

POLITICAL THINKERS no.5

General Editor: GERAINT PARRY

BENTHAM

James Steintrager



GEORGE ALLEN & UNWIN

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James Steintrager

*Professor of Politics
at Wake Forest University*

London

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obstacle in the way of going home

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Professor Steintrager's concise study of the development of Bentham's political thought is the first in many years to be based on a careful reading of Bentham's manuscripts. He re-examines the persistent caricatures about Bentham and presents a readable and balanced account of what Benthamism meant to Bentham. He demonstrates that Bentham was neither naive nor dogmatic nor impractical. Instead a picture emerges of a Bentham aware of many of the complex theoretical difficulties confronting consistent utilitarianism and alert to the many practical obstacles which stood in the way of the reforms he was proposing.

Professor Steintrager documents how Bentham consistently argued that the guiding norm for any interference with free choice ought to be the greatest happiness principle and that the burden of proof ought always to fall on those who wished to restrict the unfettered private pursuit of happiness. He explores whether Bentham, in his later years, abandoned both the freedom and the happiness of the individual to the tyrannical encroachments of a democratic majority. In doing so he shows that Bentham did not turn to radical democracy simply because of his bitterness over the Establishment's rejection of his Panopticon prison scheme. The study concludes with an examination of the process of government implicit in Bentham's Constitutional Code and with a restatement of the problems of majority and minority tyranny within the context of Bentham's thought.

This study of Bentham's political thought will be of interest to undergraduate and graduate students as well as teachers of political theory who are concerned with utilitarianism and with the problems of the nature and limits of liberalism. Since Bentham's political thought raises important ethical and economic questions the study will also be of interest to students and teachers of those disciplines.

James Steintrager has taught at Louisiana State University and the University of Texas and has spent three years in London researching the Bentham manuscript collections. He is currently a Professor at Wake Forest University where he lectures in political philosophy. As a participating editor in the new edition of the *Collected Works* of Jeremy Bentham, Professor Steintrager is particularly well-qualified to assess the difficulties involved in relating Bentham's manuscripts to his published writings. He demonstrates a keen awareness of the stages of development in Bentham's work and shows how dangerous it is to base an estimate of his thought on selective quotations from a particular period.

POLITICAL THINKERS
edited by Geraint Parry
University of Glasgow

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BENTHAM

POLITICAL THINKERS

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PREFACE

The present study was begun a number of years ago as the result of dissatisfaction with the accepted interpretations of Bentham's political thought, and in particular with the landmark criticisms by John Stuart Mill and Elie Halévy which set the tone for what one might call the standardised, textbook version. My dissatisfaction with that version, I soon discovered, was shared by others. Thus in my research and reflection I have benefited in many respects from the work of other Bentham scholars, even when I disagreed with their particular interpretations. A complete list of those whose work has been of use could not be culled from the bibliography of the present study since that, by necessity, has been kept selective. At the risk of failing to mention some who should be mentioned, I would cite, in particular, the works of C. W. Everett, C. K. Ogden, Mary Mack, David Baumgardt, H. L. A. Hart, David Manning, David Lyons, Bhikhu Parekh, Warren Roberts and J. H. Burns.

In contrast with many other revisionist interpretations, I am convinced that there is some truth in the older view, although I came to realise that even when it appeared to be correct the supporting evidence was often either weak or distorted. It became apparent at an early stage that to make a just statement about Bentham's political thought it would be necessary to examine the extensive manuscript collections which he left, especially those at University College, London, and in the British Museum. But I considerably underestimated the difficulty of that undertaking, given the quantity of the material, the illegible nature of Bentham's handwriting, and the problem of estimating the merits of material which was often fragmentary in nature. First in 1966-7, and again in 1968-9 and 1973-4, I worked through as many of the manuscripts as I could until I became convinced that the law of diminishing returns was clearly coming into play. I am quite aware of the fact that there are manuscripts which I did not examine, or which I did examine but, perhaps, without sufficient awareness of their significance. A complete examination, then, might lead to an interpretation somewhat different from that at which I arrived on certain points. My appreciation of this is only underlined by the fact that on several occasions manuscripts which I later realised were of considerable importance were not thought to be so when I first read them. The material on geometry discussed in Chapter I provides an excellent example of this, as do the many manuscripts on the obstacles which Bentham perceived stood in the way of reform in his early years, which are discussed in Chapter II. But a complete examination would take a lifetime longer than Bentham's, since I am convinced it would take more time to read what he wrote than it took him to write it!

With few exceptions the transcripts from Bentham's pinched writing

are my own. It should be noted that in respect to punctuation, spelling, the use of italics and the dash, Bentham's usage was often uniquely his own. I have attempted to reproduce his usage as exactly as possible save on a very few occasions when I have silently corrected an obvious slip of the pen. What is true of the manuscripts is also true of his published writings, and the same policy has been followed in respect to them. Thus whenever italics are used, they are in the original. Finally, it should be added that throughout this study I have written of the English Constitution and England rather than of the British Constitution and Britain because, in general, that is what Bentham did.

An enterprise of this kind obviously incurs a great many obligations. I am indebted to a number of foundations and universities for the generous financial assistance which allowed me to travel to and live in London on the several occasions mentioned above. Wake Forest University, which granted me an R. J. Reynolds research leave and travel money, and the H. B. Earhart Foundation, which on two occasions supported my work, deserve my particular thanks. But I should also like to thank the Society for Religion in Higher Education, the American Philosophical Society and the University of Texas at Austin, as well as to acknowledge the assistance of the later Professor Leo Strauss and Professor Gerhart Niemeyer who helped me to secure these various grants. I am grateful to the University College Library, London, for permission to quote extensively from the Bentham Manuscript Collection. Mr J. W. Scott, the Library Director, Mrs J. Percival, as well as her predecessor, Miss Margaret Skerl, and the staff of the Library were most kind in the ways in which they assisted me. Similar thanks are due to the staffs of the Rare Manuscript Room of the British Museum and the British Library. Miss Jean Younger, my research assistant, and Mrs Emily Lincoln, typist, proofreader and friend, deserve special commendation for catching my all too frequent mistakes.

Over the past ten years I have greatly profited from the knowledge and guidance of Professor J. H. Burns of University College, who carefully listened to and commented on my interpretation of Bentham's political thought as it evolved over the years. Mr Charles Furth, of George Allen & Unwin, and Professor Geraint Parry, the general editor of the Political Thinkers series, deserve my gratitude not only for having invited me to write this study but for their extraordinary patience in awaiting its completion. Nothing can adequately serve to thank my parents, who at considerable personal sacrifice made it possible for me to have a university education. Finally, I wish to express my thanks to my children, Kirsten, Jimmy, Rebecca and Megan, for their patience and understanding; and above all to my wife, Marianne, herself trained in political philosophy, who not only encouraged me but provided thoughtful criticism of my work.

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obstacle in the way of going home

Introduction

In 1768 Jeremy Bentham discovered the principle of utility, that the greatest happiness of the greatest number is the only proper measure of right and wrong and the only proper end of government. From then until his death in 1832, he worked with steadiness and determination to discover means of promoting that end and thus 'to rear the fabric of felicity by the hands of reason and of law'.¹ This dedicated reformer, however, was not one to take to the hustings. Instead he worked away in seclusion, turning out thousands upon thousands of manuscript pages on a wide variety of reform topics, and, in fact, seeing few of these projects through to completion by himself. Most often he would turn the manuscripts over to compatriots who had to make sense out of his pinched handwriting and bring order to the confusion of alternate readings, changed orderings and occasional gaps in the argument. Despite the rather curious way in which Bentham's writings on reform were published; despite the difficulty of his writing style which grew ever more cumbersome over the years; despite the fact that his views have been disproved countless times from his own day to the present; despite all this and more, Bentham's ideas profoundly altered the course of English politics during the nineteenth century. Indeed, it may truly be said that, as the late Sir Denis Brogan remarked, Benthamism remains one of the prevalent modes of thought among intellectuals and politicians in England even today.²

Bentham was born in London in 1748. His father, Jeremiah Bentham, was a prosperous man, a lawyer by profession but whose wealth came from property holdings rather than the practice of law. Jeremiah was an aggressive social climber. When Jeremy showed signs of exceptional ability, his father's hopes for social advancement soared. He imagined the lad rising to great heights as a barrister, perhaps even becoming Lord Chancellor; and he methodically pushed the boy academically (which was quite easy given his intelligence) and socially (which was quite difficult given his shyness and awkwardness). Jeremy was educated first by his father and a French tutor, and then sent to Westminster School. At the age of twelve he entered Queen's College, Oxford. By

1763, while only fifteen, he was admitted to Lincoln's Inn and began attending sittings of the King's Bench. The following year he received his Bachelor of Arts degree, and in 1767 he received the Master's degree. In 1769, having reached his majority, he was admitted to the practice of law. Thus it might appear that his father's hopes were to be realised. He was formally ready to enter upon a prosperous career in the law. It was a prospect not to be realised, for the seemingly chance discovery of the principle of utility deflected him from that course, and turned him from the practice of law as it was to the study of law as it ought to be.³ This decision disappointed Jeremiah Bentham, who nevertheless grudgingly supported his son financially. To be sure, Jeremy was to achieve prestige, though long after his father's death in 1792; and it was not prestige within the establishment but as 'the great questioner of things established'.⁴

Bentham's first book, *A Fragment on Government* (1776), which his father justly admired, gave indications of things to come. It was a stinging criticism of one section of Sir William Blackstone's *Commentaries on the Laws of England*. The *Commentaries*, first published in 1765-9, was widely celebrated, as Bentham was anxious to point out, not least because it represented both the dominant view of English law and the accepted doctrine as to the nature of the English Constitution. Indeed, the section which Bentham singled out for attack, hoping thereby to discredit the work as a whole, was essentially a modified restatement of the Lockean theory of civil government. Bentham's criticisms did not necessarily constitute a rejection of the English Constitution, though they certainly amounted to a rejection of what he felt to be its confused and inadequate theoretical underpinnings; and, as he wrote in his own copy of the *Fragment*, 'this was the very first publication by which men at large were invited to break loose from the trammels of authority and ancestor-wisdom in the field of law'.⁵ A similar confidence in the power of reason, or at least of his own reason, to dispel the mysteries and dogmatism of law and government marks all of Bentham's published writings. His best-known work, *An Introduction to the Principles of Morals and Legislation*, is an assertive (although remarkably brief) explication of the principle of utility, and a summary dismissal of all rival moral theories. In general, Bentham proceeded without any apparent hesitation to develop his own ideas, confident of their correctness and seemingly unaware of any complications or difficulties which might stand in the way of his attempt to establish on a firm footing, once and for all, a science of morals and legislation. As he himself suggested, he was to be the Newton of the moral world. His moral calculus would do for morals and legislation what the Newtonian calculus did for the laws of motion and the science of the physical world in general. With it,

the legislator would be able to understand the tendencies of human actions towards and away from the end of the greatest happiness of the greatest number, and be able to employ appropriate sanctions to discourage undesirable tendencies and to encourage desirable ones.⁶ Thus he would be like the physicist who is able to calculate the appropriate force needed to move a given mass in a desired direction. Indeed, Bentham even thought it would be possible to reduce the various circumstances, which might otherwise cause distortions in the calculations, to supplementary formulae, so that variations of time and place might be taken into account by the legislator in the same way as the physicist allows for such variables as friction and atmospheric pressure.⁷ The legislator, then, would be able to know both what actions ought to be considered criminal, because they diminish the greatest happiness of the greatest number, and what penalties ought to be held up to those contemplating such criminal activities so as to convince them that it would not be worthwhile, in terms of their individual happiness, to do what they were contemplating. Bentham, then, appears to be a model of what Professor Michael Oakshott has described so ably as 'Rationalism in Politics'.⁸ Or as one of Bentham's own contemporaries suggested:

Mr Bentham maintains, that in all cases we ought to disregard the presumptions arising from moral approbation, and, by a resolute and scrupulous analysis, to get at the naked utility upon which it is founded; and then, by the application of his new moral arithmetic, to determine its quantity, its composition, and its value, and, according to the result of this investigation to regulate our moral approbation for the future.⁹

Bentham's unabashed confidence in his new system, a confidence more than echoed by his followers, taken in the light of the epoch in which he wrote, has led to a fairly standard interpretation of him and of his enterprise. Though there are nuances and variations, the stock-in-trade argument comes down pretty much to the following: Bentham grew up in an era in which the natural sciences were making rapid strides, a fact of which he was deeply aware. The advancement of science was not merely theoretical. Theory was speedily transformed into those practical alterations which we now call collectively 'The Industrial Revolution'. The Industrial Revolution, along with other complex factors, was having a devastating effect on England, as a green and pleasant land became dotted with satanic mills. The yeoman farmer was uprooted. The day labourer became a factory worker. Cities grew in size. Traditional values and *mores* were shaken. Beginning at least as early as 1763, with the initial conflict between the King and John Wilkes, there were a series of political and constitutional struggles within the