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James E Crimmins

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Bentham and Hobbes: An Issue of Influence

James E. Crimmins

Historians of political thought commonly assume that the similarities in the thought of Thomas Hobbes (1588-1679) and Jeremy Bentham (1748-1832) are the product of Bentham’s reading of Hobbes and infer that Bentham was in a certain sense a disciple of Hobbes.1 This has been generally true through the past one hundred years of scholarship, from the commentator writing at the end of the nineteenth century who had no doubt that Bentham’s “chief ideas and methods are to be found in Hobbes,”2 to the end of the last century when Gerald Postema insisted that Bentham was “a careful student of Hobbes.”3 In between George Sabine argued that Hobbes’s political philosophy “affected the whole later history of moral and political thought,” but its powerful “positive influence” was most fully felt in the nineteenth century when his ideas were incorporated into the thinking of the utilitarians.4 The implication of Sabine’s com-

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1 I am indebted to Dr. Stephen State of the University of Western Ontario for his helpful comments on an earlier version of this article and for sharing with me work in progress on Hobbes. In part, this paper takes its lead from Fred Rosen’s comment that Hobbes’s influence on Bentham has not been adequately discussed; see Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code (Oxford, 1983), 241.


ment was that Hobbes’s influence was not always of the positive sort. In other words, if one can conceive of influence being positive then it can also be negative, and Hobbes had just such an influence on many who read him until his ideas became respectable in the hands of Bentham and his associates.⁴ John Plamenatz concurred. Bentham, he wrote, “lived in the shadow of Hobbes” and, together with James Mill, came close to “an uncritical acceptance” of Hobbes’s doctrines.⁵ Because Bentham abandoned Hobbes’s “vocabulary” (laws of nature, natural rights, covenant, and so forth) “the difference between them appears so much greater than it is,” claimed Plamenatz. But eliminate the troublesome phrases from Hobbes’s writings and what remains, save for Hobbes’s extravagant fear of anarchy, is strikingly similar to the fundamental political doctrines of Bentham.⁶

At the heart of the syndrome of ideas that the utilitarians are assumed to have inherited from Hobbes is the belief that the methods of physical science were the proper models for political explanation.⁷ William Bluhm wrote that the mechanistic and naturalistic framework in which Hobbes couched his theory was not to be approached in the literature of political theory until Bentham set forth his felicific calculus. Since the time of Hobbes, Bluhm argued, Bentham stands out as the great exception to the history of neglect that has been the general fate of mathematical forms of analysis in the study of politics (until the second half of the twentieth century).⁸ Moreover, in postulating man as a rational actor motivated by selfish interest and in suggesting that it is in the interest of the ruler to govern in the majority interest as the best way of preserving his own power, Bluhm argued that Hobbes provided “an interesting echo ... of a central Benthamic principle, [and thus] good evidence that Hobbes is the forerunner of Utilitarianism.”⁹ The views of Sabine, Plamenatz, and Bluhm found an impressive echo in John Bowle’s influential Hobbes and his Critics, where Hobbes is described as “a forerunner of the Benthamite school of political thought.”¹⁰ It is with this kind of understanding in mind, that W. H. Greenleaf

of Liberty in Relation to his Utilitarianism (Toronto, 1977), 6, 27, 40-44, 210-12; L. J. Hume, Bentham and Bureaucracy (Cambridge, 1981), 63ff., 84; and Jeremy Waldron (ed.). Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man (London, 1987), 34.

⁴ See also Stephen, Hobbes, 74.

⁵ John Plamenatz, The English Utilitarians (Oxford, 1958), 2, 10; Plamenatz also pointed to several ways in which Bentham’s thinking differs from Hobbes, see 10-16.

⁶ Ibid., 16.


⁹ Ibid., 280 note.

commented, "it is no accident that the modern revival of interest in Hobbesian ideas is associated with the utilitarians....""11

Oddly, these commentators have remarkably few references to Hobbes in Bentham's writings to work with. This paucity of textual evidence was noted by an early reviewer of the first edition of Bentham's works, who chose rather to speak of the "coincidences" between the thought of Hobbes and Bentham, only pausing to note that such is the "slippery" nature of general reasonings of the kind Hobbes and Bentham attempted that it should not startle us to find one a monarchist and the other a republican.12 Nevertheless, it is generally assumed that Bentham did read Hobbes and that much of what he read he assimilated into his own thinking. Nuances there may be, of course, just as there were different issues and events that imposed upon and shaped their thoughts, but the underlying principles were the same in each case. However, in all this the questions are merely begged: are Bentham's ideas Hobbesian ideas? If they are, did they come to him from Hobbes? These questions raise the further methodological issue of how historians of political thought justify associating these two philosophers, and here two conceptual devices conventionally used to explain these kinds of linkages are involved: "influence" and "tradition." Did Hobbes influence Bentham? If so, what form did that influence take? Are Hobbes and Bentham appropriately connected within the same tradition of political thought? In sum, are these conceptual devices useful to us in working out the intellectual association between Hobbes and Bentham? These questions shape the core of the issue of "influence" addressed in this paper.

Hobbes and Bentham Compared

In order to elicit a useful response to the questions posed above it will be best to begin by exploring the apparent similarities and differences between the thought of Hobbes and Bentham. In what specific areas of their thought do they genuinely share the same principles? In what areas are they decidedly at odds? Do the differences outweigh the similarities, such that it makes little sense to speak of Hobbes and Bentham as fellow-travelers in a common political tradition?

With certain qualifications, my own accounting of the similarities between the thought of Hobbes and Bentham begins with the fact that they each held linguistic analysis and a descriptive or referential theory of language to be crucial to the development of a science of man and politics. At the core of this idea stood the realization of the significance of "signs" and the concomitant

demand for correct definitions. Both philosophers asserted that this “science” is crucial to the project of precision in political theorizing, and both men integrated a censorial approach to current and past political thinking with an attempt to develop a systematic analysis of politics and society. Hobbes and Bentham each worked long and hard at developing and refining the fundamental principles of their respective systems of thought, seeking to place the science of politics on a foundation comparable with that of natural philosophy, as each understood that field of investigation. The painstaking, determined, detailed frame of mind exhibited by Hobbes, as he developed his system through several seminal works (some published, others circulated in manuscript), is also evident in Bentham’s voluminous body of published and unpublished writings. Next, they were individualists who posited the primary motivating fact of self-interest and coupled this with the supposition that the security of the individual lay at the root of the justification for political society. Finally, both Hobbes and Bentham were legal positivists who expounded a command theory of law, and condemned the arbitrary nature of English common law. Both men’s political reasoning was strongly jurisprudential in character, eschewing the wisdom of past authorities, judge-made law and other common law vagaries, in favor of the commands and intentions of the legally constituted sovereign.13

Yet, the supposed “scientific” character of the work of Hobbes and Bentham was not entirely of the same kind. Both were materialists (although in Hobbes’s case this has been disputed)14 who expounded a nominalist metaphysics, but the empirical elements of Bentham’s work were vastly more pronounced, his inductive method contrasting in marked fashion from Hobbes’s deductive approach modelled on geometry. Both men learnt from Bacon, but Bentham claimed Newton as his exemplar and guide to further discoveries not Galileo. Observation, experimentation, and measurement were the watchwords of Bentham’s positivist social science, and he rejected natural law theory and the notion of the contract as the foundation of civil society, each of which were basic assumptions of Hobbes’s political thought. Though both men took reason for their guide and rejected the uncritical reverence for established authority (“the worship of dead men’s bones,” Bentham would say),15 Bentham used reason not to support the institutions of church and state but to attempt to diminish the one and radically reform the other. And if the individualism of Hobbes found its corollary in an absolutist theory of the state, the individualism of Bentham resulted, ultimately in democratic institutions. In recent times this political difference has been accentuated by Bentham scholars concerned to put as

much liberal and democratic daylight as possible between their man and the long forbidding shadow of Hobbes’s “Leviathan.” Fred Rosen has been at the forefront of this endeavor, Rosen argued that as early as the publication of *A Fragment on Government* in 1776 Bentham turned away from a theory of sovereignty based on simple command and obedience, in favor of a more flexible view of sovereignty. Even before he became a democrat (in 1809, following a brief flirtation with democratic ideas in 1789-90), he rejected the Hobbesian view of sovereignty, in which the sovereign power is necessarily a single, unified supreme power to legislate and coerce in the state, in favor of “the notions of the legal limitation and division of sovereign power and the possibility of a plurality of sovereigns with each possessing full sovereign power.” This developing perspective reached its full maturity in the constitutional writings of Bentham’s later years. For example, in the representative democratic polity he described in the *Constitutional Code* (written in the 1820s), the sovereignty of the people took on an informal character (in addition to its formal voting power) through the check on political misrule provided by the Public Opinion Tribunal. Principally mediated through an unshackled press, the Public Opinion Tribunal acts, through widespread publicity and criticism, as an indirect means of preventing the legislature from abusing its power. Other sources of “securities” against misrule were the proposed short terms of office for legislators, and the power of the electorate to remove individual legislators from office. In unpublished manuscripts related to the *Constitutional Code* Bentham explicitly avoided the notion of a supreme coercive force and replaced it with an empirical conception of power distributed among various institutions, including the judiciary, legislature, and police. Rosen concluded that an exploration of the distinctions Bentham developed between, on the one hand, constitutive power and operative power and, on the other hand, popular sovereignty and an omnicient legislature reveal “considerable differences in doctrine from that of Hobbes.”

Paul Kelly has also contested the idea that Bentham adhered to a Hobbesian view of sovereignty and law, this time through a focus on Bentham’s writ-

16 Rosen, *Jeremy Bentham and Representative Democracy*, Ch. 3.
17 Ibid., 41.
ings on civil law. While it is clear that Bentham’s code of utilitarian penal law represents his commitment to a command theory of law, his work on civil law integrated a range of complexities appropriate to the objective of preserving and enhancing individual liberty in civil society. Bentham shared with Hobbes the view that the absence of security leaves the individual at the mercy of others, and it is only when he is free from the constant need to defend himself that he is in a position to pursue his broader interests. Among these interests are the expectations of the future rewards derived from his labour. As Hobbes famously phrased it in *Leviathan*, without security of the person:

there is no place for Industry; because the fruit thereof is uncertain; and consequently no Culture of the Earth; no navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.

Bentham had similar, if less apocalyptic, things to say about “security” as a prerequisite for the effective pursuit by individuals of their interests and the personal and social benefits that would accrue. Where he significantly departed from Hobbes, as Kelly has demonstrated, was to argue that in practical terms interest-formation and interest-realization required integrated layers of institutions and practices supported by the civil law. Certainly, security of the person is a vital necessity. But alone it is an insufficient condition to guarantee that individuals reap the rewards of their labor. Interest-formation requires more than merely the freedom to move about unhindered in a society; in particular the state must place a high premium on the possession and protection of property rights to ensure that legitimate expectations are fulfilled, and this is the primary objective of civil law. In Bentham’s working out of the issue the requirements of the utility principle gained additional support and direction from the subsidiary objectives of security, subsistence, abundance, and equality and by the application of the security-providing and disappointment-preventing principles. In these terms, the civil law provided the framework in which individuals could effectively pursue their interests relatively free from interference by the state, while the basic requirements of security were upheld

24 Kelly, *Utilitarianism and Distributive Justice*, 158.
by the complexity of institutions and practices that constituted the (utilitarian and democratic) state. There is no equivalent in Hobbes’s legal theory to this attention to the requirements of “security” or to the legislator’s need for practical guidance in framing civil law. Hobbes offered little to persuade us that liberty was or should be a priority for the sovereign, beyond delineating an understanding of what constituted “natural” liberty and demonstrating the dependence of “civil” liberty on the law’s “artificial chains.”

These are significant legal and political differences, the nature of which undermine the view that the later utilitarian legal and constitutional theorist was influenced in a substantive way by the earlier natural law philosopher, and should cause us to hesitate before we associate the two in the same ideational camp. However, before taking the discussion further we should at least consider Bentham’s own remarks on the subject. What did he have to say of Hobbes? Did he consider that he was in any sense giving voice to Hobbesian ideas in his philosophy?

Bentham on Hobbes

Unfortunately, we do not find in Bentham’s writings an analysis of Hobbes’s work. This neglect is poorly explained by Mary Mack’s contention that “Hobbes was anathema in eighteenth-century England and Bentham saw no point in arousing even more hostility than he already had to face.” To be sure, as one might expect of any self-respecting eighteenth-century intellectual, we can safely assume that Bentham knew his Hobbes as a non-Bible reading Christian could be said to know his Old Testament. A collected edition of Hobbes’s works appeared in 1750, to add to an already notorious European reputation. Bentham would have been familiar enough with this reputation such that it is conceivable that he judiciously chose (as others before him) not to see his name coupled with “the beast of Malmesbury.” Tactically, he was an adroit publicist who rarely took risks: critical attacks on religion, the Church of England, the criminal laws on homosexuality as well as less offensive if controversial writings on politics and the law were frequently shelved, left incomplete, or their publication postponed until more propitious times. Nevertheless, sympathetic references to the work of deists, materialists, and atheists are not uncommon in Bentham’s writings, thus making an exception of Hobbes is not a convincing explanation. In fact, Bentham was never reticent to acknowledge the writings of those who had an impact upon the development of his thought, although such confessions were often confined to unpublished manuscripts. For example, effusive comments on the role played by the atheistic Helvétius in preparing the way for a science of jurisprudence founded on precision in terminology

26 See Leviathan, Part II, Ch. 21, 261-74.
27 Mack, Jeremy Bentham, 118.
abound, especially in the extremely important but still unpublished manuscripts devoted to the foundational principles of his legal theory and general utilitarian philosophy. 28 However, when he argued for the necessity of a “dictionary of moral terms,” one might have expected Bentham to acknowledge the pioneering linguistic analysis of Hobbes, but he did not. There is only one occasion in these manuscripts where Bentham hints at the importance of Hobbes in this regard. He writes, “It is the knowledge of the true signification of words, says Helvetius after Hobbes, that Distinguishes one man in point of understanding from another.” 29 The reference is to Helvétius’s remark in De l’homme that, according to Hobbes, “the superiority of the mind consists principally ... in the knowledge of the true significance of words.” 30 It is certain that Helvétius read Hobbes, since he quotes him directly in De l’homme and elsewhere refers to him and his work with approval. It may be that in writing these early manuscripts Bentham also recalled his own reading of Hobbes when he made this connection between the pronouncements of Helvétius and the work of his English forerunner in the science of language, but at best this is circumstantial evidence that Bentham had a first-hand knowledge of those parts of Hobbes’s writings devoted to language theory.

There are three other known references to Hobbes in Bentham’s writings and one in his correspondence. 31 Taken together they offer more concrete evidence that Bentham was acquainted with at least parts of Hobbes’s philosophy, particularly his discussions of law. In his 1774-75 Commonplace Book Bentham noted without further comment, “The paradoxes of Hobbes and Mandeville (at which divines affect to be so much scandalized) were of service: they contain many original and bold truths, mixed with an alloy of falsehood, which succeeding writers, profiting by that share of light which these had cast upon the subject, have been enabled to separate.” 32 At this relatively early point in his philosophical development Bentham almost certainly counted himself (presumably with Helvétius) among those who had separated the valuable from the worthless in Hobbes’s philosophy. Around the same time, in Bentham’s A Com-

28 For example, “Elements of Critical Jurisprudence,” UC Box xxvii. 4-8. The manuscripts in which Bentham mapped out the general principles of his utilitarian philosophy in the 1770s are most frequently titled “Preparatory Principles Inserenda” (UC lxix. 69-241, cxl. 21-22) and “Crit[ical] Jur[isprudence] Crim[inal]” or “Elements of Critical Jurisprudence” (UC lxix. 1-56, xxvii. 1-12, cxl. 1-20, 60-153, clx. 262-70, and cxvii. 1-2).
29 UC lxix. 195 (undated mss., probably late 1770s).
31 Bentham’s correspondence in The Collected Works of Jeremy Bentham is not yet complete, ending for the moment in June 1824.
Bentham and Hobbes

ment on the Commentaries (largely completed 1774, published posthumously) Hobbes appears as that “bold and inquisitive but irregular genius..., the philosopher of Malmesbury.”33 Probably quoting from the 1750 edition of Hobbes’s Works, Bentham chided Hobbes with drawing back “into error and confusion” in his exposition of the nature of law: “ ‘And forasmuch as Law,’ says he [Hobbes] ‘(to speak properly) is a command, and these dictates as they proceed from nature are not commands, they are not therefore called Laws, in respect of nature, but in respect of the Author of Nature, God Almighty.’ ”34 Bentham drove the point home by highlighting Hobbes’s extensive use of the scriptures and mischievously enquiring:

How could it escape him, that the only characteristic difference between the Laws that are to be met with in scripture and these ‘dictates’ as he calls them ‘of nature’ is that the former, being really commands, expressions of so many volitions having visible and permanent signs of them still extant, are real Laws: the latter not appearing to be commands, by any signs we have of them, are not Laws: in short as proceeding from God, are nothing: as proceeding from man, are expressions of the judgement of him who happens to propose them.35

From Bentham’s perspective the examination of law as command was subverted by such considerations; natural law is the “alloy of falsehood” which has led Hobbes astray.

In the opening pages of A General View of a Complete Code of Laws, first published in French in 1802 by Bentham’s friend, disciple, and editor, the Genevan Étienne Dumont, Bentham coupled Hobbes with Harrington, noting that both “treated only of the principles of constitutional law” and then only “with a view to local application.”36 The reference is to Hobbes’s distinctions between kinds of law. In Leviathan as elsewhere, Hobbes divided law into natural and positive law, the latter being that which emanates from the will of the sovereign and which can be further sub-divided into divine and human, the latter divided again into penal and distributive.37 A further distinction is made when he referred to laws which are fundamental and those which are not fundamental; a fundamental law is “that, which being taken away, the Common-

35 Bentham, A Comment, 13-14 note.
37 Hobbes, Leviathan, Part II, Ch.26, 330.
wealth faileth, and is utterly dissolved.” Hence, he argued, that “Subjects are bound to uphold whatsoever power is given to the Soveraign.”38 From an entirely different perspective Hobbes also laid out in Leviathan a comprehensive division of the sources of law in England: proclamations of the monarch, Acts of Parliament, Orders of the House of Commons, Acts of Counsell, decisions of the Chief Justices, judicial interpretations, and unwritten customs.39 It is this latter set of distinctions that Bentham seems to have had in mind when he referred to the “local application” of Hobbes’s theory, a focus which is unduly narrow in the context of defining law and making relevant distinctions between kinds of law.

Finally, in a letter to Dumont (14 May 1802), in the course of addressing himself to the question of “what ought to be the common end in view in all operations of Government,” Bentham included Hobbes in a review of the contentions of a number of political writers from Filmer and Locke to Rousseau. His summation is that, notwithstanding their combined celebrity, in none of the works of these authors is there “any thing better than a mere useless heap of words.” Hobbes, “having in view the giving support in his way to absolute Monarchy spoke of his Leviathan,” which is, Bentham goes on to say, “an ideal being fabricated to give the appearance of a visible foundation to a set of unintelligible discussions.”40 The political differences between the two philosophers is thus underscored by the dismissive manner in which Bentham marked off his own approach from that of Hobbes.

The Nature of Influence

One way to scrutinize more closely the nature of the supposed influence of Hobbes on Bentham is to test it against a model of what constitutes influence in the history of ideas. An example of what Quentin Skinner calls the “mythology of parochialism” or “conceptual parochialism” is when a historian of ideas misuses his vantage-point to cite an argument in one work as similar to that found in an earlier work, thus supposing that it was the intention of the later writer to refer to the earlier, and thus comes to impute influence erroneously to the earlier work.41 While Skinner acknowledged that the concept of influence can be usefully employed to explain relations between ideas, arguments, thinkers, and texts, his point is that locating and substantiating such relations can be extremely difficult: “The danger is ... that it is so easy to use the concept in an apparently explanatory way without any consideration of whether the condi-

38 Hobbes, Leviathan, 334.
39 Ibid., Part II, Ch.26, 329-30.
tions sufficient, or at least necessary, for the proper application of the concept have been met."\(^{42}\) Skinner lays down three necessary conditions for asserting a relationship of (positive) influence between writers of texts (sufficient conditions are left undefined). First, there must be a genuine similarity between the doctrines they espoused. Second, it must be established that the influenced writer could only have found the relevant doctrine(s) in the alleged source. Third, there must be a low probability of the similarities between the texts or arguments being merely coincidental.\(^{43}\) Skinner insists that this is a "not very stringent model," but in fact his three conditions present a tall order for the historian of ideas to fulfill.

First, regardless of the confident assertions of numerous historians of political thought, it is arguable that the alleged influence of Hobbes on Bentham remains questionable. As we have seen, with the exception of five scattered asides in a vast volume of published and unpublished writing, Bentham never discussed the work of Hobbes in any meaningful way. On the other hand we have also noted sufficient resemblances between the two such that we should delay a final judgement. Second, it is probable that the alleged influence of Hobbes on Bentham fails the second test (that doctrines espoused in the later work and undeniably similar to those found in the earlier work, can only be traced to this source). Bentham might equally well have found doctrines common to both himself and Hobbes such as the notion that natural science provides the crucial platform for certitude in political theorizing, the assumption that human nature is self-interested, uniform and unchanging, and the argument that law is the consequence of command expounded elsewhere than in the writings of Hobbes (Locke, Hume, and a variety of continental philosophers most readily come to mind, many of whom Bentham referenced in developing his own ideas of this kind). Finally, it is doubtful whether any version of the relationship between the work of Hobbes and Bentham could be made to satisfy Skinner’s third condition (a low probability of the similarity being random). The fact is that in each of the cases of doctrinal similarity it is conceivable that Bentham developed his thoughts independently of Hobbes (though, admittedly, influenced in Skinner’s meaningful explanatory sense, by other writers than Hobbes). In the absence of an author’s acknowledgment of his sources to guide us, this last condition is obviously the harder of the three demands placed on the historian by Skinner’s model. However, the failure to satisfy the second condition is potentially the most damaging to those who assert Bentham’s debt to Hobbes in any explicit sense. The first condition is problematic if strictly applied. The difficulty is underscored if we take a specific instance of assumed similarity of doctrine: their shared disdain for the

\(^{42}\) Skinner, “Meaning and Understanding,” 25.

\(^{43}\) Ibid., 26.
common law. This is one of the more generally agreed upon similarities in the thought of Hobbes and Bentham.

Hobbes and Bentham on the Common Law

The basic strategy of common law theory rested on its challenge to the competency of individual natural reason. As Sir Edward Coke put it, “the Common Law is nothing else but Reason.... But this is an artificial perfection of Reason gotten by long study, observation, and experience, and not every man’s natural reason.... On this view the common law “is the perfection of reason.”

In essence this was the view that Hobbes set out to challenge in *A Dialogue between a Philosopher and a Student of the Common Laws of England*. For Hobbes law is not to be identified with either the reason of individuals or with a fictitious artificial reason. Rather it is the natural reason of the sovereign, the “King’s Reason”; this “is all that is, or ever was Law in England.” This position is consistent with Hobbes’s line in *Leviathan*, where law is equated with “the Reason of this our Artificial Man the Common-wealth, and his Command.”

In developing his position it is apparent that Hobbes took particular exception to Coke’s insistence on the independence of the judiciary from the sovereign. Against this Hobbes insisted that the sovereign is master of the judiciary, whose officials are bound to give expression to his laws and to sustain their master’s prerogative. Coke’s defense of common law served to question Hobbes’s theory of sovereignty with its emphasis on the indivisibility of sovereign power and, from Hobbes’s perspective, its implied critique of the crown’s prerogative only enhanced the menace of Coke’s doctrine to civil order in England. This is one of the important themes of Hobbes’s *Dialogue*, which illustrates the profoundly threatening political consequences he discerned in Coke’s position. In Hobbes’s account, not only is the King “Suprem Judge” in all temporal disputes, and thereby retains his right to receive appeals from any lesser judge, but it is only he who can distinguish the jurisdiction of each of the courts. Contrary to Coke, no king can give away “the Essential Rights of his Crown.” One of the “essential rights” Hobbes was most concerned to protect was the royal prerogative in matters judicial, particularly the right to pardon. Alarmed by the excessive harshness of common law punishments, their dis-

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48 Ibid., 96.
49 See *ibid.*, 57-77.
50 Ibid., 89, 88, 90.
51 Ibid., 140-42.
tance from what the law of reason dictates, Hobbes argued in favor of increased
discretion in pardoning, including the right of judges to do so when authorized
by the king.52

Henry Maine remarked that in the Dialogue Hobbes anticipated many of
the legal reforms advocated by Bentham.53 More recently, Gerald Postema has
written much about the similarities between Hobbes and Bentham in their views
on England’s common law.54 Just as Bentham envisaged his own account of
law as a clear alternative to the conception of common law theory advanced by
Sir William Blackstone in Commentaries on the Laws of England (1765-69),
so Hobbes over a hundred years before perceived his own position as the alter-
native to Coke.

Postema is at least partly correct: clearly, there are some important con-
cerns about the common law of England that Bentham shared with Hobbes,
most especially the fact that it was characterized by the employment of judicial
discretion to a degree that stamped it as the arbitrary exercise of power. But
there are differences to note, too. Hobbes’s analysis of England’s common law
stopped short of abolition; rather he intended to establish its rightful subserv-
tence to statute law. In this respect Bentham’s critique is much the more straight-
forward and indeed much the more ambitious. For example, unlike Hobbes
Bentham viewed the royal prerogative to pardon as a flagrant abuse in the
administration of justice in England. To permit “Judge & Co.” this discretion
was to maintain a situation ripe for corruption. For Bentham the power to par-
don was subject to the same critique as the operations of the common law in
general.55 However, more important than this is the fact that Hobbes’s discus-
sion is logically linked to his understanding of natural law.

In Hobbes’s scheme the judiciary retained a significant role in interpreting
law. For instance, in Leviathan he argued that where the literal sense of a stat-
ute is at odds with its original intention the latter should prevail in a judge’s
decision, and intention is discerned by the presumption that the legislator in-
tended to enact equity, that is, to enact natural law. The same operation is rec-
ommended in those cases where the law is silent: in the absence of written law,
equity is the judge’s guide. The appeal is not to precedent, to ancient books of
authority or other documents, or to the collective “reason” of the legal profes-
sion, as with Coke, but to the law of nature.56 That the judges act only on
the authority of the sovereign is Hobbes’s way of insisting on the indivisibility
of sovereignty and the primacy of statute law, but clearly the interpretive latitude

54 Postema, Bentham and the Common Law Tradition, esp. Ch. 9.
55 James E. Crimmins, “A Hatchet for Paley’s Net: Bentham on Capital Punishment and
56 Hobbes, Leviathan, Part II, Ch.26, 326; see Ch.26 passim. Hobbes presents a less cat-
egorical version of this in Dialogue, 97-98.
he allowed invites precisely the common law practice of judicial discretion
that Bentham opposed. In Bentham’s account, where a disjunction occurred
between the dictates of statute law and the dictates of utility, the utilitarian
court was permitted a limited scope for action outside its normal operations. In
the Constitutional Code Bentham acknowledged that even utilitarian legisla
tors would be fallible; they could not be expected to take into account every
contingency that might arise within the legal sphere. Hence judges could find
themselves in a situation where the strict application of the law would not
enhance utility. The “emendative” and “systitive” functions of the judge were
designed to overcome this problem. 57 The first enabled the judge to propose an
amendment to a law necessary to enhance its utility; the second permitted the
suspension of the execution of a law in a particular case to allow time for the
legislature to rule on the proposed amendment. However, at no time did this
discretion abrogate the judge’s undertaking to execute the law, rendered by
Bentham in the form of an oath deterring the judge from substituting “any
particular will of my own, to the will of the Legislature, even in such cases, if
any, where the provisions of the law may appear to me inexpedient: saving
only the exercise of such discretionary suspensive power, if any, with which
the Legislature may have thought fit to entrust me.” 58

Taking into account such differences, the thought of Hobbes and Bentham
on English common law looks less like the product of a unified critical tradition
of judicial reasoning as pictured by Postema, and the purported influence
of Hobbes on Bentham by degrees looks less credible. Nor should it surprise us
to find a view of law premised on utility calculations looking substantially
different from one founded on natural law, theologically construed or other
wise. It would appear, therefore, that any attempt to make a strong connection
between the thought of Hobbes and Bentham on the subject of England’s com
mon law is sure to fail when faced with the strict application of Skinner’s criter
ia for establishing influence. What generally appears to have occurred when
historians of ideas speak of the relationship between Hobbes and Bentham on
this and other subjects is that, struck by seeming similarities between the think
ing of the two men, chronology dictates that in this respect the first influenced
the second. If this is all there is to go on, then the risk of becoming enmeshed in
Skinner’s mythology of parochialism is greatly enhanced.

Having said this, however, it cannot be the last word on the subject, since
no author can be fully aware of all the possible influences shaping his thought,
or of all the affinities that his work might have with that of others. Is there,
perhaps, another (less direct) way in which it is appropriate to associate Bentham
with Hobbes in the history of ideas?

57 Bentham, Constitutional Code, Bowring, IX, 504-11; see John R. Dinwiddy, “Adjudica
tion under Bentham’s Pannomion,” Utilitas, 1/2 (1989), 283-89.
58 Bentham, “Judges’ Inaugural Declaration,” Constitutional Code, Bowring, IX, 533,
Conceptualizing a Tradition

If what we call historical consciousness is subjective in its origins, then it is as John Pocock has said "a developed form of man's awareness of himself as existing and acting in a continuous context of social relationships and must therefore begin with his awareness of a particular social continuity to which he himself belongs." This is not to say that the study of ideas becomes bound within the narrowly determined perspective of the author's view of his own work, but it does posit an essential starting point. It is in this sense that we have to treat seriously Bentham's own perceptions of what he believed he was doing when he developed and applied the principles of his philosophy, and here we have much to guide us from the author himself.

As we have seen, there is little evidence to support the view that Bentham perceived himself as influenced by Hobbes; on the other hand, we have a good deal of evidence in his writings that points us in a very different direction. Here the notion of Hobbes and Bentham belonging to a common and distinctly British tradition is brought before the court of historical enquiry, for Bentham's chosen progenitors, those he claimed (in the 1770s and after) to have been most influenced by, are largely of continental origin—Voltaire, Diderot, D'Alembert, Helvétius, Beccaria, Condorcet, and Condillac, to name the most prominent of those Stephan Collini has dubbed "the great bogeymen of English political wisdom." With honorable mentions for Bacon, Newton, Locke, Hume, and Smith (on economics), it is from the philosophe pantheon that Bentham constructed his intellectual genealogy. The detail of the connections between Bentham and the philosophes need not detain us here; it is a subject well enough covered in a variety of studies by Bentham scholars. The symbolic nature of Bentham's association of his work with that of his more illustrious continental forebears and contemporaries was his attempt to situate himself intellectually within a school of thought congenial to his view of himself as an enlightened thinker, a vanquisher of the antiquated and absurd, an innovator and messenger of progress. He pictured himself at the cutting edge of the political wisdom of the day, and this was not located in natural rights-ridden England but principally in the more volatile, critical, and challenging intellectual milieu of eighteenth-century France.

Two problems are encountered if we uncritically acquiesce in Bentham’s self-constructed genealogy. First, we may only be speaking of an influence once-removed, an indirect shaping of his ideas channeled through mediating sources. Consider Bentham’s abundant eulogies to Helvétius. How much of Hobbes might he have extracted from his reading of the work of the philosophe who in his own estimation had the greatest impact upon the development of his philosophy? Helvétius devoted an entire chapter of De l’esprit to the “Abuse of Words” and the importance of precision in language in the moral sciences. Here the pioneering efforts of Descartes and Locke are duly acknowledged, while Hobbes is inexplicably ignored. On the other hand, elsewhere in De l’esprit Hobbes’s view of human motivation is alluded to and he is included in Helvétius’s litany of men of genius. That Hobbes’s materialism and naturalist ethics had an important impact upon Helvétius was generally accepted by his French contemporaries, and this has also been taken to be the case by modern commentators on his thought. On religion Helvétius recognized in Hobbes a fellow skeptic, and in De l’homme quoted him thus: “Every religion founded on the fear of an invisible power, is a tale, that, avowed by a nation, bears the name of religion, and disavowed by the same nation, bears the name of superstition.” Finally, in De l’homme Helvétius recorded Hobbes’s view of the importance of precision in language. Clearly, there is much in Helvétius with which Bentham agreed, but there is much here too that the Frenchman credited to Hobbes.

The second problem is the selective character of Bentham’s genealogy. Rousseau aside, one of the principal contributions made by thinkers to the ferment of opinion in France in the second half of the eighteenth century was their general jealousy of English liberty. Yet, this was the same English liberty which found its philosophical justification in the ancient common law, natural law and its concomitant theory of natural rights, all targets for Bentham’s critical jurisprudence, epitomized in his 1794 dissection of the “terrorist language” of the French Declaration of the Rights of Man and the Citizen in Anarchical Fallacies. The stringent clarificatory demands of his theory of language, positivist jurisprudence, and attack on the common law, natural law theory and divinity each led him to this memorable denunciation: “Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon

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63 Ibid., 40-41, 405.
64 See, for example, David W. Smith, Helvétius: A Study in Persecution (Oxford, 1965), 14, 165.
65 Helvétius, A Treatise on Man, I, Sect I, Ch. 11, 50-51. This is likely a garbled re-translation of Leviathan, Part I, Ch.12, 168; cf. 124.
66 See above, note 30.
stilts.” Talk of natural duties and natural rights invariably entailed a reference to the natural law commands of a divine sovereign. Bentham was quick to note that the revolutionaries were reluctant to admit this premise, thus the ideological base of their Declaration came to nothing but nonsensical mischief: “The natural rights we hear so much of ... are of all things the farthest from being divine rights. For in no mouths are they so frequent nor so much insisted upon as in the mouths of those by whom the existence of a divine law and a divine lawgiver are equally denied.” Without the lawgiver there can be no law, and “right” and “duty” are devoid of any sense. The mischief is the inevitable outcome of raising the edifice of government upon such uncertain ground, the resulting institutions being no better than “execrable trash.”

Bentham was aware of at least the surface irony of the situation. “It is in England,” he noted in Anarchical Fallacies, “rather than in France, that the discovery of the rights of man ought naturally to have taken its rise: it is English, that have the better right to it.” This right is rooted in the flexibility of the English language, a flexibility that can support two different understandings of the same term, but ignoring “its adjective shape” the French have seized upon “its substantive shape.” Bentham illustrated his meaning:

It is right that men should be as near upon a par with one another in every respect as they can be made, consistently with general security: here we have it in its adjective form, synonymous with desirable, proper, becoming, consonant to general utility, and the like. I have a right to put myself upon a par with everybody in every respect: here we have it in its substantive sense....

By such an abuse of words is “every fibre of the heart inflamed, the lips prepared for every folly, and the hand for every crime.” It is imperative that the two meanings of the word be separated, but how is this to be done? Not easily it seems, for the substantive meaning of the term has taken a deep and deadly root in contemporary political language. Only education, according to Bentham, can slowly but surely rid the understanding of this nonsense, and this is a task to be undertaken for the good of England as for the good of any other nation.

The deeper irony in the context of the subject-matter of this paper is that Hobbes, like Bentham, pressed the need to demystify and correctly define political language. But Bentham could not bring himself to share the jealousy of

67 Bentham, Anarchical Fallacies, in Waldron, Nonsense upon Stilts. 53.
68 Ibid., 73 note.
69 Ibid., 66.
70 Ibid., 68.
71 Ibid.
72 Ibid., 69.
73 Ibid.
the French for English liberty understood in the language of natural law and natural rights. True, Hobbes would not have accepted the political conclusions derived by the French from their use of this terminology, but he certainly helped develop the language they employed. True, too, Hobbes’s commitment to natural law may have been rhetorical rather than substantial (does justice exist prior to positive law for Hobbes?). He certainly was not a natural law theorist in the same sense as Puffendorf and Grotius. Even so, at bottom, whether in theological or secular garb (and whether Bentham correctly understood Hobbes’s version of it or not) it is the language of natural law which quintessentially separates Bentham from Hobbes, and which prevents us from being easy with the notion that they stand within the same tradition of political thought. Nevertheless, it may not be entirely misleading to situate them within a tradition. The question is what kind of tradition is it.

Scholars have been frequently vexed on the question what constitutes a tradition. Conal Condren has disparaged the construction of “synthetic” traditions, the imposition by the historian of ideas of “a line of continuity between various figures by virtue of a synthetic principle of which, per se, the members of the proposed tradition may be unaware.”74 Condren was particularly at pains to debunk the notion that there was such a thing as a tradition of western political theory. Pocock, while maintaining that traditions are “complex mental structures,” cautions us that when abridged, as they often must be for the purposes of historical explanation, they risk distortion and caricature, robbed of their various peculiar and most fascinating features.75 Pocock may have had in mind Oakeshott’s assertion that a caricature can sometimes capture some outstanding features of its subject, and might therefore be useful in exploring the more complex elements it is said to represent.76 Naturally, this is an intellectual operation about which historians of ideas should show some care and sensitivity. If we adopt a somewhat restricted understanding of tradition, we might posit it as a short-hand method appropriate to describe the sharing of particular doctrines over time, by various thinkers who address similar questions, employing similar assumptions, techniques and modes of thought. If the transmission of fundamental ideas from one writer or generation of writers to the next or subsequent generations of writers, those ideas being consciously adopted with little variation in the language by which they are expressed, be sufficient for us to employ the term “tradition,” then its usage may be justified. For example, I have elsewhere used it to underscore the intellectual associations between religious exponents of the principle of utility down through the eigh-


75 Ibid., 245.

teenth century and after. However, employing the term in this way still leaves us with the question whether Hobbes and Bentham can be said to occupy the same tradition and what is the character of this tradition.

In the light of Condren’s critical attack it would appear archaic and parochial to insist that there exists a British political tradition within which one can discern distinct strands of thinking, but of course scholars do make such a claim. John Maynard Keynes situated himself within “the English tradition of humane science,” a tradition which included Locke, Paley, Bentham, Darwin, and Mill, and broad enough to count in its roll of honor the Scots Hume and Smith. In a recent collection of essays Collini rebuked Keynes for omitting from this tradition figures like Bacon, Hobbes, Newton, and Burke (the latter presumably as English as Hume and Smith). On the other hand Oakeshott described the British political tradition as one that takes for its primary focus individuality in all its various forms, and thus it is a tradition that opposes the excessive concentration of power. However, as caricatures go this is surely one of the most distorting, as Oakeshott’s disciple W. H. Greenleaf has demonstrated, albeit unwittingly, in his most ambitious work, The British Political Tradition.

Greenleaf tells us that tradition implies “a complex amalgam of different forces and opposing choices, and therefore of internal tension, which is at the same time in a continual state of flux and development but which nevertheless constitutes a recognizable and acknowledged whole.” He views the modern British political tradition as constituted by a dialectic between two opposing tendencies, a dialectical pattern of relations between two ideally distinct modes of thought, the one libertarian, and the other collectivist. This sheds useful light on the thinking of Hobbes and Bentham. To adopt Greenleaf’s bipartite division for a moment, in Bentham these two strands of thought (or something much like them) live a tension-filled life, a fact that in large measure accounts for the ambivalence that commentators sometimes feel toward his public policy prescriptions, in which laissez-faire liberalism alternates with more direct and imposing attempts at utility maximization. In Hobbes, too, paradox attends. If the author of Leviathan can be described as providing liberal thought with certain of its foundational principles, he also issued the central challenge to

78 John Maynard Keynes, Essays in Biography (London, 1933), 120.
79 Collini, Public Moralists, 311.
82 Ibid.
liberal thought: how to maintain order in a society of self-serving individuals. Hobbes’s solution—the absolute necessity of absolute sovereignty—has be-deviled liberal theory ever since, and launched a myriad of projects to find ways of short-circuiting and limiting the powers of the modern state. But for all the value discernible in Greenleaf’s approach, the fragrance of anachronism wafts over the usage of terms like “libertarianism” and “collectivism” to describe seventeenth- and eighteenth-century modes of thinking that pre-date such language and which defy easy categorization. Clearly, the intentions of Hobbes and Bentham need to be factored into an overall assessment of their work, and here we find objectives that elude narrowly construed political positions on the role of the state.

To take the most obvious example in the case of both thinkers, perhaps the central defining characteristic of their work is its crucial commitment to the clarification of terminology as a way of achieving a level of precision that had hitherto escaped the grasp of political philosophy. In doing this neither Hobbes nor Bentham can be said to be libertarian or collectivist in their thinking. What they intended, as they tell us, was to settle political theorizing on a footing divorced from political considerations, but which they expected to provide the key to manifold political problems. If there is a tradition to be invoked in linking Bentham with Hobbes, then we can confidently connect them here, within a tradition of theorizing that is universal in its metaphysical and political reach, the exemplars of which constitute a cosmopolitan cohort of thinkers, including Bacon, Locke, Berkeley, and Horne Tooke, as well as those continental philosophes so agreeable to Bentham in the foundational years of his intellectual development. Whether Bentham borrowed from Hobbes is not germane to the issue. What matters in this regard is that he was conscious of following in Hobbes’s footsteps (as the quotation acknowledging the connection between Helvétius and Hobbes on the importance of clear and defined language proves), agreeing with Hobbes on the fundamental requirement that the language of analysis be appropriate, clear, and shared in order to further the goal of precision in political reasoning. Despite their manifest differences, Hobbes and Bentham stand among the earliest and foremost exponents of this approach to political thought, and in this way they are suitably associated in the history of ideas.

Huron University College.