Bentham and Utilitarianism in the Early Nineteenth Century

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**Utilitarian Praxis**

Jeremy Bentham (1748–1832) coined the term ‘utilitarian’ in the summer of 1781, when he recorded a dream in which he “was the founder of a sect; of course a personage of great sanctity and importance. It was called the sect of the utilitarians.” The dream turns on Bentham’s hopes for *An Introduction to the Principles of Morals and Legislation* (*IPML*), printed the previous year (but not published until 1789), “my driest of all dry metaphysics,” parts of which he had recently read to the company of guests at the country seat of his patron, the reformist Whig the Earl of Shelburne, who served as Prime Minister 1782–1783 and became Marquis of Lansdowne in 1784. In Bentham’s telling of the dream he writes, “there came to me a great man named L. [Shelburne] and he said unto me, what shall I do to . . . save the nation? I said unto him – take up my book, & follow me.” With the noble lord in tow, he then encountered King George III and instructed his “apostle,” Shelburne, to give the king “a page of my book that he may read mark learn and inwardly digest it.” Bentham’s fanciful reverie is indicative of his strategy at this time for the implementation of utilitarian ideas. Inexplicably, however, he demurred from presenting Catherine the Great with a copy of *IPML* when the opportunity arose during his stay in Russia with his brother Samuel in 1787. Nevertheless, the global reach of Bentham’s ambitions is clearly signaled. Its foundations lay in the “universal” character of the constructs of his secular version of utilitarianism. Allowing for the influence of local contexts in shaping laws based on utilitarian principles, in *Of the Limits of the Penal Branch*

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of Jurisprudence, written 1780–1782, he outlined a system of “universal jurisprudence” premised on “the universal system of human actions”; in the preface to IPML, he detailed the several branches of a complete code of law or pannomion. At his most universal Bentham, who was responsible for introducing the word “international” into both the French and English languages, held (in his “Principles of International Law,” written from the perspective of “a citizen of the world” in 1786–1789) that the object of international law is “the greatest happiness of all nations taken together.” Consistent with this objective, in the later Codification Proposal, Addressed . . . to All Nations Professing Liberal Opinions (1822) he advertised his credentials as a codifier of law to statesmen around the world, first by setting down the utilitarian principles of an “all-comprehensive code of law, accompanied with a perpetually interwoven rationale, drawn from the greatest happiness principle,” and second by providing testimonials to his aptitude for the task of codification. The testimonials came from far and wide between the years 1814 and 1822 – from fellow reformers in England, government ministers, and representatives of the Cortes in Spain and Portugal, Italian and French liberals, state governors, legislators, and other public figures in the “Anglo-American States,” and Catherine’s grandson Tsar Alexander, among others. Little came of the initiative, but it highlights a key feature of Bentham’s utilitarianism: the unity of theory and practice – the “praxis” that embraced his philosophical engagement with the world.

The “fundamental axiom” of the theory was first stated in A Fragment on Government (1776), where he states, “it is the greatest happiness of the greatest number that is the measure of right and wrong,” and “the obligation to minister to general happiness, was an obligation paramount to and inclusive of every other.” As he later explained, the utility principle or greatest happiness principle “gives character and direction to the details of Morals and Politics . . . Government and Legislation . . . each of them considered as it is, for the hope of seeing it rendered what it ought to be.” It was in IPML, however, that he delineated the component parts of the “science” of morals and legislation founded upon the utility principle, and expressly laid it down as the objective of government “to rear the fabric of felicity by the hands of reason and of law.”

Bentham’s theory of motives provided the bedrock of his utilitarianism. Pleasures and pains, he announced in the famous opening
passage of *IPML*, are mankind’s “sovereign masters.” As the “real entities” of individual experience, acting both as the final cause of individual action, and as the efficient cause and means to individual happiness, they determine what people do and what they ought to do.14 Pleasure, excepting the “immunity from pain,” is “the only good,” while pain “without exception, the only evil.”15 All motives have their source in the anticipation of pleasure or pain, and as such are properly termed pleasures and pains “in prospect.” In this sense, interest is composed entirely of imagined (though not imaginary) expectations and apprehensions about the future. It is not the pleasures presently enjoyed or the pains presently suffered that provide the motive to action (though past experience will often influence a person’s expectations of the future), but rather the belief or persuasion that the imagined outcome of an action will come to pass.16

In Bentham’s account in *IPML*, all motives, including the most extensive benevolence, are rooted in self-interest; in these terms, the notion of a disinterested motive is implausible. People commonly speak of actions as proceeding from good or bad motives, but the expression is inaccurate. Even “ill-will” is still a kind of pleasure or pleasure in prospect that constitutes a person’s motive. Does this mean there is no genuine philanthropy or self-sacrifice in the world? Bentham recognized the possibility of altruistic actions and frequently alluded to his own philanthropy when recommending schemes that would further the public good. Moreover, he acknowledged that sympathy for others was a “primeval and constant source” of pleasure and action.17 However, he still maintained that no action strictly speaking could properly be considered disinterested, since all action is “caused” by the anticipated pleasures and pains that constitute an individual’s perception of his interest. Given the neutrality of motives, the utility of an act – its goodness or badness, rightness or wrongness – is based entirely on its consequences: the benefits and/or costs that result.

When deciding whether to act or which act to undertake a person must calculate as best he can the pleasures and pains that may reasonably be expected to accrue to the persons (including himself) affected by the acts under consideration. According to what others have called the “felicific calculus,” the value of a pleasure or pain will be determined by its “intensity,” “duration,” “certainty or uncertainty,” and its “propinquity or remoteness.” Where the object is to measure the value of a pleasure or pain in terms of the tendency of an
act, there are two additional circumstances to be taken into account: “fecundity,” that is “the chance it has of being followed by sensations of the same kind,” and “purity,” or “the chance it has of not being followed by sensations of the opposite kind.” Where there are a number of persons with reference to whom the value of a pleasure or a pain is considered, then the “extent,” or the number of persons affected, must be factored into the calculus. Though Bentham believed there was nothing in what he had proposed “but what the practice of mankind, wheresoever they have a clear view of their own interest, is perfectly conformable to,” it has often been said that applying the felicific calculus is impractical. But Bentham realized that neither the individual nor the legislator could strictly follow the process he described. Rather, he presented it as a model of an ideal calculation, and insisted that “as near as the process actually pursued on these occasions approaches to it, so near will such process approach to the character of an exact one.”

Clearly, Bentham was aware of the limitations of the mathematical approach to summing pleasures and pains. As recent scholars have noted, his classification of pleasures included qualitative distinctions not amenable to strict calculation. It is impossible, for example, to quantify the intensity or purity of a pleasure. On the other hand, it is entirely feasible for an individual to determine that one pleasure is more intense or purer than another he has experienced and to quantify multiple qualities of pleasures, though Bentham understood that such “calculations” were more impressionistic than mathematical. The complexity inherent in the idea that pleasures could be estimated by anyone who had “a clear view of their own interest” underscores Bentham’s instruction that great care is needed in designing institutions and crafting laws. The development of an objective theory of morals and politics was intended to guide the moralist, educator, and legislator in the assessment of interests and the sorts of cost–benefit analysis that could, potentially, produce the optimum utility for all those affected by the decisions of those in authority. Viewed in this light, the distance between Bentham and the supposed “revisionism” of Mill’s distinction between higher and lower pleasures is sharply reduced.

Based on the calculation of interests, the goal of the legislator is to enhance the greatest happiness of the community by formulating laws aimed at maximizing the happiness of the particular individuals
who make up the community. This is “the sole end which the legislator ought to have in view” and “the sole standard in conformity to which each individual ought, as far as depends upon the legislator, to be made to fashion his behaviour.”23 Properly constructed laws, with the attendant rewards and sanctions (physical, political, moral, and religious) that give them their binding effect,24 both reflect the interests of the people and construct interests by providing individuals with the motives to pursue courses of action beneficial to the community. This is most obviously the case in penal law, where punishment is designed to deter individuals from actions harmful to the interests of others, but is also applicable across all the other branches of the law. In demonstrating how best this could be done, the task Bentham set for himself was to map out the rules, derivative precepts, maxims, and subordinate principles to guide the legislator in crafting penal, civil, constitutional, and procedural law, and their various subsets.25 It was a huge undertaking that dominated extensive periods of his life right up until his final years, when, at the age of 82, he assured a correspondent he was still “codifying like a dragon.”26

However, Bentham realized that spelling out the foundations of his philosophy and laying down explicit guidelines for the implementation of the utility principle in each branch of the law would not ensure their adoption. Nor were appeals to those in power a reliable route to success. The frustrating engagement with the Pitt administration over the panopticon in the 1790s put a severe dent in his expectations from this quarter, even if he continued to think that those who had acquired power in revolutionary France, republican America, and other states wrestling with new constitutions would be more amenable to his overtures.

Bentham’s Panopticon; Or the Inspection House (1791) has occasioned a good deal of controversy in discussions of the history of punishment.27 The basic architectural idea came from Bentham’s brother Samuel, a naval architect in the service of the Russian Prince Potemkin. Jeremy immediately saw its potential for adoption in any institutional context requiring a high level of supervision, including schools, hospitals, factories, and poorhouses. It is, however, as the governing principle of a prison, in which convicted criminals would be subject to a disciplinary regime based on the maxim that “the more strictly we are watched, the better we behave,”28 that it has gained most attention. The circular prison design was to leave each cell visible
to the center which was occupied by a watchtower from where the unseen warden might observe the activities of prisoners day and night. The real achievement of the idea, however, was the manner in which Bentham gave effect to utility in a range of practical subordinate principles: economy, since the prison should be a private self-sustaining operation not requiring financial assistance from the public purse; severity, because it was necessary for the offender to suffer to serve the ends of reformation and deterrence; and humanity, which prescribed that prisoners should be deprived only of liberty, not of health or life. In contrast with the cesspits of the existing gaols and hulks in Britain, and the horrific experiment with the penal colony at Botany Bay, Bentham’s prisoners were to be kept clean and their labor was to be productive and profitable, and serve to develop skills that might be useful to them upon release and assist in their moral reformation. In support of these objectives, Bentham devised several devices to produce transparency and accountability. The chief mechanism intended to bring the interest of the warden in line with his duty to be humane was publicity – “the most effectual means of applying the force of moral motives, in a direction tending to strengthen the union between his interest and the humane branch of his duty; by bringing to light, and thus exposing to the censure of the law and of public opinion ... every instance of contravention.” Members of Parliament and interested members of the public were to be guaranteed free access to the prison, making the panopticon subject to “the great open committee of the tribunal of the world.” The aim was to prevent abuses of power by prison officials and to enhance the security of the inmate.

Bentham’s hopes for the panopticon were never realized, despite the Pitt administration entering into a contract to enable him to establish and manage a penitentiary in London under the terms of the Penitentiary Act 1794. Collusion between aristocratic landowners and public officials stymied the project; Bentham even suspected George III of meddling behind the scenes. After many years of negotiations, lobbying, and repeated disappointments, he was forced to admit defeat in 1802, and ten years later Parliament voted £20,000 in compensation for Bentham’s immense investment of time, money, and effort. The entire experience left him bitter about the motives of those in public life, and served to confirm in him the notion that democratic institutional arrangements were necessary to provide “securities against misrule.”
Long before then, however, Bentham had realized the need to broaden the base of supporters for his ideas—men willing to disseminate and prosecute his ideas and press for reform based on utilitarian principles. His own writings—with the notable exceptions of A Fragment on Government and Defence of Usury (1787)—were notorious for their tortuous terminology and distracting parentheses, castigated by the critics as incomprehensible “Benthamese,” making them ill-suited for public consumption. In rendering utilitarian ideas in a readable form, no one was more important than the Genevan lawyer Pierre-Étienne-Louis Dumont, who assumed the role of Bentham’s translator and editor, and fashioned an international audience for his work.32

THE DISSEMINATION AND RECEPTION OF UTILITARIANISM

Dumont become acquainted with Bentham in April 1788 in the circle of reformers connected to Lord Lansdowne, and soon after gave his assistance in correcting several essays the philosopher had penned in French in response to events in France.33 He then translated Panopticon for distribution to the members of the French National Assembly,34 and in the summer of 1792 embarked upon the formidable challenge of composing a work that would present Bentham’s legal philosophy in a comprehensive and accessible form. Between October 1796 and April 1798 Dumont published a series of extracts from this ongoing work (and from Bentham’s Manual of Political Economy) in the Genevan journal the Bibliothèque britannique.35 The complete work appeared in three volumes in 1802 as Traités de législation civile et pénale (1802), the main parts of which were the treatises on civil and penal law. Four more major publications based on Bentham’s writings followed: Théorie des peines et des récompenses (1811), Tactiques des assemblée législatives, suivi d’un traité des sophismes politiques (1816), Traité des preuves judiciaire (1823), and De l’organisation judiciaire et de la codification (1828). None of these texts, including the Traités, was a straightforward translation of Bentham. They are commonly called redactions or recensions, either edited from Bentham’s original papers or combining manuscript material with extracts from published works, substantially rewritten in plainer language and divested of cumbersome detail. In this form utilitarian ideas reached
many more readers than Bentham ever could have hoped. True, *A Fragment on Government* had caused a minor stir, but *IPML* had virtually sunk without trace when it appeared in 1789 – “the edition was very small and half of that devoured by the rats,” he noted.\(^{36}\) Matters were far otherwise with the *Traités*, substantial parts of which were based on *IPML*.\(^{37}\)

Though questions have been asked about the faithfulness of Dumont’s publications to the original,\(^ {38}\) the *Traités* is of unquestionable importance in fathoming the nature of Bentham’s philosophy as it would have appeared to the world in the first half of the nineteenth century. It proved to be one of the great works of legal philosophy in an age that could boast many other splendid examinations of the principles and forms of law. Even the young John Stuart Mill – so close to the fountainhead of the doctrine we might have expected his confirmation to have been initiated by an immersion in the original script – cut his utilitarian teeth on Dumont’s volumes, professing that the *Traités* marked “an epoch in my life.” “I now had opinions,” he declared, “a creed, a doctrine, a philosophy; in one among the best senses of the word, a religion; the inculcation and diffusion of which could be made the principal outward purpose of a life.”\(^ {39}\)

Dumont records that 3,000 copies of the *Traités* were initially distributed in France, and that it was “frequently quoted in many official compositions relating to civil or criminal codes.”\(^ {40}\) Soon after, it was translated into Russian, and later into Spanish, German, Hungarian, Polish, and Portuguese.\(^ {41}\) Other editions of the *Traités* followed. Reportedly, 50,000 copies of Dumont’s various recensions were sold in Europe in the early decades of the century and 40,000 in Spanish translation in Latin America alone.\(^ {42}\) Bentham’s ideas had been circulating in Spain since 1810 through the London-based *El Español*,\(^ {43}\) but interest increased during the liberal triennium of 1820–1823. In 1820, Toribio Núñez, librarian at the University of Salamanca, published a two-volume account of utilitarian legal philosophy based on the *Traités*, and his own work on moral and political philosophy was greatly influenced by Bentham’s ideas.\(^ {44}\) In 1821–1822, Ramón de Salas, a law professor at Salamanca, produced the first Spanish translation of the *Traités* in five volumes,\(^ {45}\) which received a scathing critique by José Vidal, a Dominican theologian at the University of Valencia, who condemned the work as an encouragement to revolution.\(^ {46}\) From Spain, Bentham’s utilitarianism
reached its former colonies in the New World. Andrés Bello used Salas’ translation as the basic text for his law lectures at the Colegio de Santiago in Chile, as did Pedro Alcántra de Somellera, professor of civil law at the University of Buenos Aires. In 1825 Francisco de Paula Santander, the Vice-President of Gran Colombia, decreed that the work be required reading for all law students in the vast territories of the new republic, but in 1828 its President Simón Bolívar, the legendary “Liberator,” after previously embracing the principles and purpose of Bentham’s legal philosophy, bowed to clerical pressure and banned its teaching as detrimental to religion, morality, and social order. Santander, more inclined to resist the influence of the Catholic Church, restored it to the curriculum of the universities when he became President of the newly constituted state of Colombia in 1832.

Bentham’s ideas were also beginning to take hold in other parts of the world. Following the Greek revolution against Ottoman rule, the historian and legal scholar Anastasios Polyzoides, who had a hand in drafting its new constitution in 1822, translated an extract on “publicity” from Dumont’s Tactiques des assemblée législatives for a Missolonghi newspaper in 1824, promoting transparency in legislative proceedings and government matters in general. A year later he published A General Theory of Administrative Systems and especially of the Parliamentary One, Accompanied by a Short Treatise on Justices of the Peace and Juries in England (1825), containing a defense of representative government and advocating a judicial system based on utilitarian principles, replete with references to Bentham.

In the United States, the dissemination of utilitarianism was initially hampered by the absence of an English translation of the Traité, but there too Bentham’s influence was not long in being felt. Utilitarian ideas were first introduced into the academic study of the law by David Hoffman, the inaugural professor of law at the University of Maryland law school, which he helped found in 1816. John Neal, who studied law under Hoffman’s guidance, described him as one of Bentham’s “most enthusiastic admirers.” Hoffman’s bibliographic A Course of Legal Study (1817), later expanded to a two-volume edition (1836), became a standard guide for the teaching of law in American universities, and continued to hold its place of eminence in the field well into the second half of the century.
the published version of his lectures, *Legal Outlines* (1829), he expounded a legal theory that combined utilitarianism with elements of natural law. In *A Course of Legal Study* Hoffman recommended that students study closely the first seven chapters of *IPML* and chapters 12–17 of Dumont’s redaction *Théorie des peines et des récompenses*. Of the latter he wrote: “It is a matter of no less surprise than regret that a work of such extraordinary merit . . . should so long have continued unknown, not only to the students, but to the learned of our country.” Nor did he think this was putting it too strongly, for “nowhere among ancient or modern productions, is the philosophy of criminal legislation so ably and happily illustrated.” In this regard Bentham “left his predecessors at an immeasurable distance.”

Hoffman encouraged Neal to translate the *Traités* into English, a task he undertook during the eighteen months he stayed with Bentham in London in 1825–1826. However, Neal managed to translate only the introductory “Principes de legislation” and balked at the essays on civil and penal law. His edition of the *Principles of Legislation* first appeared in the United States in parts in *The Yankee*, which he edited under the banner heading “the greatest happiness of the greatest number,” then in full in 1830. In the biographical reflections on Bentham included in the volume Neal described the philosopher as “the great high-priest of legislation” and commented in effusive terms on Dumont’s role in popularizing his work. Neal reported that four hundred of the five hundred printed copies were sold soon after publication.

It was Richard Smith, a government tax officer and one of Bentham’s young disciples, who eventually translated the civil and penal law parts of the *Traités* into English for the *Works of Jeremy Bentham* in 1838. While Smith was at work in England, the historian and antislave propagandist Richard Hildreth was busy translating the same material on the other side of the Atlantic, convinced that the widespread interest in legal reform in the United States would benefit enormously from Bentham’s ideas. Hildreth’s translation eventually appeared in two volumes in 1840 as *Theory of Legislation*, and remained at the center of utilitarian studies in the English-speaking world through to the middle of the twentieth century. Two reviews appeared in the American journals of the day, both of which praised Bentham’s legal philosophy, while objecting to its underlying moral assumptions and disdain for religion,
position frequently adopted in contemporary appraisals of utilitarianism. The reviewers paid particular attention to the systematic presentation of Bentham’s theory of civil law – notably his delineation of the subordinate ends of civil law (security, subsistence, abundance, and equality) in relation to property – which had appeared for the first time in print in the Traités, and which provided the guiding principles for his writings on the poor laws and economic policy.\textsuperscript{59} Dumont himself believed that Bentham’s theory of civil law was one of the most significant of his contributions to legal philosophy,\textsuperscript{60} and it was this feature of his work that most impressed itself on the teaching of law in the newly independent states of South America, where property rights were a matter of considerable import in the aftermath of the collapse of the Spanish and Portuguese empires. Sir James Fitzjames Stephen, the English jurist and critic of Mill’s On Liberty, later commented in a review of Hildreth’s 1864 edition that Bentham had single-handedly rescued the theory of civil law from undeserved neglect.\textsuperscript{61}

Hildreth, whose own Theory of Morals (1844) drew substantially on the Traités, was correct in thinking that law reformers in the United States would find sustenance in Bentham’s legal philosophy. Thomas Cooper, who left England for the United States in 1794 with Joseph Priestley, from whom he initially derived his utilitarianism, by the 1820s was a confirmed Benthamite and the recipient of writings personally sent by the philosopher.\textsuperscript{62} Thereafter, with the exception of the slavery question,\textsuperscript{63} he systematically employed utilitarian principles in his writings on political economy and law. Edward Livingston, the famous author of codes of law for Louisiana,\textsuperscript{64} freely professed that his codification work was shaped by Bentham, whom he acknowledged as the world’s leader in this domain of law,\textsuperscript{65} and confirmed that it was his reading of the Traités which “fortified me in a design to prosecute the subject” of the reform of penal law.\textsuperscript{66} Gilbert Vale used his position as editor of the radical periodical The Diamond (1840–1842) – like The Yankee, published with the banner heading “the greatest happiness of the greatest number” – to disseminate Bentham’s criticisms of the vagaries, chicanery, and technicalities of the law. Inspired by Bentham, Vale was in favor of humane penal laws that proportioned penalties to the objective of deterrence and an advocate of state intervention to alter the social circumstances which fostered crime.\textsuperscript{67} John O’Sullivan, the quixotic editor of the United
States Magazine and Democratic Review famous for coining the phrase “manifest destiny,” wrote sympathetic reviews of Bentham, Livingston, and Hildreth, and followed them in advocating utilitarian law reform, particularly the abolition of capital punishment.  

Bentham’s influence continued throughout the century in America, where the Traités paved the way for the reception of other editions and versions of his writings, which in turn led to sympathetic responses to the more amenable forms of utilitarian moral and legal theory offered by Austin, Mill, and Sidgwick. On the other hand, Bentham’s political prescriptions made little impact in the United States, which was, by comparison to aristocratic England, already an advanced democracy. If the utilitarian Constitutional Code was directed “for the use of all nations and all governments professing liberal opinions,” as its title page declared, the political positions it embraced were recommended, in the first instance, for adoption at home.

**Utilitarian Politics in Britain**

For all Bentham’s success abroad, in the early years of the new century he was little known in his own country, save among a small band of law reformers determined to tackle the antiquated and notoriously harsh punishments meted out by English penal law. His reputation, such as it was, fueled the caricatures of Lord Byron, who voiced doubts about the balance of his mind, and William Hazlitt, who depicted him as a venerable anchorite in the quiet of his cell reducing law to a system and the mind of man to a machine, divorced from the life of spirit, imagination, passion, and sentiments of love, and who dismissed utilitarianism as a philosophy “fit neither for man nor beast.”

Bentham, Hazlitt fancifully opined, was the head of a zealous sect of “philosophical projectors... churning out inventions in jurisprudence, morals, logic, political economy, and constitutions, with as little variation as a barrel-organ plays ‘God save the King’ or ‘Rule Britannia’.” There were times when Bentham was bitter about his lot in life – let down by Shelburne from whom he impetuously demanded a seat in the House of Commons, humiliated by a government that failed to keep its word to support the building of a panopticon penitentiary, and his philosophical contributions to understanding and reforming law for many
years met by either bemusement or indifference. He struck a note of despondency when he remarked how well his work had been received in France: “Greater – far greater – is the honour bestowed upon him in that foreign country than in his own,” he wrote. Even those unconvinced of the merits of utilitarianism recognized the irony of the situation. Hazlitt, who was for a time a tenant of Bentham’s, with only a little extravagance opened an 1824 essay on his former landlord with the declaration:

Mr. Bentham is one of those persons who verify the old adage, that “A prophet has most honour out of his own country.” His reputation lies at the circumference; and 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 [sic] and the mines of Mexico.

The critic William Empson concurred. “Mr Bentham’s reputation,” he wrote, “is at present thoroughly European … he has been left almost ‘a stranger in his father’s house’.”

Hazlitt and Empson were only half right. In the years following the defeat of Napoleon in 1815, when calls for legal, social, and political reform gained considerable traction, Bentham’s reputation in Britain underwent a change from that of a misunderstood oracle on the periphery of the intellectual and political world to that of a venerable sage situated at the center of a broad reform movement. An increasingly impressive list of public figures cited his authority to enhance their credibility both within and outside Parliament, including law reformers such as Samuel Romilly, James Mackintosh, and Henry Brougham, and political radicals like Francis Burdett and Daniel O’Connell. Bentham sought to extend this influence to include populist agitators, like John Cartwright, William Cobbett, and Henry Hunt, but with less success. These were men with their own supporters and agendas, and they did not often see eye to eye, and could not be expected to work harmoniously with the kind of reformers with whom Bentham liked to dine and discuss the issues of the day – the likes of Romilly, Brougham, and Joseph Hume. Nor were Bentham’s utilitarian disciples entirely comfortable with the alliances he felt it necessary to construct to bring about reform. Understandably, there were moments of tension and dispute between Bentham and his Whig friends. His intimacy with Romilly was sorely tested by the latter’s
stubborn moderation on political reform, which led Bentham to an egregious betrayal of his friend when he entered into a pact with Burdett aimed at preventing Romilly's election for Westminster in 1818. Brougham also frustrated Bentham by his half-hearted support for reform. He once announced in the Commons that, “The age of law reform and the age of Jeremy Bentham are one and the same,” but this did not prevent Bentham from attacking the Lord Chancellor in *Lord Brougham Displayed* (1832), a criticism of Brougham’s plan to absorb the courts of the Vice-Chancellor and the Master of the Rolls into the Chancery Court, a plan which fell far short of the reform of the judiciary Bentham advocated.

The transformation in Bentham’s reputation in Britain can be traced to the early months of 1809 when, with the encouragement of his newly enlisted aide-de-camp James Mill, he began writing extensive drafts of analysis on the forms and debilitating consequences of “influence” in British politics, material which formed the grounds for his support for representative democracy. In these still-unpublished papers Bentham explored the relation between abuses in the law and abuses in Parliament: the beneficiaries of the law and the beneficiaries of the corrupt Parliament were united in one “confederated sinister interest,” he concluded. The terminology of “sinister interest” had entered Bentham’s vocabulary several years before as shorthand for his view that the interests of England’s rulers in Church, law, and government were invariably pursued at the cost of the interests of the people, and hard evidence of corruption in government came to hand in 1809 in the reports of the Commons’ Select Committee on Public Expenditure detailing the exorbitant amounts of public money disbursed in support of sinecure posts and pensions. With the long-delayed publication of *Plan of Parliamentary Reform* in 1817, Bentham formally announced the tenets of his democratic politics: the elimination of royal patronage, a substantial extension of the franchise, annual elections by secret ballot, the election of intellectually qualified independent Members of Parliament (with a system of fines to ensure regular attendance), and the accurate and regular publication of parliamentary debates. Collectively styled “securities against misrule,” none was more important than the “Public Opinion Tribunal,” the open court of public opinion founded on the freedom of the press, by which government actions could be held up to public scrutiny and officials held
accountable. Much of what Bentham recommended was governed by “the interest-junction-prescribing principle” designed to ensure that the interests of those with power would be reconciled with the public interest.\(^8\) The same reasoning had informed Bentham’s strategy for holding the warden to account in the panopticon, but the basic political idea can be traced to the earlier *A Fragment on Government*, in which he argued that effective government required institutions and practices that enabled “the frequent and easy changes of condition between governors and governed; whereby the interests of one class are more or less indistinguishably blended with those of the other.”\(^8\) By 1809, he became convinced that democratic institutions and procedures would be necessary to achieve this identification of interests. And when he turned his thoughts to constitutional law in earnest in the 1820s, by then fully committed to republicanism, it was with the conviction that all states in which the institutions of representative democracy already existed or in which they could be introduced were fertile soil for the utilitarian *pannomion*.

The response to Bentham’s democratic proposals from apologists for Britain’s “mixed and balanced” constitution was predictable. The Tory *Quarterly Review* disparaged the deconstruction of the foundations of the constitution, but without stooping to examine the merits of the reforms proposed.\(^8\) The stiffest opposition came from Mackintosh in the *Edinburgh Review*,\(^8\) the vehicle for moderate Whig reform. Mackintosh denounced Bentham’s position on democratic reform as dangerous radicalism, arguing it went too far in extending the franchise – a plan that would endanger the liberties of the people, he thought – and placed unfounded faith in the beneficial effects of the secret ballot and annual parliaments. Like many reformist Whigs, he believed the extension of the franchise should be gradual and limited, with attention focused, initially at least, on the disfranchisement of rotten boroughs, and argued that the variety of franchises that ensured representation for different sections of the populace should be maintained.\(^8\)

Bentham affected indifference to Mackintosh’s attack, but Mill saw it as treachery by a fellow reformer. It seems likely that Mackintosh’s critique was the catalyst for Mill’s own statement of the political implications of utilitarian doctrine in the famous essay “On Government,” published in the *Encyclopaedia Britannica* in 1820. Mill had made flattering remarks on Mackintosh’s tenure as
recorder for Bombay in the pages of his *History of British India* (1818), but after the attack on Bentham his correspondence contains only disdain whenever his fellow Scot came to mind. Later, Thomas Babington Macaulay, exercised by the republication of Mill’s essay in 1825, engaged in a six-part debate with the utilitarian camp— one of the period’s great intellectual battles played out in the pages of the *Edinburgh Review*, in which Mackintosh had previously denounced Bentham’s views, and the *Westminster Review*, the mouthpiece of Benthamite utilitarianism.

In the essay “On Government” Mill attempted to distill the essence of the utilitarian position on political reform. Though lacking the penetration of Bentham’s critique of established institutions and exhibiting little of the senior utilitarian’s subtlety in linking theory to practice, it had the virtue of being a systematic and forthright exposition based on the “science of human nature.” In determining the extent of the suffrage, however, an element of caution entered Mill’s argument which was unwarranted by his initial premises and which exposed him to the criticisms of the more progressive among his fellow radicals. The franchise, he argued, might be limited by excluding “all those individuals whose interests are indisputably included in those of other individuals,” i.e., children “up to a certain age,” since their “interests are involved in those of their parents”; women, “the interest of almost all of whom is involved either in that of their fathers or in that of their husbands”; and men under the age of 40, on the grounds that older males could be counted on to possess “a deep interest in the welfare of the younger men.” Mill thought a property qualification might be added to the age qualification, set at a level that encompasses the majority of men 40 and over and sufficient, therefore, to provide “a tolerable security” to good government.

Mill’s exclusions from the vote were not well received among the Benthamite radicals. Bentham was committed to universal manhood suffrage (subject only to a literacy qualification), and in notes he shared with Mill he disparaged the arguments by which his fellow utilitarian had justified limiting the vote to men of property over 40. If Bentham was prepared to accept the politics of excluding women, at least temporarily, John Stuart Mill felt no such compulsion. He later remarked that the argument for denying women the vote was the worst passage his father ever wrote. William Thompson, a socialist utilitarian and friend to Bentham and the younger Mill, shared their
dismay. In *Appeal of One Half of the Human Race Women against the Pretensions of the other Half Men* (1825), he supported the general utilitarian position on political reform but offered a considered, if at times intemperate, critique of Mill’s exclusion of women from the franchise. So incensed was he that he went so far as to demonstrate the inconsistencies inherent in the basic assumptions of Mill’s theory, concluding that the exclusion of women was a “disgrace [to] the principle of utility.”91

Macaulay, like Mackintosh, was sympathetic to the critical intent of utilitarian legal theory, but like Thompson he objected to the narrow view of self-interested human nature that underpinned Mill’s rendering of the doctrine. Later, he regretted the tone of his critique of Mill, acknowledging that he might have “abstained from using contemptuous language respecting ... [the author of] on the whole, the greatest historical work which has appeared in our language since that of Gibbon.”92 Nor was he averse to consulting Mill when drafting a penal code for India, and his position on education has been described as “James Mill’s philosophy expressed in Macaulayese.”93 Politically, however, the central issue for Macaulay, as it was for many Whigs, was how to maintain support for moderate parliamentary reform while dismissing the position on manhood suffrage taken by Bentham and his supporters. Macaulay’s approach was to demonstrate the defects in the foundations of utilitarian philosophy itself – at least, as they were presented in Mill’s essay.

Macaulay’s main criticism of Mill is that his way of proceeding is entirely *a priori*, by which he means that “certain propensities of human nature are assumed” and “from these premises the whole science of politics is synthetically deduced,” a deduction which it is logically “utterly impossible” to draw. Added to this, the claim that men always act out of self-interest is at best a comment on only “one-half of human nature”94 [a criticism the younger Mill would later direct at Bentham]95 and supposed that “the motives which impel men to oppress and despoil others” were the only motives influencing their actions.96 On the basis of this false assertion Mill derived doctrines which are also false,97 including the need for democratic checks on self-interested politicians and the implicit faith that only with the establishment of representative democracy could the public good be served.98 If legislation is the primary means of constraining individuals, as Mill implied, and legislators act only out of self-interest, as do all
men, then the attempt to produce an identification of interests between rulers and people through democratic institutions is futile: the principle of utility would only be operable by a happy coincidence. Much of Macaulay’s line of attack on Mill was reiterated by Mackintosh a year later in “Dissertation on the Progress of Ethical Philosophy” (1830), an extended essay prefixed to the *Encyclopaedia Britannica*, in which, contrary to William Paley and Bentham, he maintained that ethics rested on the primacy of conscience. Mackintosh was particularly harsh in his observations on Mill.99 Mill’s unmitigated response is contained in *A Fragment on Mackintosh* (1835),100 in which he restated the principal parts of his original position in “On Government,” insisted that institutions designed to produce an identity of interests between the governors and the governed are “the only security for good government,” and left his original exceptions to the ballot intact.101

**Conclusion**

Bentham’s role in the great debate was not significant.102 Initially, Perronet Thompson, the newly minted proprietor of the *Westminster Review*, had hoped that the response to Macaulay would come from Bentham. Once again, however, he left the debate to others, supplying only notes on the history of the utility principle for Thompson to use in crafting a defense.103 Enmeshed in the politics of constructing a broad alliance of reformers under his leadership, Bentham had bigger fish to fry. By the late 1820s his hopes were high for law reform and political reform and he was anxious to avoid friction within the loose alliance of moderate and radical reformers he had worked so hard to construct. Moreover, momentous political events abroad had encouraged him to press on with codifying the political, administrative, and judicial institutions, rules, and practices that should be in force in all nations professing liberal opinions. Ultimately, Bentham’s attempt to fulfill the role assigned him by the Guatemalan politician José del Valle – “Legislador del mundo”104 – fell short of its initial promise. Nevertheless, this was not the man described in the *Quarterly Review* whose litany of failed attempts “to become the governor of a prison, the enlightener of the world, the legislator of despotic Russia, of republican America, and lastly the head of a chrestomathic school,” cast “a misanthropical gloom over his temper.”105 Rather
this was the energized reformer who believed that the most important task he could undertake was to produce a comprehensive code of law or set of codes based on the greatest happiness principle that would serve as a blueprint for reformers at home, and which might be exported piecemeal or in whole to other parts of the world.\textsuperscript{106} To this end Bentham fostered friendships with prominent politicians, intellectuals, and reformers around the world. In the United States this included presidents Madison, Quincy Adams, and Jackson, and a variety of state governors and other legislators to whom he issued a standing offer to assist in law reform and sent batches of his writings to stimulate their interest. He used his connections to offer his services in drafting or codifying law to the Spanish Cortes in the aftermath of the restoration of the liberal constitution in 1820, to the Portuguese Cortes when it instituted a new constitution based on the Spanish example in 1821, to Tripoli when it appeared on the verge of revolution in 1822, to Greece following the promulgation of its new constitution in 1822 and the legislative debates on further reform 1823–1824, and to several of the newly sovereign states of Central and South America emerging from under colonial rule.\textsuperscript{107}

John Bowring, a constant companion during these years and later the editor of the first collected edition of Bentham’s writings, remarked “These were days of boundless happiness to Bentham, when, from every side, testimonials of respect and affection were flowing towards him, and when all events seemed concurring in advancing the great interest to which he was devoted.”\textsuperscript{108} Westminster was the hub of radical politics in England, and Bentham’s home in Queen Square Place became a place of pilgrimage for disciples from near and far. Inspired, encouraged, flattered, and paid the most gratifying respects, as he was, none of his codification proposals came to fruition. Nevertheless, the news that his ideas were reaching all parts of the globe gave impetus to his resolve to complete the drafting of the constitutional code, the centerpiece of the utilitarian \textit{pannomion}. The author of this project was by then an elder statesman in the world of legal philosophy and political radicalism, a man respected as the leader of the utilitarian school whose philosophy would occupy a central place in the discussion of legal and political thought and continue to inspire reform in Britain and elsewhere for much of the remainder of the century.
NOTES

1. Bentham, Papers, box clxix, fol. 79. For the complete text, see Crimmins, Secular Utilitarianism, pp. 314–316.
2. Bentham, Correspondence, vol. iii, p. 69.
4. I am indebted to David Armitage for the insights in “Globalizing Jeremy Bentham.”
6. Bentham, Of the Limits of the Penal Branch of Jurisprudence, p. 17 and p. 130; and Bentham, IPML, p. 6, p. 8, and p. 305.
15. Bentham, IPML, p. 100.
16. See Engelmann, “Imagining Interest.”
23. Bentham, IPML, p. 34.
24. Bentham, IPML, p. 34.
25. For the details, see Crimmins, Utilitarian Philosophy and Politics, chapter 4.
27. See, for example, Foucault, Discipline and Punish, and Ignatieff, A Just Measure of Pain. For a more balanced account, see Semple, Bentham’s Prison, and Blamires, The French Revolution and the Creation of Benthamism, chapters 1–2.
35. Bentham, *Correspondence*, vol. v, p. 200n.
36. Bentham, *Correspondence*, vol. iv, p. 34.
44. Toribio Núñez, *Espíritu de Bentham ó sistéma de la ciencia social, ideado por Jeremías Bentham* [Madrid, 1820]; *Principios de la ciencia social ó de las ciencias morales y politicas* [Salamanca, 1821]. See Bentham, *Correspondence*, vol. x, pp. 329–337 and pp. 463–471.
46. José Vidal, *Orígen de los errores revolucionarios de Europe, y su remedio* [Valencia, 1827].
47. Pedro Alcántara de Somellera, *Principios de derecho civil* [Buenos Aires, 1824]; see Bentham, *Correspondence*, vol. xi, p. 145n.
49. Peonidis, “Bentham and the Greek Revolution.”
55. John Neal to Bentham [11 March 1830], *Correspondence*, vol. xiii [forthcoming].
63. Cooper, “Slavery.”
64. Livingston, *A System of Penal Law for the State of Louisiana*.
83. “Plan of Parliamentary Reform ... by Jeremy Bentham” [*Quarterly Review*].
84. “Plan of Parliamentary Reform ... by Jeremy Bentham” [*Edinburgh Review*].
88. Lively and Rees, *Utilitarian Logic and Politics*, pp. 79–82.
104. Bentham, *Correspondence*, vol. xii, p. 217.