

# Man and Nature

## L'homme et la nature

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# "BENTHAM AS REVOLUTIONARY SOCIAL SCIENTIST"

## INTRODUCTION

It has not always been fashionable to take Jeremy Bentham at all seriously as a philosopher. Many a lecturer has taken the opportunity, in the midst of some survey of sombre and serious works in history or philosophy, to provide comic relief by regaling a captive audience of undergraduates with tales of the eccentric who named his teapot "Dick", his walking stick "Dapple", and his cat "The Reverend Doctor Sir John Langborn"; who, by virtue of his "post-prandial and ante-jentacular circumgyrations", qualifies as the great-grandfather of today's jogger; whose "auto-icon" still gazes serenely and unnervingly at those who frequent the South Cloister at University College London, England.

The tradition of caricaturing Bentham may have begun, however subtly and unintentionally, with John Stuart Mill. We sometimes forget that J.S. Mill never knew the young Bentham. We cannot be sure of the extent to which Mill acquainted himself with Bentham's early works, nor with the early manuscripts which, I shall argue, can contribute so much to one's appreciation of Bentham's creativity as a social theorist. In 1784, more than twenty years before his association

with J.S. Mill's father was to begin, Bentham had written to his friend James Anderson that "the task of invention has for some time been accomplished, and all that remains is to put in order ideas ready formed."<sup>1</sup> There is value and some truth in Mill's portrayal of Bentham as a 'one-eyed man':<sup>2</sup> from the perspective of a nineteenth-century theorist so dominated by the ideas of progress and sociological positivism as Mill was when he wrote his essay on Bentham, the older theorist was as archaic in his views as any 'philosophe' could be. His theory of man and society was two-dimensional, lacking in the depth which only nineteenth-century binocular vision, so to speak, could provide.<sup>3</sup> But all of this was brilliant, unknowing caricature, as revealing about Mill and his limitations as it was about Bentham. I do not believe that Mill would have portrayed Bentham as a man adept at the arrangement of commonplaces but bereft of genuinely novel ideas of his own, had he fully known and appreciated the Bentham portrayed in the present paper.

Many others, from William Hazlitt<sup>4</sup> to Charles Dickens<sup>5</sup> and Michael Oakeshott,<sup>6</sup> culminating (if that is the word) in the poet who wryly observed that during the Blitz "... surely it was fitting/ That Nazis, bent on hitting/ A real objective, sent them/ A bomb for Jeremy Bentham",<sup>7</sup> have not resisted the urge to lampoon the eminently lampoonable Bentham. Indeed in a sense the tradition began with Bentham himself, who had a tendency toward self-caricature that was at once charming, sad and regrettable. The young Bentham discovering his "Genius for legislation" and the despondent author of the Panopticon plan faced with catastrophe ("My Brother ruimy fortune wasted, my spirits sunk, my health consuming ...")<sup>8</sup> are both eccentrics - outsiders seeking a unique outlet for their unique gifts. But Bentham's self-image should more properly be the stuff of studies by Bruce Mazlish or Norman O. Brown. For our purposes the point is simply that a serious attempt to assess Bentham's philosophy of social science must not be seduced into caricature - not even by the efforts of the subject himself.

Occasionally in the history of Bentham scholarship the argument has been made that Bentham's social science should be taken seriously. This paper owes something to earlier treatments of Bentham as a "social engineer",<sup>9</sup> to C.W. Everett's *Life*,<sup>10</sup> to brief remarks by Messrs. Lively and Rees in their work on Bentham and James Mill,<sup>11</sup> and to Ross Harrison's recent stimulating and fresh look at Bentham's life and thought from a modern philosopher's perspective.<sup>12</sup> Much of the present discussion merely corroborates their views, but it also enlarges upon them significantly. Though each of these authors would, I think, agree that Bentham had a serious and important philosophy of social

science, none of them aimed to explore in any detail the scope and character of the intellectual constructs which Bentham presented in his works as evidence of his commitment to a full application of his theories. At least a preliminary attempt at such an exploration is made in this paper.

Concentration on the explication and application of Bentham's philosophy of social science also, I submit, enables us to give an interesting and novel twist to the meaning of the label most commonly applied to him, that of "philosophic(al) radical".<sup>13</sup> Halévy's label has been used mainly to situate Bentham in the early nineteenth-century context of political radicalism. My contention is that the label "philosophe-ic radical" would more accurately reflect the proper context of Bentham's work.

In retrospect it may appear ironic that Bentham's first published words constituted an impassioned denunciation of the ideas and activities of a group of political radicals - the Wilkesites. The issue was impressment, a device whose manifest utility, Bentham proclaimed, was being obscured by Wilkesite rhetoric. "The Aegis of liberty", he complained, "was to be held up to cover all, and dazzle the eyes of weak-sighted observers."<sup>14</sup> Is this little episode perhaps a mere false start? Is it a minor exception which but serves to prove the rule of radical partisanship exemplified in Bentham's subsequent half-century of reforming activity? In fact the encounter with the Wilkesites is no aberration at all, and the "irony" alluded to above is more apparent than real. The same intellectual principles and the same political perspective which led Bentham to repudiate "Wilkes and liberty" were to lead him in subsequent years to reject equally peremptorily the American Declaration of Independence<sup>15</sup> and the Abbe Siéyès's Declaration of the Rights of Man and the Citizen.<sup>16</sup> In fact proximity to revolutionary political actors always made Bentham uncomfortable, and he never fully shared their enthusiasms, not even when he was driven by circumstances into a tactical alliance with political radicalism during the final 25 years of his life. During that period he acquired a strong strategic interest in the political radicalism of others, but can we really say that he himself became a political revolutionary? Surely not. But in another sense Bentham can be seen to have been a radical, even a revolutionary, *AB INITIO* - not as a result of a long-term transitional movement from Tory to Whig to Radical in politics,<sup>17</sup> but as a result of his very earliest intellectual commitments and choices. If we insist on seeing Bentham as quintessentially a political radical, then the enigmatic shiftings of his views as phase follows phase in his inordinately long life of scholarship and writing will force us to see him as a chameleon.

This he was not. I shall argue that intellectually his life is "all of a piece". His oeuvre can be 'seen whole', as a unity, only when he is seen throughout it as a "philosophic" radical, as a constructor of (secularized) "Heavenly Cities" in the grand eighteenth-century tradition: as a revolutionary social scientist.

I shall divide my over-all task of characterizing Bentham's social science into two phases, one concentrating on method and philosophical presuppositions and the other on the scope and nature of the resulting intellectual construct as embodied in a number of particularly striking images, even 'visions', conjured up by Bentham in his works. In this process I shall have very much in mind F.A. Hayek's conception of "constructivism". Hayek finds the essence of the "constructivist" view of social science nicely conveyed in a statement by a Swedish sociologist (although he finds the same elements in the works of modern psychologists, psychiatrists and political scientists):

"The most important goal that sociology has set itself ... is to predict the future development and to shape (gestalten) the future, or, if one prefers to express it in that manner, to create the future of mankind."<sup>18</sup>

Hayek describes the development of constructivism as a process beginning with Cartesianism, gathering strength in the era of the "Enlightenment(s)" and culminating in the emergence of two equally reviled phenomena - scientific socialism and 'vertfrei' social science.<sup>19</sup> It has, in his view been a tragic story, a tale "of scientific error destroying indispensable values", and this destructive movement has played "an important role during the last century". Constructivism, he says, is

"... specially associated with various philosophical views, which their authors like to describe as 'positivist', because they wish to recognise as useful knowledge only insights into the connection between cause and effect. The very name ... expresses the preference for the deliberately created over all that has not been rationally designed."<sup>20</sup>

Hayek names as the most important modern manifestations of constructivism "utilitarianism", "epistemological positivism", "legal positivism" and "finally ... the whole of socialism"<sup>21</sup> (this last includes for Hayek most forms of modern liberalism). In connection with legal positivism he names John Austin and Thomas Hobbes.<sup>22</sup> In the same context one might have expected him to name Bentham. Reflection reveals, however, that that would only 'scratch the surface' of Bentham's

importance as a specimen constructivist. Bentham's positivism was not only legal but, as we shall see, epistemological as well. Moreover, the similarity between his legal, economic and social vision of what I shall call his "Utilitaria" and what Joseph Schumpeter called rational socialist "blueprints"<sup>23</sup> for a just society is, I believe, self-evident. I hope to show that Bentham possessed the philosophical apparatus, the systematic rationalism, and the architectonic urge of the "constructivist" social scientist.

### "CENSORIALISM"

Bentham once referred to the study of metaphysics as "the most sublime and useful of all human sciences, according as it is applied, or the most futile".<sup>24</sup> On reflection it becomes clear that this remark is the key to his attacks on the American and French revolutionaries, for in his view though their political actions were far from futile their metaphysical arguments were totally so. In 1789 he described the U.S.A. as "that newly-created nation, one of the most enlightened, if not the most enlightened, at this day on the globe",<sup>25</sup> and asked rhetorically

"Who can help lamenting, that so rational a cause should be rested upon reasons, so much fitter to beget objections, than to remove them?"<sup>26</sup>

His hostility toward these and other political revolutionaries of his time was directed very specifically at their reasoning. He scorned the blind political enthusiasms of the partisans of natural liberty and natural rights. In August of 1792, just weeks before he was to be made an honorary citizen of France, he wrote to Lord Lansdowne comparing France to a "Bedlam"; he began referring to the French revolutionaries as the "Pandemonions"; he denounced French republicanism as "the raging pestilence of the times", and prepared his analysis of their declaration of rights as an antidote. This work, which was eventually to come down to us as *Anarchical Fallacies*, was offered to the editors of the *Anti-Jacobin* magazine in 1801 under the title "Pestilential nonsense unmasked". Here is his vitriolic caricature of how Citizen Siéyès had composed his declaration of rights:

"A man turned crazy by self-conceit, takes a word in universal use, and determines ... that he will use it in such a sense as a man never used it in before. With a word thus poisoned, he makes up a proposition, - any one

that comes uppermost; and this he calls ingenuity: - this proposition he endeavours to cram down the throats of all those over whom he has ... power or influence - more especially of all legislators ... of the present and all future times; - and this he calls LIBERTY: and this he calls GOVERNMENT.”<sup>27</sup>

What Bentham objects to here is not the pursuit of power or influence, not the attempt to instruct legislators, and not the systematic reconstruction of a political vocabulary. He was himself engaged in each and every one of these activities. Bentham was appalled by the lack of content, as he saw it, in Siéyès' language, not by his political activities in support of it. Just as he had once found Blackstone's assertions neither true nor false but meaningless,<sup>28</sup> he now found the language of Siéyès simply “poisoned”.

Bentham could be just as enthusiastic and imaginative in his use of language as any of these other revolutionaries. But his revolution, unlike theirs, began as a self-consciously radical analysis (which in time demanded a revolutionary transformation) of language itself. Among the formative influences on the young Bentham we must not overlook James Harris's *Hermes: or a Philosophical Enquiry Concerning Universal Grammar* (1751) and John Horne Tooke's *Diversions of Purley* (1786).<sup>29</sup> In 1779 Bentham employed a boy “and set him to read Johnson's dicty [sic], for me to class the words by bidding him mark one with M. for Metaphysics, another E. for Ethics (etc.) ... I shall also number them M1, M2 etc.”. Thus Bentham expected to deploy “a compleat vocabulary for each science.”<sup>30</sup> Volume eight of Bowring's *Works* contains “A Fragment on Ontology”, essays on logic and on language, and “Fragments on Universal Grammar”, all written during the last twenty years of Bentham's life. Among the manuscripts written in his early years (i.e. largely in the 1770s) is a 614-page text entitled “Preparatory Principles” (i.e. of Censorial Jurisprudence).<sup>31</sup> The opening pages of this work deal not with current political issues, nor even with Blackstone, but with metaphysics and language: “What things exist”<sup>32</sup> is one section heading. “A Law: what” is another.<sup>33</sup> Bentham himself contrasts his enthusiasm for metaphysical and linguistic analysis with the political enthusiasms of radicals of another stripe:

“A sober and accurate apprehension of the import of fundamental words is a true key to Jurisprudence and the only effectual antidote against the fascinations of political enthusiasm.”<sup>34</sup>

It is well known that Bentham identified in the work of every serious analyst of the law one or both of two basic functions: that of the

expositor and that of the censor.<sup>35</sup> the fact that in his famous encounter with Blackstone Bentham assigned to his antagonist the role of expositor and claimed for himself the task of censor<sup>36</sup> should not blind scholars to the fact that Bentham was first and foremost a radically innovative expositor in the realms of metaphysics, language and law. His social science rested on a foundation of what I have elsewhere described as "philological nominalism".<sup>37</sup> Arguably the first step in the construction of his utilitarian system was the making of the distinction between "real" and "fictitious" entities. Real entities were of three types: "substances" (e.g. You or I), "motions" (e.g. "meddling") and "perceptions" (e.g. pain).<sup>38</sup> Fictitious entities, or "fictions", could be necessary or unnecessary, but were in all cases in need of demystification. Bentham developed a novel method which he called "paraphrasis" for defining, or demystifying, fictions. The object was to break them down into their component real entities, or else to show them to be incompatible with or unrelated to demonstrably real entities. In paraphrasis a fiction would be explicated by being used in a proposition, which proposition would then be re-expressed in terms involving only real entities. Such central legal and social concepts as "liberty" and "property" were dealt with in this way. Harrison has recently argued that paraphrasis has been insufficiently appreciated as a novel, important and sophisticated philosophical technique.<sup>39</sup> For our purposes what is important about it is that it converted the abstract analysis of concepts into a systematic elaboration of propositions about a dynamic reality of socio-political action and reaction. This field of social physics became, in turn, the reality which the social scientist must critically and comprehensively survey.

Bentham of course maintained a censorial posture throughout his intellectual life, but it would have been no *more* than a posture, an attitude of mind, lacking a consistent focal point, had Bentham not engaged in careful metaphysical, logical and linguistic work to prepare the ground for it. His "Comment", "Fragment", "Rationales",<sup>40</sup> "Defence",<sup>41</sup> or "Catechism"<sup>42</sup> could not have come into being without the "Dictionaries", "Tables",<sup>43</sup> "Encyclopedical trees",<sup>44</sup> "Elements"<sup>45</sup> and "Introductions" which provided the framework within which critical campaigns could be planned, ordered and launched. As a case in point, let us consider Bentham's critique of Blackstone's use of the idea of "common law".

"What is the COMMON LAW? What, but an assemblage of fictitious regulations feigned after the images of these real ones that compose the Statute Law?"



"That men should have lived thus long without ever having yet asked themselves a question thus obvious and thus interesting, may well be a matter of surprize. But the light of philosophy has but just begun to dawn upon the clime of Law."<sup>46</sup>

This question, and the aside which follows it, capture nicely the spirit of Bentham's early censorial writings. The object is to criticize and unmask "everything as it should be Blackstone",<sup>47</sup> apologist for the system of "judge-made" (i.e. common) law.<sup>48</sup> The object is also, however, to shed the "light of philosophy" on a hitherto shadowy realm of "fictitious entities". For the utilitarian philosopher of social science, the issue is not so much the truth or falsity of fictions as their utility or disutility. Many of the fictitious entities identified by Bentham in, for example, appendix B to *Of Laws in General*<sup>49</sup> are repeatedly employed in his analyses of powers, rights, liberty, duties etc. in that same work. Fictions are not eliminable from even enlightened, philosophical discourse about politics. As we shall see later in this discussion, Bentham's presentation of his most important theoretical constructs was consistently made vivid by the use of dramatic metaphors and sweeping 'fictitious' visions. Bentham's object can only have been to weed out abuse *and to justify the use* of fictions. And the difference between use and abuse can only be established by an appeal to utility. Bentham's indictment of legal fictions in the *Comment on the Commentaries* attacks Blackstone as a judge defending the tradition of "judge-made law". As Ross Harrison observes,

"... the real root of Bentham's objection is an objection to judge-made law; and his point is a point about power. The judges are using powers that they ought not to have, the power to legislate."<sup>50</sup>

Harrison's assessment is borne out by the fact that in Bentham's *Fragment on Government* the indefiniteness of judge-made law (i.e. its fiction-laden, discretionary and esoteric nature) is replaced by the indefiniteness of the unbounded field of authority of the sovereign legislator:

"... the field, if one may say so, of the supreme governor's authority, though not INFINITE, must unavoidably, I think, UNLESS where limited by express convention, be allowed to be INDEFINITE."<sup>51</sup>

Fiction replaces fiction. But the new is harnessed in the service of a utilitarian science of man and society, where the old had served only the professional interests of judges and lawyers. The young Bentham

thought this latter situation to be the result of “inattention and prejudice” (i.e. lack of enlightenment). Fifty years later he saw it as “the elaborately organized, and anxiously cherished and guarded product ... of sinister interests and artifice”.<sup>52</sup> Whether in ignorance or with corrupt intent, however, fictions were in this instance being used in ways that made otherwise comprehensible situations unfathomable to all but the initiates in certain professions. They were part of a campaign to entrench power in “sinister” hands, and they were *not* being deployed in the public interest, i.e. as part of a utilitarian system.

It was not solely the prevalence of fictions in it that made common law anathema to Bentham. He also objected to the way in which common law disguised its imperational nature in elaborate (and often fictional) descriptive charades:

“the judges make the common law. Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait till he does it, and then you beat him for it. That is the way you make laws for your dog: and this is the way that the judges make law for you and me. They won’t tell a man before hand what it is he SHOULD NOT DO.”<sup>53</sup>

Bentham’s demand for codified statute law with clearly defined expository and sanctional elements simply reflected his desire to give a science of legislation its proper, fully integrated, place within something broader - a “logic of the will”,<sup>54</sup> of command per se, of imperation, of volition. As his MAGNUM OPUS<sup>55</sup> took shape in the late 1770s, legislation and legislators became for him neither more nor less than central elements in an analysis of the whole social “system of human actions”. What he called “direct legislation”, the post facto punishment of behaviour deemed unacceptable, was supplemented by a system of “indirect legislation” designed not only to “tell a man before hand what it is he SHOULD NOT DO”, but to provide him with such motives (i.e. raise the prospect of such pains and pleasures in relation to the contemplated act) as to “divert the current of the human desires” into channels deemed appropriate by the utilitarian legislator.<sup>56</sup> This was more than jurisprudence, more than a science of positive law. No doubt Bentham would roll in his grave (were he in one) to hear the phrase “natural law” applied in the context of his work, but surely the logic of this system *is* the logic of human volition itself, and the science is a science of human nature as revealed in the realm of social action.

D.D. Raphael has noted that the thrust and value of Bentham's philosophical work lies specifically in the area of action:

"The weakness and the strength of Bentham as a philosopher are apparent enough in his *Introduction to the Principles of Morals and Legislation*. The utilitarian theory of the early chapters is crude, inconsistent, and unrealistic. But the later analysis of concepts of action - act and consequence, intention, motive, disposition - is masterly."<sup>57</sup>

Notice, further, how in Bentham's *Introduction to ... Morals and Legislation* the principle of utility itself, and principles qua principles, are defined in terms of actions - of "mental and physical operations":

"(Principle) is a term of very vague and very extensive signification: it is applied to any thing which is conceived to serve as a foundation or beginning to any series of operations: in some cases, of physical operations; but of mental operations in the present case.

The (Principle of Utility) may be taken for an act of the mind; a sentiment; a sentiment of approbation; a sentiment which, when applied to an action, approves of its utility, as that quality of it by which the measure of approbation or disapprobation bestowed upon it ought to be governed."<sup>58</sup>

In one sense the scope of Bentham's enterprise remained quite fixed from this time forward. Just as his illustrious predecessor Bacon had taken all knowledge for his province, so now Bentham took all human "operations", as he found them and as they ought to be, for his. He would survey what he was to call the "universal system of human actions",<sup>59</sup> applying throughout it his fundamental proposition that "physical sensibility (is) the ground of law".<sup>60</sup> He did not hesitate, as we shall see, to speak of "knowledge ... rapidly advancing toward perfection",<sup>61</sup> or of the "optimization of the condition of mankind", of the best "future conceivable" for man, or of the perfecting of legal and moral science. And nothing could be more neo-Newtonian than his criterion for assessing the degree of perfection achieved in a given science:

"The fewer principles that are independent of one another a science can be reduced to, the nearer is that science advanced to its perfection."<sup>62</sup>

This neo-Newtonianism becomes quite explicit when Bentham, misleadingly but revealingly omitting all mention of Hume, gives the pedigree of his scientific method as follows:

"any ... work of mine that has been or will be published on the subject of legislation or any other branch of moral science is an attempt to extend the experimental method of reasoning from the physical branch to the moral. What Bacon was to the physical world, Helvetius was to the moral. The moral world has therefore had its Bacon, but its Newton is yet to come."<sup>63</sup>

Clearly Bentham associated the idea of "experimental method" not with the epistemological scepticism of a Hume, but with the universality and potency of experimentally *verifiable* Newtonian laws of motion. His own "experimental reasoning" would begin with irreducible building-blocks for an analysis of action such as "pleasure", "pain", "interest" and "will". It would progress through the development of a "ladder" of definitions:

"An orderly, unbroken, well compacted chain of definitions is the only sure ladder whereby a man can climb up to the heights of science."<sup>64</sup>

From definition, "paraphrasis" and "parsing" (the last to be examined below) he went on to a "Table of the Springs of Action", a catalogue of "axioms of mental pathology" and ultimately a work to be called "Pannomion".<sup>65</sup> These were the materials for his study of law as command, of the logic of imperation, and finally of volition itself - thus his "logic of the will":

"There is, or rather there ought to be, a LOGIC of the WILL, as well as of the UNDERSTANDING: the operations of the former faculty, are neither less susceptible, nor less worthy, than those of the latter, of being delineated by rules. Of these two branches of that recondite art, Aristotle saw only the latter: succeeding logicians, treading in the steps of their great founder, have concurred in seeing with no other eyes. Yet so far as a difference can be assigned between branches so intimately connected, whatever difference there is, in point of importance, is in favour of the logic of the will. [sic] Since it is only by their capacity of directing the operations of this faculty, that the operations of the understanding are of any consequence. Of this logic of the will, the science of LAW, considered in respect of its FORM, is the most considerable branch - the most important application. It is, to the art of legislation, what the science of anatomy is to the art of medicine ..."<sup>66</sup>

There can be no doubt of the importance of "the science of law" or "the art of legislation" in Bentham's view, and in his works. But neither can the passage just cited leave us in any doubt that Bentham's enter-

prise in its totality was something more than a science of jurisprudence. By 1782 Bentham had laid out in his mind and in his manuscripts not just a logic but a philosophy - a metaphysic, an epistemology, a logic and an ethics. Moreover, it was not a philosophy strictly and solely of law, but of action: a philosophy constructed to support a social science. The roots of Bentham's radicalism were thus strictly philosophical, and the revolution to which he was most deeply committed was a neo-Newtonian one. For a full picture, however, we must investigate some of the remarkable intellectual constructs in which Bentham conveyed vivid images of the sort of social system which would result from the application of his philosophical principles to society as he found it in his day. Bentham as radical "visionary" is clearly Bentham the revolutionary social scientist.

#### "CONSTRUCTIVISM"

Utilitarianism, perhaps because of the hedonistic and materialist basis which Bentham provided for it, has always been seen as a mode of theory more mundane than visionary. Let others conjure up "the Aegis of liberty" or metaphorical "social contracts" or impressionistic depictions of man's "natural state": the utilitarian world of pleasure and pain and of concrete particular entities and direct perceptions of them would be less dramatic but more accessible because more realistic. Sometimes, but only sometimes, Bentham would argue in this way. At other times, however, he could create and embellish a metaphor as lovingly as any other utopian theorist. Bentham had a radical vision of an ideal society. We can piece it together with the help of his voluminous published and unpublished writings. I shall call it his 'utilitaria'. It is not completely outlined in any one work. We must exhume it from a series of texts. But it is "there", not just in shadowy form but in rich, imaginative and sometimes disturbing detail. Many of its features were enthusiastically elaborated in the manuscripts for a huge, sprawling projected work which rapidly outgrew the possibility of publication within a single set of covers. In 1782 it was seen as having 40 chapters (the bulk of these were later published as the *Introduction to the Principles of Morals and Legislation* and *Of Laws in General* - hereafter *IPML* and *OLIG*).<sup>67</sup> By 1789 it was seen as more truly encyclopedic, comprising ten volumes.<sup>68</sup> Bentham considered several possible titles: "Elements of Critical Jurisprudence",<sup>69</sup> "Principles of Legal Polity" and six or eight more.<sup>70</sup> To Bentham it was simply his "MAGNUM OPUS".<sup>71</sup>

None of Bentham's early works is more than an instalment of, or a tangent to, this great work which he had almost constantly in mind from about 1773 to 1785. His early manuscripts abound in suggestively-headed pages promising a "prefat" or a "beginning" to a work which would lay out the "elements" or "principles" of, or expound the "key" terms in, "critical jurisprudence".<sup>72</sup> Note the titles of two early publications: a "fragment" and an "introduction". His "comment" on Blackstone's *Commentaries* belongs in the same group, although it was not published at all until the twentieth century.<sup>73</sup> Bentham was in this period searching for a point of entry into his envisaged OPUS. That work in its (40-chapter) entirety was best outlined in a long letter to Lord Ashburton in 1782.<sup>74</sup> The 37th, 38th, 39th and 40th chapters of that work were recapitulative and climactic. Chapter 37 has come down to us as the final chapter of *OLIG*, finally published in 1970. Chapter 40 became "An Essay on the Influence of Place and Time in Matters of Legislation", a definitive edition of which will soon be in print.<sup>75</sup> From these two sources the heart of Bentham's portrait of 'utilitaria' can be drawn.

*OLIG* concludes with a chapter, entitled "Uses of the Eighteen Preceding Chapters", which is really an assessment of the utility of the science of morals and legislation developed up to that point in the 40-chapter *MAGNUM OPUS*. Bentham lists seven uses of his approach to a science of legislation, ending with a discussion of how to "facilitate the communication and thereby the gradual improvement of the science to beginners".<sup>76</sup> He speaks of matters much broader than a science of legislation as well, when he observes that

"In its turn every intellectual production undergoes this course of husbandry. If while in the nursery of invention it is found to bear the blasts of criticism, it is taken up by somebody, pruned into form, and transplanted into the garden of science."<sup>77</sup>

The scientific method to which Bentham was committed at this point, then, was not in his view circumscribed by the boundaries of the field of jurisprudence. Rather the field of jurisprudence was to be broadened to take its place (a most central place) within a master science, in the sense made famous by Hume, of human nature - of man and society. Directly after the passage cited above he went on to analyze the "sciences" of grammar and legislation and to subsume them under a more general "logical science". He identified the process of "parsing" as a logical device useful in "teaching the rules of speech in general", and suggested that

"In the same manner may propositions of the Legislative stamp be parsed by referring them to the classes entitled LAW AGAINST SIMPLE PERSONAL INJURIES ... LAW AGAINST PUBLIC OFFENCES ... SUBSTANTIVE LAW, ADJECTIVE LAW, REMEDIAL LAW, PUNITIVE LAW; and so on ..."<sup>78</sup>

His imagination now truly taking wing, he called for the creation of an international "school of legislation". Here a universally applicable model of a complete code of laws (the next chapter of the MAGNUM OPUS was to deal with "the idea of a complete CORPUS JURIS") could be used to generate distinctive, but presumably commensurable, codes for specific nations. Characteristically, he compared this school with "the schools of medicine, of botany, of chemistry, and other branches of the physical department of science". Each student would, as a sort of preliminary (!) assignment, have to "take in hand the jurisprudence of his own state", arranging its "old laws" upon a "new plan".

"This being accomplished the next and finishing achievement would be to frame for each nation a complete code new in point of substance as well as form, copied from the general model ... with such alterations as shall be deemed requisite to adapt it to the particular manners, sentiments, and exterior circumstances of each respective state. If the time when an institution of such a sort could be proposed with any probability of its adoption is yet at a great distance, the idea of it however can not be thrown out too soon ..."<sup>79</sup>

What he has in mind, Bentham now makes clear, is in effect a pedagogy of legislation analogous to that of grammar or cartography:

"As grammar is taught by sentences thrown on purpose out of regimen, and geography by dissected maps, in like manner might the art of legislation ... be taught by means of shapeless laws, to be taken to pieces and put together again after the manner of the model ...

... A school boy is thought to have made but a small proficiency in grammar, if when a grammatical sentence is set before him, there be a word which he is unable to refer to the place that belongs to it in that sentence. If the science of legislation were as far advanced as that of grammar ... a statesman would be thought to have made but a small proficiency in legislation, if in any book of law that were set before him there were a word which he knew not how to refer to the place that (it) occupies in some mandate."<sup>80</sup>

An advanced science of legislation would begin to converge, by virtue of common methods, structure and even subject matter, with other sciences such as grammar and geography, and even with “branches of the physical department of science”. Thus did Bentham’s conception of a science of legislation or jurisprudence take its place within a larger methodological conception of science qua science, and within a family of sciences related as components of a comprehensive investigation of human nature and human activity. The passage, however, which in my view most clearly supports this interpretation comes at the very end of the chapter I have been discussing. At this point in the text Bentham has just unveiled for the first time the idea (of which more later in this discussion) of a science of legislation comprising both direct (post facto) legislation and indirect, or “preventive” legislation. The latter is to be a system of sanctions aimed at “diverting the current of the human desires” into socially desirable channels. Thus both “delinquency” in subjects and “misrule” by politicians, judges or lawyers might be prevented in advance. Here was law such as to tell a man what he ought to do in virtually any socially significant situation. Reviewing with evident satisfaction this plan of legislative action, Bentham observes that it spans “the possible sphere of human agency”, telling any man

“... what acts it is his duty to perform for the sake of himself, his neighbour or the public: what acts he has a right to do, what other acts he has a right to have others perform for his advantage: whatever he has either to fear or to hope from the law. In this one repository the whole system of the obligations which either he or anyone else is subject to are recorded and displayed to view ...”<sup>81</sup>

Clearly his science is *at least* a science of both morals and legislation, as had been asserted in *IPML*. His “map of the law” is also a map of the “possible sphere of human agency”. Moreover,

“In a map of the law executed upon such a plan there are no TERRAE INCOGNITAE, no blank spaces: nothing is at least omitted, nothing unprovided for: the vast and hitherto shapeless expanse of jurisprudence is collected and condensed into a compact sphere which the eye at a moment’s warning can traverse in all imaginable directions.”<sup>82</sup>

This sense of the encyclopedic scope of his system is evoked again in Appendix B to *OLIG*, where Bentham secularizes Genesis to describe the constructivist powers of the utilitarian legislator:



"As yet there is no law in the land. The legislator hath not yet entered upon his office. As yet he hath neither commanded nor prohibited any act ... This is the first day of the political creation: the state is without form and void."<sup>83</sup>

The true context for legislative action is not simply the political system, but rather a much more ambitious field of forces: "the universal system of human actions":<sup>84</sup>

"... Under the single term ACTS are included all the possible modification of human conduct: add the several possible aspects or phases of the will, and you have the whole possible assemblage of laws as well as of autocratic ordinances. The will of the legislator, like that of any other person is a uniform unvaried surface: ... deriving its distinctive character ... from the various images, which are reflected upon it as it were from the several modes of conduct towards which it turns itself."<sup>85</sup>

In the "Essay on the Influence of Place and Time in Matters of Legislation" Bentham conjured up a series of vivid and dramatic images of "the several modes of conduct" towards which the will of the subject or of the legislator might turn. He did so in the course of a striking depiction of the society which could result from the activities of an ideal utilitarian legislator. If there is a single passage in all of Bentham's works which brings the reader face to face with what I have christened "utilitaria", it is this passage. If in *OLIG* we briefly glimpsed the utilitarian version of Genesis, here we find the materialist's heaven on earth:

"The perfection of the law will be at its ACME and the condition of mankind as far as depends upon the law will be at its OPTIMUM when the following signs are visible: when palpable injuries /atrocious crimes/ are unknown except by means of the laws by which they stand prohibited; when no acts to which man's nature is prone are included in the catalogue of offences that do not deserve to be so; when the rights and duties of the various classes of subjects are so well defined by the civil code that there are no longer any controversies in which the question turns upon the point of law; when the code of procedure is so formed that the few controversies which arise purely out of the matter of fact are terminated without any unnecessary expense or delay; when the courts of justice are seldom filled, though always open without intermission; where the military forces of nations being broken down by mutual stipulations not by mutual impotence, the burthen of taxes is render'd imperceptible; when trade is so far free that no branch which might be carried on by many is confined to few, nor any branch pinched by pressure of taxes into a smaller compass than it would otherwise assume; when

for the encouragement of such branches of industry as require positive encouragement, positive encouragement is given; and liberty, perfect liberty to such as require nothing more. When the constitutional law is settled on such a footing and the rights, powers and duties of the servants of the public are so distributed and circumscribed, and the dispositions of the people to submission and to resistance so temper'd and adjusted, that the prosperity resulting from the preceding circumstances is fix'd; lastly, when the law, which is the rule of men's actions, is concise, intelligible, unambiguous, and in the hands of every man."<sup>86</sup>

There is more at stake here than "the perfection of the law" in any strict jurisprudential sense. What is "optimized" in utilitaria is simply "the condition of mankind": the qualifying phrase "as far as depends upon the law" exempts no significant realm of behaviour, nor even of thought or inclination, from legislative control. It has long been felt that perfect "act utilitarianism" is simply unrealizable, and Bentham has been taken to be an act utilitarian, and thus particularly hard hit by this judgement. But his portrait of utilitaria is of a perfect system of *rules*. Nowhere does Bentham suggest that perfection in all acts is imaginable, even comprehensible. As we shall soon see, his argument is quite the reverse. But in what conceivable area of significant human endeavour will the law as Bentham here conceives of it *not* be "the rule of men's actions"? When "the dispositions of the people to submission and to resistance" have been duly "temper'd and adjusted" (say, by *indirect* legislation), will any self-regarding sphere of actions remain inviolate? To present the theory that gave birth to this social vision as simply a theory of jurisprudence would be to fail to convey adequately either its scope or some of its sinister implications. For the intellectual descendant of this construct is not Austin's legal positivism but B.F. Skinner's behaviouristic social science. Utilitaria's modern analogue is *Walden Two*.<sup>87</sup>

Interesting as the details of this portrayal of "optimization" are, Bentham's sense of the *limits* to optimization within such a system is equally significant. Hard on the heels of the 'utilitaria' passage, one of the most breathless perorations in all of Bentham's writings, comes a burst of negativity:

"But to what does all this felicity amount: only to the absence of a certain quantity of evil: to the absence of a part of the various mass of evil to which human nature is now subject. That the accession of felicity would be great and the prospect comfortable is not to be denied: but still there is nothing

in it that is ... unknown: nothing but what the imagination of man at the present period is perfectly competent to conceive."<sup>88</sup>

A sense of the limitations which must be imposed on the human imagination to render its vision compatible with the reality discovered or postulated by his science compels Bentham to temper his utopianism with hedonistic realism. "Physical sensibility", which Bentham had long regarded as incontestably "the ground of law", is also the bane of utilitaria:

"Fire will burn, frost pinch, thirst parch, hunger gripe as heretofore: toil even now must be the prelude to subsistence: that the few may be wealthy, the many must be poor: all must be tantalized more or less with the prospect of joys or supposed joys, which they are out of hopes of tasting, and how much lighter soever coercion may sit than it does now, coercion must be felt, that all may be secure."<sup>89</sup>

Our subjection to our "two sovereign masters, pain and pleasure"<sup>90</sup> cannot be the creation or the plaything of law. It can be recognized; it can be used in "adjusting" our "dispositions to submission and to resistance", but it cannot be altered. "Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light."<sup>91</sup>

"Sense, which is the basis of every idea, is so of every enjoyment; and (unless man's nature be new modelled) so long as man remains man the stock of senses, the source more or less remote of every thing that is called enjoyment, never can encrease.

In the regions of poetry, painting, music and their sister arts the mines of novelty will in a few centuries be exhausted: and if the instruments of enjoyment are (become) more exquisite, taste will be more severe. If this be paradise, paradise is at best what the Asiatics meant by it, a garden: it is still however a very pleasant garden to look to in comparison of the wilderness of evils and abuses in which we have as yet been wandering."<sup>92</sup>

Bentham is confident that with this image of a garden paradise we have "arrived in prospect at least at that NE PLUS ULTRA of perfection, beyond which it is not in the nature of things for us to go".<sup>93</sup> Taking as objects of criticism the works of two men whom in the 1770s he had admired, Bentham now cites the Chevalier de Chastellux (author of *De la Félicité Publique*)<sup>94</sup> and the Rev. Joseph Priestley<sup>95</sup> as

purveyors of views which violate the Benthamic-Asiatic standard for plausible utopianism. If examined with even "moderate discernment and impartiality", he says, the views of Chastellux and Priestley cannot be sustained:

"The Chevalier de Chastellux (is) clear in his opinion that from the beginning of things to the present time the condition of man has gone on improving, or at least what is all that is to the purpose, that this condition is much better at the present than at any former period, and that it is likely to be better and better still: a comfortable doctrine, which he has supported by a train of the clearest proofs that history can afford. Dr. Priestley goes further still: giving it as his opinion that in process of time the world will arrive at a state so paradisiacal [sic] as to surpass any thing which at present we can conceive."<sup>96</sup>

The historical "proofs" of Chastellux and the evangelical paradise of Priestley are alike dismissed. The best "future conceivable"<sup>97</sup> must be visualized through the eye of the utilitarian social scientist, not the historian or the theologian. Bentham as social scientist pronounces it impossible that "while man is man, the measure of felicity he enjoys (should) attain to any greater bulk /higher standard/ than what we are and must be perfectly well able to measure and see to the end of even by such lights as /without any other lights than/ we possess at present".<sup>98</sup>

I read the series of passages just adduced as sufficient to demonstrate that to treat Bentham as a radical or revolutionary social scientist is not to foist upon him a persona comprehensible only retrospectively in the light (or darkness) of modern methodological developments, but to recognize the true nature and scope of his radicalism as he himself understood it. Other and better known Benthamic "constructs" can be brought forward in support of this thesis. Panopticon, Bentham's notorious circular "Inspection House", invites such application. Moreover Bentham's writings on political economy, viewed from this perspective, appear as an integral part of the over-all Benthamic enterprise, not as an inexplicable new project of the 1780s and 1790s only tangentially related to Bentham's other interests. A brief review of these constructs will complete this selective tour of the gallery of Bentham's works.

The series of works written between 1774 and 1782, beginning with the *Comment on the Commentaries* and ending with the essays on "Indirect Legislation" and "The Influence of Place and Time ..." had mapped out a comprehensive system of social action within which the

roles of subjects and sovereign were clearly delineated. The duty of the citizen was to render full and prompt obedience to the sovereign so long as the latter exerted its authority through understandable and properly promulgated utilitarian laws. Meanwhile the subject had as citizen a right to freedom of censure limited only by the necessity of obedience:

*"Under a government of Laws, what is the motto of a good citizen? To obey punctually; to censure freely."*<sup>99</sup>

On the other hand, reflecting on the distinction between free and despotic governments, Bentham argued that this difference "depends not upon any limitation to the Supreme Power":

*"... the field, if one may say so, of the supreme governor's authority, though not INFINITE, must unavoidably, I think, UNLESS where limited by express convention, be allowed to be INDEFINITE."*<sup>100</sup>

So were spelled out the complementary roles of subject and sovereign. But what of those who were not by disposition unwilling, but so circumstanced as to be *unable* to meet the requirements for good citizenship? What of the "many" who "must be poor ... that the few may be wealthy"? What of those by whom "coercion must be felt, that all may be secure"? In fact, however perfectly submissive he might be by nature, the poor and/or jobless subject was hardly distinguished from the convict or the slave by his place in Bentham's social system.<sup>101</sup> Observe, for example, Bentham's discussion of what "indulgent humanity" on one hand and "rigid justice" on the other require by way of relief for paupers of what was then the very advanced age of 65 or more:

*"Humanity ... requires that every individual should be made happy: justice ... requires that of two members of the community ... equally innocent and equally deserving ... one shall not be compelled to part with the fruits of his own labour without necessity for the benefit of another."*<sup>102</sup>

The destiny of a huge horde of unsatisfactory citizens in utilitaria was to take up residence within the circular walls of a Panopticon. There - even there - Bentham could not promise to end their poverty, though he did aim to "fill up their time" with labour and thus to "meliorate their lot":<sup>103</sup>

"you cannot raise one of two contiguous ranks, but you depress the other ... poverty you have at any rate. How do you like it best? with or without industry - Take your choice."<sup>104</sup>

The scope and ordering principle of the Panopticon system exhibit important links with Bentham's analysis of human action in *OLIG* and the two "essays". As to scope, it must be remembered that the Panopticon ("Inspection-House") was not simply a model prison. In principle it was like a behavioural laboratory - a totally controlled environment for purposes of social experiment. In application it was to be primarily a poorhouse: the construct was developed as part of Bentham's project for poor law reform. Panopticon was to be the administrative unit of a nation-wide "Pauper Kingdom"<sup>105</sup> and the unit of production for the "National Charity Company", of which the Bentham brothers were to be the proprietors. Gertrude Himmelfarb, who has given us two major articles on Bentham and poor relief, called the National Charity Company itself "Bentham's Utopia".<sup>106</sup> A network of Panopticons was to cover all of England: Panopticon schools and factories, hospitals and lazarettos - and, of course, prisons and work-houses.<sup>107</sup> I have found but few instances of the use of the term "revolution" in Bentham, and no positive usages of it in relation to eighteenth-century political change, but he described Panopticon as the cutting edge of a "revolution" in the treatment of the poor.<sup>108</sup> What disappoints is that the revolutionary quality lay entirely in the rational, cheap and efficient administration of the programme, and in its promise of rendering the poor more industrious, submissive and disciplined. Security, not equity, was the prime consideration. The controlling principle of this whole exercise in "adjusting the dispositions" of the poor was that the arch-enemy of security and tranquility was idleness. No Panopticon must ever place "a bounty upon idleness in prejudice of industry", for "time must be filled up as well as existence kept alive".<sup>109</sup> Given that imprisonment would not spontaneously generate industry, who or what would ensure its cultivation? The answer is that in Panopticons the all-seeing eye of the inspector would take on the role assigned to the "legislatorial eye" in *OLIG*. It was in the context of Panopticon that Bentham stated that he took it to be "one of the corner stones of political science ... (that) ... the more strictly we are watched, the better we behave".<sup>110</sup>

One major area is still unexamined in our selective survey of Bentham's social science: that of the study of political economy. The Panopticon system, if fully deployed, would have constituted a major sub-system of the English economy, and it would not have been run

on a very openly competitive basis! But Bentham seems never to have grasped this issue in the context of his involvement with the conventional notion of political economy as put forward by Adam Smith in 1776. Bentham made a serious attempt to carry on the work of Smith by contributing to the development and refinement of the "Art and Science of Political Economy". We turn now to that attempt.

Adam Smith's renown as a political economist, and Bentham's sincere admiration for him, could not save the "system of natural liberty"<sup>111</sup> outlined in the *Wealth of Nations* from the sort of criticism which Bentham had earlier launched against the "natural rights" theories of the American and French revolutionaries. As Bentham saw it, "confusion of ideas" (i.e. use of the loose language of natural liberty) had placed Adam Smith, that "best subject", and the "French Pandemonions" ("the worst citizens") on common ground:

"I leave it to Adam Smith, and the champions of the rights of man ... to talk of invasions of natural liberty, and to give as a special argument against this or that law, an argument the effect of which would be to put a negative upon all laws."<sup>112</sup>

Bentham's position is exactly what the shape of his social science as we have outlined it here would lead us to expect:

"I have not, I never had, nor ever shall have, any horror, sentimental or anarchical, of the hand of government ...

The interference of government, as often as in my humble view of the matter any the smallest ballance [sic] on the side of advantage is the result, is an event I witness with altogether as much satisfaction as I should its forbearance, and with much more than I should its negligence."<sup>113</sup>

The position taken here is absolutely consistent with that taken in the "utilitaria passage" from the "Place and Time" essay cited earlier in this discussion. There he had asserted that the legislator's (or social scientist's) goal would only be reached "when trade is so far free ...

... that no branch which might be carried on by many is confined to few, nor any branch pinched by pressure of taxes into a smaller compass than it would otherwise assume; when for the encouragement of such branches of industry as require positive encouragement, positive encouragement is given; and liberty, perfect liberty to such as require nothing more."<sup>114</sup>

The utilitaria passage had been written by 1782. In 1787 Bentham pub-

lished his *Defence of Usury* (a work not long ago endorsed by Milton Friedman) and made a name as an opponent of interference by government in the setting of interest rates. But he recanted. In 1801 he avowed that even in relation to prices and interest rates governmental intervention in the market could be justified where the public interest clearly warranted it.<sup>115</sup> He was not so much drifting toward an interventionist position as recognizing that he had never meant to leave it. In 1804 he published a work which clarified decisively the place of political economy within his utilitarian social science: this was the

“Method and Leading Features  
of an  
INSTITUTE OF POLITICAL ECONOMY  
(including finance)  
considered not only as a science  
but as an art.”<sup>116</sup>

By making a clear and emphatic distinction between political economy as art and as science, he meant to distinguish equally decisively his own approach from Adam Smith's. The logic he used was the same he had previously employed in dealing with legislation as art and science:

“Political economy is at once a science and an art. The value of the science has for its efficient cause and measure its subserviency to the art.”<sup>117</sup>

The *Institute of Political Economy* is in fact largely concerned with governmental activities. Its purpose, Bentham says, is

“... to enquire what conduct it will be proper for the sovereign to take ... only on such occasions as are understood to come within the field of enquiry of the branch of science so denominated, and within the field of action of the corresponding branch of government -- the art of government in matters of political economy.”<sup>118</sup>

In Bentham's political economy there are three classes of activity aimed at economic advantage: “sponte acta” (acts which will flow spontaneously from the natural inclinations of individuals), “non-agenda” (acts which government ought NOT to undertake - the obverse of “sponte acta”), and “agenda”.<sup>119</sup> If each of these classes were equally extensive and significant, we would rightly see Bentham as an anti-interventionist. But clearly they are not. The two classes of “sponte acta”



and "non-agenda" are really only two sides of the same coin. The real question is that of the respective places of "sponte acta" and "agenda" in the system. And Bentham's justification for governmental "agenda" is simply too expansive to invite a laissez-faire interpretation. Governmental "operations" are justified if they (1) increase the stock or improve the distribution of wealth without being "attended with preponderant vexation", and/or (2) remedy some evident deficiency of "inclination, power or knowledge" among private individuals such as might previously have prevented their being "sponte acta".<sup>120</sup> Surely, to combine common English usage with Bentham's more eccentric variety, this is preponderantly an "agenda of agenda". And Bentham knows that in this he is distancing himself from Smith, for at this point he writes:

"To Adam Smith, the science alone has been the direct and constant object in view: the art the collateral and occasional one."<sup>121</sup>

For Smith, the science was the main study, the art the "collateral" one. For Bentham the science must be "subservient" to the art. In Bentham's view the value of Smith's contribution to the study of the science of political economy was vitiated by the fact that Smith had placed his science in the context of a social "system of natural liberty", an insubstantial and untenable metaphorical representation of the art of government. In Bentham's own mind, one surmises, he had succeeded in putting the scientific genius of Smith at the service of the utilitarian legislator. With science and art so refined and harmonized, could the arrival of utilitaria be long delayed?

## CONCLUSION

In the course of his highly influential, if controversial, interpretation of the development of "liberalism" in the eighteenth and nineteenth centuries, F.A. Hayek used his concept of "constructivism" to characterize a body of thought which, as he saw it, contributed to the fatal grafting onto the sturdy stem of "classical" liberalism of that voracious parasite, the "Welfare State". In this context Hayek depicted "constructivism" as a product of the influence of a specifically "continental", post-Cartesian rationalism on certain English theorists. The symptoms of this influence included (1) a firm belief in the possibility of exhaustive, encyclopedic knowledge of human and social development on the part of "Enlightened" social theorists, (2) a passion for the design

and construction of institutions and systems meant/thought to reflect and apply such knowledge, and (3) a commitment to political action and education such as to bring about the realization of a constructivist 'blueprint' for civil society IN TOTO:<sup>122</sup> that is, a commitment to doing what Hayek believes cannot be done - legislating one's way to "social justice".<sup>123</sup> Bentham's susceptibility to continental influences (Helvétius, Beccaria, Voltaire, D'Alembert, Diderot, Chastellux, Morellet etc.), his encyclopedism, his action-oriented philosophy, his "logic of the will", his determination to "rear the fabric of felicity by the hands of reason and of law", and his use of the Greatest Happiness Principle as *the* social standard of right and wrong - all of these features of his work mark Bentham as the quintessential constructivist.

The cumbersome label "rationalist constructivist" is unlikely to replace Halévy's phrase "philosophical radical" as the conventional nutshell summary of Bentham's position. Yet in some ways the more awkward phrase is nonetheless the more appropriate. Halévy's label, like the term "liberal" as applied by Hayek and many after him to Bentham's type of social science, is slightly misleading, for it makes what was a distinctly eighteenth-century philosophy of man and society sound like a twentieth-century ideology or the platform of an early nineteenth-century political grouping. This puts the cart before the horse. Bentham did not concoct his utilitarian system because he was a liberal; he did not put his social science in the service of politics. He did not act as philosophical apologist for a group of political radicals: he saw the political radicals as bearers of his philosophical insights and constructivist visions. We must distinguish carefully between what Bentham was or intended to be, and what retrospectively we can "make of him". To see him as a "liberal" is to equip him with an intellectual vocabulary which he simply did not possess. To see him as a political radical may sometimes entail reading back into his day our modern standards of political organization, mass political involvement and governmental activism. To see him as a political revolutionary is particularly dangerous, for it carries with it post-Marxist connotations of violent destruction of whole existing orders and quantum leaps into new futures. "So long as man remains man", Bentham thought, he could advocate no such transformations of human nature. Indeed, even to conjure up such visions would surely be to concoct counter-productive "fictions" in his view.

No doubt Bentham supported the activities of political radicals in the early nineteenth-century just as keenly as he had earlier supported sovereigns (Catherine the Great) or Prime Ministers (Pitt) who had seemed likely to promote his "constructivist" projects and listen to his

"rationalist" analyses of legal and social phenomena. But through all of this Bentham's radicalism did not change. He responded to major changes in his political context, but he was not 'transformed' by them. He was a radical social scientist twenty-five years before there *were* such things in politics as "philosophical radicals", and if his vision of "utilitaria" is a striking harbinger of the Welfare State, it is not because Bentham was a liberal, but because 'liberal' governments (whatever political meaning they might choose to give to that protean term) found it expedient to employ elements of Bentham's rationalist, secular, constructivist social science for reasons too varied and perhaps too obscure to be unravelled here. In view of such complications in language, history and politics, surely the safest and soundest generalization we can make about a figure as innovative and influential (or at least prescient) as Bentham is that he was one of the earliest and most unmitigated exponents of a distinctive eighteenth-century model of social science which has had a central influence on political - and academic - life in the western liberal-democracies since the early nineteenth century. Therein lies his true role as radical, even revolutionary, thinker.

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## NOTES

1. Bentham to James Anderson, 12 July 1784, in *The Correspondence of Jeremy Bentham*, vol. 3, ed. I.R. Christie, London, Athlone Press, 1971, letter 508, p. 293.
2. For Bentham as a "one-eyed man"... "hunting half-truths to their consequences", see J.S. Mill's "Bentham", in *Mill on Bentham and Coleridge*, intro. F.R. Leavis, London, Chatto & Windus, 1971, pp. 64-5.
3. For Mill's smug sense of the superiority of his own century, see *Ibid*, p. 63.
4. "(Bentham's style) ... is unpopular, not to say unintelligible. He writes a language of his own that *darkens* knowledge. His works have been translated into French - they ought to be translated into English." Wm. Hazlitt, *Letters on English Poets and The Spirit of the Age*, London, 1910, p. 181.
5. I have in mind the figure of "Mr. Gradgrind" in *Hard Times*.
6. See "The New Bentham", in *Scrutiny*, No. 1 (1932-3).

7. See Bevington, Helen, "A bomb for Jeremy Bentham", in *Nineteen Million Elephants and Other Poems*, pp. 33-4; Boston; Houghton Mifflin, 1950.
8. J.B. to the Rt. Hon. Wm. Pitt. Not Sent. 16 Sept. 1794, in *Correspondence of Jeremy Bentham* (hereafter cited as *Correspondence*) vol. IV ed. A.T. Milne, London, 1981.
9. E.g. see Beales, H.L., "Jeremy Bentham, Social Engineer", *The Listener*, 3 August 1932.
10. Everett, C.W., *Jeremy Bentham*, London, Weidenfeld and Nicholson, 1966. At p. 196 he asserts that Bentham's intellectual enterprise was complete in its basic outline before 1789.
11. Rees, J.C. and Lively, J., *Utilitarian Logic and Politics*, Oxford U.P., 1978. See the authors' introduction.
12. Harrison, R., *Bentham*, London, Routledge & Kegan Paul, 1983.
13. Halévy, E., *The Growth of Philosophic Radicalism*, trans. M. Morris, preface by J. Plamenatz, London, Faber & Faber, 1972. First published in England in 1928. First published as *La formation du Radicalisme Philosophique*, 3 vols., Paris, 1901-4.
14. See Baumgardt, D., *Bentham and the Ethics of Today*, Princeton, N.J., 1952, appendix III, pp. 552-3.
15. This is discussed in some detail in my *Bentham on Liberty*, U. Of Toronto Press, 1977, pp. 51-5.
16. See *Bentham on Liberty*, pp. 182-5.
17. See Dinwiddy, J.R., "Bentham's Transition to Political Radicalism, 1809-10", *Journal of the History of Ideas*, vol. 36 (1975). Everett's *Bentham* gives an idea of the movement from Tory to Whig to Radical as well.
18. See "The Errors of Constructivism", in F.A. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, U. Of Chicago Press, 1978, at p. 6.
19. *Ibid*, pp. 13-4. See also "Socialism and Science", in *Ibid*, pp. 295-308.
20. *Ibid*, pp. 13-4.
21. *Ibid*, p. 14.
22. "The Errors of Constructivism", p. 15.
23. See in Schumpeter, J.S., *Capitalism, Socialism and Democracy*, Harper & Row, New York, 1942, Chap. 16.
24. Unpublished remark. See Box 69, p. 155 of the Jeremy Bentham Mss. in the Ogden Library at University College London, England (hereafter cited in this form: U.C.L.Mss. 69.155); quoted in *Bentham on Liberty* at p. 69.
25. *An Introduction to the Principles of Morals and Legislation* (hereafter *IPML*), ed. H.L.A. Hart & J.H. Burns, London, Athlone Press, 1970, at p. 309.
26. *Ibid*, p. 311
27. All of these characterizations of France and the French are put in context and documented in *Bentham on Liberty* at pp. 183-4.

28. See *Fragment on Government*, Ch. I, para. 34, at p. 439 in Burns & Hart (eds.) *A Comment on the Commentaries and A Fragment on Government*, London, Athlone Press, 1977.
29. The influence of these works on Bentham is discussed in *Bentham on Liberty* at pp. 68-9.
30. J.B. to brother Samuel, 9 Nov. 1779, in *Correspondence*, vol. II, ed. T.L.S. Sprigge, London, Athlone, 1968, letter #336 at pp. 319-20.
31. Almost all of the relevant mss. are in box 69 of the U.C.L. collection.
32. See U.C.L. Mss. 69. 52-3.
33. *Ibid*, 69. 71-5.
34. At U.C.L. Mss. 69.62. Cited in *Bentham on Liberty*, at p. 60.
35. "Preface" to *Fragment on Govt.* in Burns & Hart (eds.) op. cit., at p. 397.
36. *Ibid*, p. 398.
37. In *Bentham on Liberty*, at pp. 38-40 & 67-9.
38. From U.C.L. Mss. at 69. 62-3. Quoted in *Bentham on Liberty* at p. 61.
39. See Harrison, *Bentham*, 1983, pp. 53-74 & 79-81, & *Frag.*, V, para. 6.
40. *Rationale of Punishment*, in Bowring, J. (ed.) *The Works of Jeremy Bentham*, Published Under the Supervision of his Executor, John Bowring, 11 vols., 1838-43; hereafter cited as *Bowring Works*; vol. I. / *Rationale of Reward* in *Works*, II. / *Rationale of Judicial Evidence*, in *Works*, VI & VII. / *Introductory View of a Rationale of Evidence*, in *Works* VI.
41. *Defence of Usury*, in W. Stark (ed.) *Jeremy Bentham's Economic Writings*, 3 vols., London, Allen & Unwin, 1952, vol. I, pp. 121-208.
42. *Catechism of Parliamentary Reform*, in Bowring, *Works*, III.
43. *A Table of the Springs of Action*, in *Works*, I. Now available with the *Deontology* in a volume in the new *Collected Works* series, A. Goldworth ed. (1983).
44. See *Bentham on Liberty* at p. 69.
45. "Elements of Critical Jurisprudence" was a tentative title for Bentham's magnum opus. See the "advertisement" for this work (which never was completed) in Burns & Hart (eds.) *A Comment ... and A Fragment* (hereafter *Comm/Frag*), at p. xlvii.
46. Burns & Hart, *Comm/Frag*, p. 120 and fn. 1.
47. See *The Book of Fallacies*, in Bowring, *Works*, II, 443. See also Burns Hart *Comment*, pp. 13 & 60.
48. See Burns/Hart *Comment*, II.7, p. 223.
49. See H.L.A. Hart (ed.), *Of Laws in General*, London, Athlone Press, 1970, appendix B, part 1, para. 1 at p. 251.
50. Harrison, *Bentham*, pp. 32-3; see also Bowring, *Works*, X, 75.
51. Burns/Hart, *Fragment*, Ch. 4, para. 23, p. 94.
52. *Ibid*, preface (1822) to second edition, in *Ibid* p. 508.

53. "Truth vs. Ashurst", in Bowring, *Works*, V, 235. Cited in Harrison, *Bentham*, at p. 35. Emphasis Bentham's.
54. See *infra* text at fn.66.
55. See text below at fn.'s 67-70.
56. See U.C.L. Mss. 87.62. Examined in context in *Bentham on Liberty* at p. 136.
57. D.D. Raphael, "The Jurisprudence of Bentham", *Times Literary Supplement*, Sept. 27, 1974.
58. Burns/Hart, *IPML*, Ch. 1, para. 2, note B, at p. 11.
59. See below at fn. 84.
60. U.C.L. Mss. 69.10. Quoted in *B. on Lib.* at p. 17.
61. See the opening line of the *Fragment in Burns/Hart ed'n* at p. 393.
62. U.C.L. Mss. 69.17 (*unpublished*).
63. See Stark, *Economic Writings*, I, p. 101 ("Axioms of Mental Pathology").
64. U.C.L. Mss. 69.158. See *B. on Lib.* at p. 71.
65. This was to be an "all-comprehensive collection of law"; see Bowring, *Works*, III, 211-3.
66. Burns/Hart, *IPML*, "preface", pp. 8-9.
67. For a description of this 40 Chapter work, see Bentham's long letter to Lord Ashburton in *Correspondence*, III, ed. I.R. Chrisite, Athlone Pr., 1971, #426, pp. 123-30. A draft of it is in Hart (ed.) *OLIG*, appendix E, pp. 304-11.
68. See Burns/Hart *IPML*, "preface", pp. 5-7.
69. See *supra* at fn. 45.
70. Most of the alternative titles are listed in U.C.L. Mss. 140.14.
71. See *B. on Lib.* at p. 98.
72. For a discussion of these mss., see *Bentham on Liberty*, pp. xi-xiv.
73. Everett, C.W., *A Comment on the Commentaries ... by Jeremy Bentham*, Oxford, 1928; see also Burns/Hart *A Comment ... and a Fragment ...* 1977.
74. See *supra* fn. 67.
75. See Burns/Hart, *OLIG*, pp. 307-8.
76. *OLIG*, Ch. XIX, para. 8, p. 243.
77. *Ibid.*
78. *Ibid*, p. 244.
79. *Ibid.*
80. *Ibid*, p. 245.
81. *Ibid*, para. 10, p. 246.
82. *Ibid*, para. 11, p. 246.
83. *Ibid*, Appendix B, para. 3, p. 253.

84. For this phrase, see *OLIG*, Ch. 10, Section iv, "Alterative (Laws)", para. 16, p. 120.
85. *Ibid*, p. 119.
86. The essay was published in Bowring, *Works*, I, as "An Essay on the Influence of Time and Place ..."; I have not relied on Bowring. See U.C.L. Mss. Box 142.200. See also *Bentham on Liberty*, p. 148.
87. This line of interpretation is supported by *Bentham on Liberty*, pp. 216-20.
88. U.C.L. Mss. 142.200. Headed "Place and Time": "Time".
89. *Ibid*.
90. Burns/Hart, *IPML*, Ch. 1, para. 1, p. 11.
91. *Ibid*.
92. U.C.L. Mss., 142.200.
93. U.C.L. Mss., 142.212; Headed "Place and Time." "Time". Marginal heading: "Can the standard of perfection be different at an [sic] future time?".
94. Chastellux (François Jean), Marquis de, *De la félicité publique, ou Considérations sur le sort des hommes dans les différentes époques de l'histoire*, 2 vols., 1772; tr. as *An Essay on Public Happiness*, 2 vols., 1774.
95. Priestley, J. (Ll.D., F.R.S.), *An Essay on the First Principles of Government, and on the Nature of Political, Civil and Religious Liberty*, London, 1768.
96. U.C.L. Mss., 142.212.
97. This phrase occurs as a marginal heading several times on U.C.L. Mss. pp. 212-3.
98. *Ibid*, p. 213.
99. Burns/Hart, *Fragment*, "Preface", p. 399. Emphasis Bentham's.
100. *Ibid*, Ch. Iv, para. 23, p. 484.
101. Bentham virtually argues away the distinction at U.C.L. Mss. 25.14.
102. U.C.L. Mss. 152b.534, 6.
103. "Art lies in meliorating man's lot: any bungler may make it worse." J.B. to William Pitt, 23 Jan. 1791, in *Correspondence*, IV, ed. A.T. Milne, London, 1981; letter #738 at p. 228.
104. U.C.L. Mss. 152b.352.
105. See Bahmueller, C.F., *The National Charity Company: Jeremy Bentham's Silent Revolution*, U. Of California Press, 1981; "introduction", p. 3.
106. Himmelfarb, G., "Bentham's Utopia: the National Charity Company", *J'al of British Studies*, X, 1970, pp. 84-117; "The Haunted House of Jeremy Bentham", in *Ideas in History: essays presented to Louis Gottschalk ...* ed. R. Herr & H.T. Parker, Duke U.P., 1965, pp. 199-238.
107. Bahmueller, op. cit., p. 59.
108. *Ibid*, p. 12.
109. U.C.L. Mss. 87.80.

110. *Ibid*, 152b. 332-3.
111. See Adam Smith: *An Inquiry into the Nature and Causes of the Wealth of Nations*; 2 vols.; General Editors R.H. Campbell & A.S. Skinner; textual editor W.B. Todd; Oxford, Clarendon Press, 1976: "the obvious and simple system of natural liberty ... establishes itself of its own accord", vol. II, Bk. IV, Ch. ix, p. 687.
112. Stark, *Economic Writings*, III, 258 ("Defence of a Maximum").
113. *Ibid*.
114. See text below at fn. 86.
115. Stark, *op. cit*, III, pp. 288-90 ("Defence of a Maximum").
116. *Ibid*, p. 305.
117. *Ibid*, p. 318.
118. *Ibid*, p. 307. Cf. (on the same page) "The object of the present work is to enquire what is the most suitable course for the sovereign of a country to pursue ... in his endeavours to compass what in every government ought to be, and is to a certain degree, the end or object aimed at - viz. the maximum of happiness with reference to the several members of the community taken together, and with reference to the whole expanse of time."
119. See *Ibid*, pp. 323-42.
120. *Ibid*, pp. 337-8.
121. *Ibid*, p. 318.
122. See Ch. 9., "Liberalism", in Hayek, *New Studies in Philosophy, Politics, etc ...* esp. pp. 119-32.
123. See Hayek, *op. cit.*, Ch. 5, "The Atavism of Social Justice", pp. 57-68.