptance from one body of people. The idea is unexpected because the possibility is a practical absurdity, although Bentham could find an example in the 'Roman Commonwealth' (the comitia centuriata and the comitia tributa). But the idea is not logically absurd and this is the more important point because, as Hart comes back to stress at many points in the Essays, we can logically separate the notion of the law being valid from the notion that action in accordance with it is required or prohibited. Thus the creation of a valid contract may at the same time be an illegal act such as say, theft or handling. With the distinction in hand and grasping its significance much better than Bentham, Hart is able to attack the imperative theory that law is most illuminatingly portrayed as the command of the sovereign and that legal powers are to be seen as adjuncts of commands rather than as a set of separate laws. Bentham thought the latter possibility an illusion; such laws were really only described separately in his view to facilitate understanding on the part of those who were expected to administer them.

But this distinction allows us to say that a law is valid because it is in accordance with the criteria provided by an authoritative standard without being committed in meaning to say that the law is effective (although, as Hart points out, statements about the validity of laws in general presuppose the existence of a settled and effective legal system).

The distinction comes to light again when Hart criticises Bentham's apparent view that a legislature's power to make laws could be legally limited insofar as there was a limited 'disposition to obey' on the part of those to whom the laws are addressed. Here again, Hart's reference to his method is refreshing: it is logically possible for lawyers to talk about the validity or invalidity of laws quite apart from questions concerning obedience to those laws. Once again the inadequacy of the theory that laws are fundamentally duty-imposing and that the only way to see laws as ultra vires is by assuming that a law has imposed a duty in a particular area not to make law is exposed by careful attention to the logical structure of lawyers' thought. Hart is openly admiring of Bentham's insights and so often he helps Bentham around pitfalls created by an insistence on the truth of the imperative theory. So, for example, Hart points out that in Bentham's idea of a class of persons' 'disposition to obey' lies an implicit reference to the importance of attitudes of certain members of society which under Hart's analysis are court officials. A coherent connection is therefore shown to exist between peoples' attitudes and the validity of law so that Bentham's views while unsound are shown not to be otiose.

Clarity in logical analysis is to be found also in Hart's criticism of Bentham's curious (because uncharacteristically he had not followed it through) doctrine that any statement of the form 'A is the case' made by X, was equivalent to the more complex form 'X believes that A'; this led Bentham to an analysis of command that is significantly similar; a command that something should be the case meant to him that the commander wished that that should be the case. In other words, the main difference between a statement and a command for Bentham was that in the former case there is expression of a belief and in the latter the expression of a wish. Hart criticises the analysis but nevertheless again rescues what is good in it. Bentham's analysis of command involves implicitly that a reason for acting in accordance with the command is the mere fact that the commander wished that the command should be obeyed. Although Hart rightly says that Bentham overlooks the 'operative' or 'performative' aspect of imperatives, he incorporates the recognition-of-wish notion into his own analysis, appearing in Chapter X, of what counts as an authoritative legal reason for acting. An authoritative legal reason is 'peremptory' in the sense that it cuts off the necessity for further deliberation, like a command, and it is 'content-independent' also in the same way that the mere giving of a command is: it supplies itself as the reason for action. Neatly, Hart saves an insight of Bentham where other less subtle critics might have submerged it.

The incorrect analysis of law as a command is a constant theme of the work. Hart subjects Bentham's account of rights and powers, which anticipated a lot of the much later work of the American jurist Wesley Hohfeld, to close scrutiny but concludes that here again an account solely in terms of the basic idea of imposition of duty is inadequate to provide a working concept. Legal rights in Hart's terms must include the notion of individual control where possessors of rights are 'small scale

sovereigns' in respect of a legally recognised choice. On the question of non-legal rights, however, Hart is fairly non-committal. He clearly thinks Bentham to be wrong in vehemently denouncing their existence but agrees with Bentham that the problem with the concept of a non-legal right is its 'criterionlessness'. Hart is of the view that 'we have not yet developed a theory of individual rights, comparable with the utilitarian theory in clarity, in detailed articulation and in appeal to practical men'. He also expresses the view in Chapter IV, where he compares Bentham's views on natural rights with those of Mill, that no theory of basic rights can succeed which does not take into consideration what counts as good for the individual.

This reviewer has considered several themes in the Essays of contemporary relevance to jurisprudence; but it would be a mistake to think that this was all. Bentham gains a personality from the volume, and the order of the chapters and the distinctive clarity with which they are written would, at one level, serve as an excellent introduction to anyone unacquainted with the background and scope of Bentham's work. At a more robust level, however, the Essays demonstrate not just the energy and breadth of Bentham's intellect but the immense analytical and morally perceptive powers of their author.

Ross Harrison, Bentham
London, Routledge and Kegan Paul, 1983

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In Britain, Bentham's reputation as a philosopher has never been secure. From the first, in some quarters his moral philosophy was treated as erroneous and subjected to sharp attack by such as Whewell. J.S. Mill lent Bentham his support, but his qualifications and modifications introduced strains which probably weakened the structure more than they buttressed it. Later in the century the British Hegelians became the leading philosophical school, and one of their main claims was that all forms of utilitarianism, Bentham's included, were bankrupt. Bentham's heart was in the right place, and he and his disciples had achieved much social and political reform; but his philosophy was inadequate. Indeed, from an Hegelian point of view, Bentham is in most respects a paragon of the Understanding, an indefatigable labourer, a Stakhanovite, at the task of distinguishing, defining and classifying, and thereby achieving the vital task of differentiation which is preparatory for comprehension by Reason. Bentham, however, like other Enlightenment thinkers, never took the crucial further step but remained at the lower level of philosophical thinking. When Hegelianism in turn gave way to a revival of empiricist philosophy, the damage had been done: the overthrow of Hegel was not accompanied by a restoration of Bentham. Bertrand Russell's judgment is typical: 'Bentham and his school derived their philosophy, in all its main outlines, from Locke, Hartley and Helvetius; their importance is not so much philosophical as political... Bentham's merit consisted, not in the doctrine, but in his vigorous application of it to various practical problems' (History of Western Philosophy, 1946). Again, G.M. Sabine wrote that Bentham was not 'in any way remarkable for philosophical originality or even for a very firm grasp of philosophical principles' (A History of Political Theory, 1937). Some rated Bentham much higher, for instance C.K. Ogden, but they were exceptions. Bentham became type-cast in the history of philosophy as the adherent of a rather insensitive, cumbersome and vulnerable utilitarianism, more concerned with reforming the law than exploring philosophical questions.

Over the past three decades it has become increasingly clear that Bentham's philosophical stature has been underestimated. The appearance of this study in the 'Arguments of the Philosophers' series (edited by Ted Honderich) marks an important stage in the process of taking the true measure of Bentham's work and contribution as a philosopher. Harrison's achievement is to demonstrate that Bentham deserves his place in a series which also features, among others, Descartes, Hume, Kant, Hegel, Schopenhauer, Nietzsche, Kierkegaard, Frege, Russell, Sartre and Popper. For to the traditional picture of Bentham Harrison adds a further and very significant layer, a Bentham who is a philosophical innovator, improving upon Locke and anticipating Frege and Russell, and creating an epistemological foundation which underpins and unifies all his writing.

The opening chapter of the book is described as an 'overture', and gives a lively sketch of Bentham's life, places him as an Enlightenment thinker, and suggests that 'there might be something in Bentham after all, or at least something interestingly puzzling about him' (p. viii). In particular, Harrison points to a fundamental tension between utility and Bentham's practical aims, and truth and his theoretical quest for

clarification.

In chapters II to IV, Harrison tackles Bentham's theory of meaning. After examining Bentham's criticisms of legal fictions, helpfully illustrated from the law of his day, Harrison gives an extensive analysis of Bentham's notion of 'fictitious entities', and shows how he proposes by the 'brilliant invention' of paraphrasis to translate words such as 'obligation' or 'right' until they can be understood in terms of the real entities, pain and pleasure. Others, e.g. H.L.A. Hart, have stressed the importance of Bentham's fictitious entities, but Harrison's treatment is longer and more detailed; and he discusses Bentham's ideas in relation to modern philosophical developments (not always to Bentham's disadvantage). Most important of all, Harrison proceeds in the remainder of the book to show that much else in Bentham, in every part of his writings can be made more intelligible - and defensible - in terms of these fundamental ideas about logic and language.

Chapters V-VII examine Bentham's statement that mankind's 'sovereign masters', pain and pleasure, point out both what we ought to do and what we do. The basic distinction is put in various ways: ought and is, morality and psychology, duty and interest, the greatest happiness of the greatest number and the greatest happiness of the individual, and the greatest happiness principle and the self-preference principle. Harrison first presents Bentham's project as depending upon the union of these two separate principles, the principle that pleasure ought to be maximised and pain minimised, and the principle that people act with the motive of maximising their own pleasure and minimising their own pain. These lay down, respectively, the legislator's end and his means. The law, the constitution of the state, and all public institutions are to be constructed so that individuals' own interests lead them to do what it is their duty to do. Successive chapters then examine the adequacy of Bentham's psychology for the task he assigns it, and the justification of his fundamental evaluative principle, utility. In both chapters, as elsewhere, Harrison's aim is to attribute to Bentham the most feasible doctrine which can be supported from his writings, manuscripts included. Once that has been done, some of the standard criticisms of Bentham are revealed as misconceived or overly simple.

In chapters VIII and IX, Harrison turns to politics and the practical problems of how Bentham's reforms can be effected. He shows how various themes in Bentham's thought coalesce to support his theory of democracy and the leading institutions of the Benthamite state. Once more, Bentham's utilitarianism is accorded greater merit than is usually done by philosophers, though some shortcomings are noted too. The final chapter explains, contra Lyons, that Bentham can consistently offer instructions about private morality.

Harrison prefaces his book with a 'Note on the Texts'. He lists the writings of Bentham which he has used in two groups, according to whether they were published in Bentham's lifetime. He also makes and justifies an important distinction, within both groups, between texts which are reliable and those which, having been 'constructively' or poorly edited, need to be handled with care and given a lower status as evidence. His references in the text clearly show when the material cited falls into the latter category.

There are end-notes to each chapter, and here I must express dissatisfaction with the unusual convention adopted. The end-notes are distinguished from one another by letters, but there is no indication of the part of the text to which they refer, not even a page number. Nor is there any reference to these notes in the text. In most instances it is obvious what the notes refer to, once one has gone back over the chapter, although I am still in the dark about a few. It does put the reader to extra trouble, however, which cross-referencing could and should easily have avoided.

Harrison modestly writes in the Preface that he has not attempted 'prolonged and extensive criticism' but has concentrated on expounding Bentham's work in order to make it better known, and especially to display its coherence and exhibit how better sense can be made of each of its parts when seen in the context of an overall view. He succeeds in doing this admirably. In addition, there is considerable critical assessment of a high order, and even when he has not the space to pursue it, he has cleared the way for others. His account reveals that many of the traditional objections against Bentham are misdirected, that Bentham has strengths which have not been properly appreciated, and that some of his defects are of a different character and location than has often been thought. The most significant area for further study which Harrison isolates, I think, concerns the logical status of the principle of utility. As Harrison asks, is it legitimate for Bentham to dismiss natural law, natural rights and social contract as the kind of fictions which are mischievous and redundant, whilst claiming that utility is the kind of fictitious entity which is indispensable? Bentham's case for utility is fairly clear and looks convincing; but may there not be an equally powerful case for the others too? Cannot a defender of natural rights, say, argue that they are a necessary part of moral discourse? When this is probed, it may turn out that utility and natural rights each belong to two different conceptions of morality. Perhaps, as has often been said, Bentham is indeed at fault for reducing morality to some of its features and ignoring or underemphasising others. Or maybe there simply are two aspects - or even two concepts - of morality, both essential, neither reducible to the other, and permanently in tension with one another. Whatever one's answer, it is certain that Harrison has opened up new perspectives on old questions, as well as posing new ones.

Bentham is written with clarity, discrimination, elegance and wit. It will stimulate the study of Bentham as a philosopher; and, since it makes good its claim that his philosophy is central to every aspect of his work, all students of Bentham will have to take account of it.

SOME RECENT ADDITIONS TO THE BENTHAM BIBLIOGRAPHY

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Lord Robbins

The news of Lord Robbins' death, after a long illness, on 15 May 1984 was announced as copy for this issue of the Newsletter was in the final stages of preparation. A full appreciation of his contribution to Bentham studies must await a later occasion. It is however only right that something should be said now in recognition of the immense debt which the Bentham Project owes to his work. A member of the Bentham Committee from its inception in 1959, he played an active part, in the editorial sub-committee, in planning the edition during the early 1960s. In 1966 he succeeded Lord Cohen as chairman of the main Committee, a position he held for twelve years, relinquishing it within a few months of his eightieth birthday. Those years saw the first-fruits, in publication, of the enterprise; but they were also a time of difficulty and that degree of frustration which is unavoidable in a period of increasing financial stringency. It is impossible to speak too highly of the leadership, the support, and the encouragement Lord Robbins gave the Project and those concerned with it at that time - and indeed throughout the quarter-century of his association with our work. He brought to the Project all the wisdom and skill of his long academic and public experience, together with the intellectual concern and judgment of an outstanding scholar. Yet even more than these qualities, those who had the privilege of working with him will recall the warm humanity and the personal friendship he offered so generously. His qualities of mind and spirit alike will not be forgotten.