

JEREMY BENTHAM

FEBRUARY 15, 1748 — JUNE 6, 1832

By H. A. HOLLOND

I. BIOGRAPHICAL

THE current year is the bicentenary of the publication of *L'Esprit des Lois* by Montesquieu, of whom the late Oliver Wendell Holmes, Justice of the Supreme Court of the United States, wrote that he 'influenced, and to a great extent started, scientific theory in its study of societies, and hardly less influences practice in legislation, from Russia to the United States'.¹

The year 1748 also saw the birth of Jeremy Bentham, who, among English lawyers, ranks in world-wide reputation with Thomas More and Francis Bacon.² His name is appropriately commemorated in the Inns of Court by the Bentham Committee, a body of public-spirited barristers who make themselves responsible for organising 'Poor Man's Lawyer' work in London.

Bentham's literary output was immense. A substantial part of it, inaccurately described by the publishers as his complete *Works*, was indifferently edited by Sir John Bowring, with the assistance of several others, and published between 1838 and 1843 in eleven large octavo volumes, unattractively printed in double columns of small type. Mr. C. K. Ogden, who has brought into prominence aspects of Bentham's work which had previously been little known, computes that for a satisfactory edition of his published material at least fifty volumes would be required. And there is besides a mass of unpublished manuscript.

This vast achievement was rendered possible by the fact that Bentham enjoyed a combination of advantages which fate rarely accords to men of genius. He had a well-to-do father,³ who, reluctantly abandoning forensic ambition for his son, was able and willing to support him while engaged in unremunerative work, and, having only one other child, left him half his property. Jeremy was besides endowed with a superb constitution which allowed him to work incessantly, though he had been puny and

¹ *Collected Papers*, p. 264.

² Many of his works were translated into several languages. See Dr. Lipstein's article in the *Symposium*, published 1948 by Stevens, London.

³ The father's fortune was made by judicious investment in land.

weakly as a boy; his approaches to matrimony were frustrated, so that he was not embarrassed by the cares of family life; and, lastly, he found an enthusiastic henchman, Etienne Dumont, who relieved him of the drudgery of publication, and gained for him a continental reputation by making much of his work known in a French text. He also had many other friends who helped him without stint.

Bentham's life may be conveniently divided into five stages: his boyhood and adolescence at Westminster and Oxford until 1767; from 1767 to 1781, his youth at Lincoln's Inn; from 1781 to 1792, the first phase of his middle life during which he made frequent visits to Bowood, and stayed some two years in Russia; from 1792 to 1808, the second phase of his middle life, during which, his father having died, he established himself in the latter's house in Queen's Square Place in Westminster, and was heavily engaged upon his Panopticon scheme; from 1808 to 1832, his late middle and old age, during which he was converted to radicalism and fervently preached its doctrines.

His father, Jeremiah, was an attorney, who was also a scrivener⁴ and clerk to the Scriveners' Company; his grandfather was an attorney; his great grandfather a pawnbroker. All were citizens of London. The child Jeremy's precocity was such as is rarely equalled. It was said of him that he knew his letters before he could speak. He was learning Latin from his father when three years old. At the same age, while still in petticoats, he got bored one day during a walk with his family, ran back to the house, ordered a footman to place Rapin's *History of England* on a desk, and plunged into study.

1755-1767. Age 7 to 19.

At the age of seven he became a member of Westminster School. He lived with a number of other boys in the crowded boarding-house of Mrs. Morel, one of the 'Dames' who, under the system prevalent at Eton and at Westminster, were lessees of houses which they managed with the help of ushers.⁵ In the month before his eleventh birthday his mother died. Her death inflicted a grievous loss upon him, both because she was a charming woman whom he

⁴ 'Scrivener', originally meaning a professional penman, became a synonym for 'notary public', an official, of ecclesiastical origin, who authenticates documents for use in legal proceedings in foreign countries. In the seventeenth and eighteenth centuries scriveners used also to receive money to place out at interest. *H.E.L.* XII, 70-72. Christian, *History of Solicitors*, 141-154.

⁵ Mrs. Morel's house was on the site of the house now called 'Grant's', after another eighteenth century 'Dame'. *Westminster School*, by L. E. Tanner, Keeper of the Muniments of Westminster Abbey, p. 30.

loved dearly and never forgot, and also because he was left without mediator between himself and his father, who was not the most understanding of parents.

In 1760 he went to Queen's College, Oxford, with an underdeveloped body and overdeveloped mind: in 1763 he took his degree. He then spent some time at Oxford as a Bachelor of Arts, and as such attended, during the winter 1763-4, Blackstone's lectures, publication of which, under the title *The Commentaries*, began in the following year. We have his own statement that he heard 'even then no small part of them with rebel ears'.

1767-1781. Age 19-33.

Bentham took his Master's degree in 1766 and left Oxford in the following year. His father, who about that time made a second marriage, settled on him properties worth £103 a year, and also furnished for him chambers in No. 1 Elm Court, fronting the Inner Temple Lane. There he settled down to legal study—not neglecting legal history—for he tells us that he studied Anglo-Saxon law, learning the language for the purpose. He frequented the King's Bench, and was present when Lord Mansfield in 1768 expounded the reasons for the court's reversal of the outlawry of Wilkes. Of Lord Mansfield he wrote, 'From the first morning on which I took my seat on one of the hired boards that slid from under the officers' seats in the area of the King's Bench . . . at the head of the gods of my idolatry had sitten the Lord Chief Justice. . . . Days and weeks together have I made my morning pilgrimage to the chief seat of the living idol'.⁶

One of his earliest appearances in print was in defence of Lord Mansfield, in a letter written to the *Gazeteer* on March 1, 1771, over the signature *Irenius*.⁷ Bentham's own account, given in old age, is as follows⁸: 'Lord Mansfield had been attacked. I was deluded by his eloquence, and fascinated by his courtesy of character. There was an ignorant story of the hanging of forty judges in Alfred's time, taken from one of the most trumpery books that was ever written, namely, the *Mirror of Justices*; and it had been suggested that Lord Mansfield might very properly be made the forty-first. I showed there was no evidence for the story'.

Bentham was called to the Bar by Lincoln's Inn in 1769. But he resisted his father's wish that he should practise, and determined to devote himself to the advocacy of law reform. It has been said

⁶ *Works*, I, 247.

⁷ Apart from some Latin verses written at Oxford on the death of George II, his first publication was a letter in the *Gazeteer* of December 3, 1770, on the enlistment of seamen. Ogden, Appendix I to *Centenary Lecture*.

⁸ *Works*, X, 67.

that his first glimpse into the scandals of legal procedure was the discovery that Masters in Chancery charged for three attendances, when only one was necessary and had been given. But according to Bentham's own account, written it seems towards the end of his life, he had vowed war against the abuses of the law when still a boy. 'Chance threw into my hand, in the year of our Lord 1759, a precious autobiography. Author, in form Paul Whitehead, poet-laureate of that day—in substance and name the then celebrated courtesan, Teresa Constantia Philips. . . . In her sad history, . . . a period of gallantry was closed by marriage'. The indignant relations of the husband persuaded him to repudiate her, and a hireling was suborned to swear to a prior marriage. 'Ding-dong went the tocsin of the law. Tossed from pillar to post was the fair penitent—from Courts Temporal to Courts Spiritual, by Blackstone called Courts Christian: and be it as it may with Christianity in its original form, in this griping, in this screwing, in this eviscerating form—that *Christianity* (as the saying is) is *part and parcel of the law of the land* is but too true. Lengthy of course was the vibration. Particulars of it are not remembered: nor matters it that they should be. What is remembered is—that while reading and musing, the Daemon of Chicane appeared to me in all his hideousness. What followed? I abjured his empire. I vowed war against him. My vow has been accomplished. With what effect will be acknowledged when I am no more. Gratitude to him who deserved well of mankind is never wanting, when to profit by the fruits of it is impossible.'⁹

He took as his touchstone of policy the principle of 'utility', otherwise known as that of the 'greatest happiness of the greatest number'. This concept was not of his own creation, it was part of the *Zeitgeist*, inspired by the philosophy of David Hume (1711–76). He had found it in the writings of Joseph Priestley (1733–1804), theologian and scientist, of the French philosopher Helvetius (1715–71), who published his *De L'Esprit* in 1758, and of the Italian Beccaria (1735–94), whose *Dei Delitti e Delle Pene* appeared in 1764. It was Bentham's championship of the principle of utility which made his name familiar in the nineteenth century to thousands who knew nothing of his many-sided achievements.

The decade of Bentham's life which immediately followed his call to the Bar has been attractively described by Mr. Everett^{9a} in *The Education of Jeremy Bentham*. Incidentally he has unearthed from unpublished manuscripts the previously unknown episode of

⁹ *Works*, X, p. 35. See also VII, 219–220.

^{9a} Charles Warren Everett, Professor of Literature in Columbia University.

Bentham's first love affair with a penniless girl of seventeen, Mary Dunkly, and has movingly told the story of the inevitable conflict between the young man's desire for personal happiness and his wholly unmercenary ambition to benefit his country by the advocacy of law reform.

From 1772 to 1774 Bentham was making a detailed analysis of offences and punishments. His work upon the subject remained in manuscript until it was published by Dumont about forty years later in the *Théorie des Peines*. He was also in his spare time occupying himself with experiments in chemistry and with the education of his young brother Samuel, nine years younger than himself, to whom he was devoted. He also added to his income by translating, on commission, Voltaire's *Le Taureau Blanc*. For this he wrote an introduction which Mr. Everett describes as highly irreverent, treating legal and political matters in the true Voltairian vein.

In 1774 chance diverted him to a critical study of Blackstone's *Commentaries*. At this time his most intimate friend was John Lind (1737-81), through whom indeed he had become acquainted with Mary Dunkly. Lind was an able man who would have become better known if he had not died at the age of forty-four. He had taken holy orders, but had abandoned the clerical profession. He had travelled widely, and had become tutor in Poland to the Polish King's nephew, whom he escorted to London. He then engaged in political writing and was called to the Bar. Among many points of view which Lind and Bentham shared was an antipathy to Blackstone's *Commentaries*, which they regarded as the quintessence of legal self-satisfaction.¹⁰ Lind made a draft of a critical survey of Blackstone's Introduction, and sent it to Bentham for comment. Bentham, fired with enthusiasm, did so much work upon it that he produced what was in effect a treatise of his own. He offered this work freely to Lind, who, generously recognising the superiority of Bentham's competence, made way for him completely. Bentham continued the undertaking so actively that in September, 1775, he could write to his father, 'In spite of chagrin my *Comment on the Commentaries* hastens to a conclusion'. But he never published it. And quite unaccountably

¹⁰ Bentham's attitude was grossly unfair. Blackstone was among the more progressive lawyers of his day. For a balanced estimate of Blackstone see Holdsworth's *H. E. L.*, XII, 702-37. But Bentham candidly expressed his admiration of Blackstone's presentation. 'Correct, elegant, unembarrassed, ornamented, the *style* is such as could scarce fail to recommend a work still more vicious in point of *matter* to the multitude of readers. He it is, in short, who, first of all institutional writers, has taught Jurisprudence to speak the language of the Scholar and the Gentleman'.

it was excluded from Bowring's edition of the *Works*. So it remained in manuscript until 1928, when Mr. Everett placed scholars in his debt by his edition of it.

The *Comment* led to the *Fragment on Government*, the conception of which Mr. Everett describes in the following words. 'The *Comment* being almost finished, Bentham went back to consider a point which Blackstone, copying Burlamaqui, had inserted in his discussion of municipal law. This had to do with the nature of sovereignty, and as Bentham considered that it had little to do with the treatment of municipal law, he had at first passed it over with very brief notice. He now examined it more closely. "I sat down", he says, "to give what I intended should be a very slight and general survey of it. The farther, however, I proceeded in examining it, the more confused and unsatisfactory it appeared to me: and the greater difficulty I found in knowing what to make of it, the more words it cost me, I found, to say so." In short, having completed the criticism of Blackstone's Introduction, Bentham entered upon a digression which he treated at length, and which became the *Fragment on Government*.'

The compilation of this comparatively small piece of work was associated with a new intimacy. George Wilson,¹¹ a Scot, who was later a K.C. and leader of the Norfolk circuit, became for a time Bentham's constant companion, and read and discussed his drafts with him. The work progressed rapidly during the winter of 1775-6, and in contrast with most of the author's writings was published without any delay, in April.¹² Having appeared anonymously it created a stir and much speculation. Such men as Lord Mansfield, Dunning, and Lord Camden were suggested as possible authors. Dr. Johnson read it and commended it. Bentham requested his publisher 'for the present not to dissipate so favourable an illusion', but his father could not resist the temptation and revealed the secret.

On a loose sheet at the end of the manuscript of the *Comment on the Commentaries*, Bentham wrote the words, 'Advertisement. Upon the anvil, by a hand concerned in the present publication, *The Elements of Critical Jurisprudence*, commencing with the penal branch of it'. The reform of criminal law was interesting intellectual men in various countries. The *Société Économique de Berne* had just offered a prize for the best project for such reform:

¹¹ There is no biography of Wilson in the *D.N.B.* There is an account of him in *Works*, X, 133, and of his death in 1816 in X, 487. It appears from a letter (*Works*, X, 247) that Wilson was junior to Bentham.

¹² The year of publication, 1776, is, of course, a notable one, being that of the American Declaration of Independence, and of the publication of Adam Smith's *Wealth of Nations*.

the Polish Diet had declared for a revision and codification of criminal law: D'Alembert wrote to Bentham in June, 1778, 'It is indeed high time that the human race should be freed from all the absurdities, or rather, all the atrocities of our criminal jurisprudence; and if we may not speedily hope to see this great change, it is a happiness for which philosophers like you are preparing the way by your writings—useful as they are to society, and honourable to yourself'.¹³

The labour, which Bentham's 'advertisement', so called, heralded, produced a great quantity of manuscript, in which Dumont subsequently quarried, but which was never published as a single unit. A by-product of it was the publication, in 1778, of the tract *Observations on the Hard Labour Bill*. This Bill had been drafted by William Eden with the help of Blackstone to meet a problem which had been forced upon the notice of Parliament by the loss of the American colonies as an outlet for transportation, and by the publication in 1777 by John Howard (1726–1790) of his book on the state of the prisons. Bentham welcomed the Bill as a whole, expressing his 'delight at seeing symptoms of ever so little a disposition to improvement, where none at all were to be expected'. His criticisms of details were well received by Blackstone, who sent him a polite note on the subject, saying that 'some of the observations had already occurred to the patrons of the Bill, and that many more were well deserving their attention'. The reaction of the over-sensitive Bentham was to see in this note a 'frigid caution characteristic of the writer'.¹⁴ There was no further contact between the two men: Blackstone died in 1780, at the age of fifty-seven.

The crowning achievement of Bentham's early maturity was the production of his *Principles of Morals and Legislation*. This has perhaps been in the long run the most read of his writings. It was printed in 1780, but the author's inhibition against publication got the better of him and he put the sheets away. After his return from Russia he yielded to the importunity of Wilson and published the book, in 1789. A second edition revised by him was issued in 1823; it was reprinted by the Oxford University Press in 1907. The book was intended as Part I of a larger work, but no Part II was published, or even printed, until Mr. Everett constructed a sequel out of the confused mass of manuscripts and produced it, in 1945, under the title *The Limits of Jurisprudence Defined*.

¹³ *Works*, X, 87.

¹⁴ *Works*, I, 255.

1781–1792. Age 33 to 44.

The *Fragment* brought to Bentham a piece of unforeseeable good fortune, his friendship with William Petty,¹⁵ second Earl of Shelburne (1737–1805), one of the ablest aristocrats of the day. This was the Shelburne who was Secretary of State for the southern department from 1766 to 1768, under Chatham; was Prime Minister for a few months in 1782 and 1783; and was created Marquis of Lansdowne by Pitt in 1784. There had been correspondence between him and Bentham in 1779 when, at the instance of a common friend, he gave letters of introduction to Samuel. The latter, who had become an engineer, was seeking a career in Russia, where the Empress Catherine was offering patronage to philosophers and scientists. But Shelburne and Bentham had not then met. It is probable that subsequently someone called Shelburne's attention to the *Fragment*, and to the possibility that its author might be useful as a pamphleteer. However that may be, Shelburne called at Bentham's chambers, which were then in Lincoln's Inn, and invited the young man to stay at Bowood, his country seat in Wiltshire. The visit was a great success, the whole family, both men and women, found Bentham congenial, and he returned there repeatedly during the next ten years. Why his visits then ceased is not certainly known; one may reasonably accept the conjecture that an embarrassment had been created by his developing an affection for one of the ladies of the house¹⁶ which was greater than hers for him. Bowood brought to him many contacts and friendships.

The two and a half years between August 1785 and February 1788 he spent in travelling to and from Russia, and in staying with his brother in the Ukraine. Samuel had entered the service of Prince Potemkin, who had been the Empress Catherine's lover, and was still her Minister. There Jeremy wrote his *Defence of Usury*, which was published in England in 1787, and was hailed by the *Monthly Review* as a 'gem of the finest water'. Adam Smith, whose views were attacked, said he thought the criticisms valid, and, shortly before his death in 1790, sent Bentham a copy of his works as a token of his regard.

Upon his return from Russia Bentham began his intimacy with

¹⁵ William Petty's father, John FitzMaurice, who was created Earl of Shelburne, was second son of the twenty-first Lord, and first Earl, of Kerry. On succeeding to the Petty estates from a maternal uncle John FitzMaurice assumed the surname Petty. In 1818 the third Lord Lansdowne on inheriting the Earldom of Kerry from a cousin resumed the surname FitzMaurice.

¹⁶ Caroline Fox, daughter of the second Lord Holland, and niece of Lady Lansdowne. Bentham proposed to her by letter in 1805, a few months after Lord Lansdowne's death. He wrote to her again when a very old man and was greatly hurt by the curtness of her reply.

Samuel Romilly, whom he knew already, and his literary association with a new friend, Etienne Dumont. The meeting with the latter, who had been tutor to Lord Lansdowne's sons, was at Lansdowne House, at a dinner at which Romilly was also present. Dumont was a Swiss clergyman from Geneva: Romilly had met him there in 1781. Dumont had subsequently left Geneva on account of political troubles and had become for eighteen months pastor of the French Protestant Church in St. Petersburg. He was an enthusiastic and painstaking man, and offered to publish in French the substance of Bentham's jurisprudential work. Thus began one of the strangest of literary partnerships, which bore abundant fruit in a series of French treatises between 1802 and 1828.

From 1788 to 1792 Bentham was in close touch with Paris through Romilly, Dumont and Brissot.¹⁷ Romilly had friends there, particularly Mirabeau, of whom he wrote, in his autobiography, a striking appreciation. Dumont was in Paris from 1789 to 1791, seeing Mirabeau daily and furnishing him with materials for his speeches, derived from the writings of Bentham. Brissot had been in exile in London, and had become a great friend and admirer of Bentham. The latter contributed to the cause of the revolutionists two writings. One was *Political Tactics*,¹⁸ the essential parts of which were printed and shown to the French leaders. Dumont wrote that both M. de Mirabeau and the Duc de la Rochefoucauld had expressed admiration of its 'truly philosophical conception'. The other was the *Draft of a Code for the organisation of the judicial Establishment in France*, with critical observations on the draft proposed by the National Assembly Committee.¹⁹ A hundred copies were sent to the President of the Assembly, and Lord Lansdowne in a letter to the Duc de la Rochefoucauld described the author as 'by a hundred degrees the most capable person in the country to judge of the subject'. On August 26, 1792, at the instigation of Brissot, the National Assembly included Bentham in a small group of foreigners upon whom the title of Citizen of France was conferred in recognition of their services to the cause of liberty.²⁰

1792-1808. Age 44 to 60.

The year 1792 is marked by Bentham's succession, on the death of his father, to the estate of Queen's Square Place in Westminster,

¹⁷ Guillotined as a Girondist in 1793.

¹⁸ Published in French by Dumont in 1816. The English version is in *Works*, II, 299-373.

¹⁹ *Works*, IV, 285-406.

²⁰ The group included among others Washington, Priestley and Wilberforce.

which was his principal home for the rest of his life.²¹ The years which followed were much occupied, and marred, by a voluminous correspondence about his Panopticon scheme. This was based on an architectural idea of his brother for the construction of a model factory. The Panopticon was to be a circular prison building with cells on every story of the circumference and a lodge in the centre for the inspector who would be able to see all the prisoners without himself being seen.

Bentham's proposal received support at first; the Government made a contract with him and gave him a grant to enable him to take charge of a large number of convicts. But opposition developed and eventually the Government repudiated its contract. In 1813 Parliament voted £23,000 to Bentham as compensation for his outlay.

Mr. Ogden wrote in 1932 that Bentham's plan, though it has in this country and in Europe been 'consigned to the limbo of eccentric infelicities', gained the support of many of the most practical administrators of his day, and was adopted with enthusiasm in many parts of the New World. It was very appropriate that there should appear in the *Illustrated London News* a hundred years after Bentham's death an account of the Cuban Penitentiary which is, Mr. Ogden says, to all intents and purposes a model Benthamic Panopticon. 'It consists of circular cell houses, each with galleries of doorless cells which are watched from a central guardhouse. In the centre is the dining-hall and kitchen. Over 3,000 convicts are at present serving in it.'²²

How sad the story was is told by Mr. Everett in the following words.²³ 'The result was failure, though with an ironical twist. Bentham's attempts to apply his principles to existing institutions were all failures. If applied at all, they were to be applied in places remote in time and space from Bentham's world. Joliet Penitentiary in the State of Illinois, U.S.A., constructed in 1920, is an exact replica of the architectural plan of the Panopticon, even to central heating and water supplied to each cell. In Central America the imposing name of Panopticon is given to even the humblest one-roomed gaol, though none of them bears any relation to Bentham's plan beyond the use of the name. But in England neither name nor architecture has been used, yet Bentham threw away the best part of twenty years of his life in advocating the scheme. Wilberforce, in 1795, described "poor Bentham . . . dying

²¹ In his later years he used to refer to the house as the *Hermitage*, and himself as the hermit.

²² *Centenary Lecture*, Appendix.

²³ *The Education of Jeremy Bentham*, 178.

of sickness of hope deferred". "Never was anyone worse used than Bentham", he wrote later, "I have seen the tears run down the cheeks of that strong-minded man, through vexation of official underlings, when, day after day, he was begging at the Treasury for what was, indeed, a mere matter of right." The Government had given him enough in the way of promises to justify his buying a tract of land and starting construction. At last, in 1812, the Government finally refused to carry out the plan, but acknowledged Bentham's claim to recompense, and came down with a settlement of £23,000 in cash. Bentham was not to be allowed to benefit his country, but he was to receive money enough to triple his income. Small wonder if he said afterwards, "I cannot look among Panopticon papers, it is like opening a drawer where devils are locked up", and wryly noted that he was 'Condemned to join the Baal Peor of bloodsuckers'.'

Simultaneously the partnership with Dumont was in active progress. The latter expanded the *Introduction to the Principles of Morals and Legislation* with a great deal of manuscript material into a three-volume work, referring by correspondence to Bentham for the elucidation of obscurities. Mr. Ogden quotes an expression of playful exasperation by Bentham in a letter written in 1795—'The plan was that Dumont should take my half-finished manuscripts as he found them—half English, half English-French—and make what he could of them in Genevan French, without giving me any further trouble about the matter. Instead of that, the lazy rogue comes to me with everything that he writes, and teases me to fill up every gap he has observed.'²⁴

The title of the first Bentham-Dumont treatise was *Traité de la Législation Civile et Pénale*, published in Paris in 1802. It rapidly became a classic throughout the world. Two eminent Russians wrote enthusiastically to Bentham's brother, one of them describing Jeremy as 'one of the four geniuses who have done, and will do, most for the happiness of the human race, Bacon, Newton, Smith and Bentham: each the founder of a new science: each a creator'.²⁵

A translation of this treatise was published in Boston in 1830 by John Neal, an American, who had lived in Bentham's house for a time. The other English version, much better known, was also made by an American, Robert Hildreth (1807–1865), lawyer and journalist. It was published in 1864, and became the principal medium of acquaintance with Bentham's thought. There is a modern edition of this translation, with introduction and notes by

²⁴ *Theory of Legislation*, 1931, p. xxxii.

²⁵ Quoted by C. K. Ogden, *Theory of Legislation*, 1931, p. xxxiv, *Works*, X, p. 555.

Mr. Ogden, in the International Library of Psychology, Philosophy, and Scientific Method.²⁶

1808–1832. Age 60 to 84.

The last period of Bentham's life saw no abatement of his intellectual energy. It may conveniently be regarded as dating from 1808 when he reached the age of sixty and began his intimate friendship with James Mill.

James Mill, the historian of British India, was the ablest of the early Radicals, and the most effective exponent of utilitarianism. When he first met Bentham he was thirty-five years old. He and his family first stayed with Bentham in the summer of 1809, at an old manor house near Oxted. Next year Bentham leased to Mill premises adjoining his own garden in Queen's Square Place. And when, from 1814 to 1818, Bentham was tenant of Ford Abbey, a large mansion near the meeting point of Dorset, Somerset, and Devon, the Mill family were his guests there during six months of each year.

Bentham's activities from the age of sixty to the end of his life may be grouped under the following headings. First, the continuation of his collaboration with Dumont. Secondly, his work on the law of evidence, with the invaluable help of James and John Stuart Mill. Thirdly, his conversion to radicalism, and his championship of the radical programme of parliamentary reform in England. Fourthly, his enthusiasm for constitutional reform in any country that might be willing to accept his help, and his laborious preparation of his greatest work, the *Constitutional Code*. Fifthly, his promotion of educational projects, and his writings on kindred topics.

Dumont returned to his native Geneva when it regained its independence in 1814. He became the leader of its supreme council, and introduced many improvements into its judicial and penal systems. He continued his collaboration with Bentham, the successive publications in the series being, *Théorie des Peines et des Récompenses*, 1811; *Tactique des Assemblées Législatives*, 1816; *Traité des Preuves Judiciaires*, 1823; *De l'Organisation Judiciaire et de la Codification*, 1828. He died in 1829 at the age of seventy.

Bentham's work on evidence was made available by the two Mills in English and by Dumont in French. The *Introductory View of the Rationale of Evidence* was prepared by James Mill in 1812, and printed in part.²⁷ More than one bookseller declined publication,

²⁶ *The Theory of Legislation*, 1931, Kegan Paul & Co.

²⁷ Atkinson, p. 223. It occupies pp. 1 to 187 of Vol. VI of the *Works*. There is no reference to any earlier publication.

for fear of its being regarded as libellous. Dumont's work appeared in 1828.²⁸ In 1825 John Stuart Mill, then aged nineteen and a junior clerk in the India House, spent the whole of his leisure reducing to unity Bentham's masses of manuscript on the subject. The result of his labour was the *Rationale of Judicial Evidence* published in five volumes in 1827.²⁹ Sir Leslie Stephen wrote of it,³⁰ 'It is not only one of the richest in matter of Bentham's works, but one of the best edited. It would be difficult to mention a youth of twenty who ever completed such a task in the intervals of official labours'. In the Preface, called the 'prospective view', Bentham states the three results which he hopes to have achieved. First, the proof of the theorem, 'that, merely with a view to rectitude of decision, to the avoidance of the mischiefs attached to undue decision, no species of evidence whatsoever, willing or unwilling, ought to be excluded'. He admits other grounds for exclusion, namely, the avoidance of vexation, expense and delay. Secondly, the giving of 'instructions pointing out the means by which what can be done may be done towards securing the truth of evidence'. Thirdly, the giving of 'instructions serving to assist the mind of the judge in forming its estimate as to the probability of truth, in the instance of the evidence presented to it; in a word the judging of the weight of evidence'.

James Mill converted Bentham to radicalism and secured the active support of his pen. The latter wrote and printed in 1809 a vigorous tract entitled *Elements of the Art of Packing as applied to Special Juries: Particularly in Cases of Libel Law*.³¹ Romilly persuaded him not to publish it, convincing him that the Attorney-General would certainly prosecute.³²

In 1810 Bentham became acquainted with Major Cartwright, the apostle of Universal Suffrage, and accepted the doctrine. He prepared a *Catechism of Parliamentary Reform*, and sent it to William Cobbett, editor of *The Political Register*, who refused to publish it. It was published in 1817, with a long Introduction

²⁸ Atkinson states that an English version of the *Traité des Preuves Judiciaires* appeared in 1825.

²⁹ *Works*, VI, 188 to end, and the whole of Vol. VII. There is a reference (VI, p. 203) to the original editor, but no indication as to his identity.

³⁰ *D.N.B.*, John Stuart Mill.

³¹ *Works*, V, 61-186. It was first published in 1826. The advertisement to the first edition states, 'This work was printed many years ago. Circumstances prevented its being at that time exposed to sale. In regard to the author, all that need be said is—that it was not by him that it was then kept back; and that it is not by him, or at his instance that it is now put forth.

If, on either accounts, it were desirable that the causes of its being thus long withheld should be brought to view, those causes would afford a striking illustration of the baneful influence of the principles and practices it is employed in unveiling, and presenting in their true colours'.

³² *Works*, X, 450.

purporting to show 'the necessity of radical, and the inadequacy of moderate, reform'.³³ Francis Place described it as having produced a great sensation.³⁴

In 1818 Henry Bickersteth (afterwards Lord Langdale, M.R.), an ardent advocate of parliamentary reform, persuaded Bentham to prepare a series of resolutions,³⁵ for Sir Francis Burdett to move in the House of Commons. Bentham insisted, against Burdett's inclination, on adding a resolution in favour of the ballot, to those in favour of universal suffrage and annual Parliaments. The resolutions³⁶ were moved on June 2 but received no support from the Whigs; indeed Henry Brougham spoke against them. A few days later Parliament was dissolved. Romilly, who had long been the leading Whig lawyer, accepted an invitation to stand for the City of Westminster. Bentham wrote a handbill against the candidature of his old friend in support of the radicals Burdett and Kinnaird. Romilly, who headed the poll, felt no resentment, dined with his friend three weeks after the contest, and wrote in his diary, 'though a late I know him to be a very sincere convert to the expediency of Universal Suffrage, and he is too honest in his politics to suffer them to be influenced by any consideration of private friendship'. A few months later this brilliant and humane lawyer, distraught by the death of his wife, died by his own hand.

Next year Bentham published a draft *Radical Reform Bill*,³⁷ with a commentary, and shortly afterwards he wrote, but did not publish, his tract *Radicalism not Dangerous*.³⁸

The radical conviction which guided his political activity in England made him ready to place his services as draftsman at the disposal of any country willing to liberalise its institutions, and inspired the determination with which, as his strength waned, he pursued the self-imposed task of producing a comprehensive code of constitutional law. He had made a slight reference to the subject in an Appendix added in 1789 to the original text of the *Principles of Morals and Legislation*. He there wrote: 'Besides the civil and the penal, every complete body of law must contain a third branch, the constitutional. The constitutional branch is chiefly employed in conferring, on particular classes of persons, powers to be exercised for the good of the whole society, or of considerable parts of it, and prescribing duties to the persons invested with

³³ *Works*, III, 433-557.

³⁴ Wallas' *Life of Place*, p. 127.

³⁵ *Works*, X, 492-495.

³⁶ Printed in *Works*, X, 495-497.

³⁷ *Works*, III, 558-597. For the date see statement in *Radicalism not Dangerous* that the draft Bill was published on December 6, 1819. *Works*, III, 599.

³⁸ *Works*, II, 599-622.

these powers. The powers are principally constituted, in the first instance, by discoercive or permissive laws, operating as exceptions to certain laws of the coercive or imperative kind. Instance: A tax-gatherer, as such, may, on such and such an occasion, take such and such things without any other title'.³⁹

But, apart from his support of Parliamentary reform in England it was not until he had turned seventy that he devoted himself seriously to constitutional law.

In 1820 he wrote four *Letters to the Spanish People* against a proposed law fettering liberty of speech, and in the same year three *Tracts on Spanish and Portuguese Affairs*, the object of one of which was to argue the uselessness and mischievousness of a House of Lords. It should be observed that he intended his single-chamber Parliaments to serve for one year only.

In 1821 the Cortes of Portugal accepted his offer to prepare a code of laws⁴⁰: this encouraged him to publish in 1822 his *Codification Proposal addressed to all nations professing Liberal opinions*,⁴¹ and in 1823 his *Leading Principles of a Constitutional Code*.⁴² It was not until 1827 that a part was published of the monumental *Constitutional Code*⁴³ itself, which Redlich describes as a 'marvel of lucidity, in spite of many strange pedantries of language and method'.⁴⁴ As printed in the *Works* the code is in two Books. Book II is what Bentham intended as the code: the first nine chapters of it were published in 1827, the tenth chapter in 1830, the rest posthumously in the *Works*. What appears as Book I is a series of chapters of a general character which Bentham intended as an introductory dissertation. He worked hard upon his code until the end. Three weeks before his death he described himself as 'codifying like any dragon'. This side of his work brought him an immense foreign correspondence, especially with public men in South America, where his books had a wide sale. When he died the Federal Congress of Central America went into mourning, upon the motion of his disciple Don Jose del Valle, its late President.⁴⁵

I do not know how far Bentham's advice bore actual fruit in the text of South American constitutions. I believe that the question has never been investigated in detail. There is evidence in plenty

³⁹ *Works*, I, 153.

⁴⁰ In 1822 the Cortes decreed the translation of Bentham's works into Portuguese, at the public expense. *Works*, XI, 20.

⁴¹ *Works*, IV, 535.

⁴² *Works*, II, 267.

⁴³ *Works*, IX; Book I, 1-145; Book II, 146-648.

⁴⁴ *Local Government in England*, English edition, 1903, by Redlich and Hirst, p. 53.

⁴⁵ Ogden, *Centenary Lecture*, 9.

as to the veneration with which he was regarded by foreign statesmen, but I am sceptical as to the extent to which they put his views into practice. He was an autocratic adviser, and disposed to brush aside in a high-handed manner suggestions made by his clients for the adaptation of his propositions to local conditions. It would not be unnatural for such intransigence to end in a rejection of his proposals. Dr. Lipstein, in his article for the bicentenary symposium mentioned below,^{45a} has sought light on this subject in the unpublished correspondence. His data are interesting, but not sufficiently precise or numerous to justify his submitting any positive conclusion.

Though Bentham enjoyed in his lifetime wider recognition abroad than at home, he was not wholly a prophet without honour in his own country. To a large circle of able friends of all ages he was an inspired sage, and in the outer world he was awarded the highest distinction which his professional brethren could confer upon him. It is to the credit of the Masters of the Bench of Lincoln's Inn that in 1817 they elected him to be one of their number.⁴⁶ For it was unusual for a member of the Inn, not in actual legal practice, to be so honoured, unless he was politically eminent. It was a generous act, for the Benchers of that time were probably not of radical sympathies, or interested in law reform, and many of them must have heard of, and been irritated by, some of the numerous criticisms of unrestrained violence, which Bentham had uttered about lawyers in general.

There remain to be noted Bentham's activities in fields other than law. James Mill's circle included Francis Place, who became a close friend of Bentham, and stimulated his interest in education. A movement for the diffusion of elementary education had been started by Andrew Bell and Joseph Lancaster, who at the very end of the eighteenth century had, independently it seems, in Madras and London respectively, conceived the idea that primary education could be provided cheaply by making the older boys teach the younger. In and about 1814 Place was enthusiastically canvassing the possibility of establishing a system of schools giving secondary education by the same method. His hopefulness was increased by the news that it had been successfully used in two Scottish schools. Mill threw himself wholeheartedly into the scheme, and Bentham

^{45a} See penultimate, para 2, Part III, *Bibliographical Notes*.

⁴⁶ I was sorry to read a statement made by Bentham that he left the invitation unanswered for several weeks. At the time of going to press I cannot find the reference. The resolution offering him election was passed on June 25, 1817; the date of election was December 10, 1817. The Treasurer (*i.e.*, the annual Head of the Society) for that year was Henry Martin, *x.c.*: *Black Books of Lincoln's Inn*.

impulsively promised a site in his garden for a pioneer secondary school. But things went wrong with the West London Lancastrian Association, of which Place was a key member, and money flowed in very slowly for the higher school. Bentham came to see how very disagreeable for himself a school in his garden would be, and imposed discouraging conditions. Fortunately for the peace of his last years the project was abandoned. But it had produced his *Chrestomathia*, which derives its title from the roots of Greek words meaning 'useful' and 'learning'. There were several editions of this treatise, the first edition of which was seen through the press by Place in 1815.⁴⁷ It is a tract which no one would read unless prompted by some very compelling motive. But there are modern touches, such as the statement that 'every task may be converted into play if the taskmaster be but properly acquainted with his business'.⁴⁸ And Bentham was among the first to realise the importance of giving some part of school time to the natural sciences instead of virtually the whole of it to Latin and Greek. 'In knowledge in general, and in knowledge belonging to the physical department in particular, will the vast mass of mischief, of which perverted religion is the source, find its preventive remedy. It is from physical science alone that a man is capable of deriving that mental strength and that well-grounded confidence which renders him proof against so many groundless terrors flowing from that prolific source. . . .'⁴⁹

Appendix IX of the *Chrestomathia* is headed: 'Hints towards the composition of an elementary treatise on universal grammar, or a new principle on which that branch of art and science may, it is supposed, be capable of being taught and learned with advantage and facility towards the end of a *Chrestomathic* course'.⁵⁰ This is closely connected with the other writings, dating from the same period of Bentham's life but not then published, which are included in Volume VIII of the *Works*. Their titles are: *A Fragment on Ontology*; *Essay on Logic*; *Essay on Language*; *Fragments on Universal Grammar*.

Bentham's enthusiasm for education found further scope in the movement towards a new University which should be free from the clerical influence that, in his opinion, paralysed Oxford and Cambridge. The foundation stone of University College was laid in 1827; its site abutting on Gower Street having been bought in the previous year. It bore the title 'University of London' until

⁴⁷ Wallas, *Life of Place*, 84.

⁴⁸ *Works*, VIII, 12.

⁴⁹ *Works*, VIII, 13.

⁵⁰ *Works*, VIII, 185.

King's College was constituted a few years later. University College honours Bentham with its founders, as having been a member of the first committee for its promotion; it treasures his effigy; and it houses most of his voluminous manuscripts.

It is worth while to mention among the incidents of Bentham's old age the foundation, financed by him, of the Radical *Westminster Review* in 1823, to balance the Whig *Edinburgh* and the Tory *Quarterly*; his attacks on the Tory Chancellor Lord Eldon and the Whig Chancellor Lord Brougham; and his visit to Paris after an interval of so many years.

John Scott, Earl of Eldon, had been Chancellor since 1801, with an intermission of one year only. His integrity and his ability were unquestioned. But with advancing years the habit of indecision grew upon him, and the arrears of his court became notorious. He also showed complete indifference to the abuses which were rampant behind the scenes in Chancery procedure. It became an annual event for a resolution praying inquiry into the state of the court to be moved in the House of Commons by Michael Angelo Taylor, whom the nickname Chicken Taylor shows to have been not the most effective of critics.

In February, 1824, a more redoubtable champion, John Williams, afterwards a judge, took up this task. Lord Eldon asked Peel to defend him. Peel did so with skill, but announced that a commission would forthwith be appointed to report on the court. As Lord Eldon himself was made chairman it is not surprising that the commission did not report until February, 1826, and then only after repeated insistence on the part of the Prime Minister, Lord Liverpool. In the meantime Bentham had joined in the fray with a pamphlet entitled *Indications respecting Lord Eldon*.⁵¹ In it he made fun of 'Mr. Peel's stream of eloquence' and of the commissioners as 'commissioned by Lord Eldon to report with Lord Eldon on the conduct of Lord Eldon'. The whole document was virulent, as may be inferred from the title of one of the sections, 'How the Head of the Law, seeing swindling at work, continued it, and took his profit out of it'.⁵² It is not surprising

⁵¹ *Works*, V, 348-382. According to X, 542, publication was in 1824, but it appears from the pamphlet itself that it was in 1825.

⁵² The following is an amusing example of Bentham's vitriol. It is taken from a 'Postscript', which was evidently not published with the original pamphlet. The passage, p. 377, is headed 'Lord Eldon Squeaking'. Lord Eldon is represented as answering a speech in the House of Lords, by Lord Grosvenor, on sinecures.

'Whereupon, up rises Lord Eldon, finger in eye, answering Lord Grosvenor's digression, with a digression on calumny and firmness. Addresses, two: one to the people, the other to noble lords. For better intelligibility, behold these same addresses, in the first place, in plain English: after that, for security against misrepresentation, in Lord Eldonish.

that his legal friends had implored him not to publish: in fact, no proceedings were taken against him.

Later in the year in which this pamphlet was published, 1825, Bentham revisited Paris for medical consultations. In Halévy's words it was his *voyage triomphal*, for he was made much of by distinguished people. On one occasion when he entered a law court all the barristers present rose to welcome him, and the president placed him by his side.

Henry Brougham, who was born in 1778, had had a brilliant career at the Bar and in Parliament, where he was a prominent opponent of the slave trade. Although he was not trusted by the Whig Lords he had made himself indispensable to them, and on the occasion of the Whig victory at the polls in 1830 they were obliged to make him Lord Chancellor. He had been a friend of Bentham since about 1810, though with reservation on the latter's part according to Bowring, who reported the remark, 'insincere as he is, it is always worth my while to bestow a day on him'.⁵³ Bentham was irritated by Brougham's lack of support of some of his proposals, such as the ballot, which, strange though it may seem to us, were regarded as radical. And Brougham had

'1. *Lord Eldon to the people, in plain English.*—Have done! have done! Let me alone! Nay, but don't tease me so. You had best not; you won't get anything by it. This is not the way to get me out, I can tell you that. Come now, if you will but let me alone, I'll go out of my own accord. I should have been out long ago, had it not been for you. It's only your teasing me so that keeps me in. If you keep on tease, tease, I'll never get out: no, that I won't'.

'*The original in Lord Eldonish.*—"Perhaps it is thought that this mode of calumnious misrepresentation is the way to get me out of office. They are mistaken who think so; I will not yield to such aspersions; nor shrink from asserting what I owe to myself. Had I been treated with common justice, I should not, perhaps, have been Lord Chancellor this day; but, I repeat it, I will not be driven out of office by calumnious attack. Let me only be treated with common justice, and my place shall be at any man's disposal".'

'2. *Lord Eldon to Lordships in plain English.*—Help! help! help! Going, going! Can't stand it any longer. What! nobody lend me a hand?—nobody speak a word for me? Do not you see how it is with me? What! and will you turn against me? Better not: I can tell you that. You'll be all the worse for it. When I am put down, it will be your turn next. What will become of your privileges?—think of that! I'll tell you what, so sure as they take away my seals, so sure will they take away your privileges.

'Squeaking, staggering, blustering, crying out for help—all in a breath! What an exhibition!'

'*Original in Lord Eldonish.*—"The feelings and fate of an individual are in themselves of small importance to the public, and I may be sacrificed to the insults I daily receive. But I beg noble lords to reflect, that I may not be the only sacrifice. If the object is, as it appears to be, to pull down the reputation, and throw discredit on the motives and conduct of men in high official situations, —if every man who occupies a high situation in the church" [turning, of course, to the bishops' bench] "in the church or state, is to become the object of slander and calumny, then your lordships may lay your account with similar treatment, and be convinced that your privileges or power cannot long be respected, when such characters have been sacrificed".'

'N.B. At what words the tears began to flow is not reported. When a crocodile comes on the stage—*Tears, tears*, should be added to the *Hear! Hear!*'

⁵³ *Works*, X 571.

opposed Burdett's reform motion. But the correspondence between them was friendly and even playful. In September, 1827, Brougham wrote to Bentham telling him of his intention to propose the appointment of a common law commission. Bentham wrote back enthusiastically.⁵⁴ The great day came on February 7, 1828, when Brougham delivered a six hours' speech setting forth the anomalies and defects of the law of real property and proceedings at common law. But there was no express recommendation of some of Bentham's cherished notions, and the latter was bitterly disappointed. Two days later he wrote,⁵⁵ 'Mr. Brougham's mountain is delivered, and, behold!—the mouse. The wisdom of the reformer could not overcome the craft of the lawyer. Mr. Brougham after all, is not the man to set up a simple, natural, and rational administration of justice against the entanglements and technicalities of our English law proceedings'.

In 1831, Brougham having become Chancellor and having cleared off arrears in his court, announced his intention to hear at first instance a great many cases of the kind previously heard either by the Master of the Rolls or by the Vice-Chancellor. He also promoted the Bankruptcy Court Bill, which was duly passed in that year. Bentham approved neither the announcement nor the Bill, and let himself go in an effusion, which he published within a few months of his death, entitled *Lord Brougham Displayed*. He did indeed describe the Chancellor as 'one of the most admirable members this country ever saw of the most highly talented profession—one of the most amiable men I can think of in private life', but on the other hand he did not scruple to suggest that his friend was prompted by a desire for patronage and that 'there was some sinister design, and, in particular, some *fee-gathering* design, for assuaging his hunger and thirst after—what shall we say?—not *righteousness*, but the mammon of *unrighteousness*'.⁵⁶

It is pleasant to read that Brougham, defending himself, took no umbrage at the criticism, but described the author as 'a personal friend of mine—a man of extraordinary learning, the father of the English Bar, and the father of law reform'.⁵⁷

In old age Bentham was fortunate in enjoying the services and inspiring the affection of a number of much younger men, notably Bowring, Southwood Smith and Chadwick. John (later Sir John) Bowring (1792–1872), a considerable linguist and writer, was Bentham's most beloved protégé, and was charged with the care

⁵⁴ *Works*, X 574.

⁵⁵ *Works*, X 588.

⁵⁶ *Works*, V, 577.

⁵⁷ Atkinson, 185.

of his manuscripts. Thomas Southwood Smith (1788–1861), to whom Bentham entrusted the task of having his body dissected, was a unitarian minister, a doctor of medicine and pioneer in sanitation. Edwin (eventually Sir Edwin) Chadwick (1800–1890), who became a civil servant and founded modern public health law, was Bentham's devoted secretary, and derived much inspiration from him.

Death came peacefully to Bentham the day before the great Reform Bill received the Royal Assent. His last thought was characteristic of the benevolence which inspired his life. 'I now feel that I am dying; our care must be to minimise pain. Do not let the servants come into the room, and keep away the youths, it will be distressing to them, and they can be of no service'.⁵⁸

There could hardly be an epitaph more appropriate to Bentham than a quip of his old friend Talleyrand, who revisited him shortly before his death. Bowring remarked that from no modern writer had so much been stolen without acknowledgment. Talleyrand assented, adding, 'et pillé par tout le monde il est toujours riche'.⁵⁹

II. COMMENT ON BENTHAM'S WORK

Private and public law; administration.

Bentham's primary rôle was the very unusual one of legal seer. He had a quite extraordinary power of freeing himself from the influences of time and place, of seeing as abuses conventional machinery which his contemporaries accepted uncritically as part of the natural order, of visualising what rules of procedure and evidence should obtain in a perfected legal system. When so learned and judicious a scholar as Dicey has written of him that 'his genius was of the rarest quality', and that 'he was in very truth the first and greatest of legal philosophers' one can have no anxiety lest one's enthusiasm should overrun one's discretion.⁶⁰

To what extent the course of law reform would have been retarded if he had not lived can be but a matter of conjecture. I do not think that Maine⁶¹ exaggerated when he wrote in the middle of the nineteenth century that he did not know a single law reform effected since Bentham's day which could not be traced to his influence. Dicey was of the same opinion a quarter of a century later. 'The name', he wrote, 'of one man, it is true, can never

⁵⁸ *Works*, XI, 95.

⁵⁹ *Works*, XI, 75.

⁶⁰ *Law and Opinion*, 129, 133. I think that Dr. Zane's diatribe in *Great Jurists of the World* may be dismissed as unworthy of attention. Why the editor should have admitted to a volume so entitled a contribution which denied to Bentham the right to be considered a jurist at all I cannot imagine.

⁶¹ *Early History of Institutions*.

adequately summarise a whole school of thought, but from 1825 onwards the teaching of Bentham exercised so potent an influence that to him is fairly ascribed that thorough-going, though gradual, amendment of the Law of England which was one of the main results of the Reform Act'.⁶² The secret of this influence was, in Maine's opinion, that Bentham 'gave us a clear rule of reform. English lawyers of the last (*i.e.*, the 18th) century were probably too acute to be blinded by the paradoxical commonplace that English law was the perfection of human reason, but they acted as if they believed it, for want of any other principle to proceed upon. Bentham made the good of the community take precedence of every other object'.⁶³

Obviously the time came when Bentham's influence was spent. For instance, the fact that the Administration of Estates Act, 1925, deprived the remote relations of an intestate of the right to succeed to his property, and the fact that Grand Juries were abolished in 1933, cannot be attributed to Bentham's advocacy of both these reforms. But the fact that he envisaged them is surely remarkable.

Among the reforms of the civil law which took place when they did because of him the following can safely be included: the provision of county courts; the abolition of fictions from writ process, from the barring of estates tail, and from the action of ejectment; the abolition of arrest in mesne process; the abolition of the usury laws; the removal of exclusionary rules from the law of evidence; the reform of chancery procedure so as to reduce delays; the improvement of the law of patents; the limitation of the liability of investors in industrial enterprises.

In the criminal law such penal science as there is in England begins with Bentham's teaching. It was his reiterated argument which produced a public opinion that refused to tolerate any longer the pillory, the whipping of women, and transportation. But for his efforts and Romilly's the reduction of capital offences to treason and murder would have been still further delayed. But for them we should have had to wait still longer for laws punishing cruelty to animals.

In the field of private law the name of Bentham was during the central part of the nineteenth century invoked in support of legislation favouring individual initiative and securing freedom of contract. The sixth of Dicey's masterly lectures entitled *Law and Opinion in England* is headed 'The period of Benthamism or Individualism'. In it he states one of the best known of the

⁶² *Op. cit.* 125.

⁶³ *Ancient Law.*

principles associated with the name of Bentham in the following terms.⁶⁴ 'Every person is in the main and as a general rule the best judge of his own happiness. Hence legislation should aim at the removal of all those restrictions on the free action of an individual which are not necessary for securing the like freedom on the part of his neighbours'. No doubt Bentham believed this. But I think he would have approved unreservedly Dicey's statement that 'this dogma of *laissez faire* is not from a logical point of view an essential article of the utilitarian creed'. And he would not, I think, have been opposed, as were many who regarded themselves as his followers, to legislative interference with freedom of contract when the parties are of unequal economic strength, as were employers and employees in the nineteenth century.

In the field of constitutional law the learned foreign scholar already mentioned, who made a profound study of our local government, testifies to Bentham's influence. It was Bentham, he says, who 'taught the nation that scientific methods and scientific investigations are indispensable if laws are to be made adequate to the needs of a modern industrial society. A great series of reforms followed his death; and of them none were more Benthamic in the best and truest sense than those which built up the modern system of local government in England'. After extracting from the *Constitutional Code* the main ideas which Bentham desired to apply to the reorganisation of English government, Redlich points out that it is difficult now to realise what a startling revelation these ideas were to his contemporaries, and how great was 'the intellectual force and originality of the man whose doctrines overcame in the course of two generations the spell of tradition, the self-interested opposition of the governing classes, and even the hardy conservatism of the English character'.⁶⁵ Defending against the charge of exaggeration the view of Hill Burton⁶⁶ and Sir Henry Maine⁶⁷ that nearly all the great reforms of the first half of nineteenth century England were originated by Bentham, he concludes, 'but the best and most conclusive evidence of all is to be drawn from a comparison of Bentham's teaching with the legislation which followed it'.

⁶⁴ P. 145.

⁶⁵ Redlich and Hirst, *Local Government in England*, 83-97.

⁶⁶ John Hill Burton (1809-82), historian and economist, assisted Bowring in editing the *Works*. He contributed an introduction of eighty pages to Vol. I. His list of reforms advocated by Bentham is in the 'Advertisement'.

⁶⁷ Henry Sumner Maine (1822-88), one of the greatest jurists of the nineteenth century, was Regius Professor of Civil Law at Cambridge, 1847-54; legal member of the Council of India, 1862-9; Corpus Professor of Jurisprudence at Oxford, 1869-78; Master of Trinity Hall, 1877-88; Whewell, Professor of International Law, 1887-8.

This estimate is confirmed by Graham Wallas in the following striking passage: 'Between 1824 and 1832, with the help of Southwood Smith and Chadwick, he wrote his unfinished but amazing *Constitutional Code*, the mine from which a new system of English administration, and a new relation between English central and local government, were extracted in the years that followed the Reform Bill of 1832. From the incompletely printed manuscript of the *Constitutional Code* Chadwick took the details of the New Poor Law of 1834, Parkes and Place the details of the Municipal Reform Act of 1835, Chadwick the details, and even the phrasing of the Act establishing a scientific system of vital statistics in 1836. The whole book was at last printed in 1841, and contained, mixed with some details which seem to us fanciful, schemes, which have since then been carried out, for a logical division of work between the Government departments, for Ministries of Health and Education, and Police, and Transport, in connection with corresponding municipal committees and expert municipal officials, and—most wonderful of all, when one thinks of the patronage arrangements of the time—a Civil Service recruited by competitive examination, access to which was to be made possible to the poorest boy of talent by a great system of educational scholarships'.⁶⁸

The late Professor J. L. Stocks paid a similar tribute in a memorial lecture.⁶⁹ After referring to the law reforms instigated by Bentham as constituting a record of practical productivity probably without record in this or any other country, he said, 'There is a tendency to think of these reforms as mainly negative in character, as consisting in the removal of harmful restraints and inherited abuses. John Stuart Mill's fine essay on Bentham encouraged this view, describing him as 'the great subversive or . . . critical thinker of his age and country'. There is, of course, much truth in this. He was bound to deal with the political problems more or less in the form in which his time set them to him. But constructive elements are not wanting. His contributions to the Census, to Municipal Reform, to the development of the Poor Laws, the Civil Service, and the Post Office, to the foundation of a system of inspection and registration in a variety of fields, show a strong constructive bent in a direction which we are better able to appreciate than Mill was. Few things

⁶⁸ *Men and Ideas*, p. 29. The book, published in 1940, is a collection of articles and addresses by Graham Wallas, edited by his daughter Miss May Wallas. The quotation is from a foundation oration delivered at University College, London, in 1922, and printed in the *Political Science Quarterly*, March, 1923.

⁶⁹ Published by the Manchester University Press, 1933, see pp. 26, 27.

are more significant of this bent than his emphasis on the need in every department of government of full and accurate statistics. We shall not go far wrong if we regard him on his more positive side as the founder of the modern science of administration'.

In this connection the names of Jeremy Bentham and of Edwin Chadwick (who died in 1890 after founding the system of sanitation and public health in this country), should be remembered together in honoured association.

Nor was Bentham without influence upon colonial history. In 1793 he had addressed to the French Government a pamphlet entitled *Emancipate your Colonies*. It was subsequently used in England for circulation among the friends of colonial liberty. As late as 1828 Bentham was drafting a petition in which the Canadians were to ask Parliament for complete separation. But when over eighty he came round to the view that the interests of the colonies would be better served by the adoption of a new principle of self-government within the Empire. Wallas writes, 'He printed a page of retraction to that effect, which he pasted on the remaining copies of his original pamphlet; and six years after Bentham's death his disciples made that principle the basis of that new Canadian polity which soon spread to the other Dominions'.⁷⁰

International Law.

Bentham's writings on International Law—an expression which he coined, using it in his *Principles of Morals and Legislation*,—are meagre. They consist of four essays, the manuscripts of which date between 1786 and 1789. They were first printed in the *Works*, under the title *Principles of International Law*.⁷¹ But they show amazing prescience. For in them are adumbrated the major issues which in modern times have been to the fore in discussions of international affairs. The titles of the essays are: (1) Objects of International Law; (2) Subjects, or the Personal Extent of the Dominion of the Laws; (3) War, considered in respect of its Causes and Consequences; (4) A Plan for an Universal and Perpetual Peace. The last of these is the most important. It begins with the statement that 'the happiest of mankind are sufferers by war; and the wisest, nay, even the least wise, are wise enough to ascribe the chief of their sufferings to that cause. The following plan has for its basis two fundamental propositions: (1) The reduction and fixation of the force of the several nations that comprise the

⁷⁰ P. 31.

⁷¹ Vol. II, 535-60. The first three essays have been summarised, and the last reprinted in full, by Dr. C. J. Colombos in No. 6 of the Grotius Society Publications, 1927.

European system; and (2) the emancipation of the distant dependencies of each State'. He follows this up with the enunciation of fourteen propositions, the last three of which are as follows:—

XII. 'That for the maintenance of such a pacification', *i.e.*, a plan of general and permanent pacification for all Europe, 'general and perpetual treaties might be formed, limiting the number of troops to be maintained'.

XIII. 'That the maintenance of such a pacification might be considerably facilitated by the establishment of a Common Court of Judicature for the decision of differences between the several nations, although such a Court were not to be armed with any coercive powers'.

XIV. 'That secrecy in the operations of the Foreign Department ought not to be endured in England, being altogether useless and equally repugnant to the interests of liberty and to those of peace'.

In his comment he does not face any of the difficulties which make the conduct of foreign affairs the most arduous of practical activities. To him it is in all so simple. 'The dread', he writes, 'of being duped by other nations—the notion that foreign heads are more subtle though at the same time foreign hearts are less honest, than our own—has always been one of our prevailing weaknesses'.

He is optimistic, too, about the enforcement of the decrees of the Common Court, suggesting that the power of the court would consist in putting, after a certain lapse of time, the refractory State 'under the ban of Europe'. 'There might perhaps', he adds, 'be no harm in regulating, as a last resource, the contingent to be furnished by the several States for enforcing the decrees of the court. But the necessity for the employment of this resource will, in all human probability, be superseded for ever by having recourse to the much more simple and less burdensome expedient of introducing into the instrument by which such court was instituted a clause guaranteeing the liberty of the press in each State, in such sort that the Diet might find no obstacle to its giving, in every State, to its decrees and to every paper whatever, which it might think proper to sanction with its signature, the most extensive and unlimited circulation'.

Readers of this extract will make their own comments, each according to his temperament.

Lastly, in view of the duty imposed on the United Nations Organisation by its Charter to encourage the codification of

international law, it is of interest that Bentham, as one would expect, held that few things are more wanting than such a code.⁷²

Economics.—The *Defence of Usury* is a renowned book. Its publication in 1787 has already been mentioned. During the next few years Bentham continued his work on Political Economy; part of it was published in Geneva in a collection of articles by various authors, part much later as the fourth book of the *Rationale of Reward*, which was the English version of the second half of the *Théorie des Peines et des Récompences*. These writings, with material previously unprinted, constitute the *Manual of Political Economy* in Bowring's edition. Bentham himself linked his own name with that of Ricardo in the saying, 'Mill was the spiritual father of Ricardo, while I am the spiritual father of Mill'. This was no exaggeration, for economists regard Bentham as filling a rôle of first rate importance in the history of economic doctrine. Indeed, at the present time the Royal Economic Society has in hand a project for the publication of hitherto unprinted writings on political economy from Bentham's manuscripts. I am informed that the editor, Dr. Stark, has discovered some most important material.

Philosophy and Linguistics.—If Mr. Ogden is right, Bentham is entitled by his work in this field alone to rank among the great thinkers of history, though the neglect of his writings robbed him of the influence which their quality deserved. Halévy referred to them as *longs et inutiles manuscrits*, and others have echoed this description. But his work on fictions anticipated and went beyond Hans Vaihinger's *Philosophie des Als Ob* (1911), which was translated by Mr. Ogden under the title *The Philosophy of As If*. 'The chief defect', says Mr. Ogden, 'of the latter work was its failure to lay stress on the linguistic factor in the creation of fictions'. But Bentham had already emphasised the fact that 'to language alone it is that fictitious entities owe their existence, their impossible, yet indispensable existence'.⁷³

Another living philosopher, Mr. John Wisdom, has given attention to Bentham's work in this field and testifies to its importance. In answer to an inquiry from me he writes, 'I think it fair to say that Bentham anticipated much of what Russell wrote on logical fictions, and also of what Wittgenstein has said about the power of pictures and models in our thinking, even where we do not realise that such models are influencing us. The importance of these models has not yet been fully worked out, much less widely

⁷² *Works*, X, 584.

⁷³ Bentham's *Theory of Fictions*, ed. Ogden, 1932, p. xxxii.

recognised. Their connection with unconscious phantasies should, I think, interest psycho-analysts also'.

And lastly reference must be made to the researches which Bentham was led to make, in connection with his theory of fictions, into the problem of a universal language. Mr. Ogden writes that 'he classified the seventeen properties desirable in a language as a means to linguistic reform. He outlined the principles of a universal grammar. He enumerated the kinds of referents, fictitious and otherwise, for which symbols are required. And finally he gave his reasons for believing that English could be adapted to meet the requirements of international communication, if certain proposals of his met with sufficient support'.

To Bentham, Mr. Ogden gives unreserved credit for various suggestions, especially in regard to verbs—described as linguistic eels—which he has used in his own remarkable creation, Basic English. It has thus befallen Bentham—as it has befallen few others—to receive, a century after his death, a tribute to his memory exactly such as he would have desired.

III. BIBLIOGRAPHICAL NOTES

(1) There is a detailed bibliography, of publications anterior to 1928, prepared by Mr. C. W. Everett. It was published in that year as an appendix of about twenty-five pages to Mary Morris' translation of Halévy's *La formation du radicalisme philosophique*. Faber and Gwyer, London, 1928. The bibliography includes references to some of the literature about Bentham.

Mr. Everett makes use of an earlier bibliography by A. Siegwart, in *Bentham's Werke und ihre Publikation*, an article in *Politisches Jahrbuch der Schweizerischen Eidgenossenschaft*, Vol. 24 (1910), pp. 287-400.

(2) *Jeremy Bentham's Works*, erroneously described by the publisher as 'complete', were published in 1843 by William Tate, of Edinburgh. The general preface is dated 1837. The editor-in-chief was John Bowring, who was assisted by John Hill Burton and others. Vols. X and XI contain a memoir by Bowring with extracts from Bentham's correspondence.

(3) Modern editions of some of Bentham's writings.

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(4) Some accounts of Bentham's life, works, and influence.

(a) All writers must necessarily draw on the memoir by Sir John Bowring mentioned above.

(b) The following are modern books and articles suitable for elementary reading.

Atkinson,⁷⁴ C. M., *Life of Jeremy Bentham*. London, 1905.

Dillon,⁷⁵ J. F., *Bentham's Influence in the Reforms of the Nineteenth Century*. Reprinted from lectures in *Select Essays in Anglo-American Legal History*, Vol. I, 492. Camb. University Press, 1907.

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(c) The following are for more advanced reading.

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Kenny, C. S., two articles on Bentham's influence on Spanish thought in *Law Quarterly Review*, Vol. 11, 1895, pp. 48, 175.

⁷⁴ Atkinson was a stipendiary magistrate in Leeds.

⁷⁵ Dillon was an American judge and law professor.

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Stone, Professor Julius, Chap. 10 in Part II of *The Province and Function of Law*. Stevens, London, 1947.

Jeremy Bentham and the Law; a Symposium. This volume is being prepared by the Dean and members of the Faculty of Laws of University College, in the University of London, for publication by Messrs. Stevens in the current year. I have read the volume in proof and can warmly commend it to any one whose interests may have been aroused by my article, and who may wish to be further informed upon any of the aspects of Bentham's work and influence to which I have briefly alluded.

Holdsworth, W. S., *History of English Law*. I am informed that Bentham is fully discussed in the posthumous Vol. XIII, shortly to be published.