

**Projecting Law Reform: Jeremy Bentham's networks  
in Hanoverian Britain, c.1790-1830**

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# Abstract

Bentham's relationship with the late Hanoverian law reform movements has been oversimplified by recent historiography as futile and unimportant. This thesis shifts the focus from official and public politics to Bentham's epistolary networks, aiming to reconstruct Bentham's private campaigning in the context of an increasingly vibrant reform culture.

From the late 1780s, the patronage of Lord Shelburne extended Bentham's political connections. A group of lawyers, politicians, and writers became interested in Bentham's innovative ideas and schemes. By the late 1820s, Bentham had established cross-party networks to sustain radical law reform ideas. The first three chapters will explore the formation of these networks, and the reception of Bentham's ideas, by analysing his relationship with the Whig lawyer Samuel Romilly, the Tory politician Robert Peel, and the Irish agitator Daniel O'Connell. It will be argued that Bentham's private persuasion pushed these well-connected political leaders to clarify their positions.

From the mid-1820s, the politics of law reform became much complicated after the government changed to a more open attitude, and many politicians, lawyers, and writers joined the debate. The increase of participants did not make Bentham's advocacy of radical law reform any easier. The private contact with Peel made Bentham recognise that he was marginalised in official politics. He changed strategy and appealed for popular support instead. Meanwhile, the correspondence with O'Connell encouraged Bentham to establish a popular association comparable to the Catholic Association. The fourth chapter will explore Bentham's mobilisation of the Law Reform Association between December 1829 and June 1830. The last chapter is an analysis of Bentham's impact on the younger generation of lawyers between 1827 and 1833 through a legal periodical called *The Jurist*. The identified authors and articles, and their references to Bentham, suggest a wider acceptance of Bentham's philosophy and ideology than historians have argued.

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# List of Abbreviations

Bowring	<i>The Works of Jeremy Bentham, published under the superintendence of his executor, John Bowring, 11 vols. (Edinburgh, 1838-43)</i>
<i>Correspondence</i>	<i>The Correspondence of Jeremy Bentham (The Collected Works of Jeremy Bentham), 12 vols., various editors</i>
UC	Bentham Papers, University College London Library (roman numerals refer to the boxes in which the papers are placed, arabic to the folios within each box)
<i>O'Connell Corr.</i>	<i>The Correspondence of Daniel O'Connell, 8 vols., ed. M.R. O'Connell, various publishers</i>
HC Deb.	Parliamentary Debates (Official Report of the House of Commons) (Hansard)
HL Deb.	Parliamentary Debates (Official Report of the House of Lords) (Hansard)

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This thesis is dedicated to my mother and Ann (*my English mother*).

## Author's Declaration

I, Cheng Li, declare that this thesis is a presentation of original work, and I am the sole author. Parts of Chapter II have been published in the article entitled "Jeremy Bentham and Robert Peel in the Context of Legal Reform Movement (1826-1832)", *World History Studies* 1 (2021), 29-53. This thesis has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References.

# Introduction

## I Bentham in the historiography of law reform

The subject of this thesis is Jeremy Bentham's impact on the law reform movement in late Hanoverian Britain. During his lifetime (1748-1832), Bentham designed many projects attempting to influence the government and public opinion. Over the two decades following the late 1780s, Bentham mobilised support for his Panopticon prison project but failed to secure legislation for it. Disappointment shifted Bentham's attention to foreign nations until the 1820s, when public interest in law reform revived: first in criminal law when the Home Secretary Robert Peel announced a supporting opinion in 1823, and then in 1824 when a Royal Commission of the Court of Chancery was appointed. These events marked the government's change of strategy in response to pressure from the opposition parties and an increasingly agitated public opinion. From 1826, Bentham developed different networks and contacted leading public figures such as Robert Peel, Henry Brougham, and Daniel O'Connell. Encouraged by this burgeoning culture of reform, especially the Catholic Association's success in the Clare by-election of 1828, Bentham attempted to organise a special pressure group for law reform between December 1829 and August 1830.

Bentham's influence has long attracted scholarly attention. For a long time, he was viewed as "the architect" of nineteenth-century reforming legislation. His ideas have been identified as the driving force behind most major policy changes following the Reform Act of 1832. Such a high appraisal is best manifested by A.V. Dicey, who claimed that "liberalism...was nothing but Benthamism modified".<sup>1</sup> However, Dicey's definition of Benthamism is too loose. Dicey defined Benthamism solely as the expression of individualism in legislation, and ignored other individualistic intellectual trends such as Whiggism. To Dicey, all reformers, including Whigs, radicals, and Peelite Tories, accepted Benthamism from 1825. Such an oversimplified narrative is problematic for historical interpretation because Dicey did not provide empirical evidence to prove the causality between Bentham's ideas and reformist laws. This problem was temporarily solved by Élie Halévy's more

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<sup>1</sup> A.V. Dicey, *Lectures on the Relation between Law & Public Opinion in England during the Nineteenth Century* (Macmillan, 1914; Liberty Fund, 2008), 90.

refined and empirical study, which claimed that all leading law reformers were Bentham's disciples.<sup>2</sup> Until the 1970s, most scholars shared Dicey and Halévy's view.<sup>3</sup>

The high evaluation of Bentham's impact received its first serious challenge from two biographical studies. Both Joseph Hamburger and William Thomas chose the term "philosophical radicals" (John Stuart Mill's invention<sup>4</sup>) to refer to a group of reformers who followed Bentham's intellectual leadership in politics. James Mill and John Stuart Mill are viewed as the central figures in this network, while Bentham is portrayed as an eccentric writer. In short, historians began to treat Bentham more as an avuncular figure, less as a pioneer. However, in terms of Bentham's leadership role, Hamburger's estimate is higher than Thomas's. Hamburger has argued that from Bentham's ideas the philosophical radicals fashioned an ideology which distinguished them from other reforming politicians in the decade after the Reform Act of 1832.<sup>5</sup> By comparison with Hamburger's stress on the unity of Bentham's intellectual disciples, Thomas was more interested in uncovering the independent personalities of the same group. He argues that Bentham's intellectual impact was in fact far more limited than Dicey supposed: "Bentham's influence on nineteenth-century legislation...seems to me rather a barren one."<sup>6</sup>

William Thomas's detailed empirical study started a revisionist trend. J.R. Dinwiddy has discussed Bentham's impact on public debates about legal codification in the 1820s. Although he describes the approach of statute consolidation as "partial codification",<sup>7</sup> Dinwiddy argues that leading supporters of this approach such as Antony Hammond and James Humphreys were not inspired by Bentham but by the French codes. Legal historians have also followed the trend of downplaying Bentham's influence on the revival of public interest in law reform. As Michael Lobban has put it, "law reformers did not need the Benthamic impulse to encourage them into reform in the early

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<sup>2</sup> Élie Halévy, *The Growth of Philosophic Radicalism*, Mary Morris trans., (Faber & Faber, 1934, second edition).

<sup>3</sup> But most scholarly attention is on administration and legislation, few on judicial reform. William Holdsworth, "Bentham's Place in English Legal History," *California Law Review* 28, (1940), 568-86. Oliver MacDonagh, "The Nineteenth-Century Revolution in Government: A Reappraisal," *The Historical Journal* 1, (1958), 52-67. Henry Parris, "The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised," *The Historical Journal* 3, (1960), 17-37. L.J. Hume, "Jeremy Bentham and the Nineteenth-Century Revolution in Government," *The Historical Journal* 10, (1967), 361-75. Ursula Henriques, "Jeremy Bentham and the Machinery of Social Reform," in *British Government and Administration: Studies Presented to S.B. Chrimes*, ed. H. Hearder and H.R. Loyn (University of Wales Press, 1974), 169-86.

<sup>4</sup> William Thomas, *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817-1841* (Clarendon Press, 1979), 2.

<sup>5</sup> Joseph Hamburger, *Intellectuals in Politics: The Philosophic Radicals* (Yale University Press, 1965), 1.

<sup>6</sup> William Thomas, *The Philosophic Radicals*, 10-11.

<sup>7</sup> J.R. Dinwiddy, "Early-Nineteenth-Century Reactions to Benthamism," *Transactions of the Royal Historical Society* 34, (1984), 56.

nineteenth century. They could look back to the example of Francis Bacon.”<sup>8</sup> The seventeenth-century Lord Chancellor proposed a moderate and gradualist method to rationalise both statute law and common law, and rejected any radical change of the relationship between common law and legislation. This reformist tradition conflicted with Bentham’s criticism of common law. During Bentham’s lifetime, Bacon’s method was more influential. As David Lieberman writes, “Bacon’s legislative teaching, along with Matthew Hale’s authoritative statement of the strengths of customary law, ranked among the most influential of inheritances shaping professional attitudes to law reform.”<sup>9</sup>

The reconstruction of a different reformist tradition has not completely denied Bentham’s existence. Instead, it has encouraged more detailed empirical studies. Michael Lobban has provided the most comprehensive account of Bentham’s theoretical influence on the debate over codification in the 1820s. In 1991, he noted that Benthamite reformers’ campaigns for radical law reform reached their most extensive publicity in February 1828, when Henry Brougham delivered a six-hour speech to the House of Commons. “This speech led to the creation of two Royal Commissions to examine the law of real property and the procedures and practices of the common law courts, these two subjects being in effect the cornerstones of the common law.”<sup>10</sup> However, Lobban argues that Brougham’s attitude towards common law was not so critical as Bentham’s.<sup>11</sup> Lobban also examines the Royal Commissions on Real Property, on Common Law Courts, and on Criminal Law. In short, Lobban has proposed an interpretation that reformers were more influenced by Bentham’s analytical thinking by than his radical measures such as codification. “We must divide Bentham in two: the formal analyst of legal concepts, and the substantive codifier...the legal disciples of Bentham tended to follow him only in the first sphere.”<sup>12</sup>

Lobban accurately identifies the limitations of Bentham’s influence by revealing that most members of those Royal Commissions opposed Bentham’s codification and natural procedure. However, because his research focus is on policy changes, Lobban is less interested in Bentham’s personal contacts with politicians and reforming activists, or in the progress of his writing. The latter is

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<sup>8</sup> Michael Lobban, “‘Old wine in new bottles’: the concept and practice of law reform, c. 1780-1830,” in *Rethinking the Age of Reform Britain 1780-1850*, ed. Arthur Burns and Joanna Innes (Cambridge University Press, 2003), 120.

<sup>9</sup> David Lieberman, *The Province of Legislation Determined: Legal theory in eighteenth-century Britain* (Cambridge University Press, 1989), 182.

<sup>10</sup> Michael Lobban, *The Common Law and English Jurisprudence 1760-1850* (Clarendon Press, 1991), 191.

<sup>11</sup> *Ibid.*, 192.

<sup>12</sup> *Ibid.*, 186.

pointed out by Philip Schofield, who suggests that although “Lobban’s explanation of the nature of law reform in the 1820s and 1830s is convincing...Lobban perhaps underestimates the progress which Bentham did in fact make on his substantive codes.”<sup>13</sup> Then Schofield provides some facts to show that during this period, Bentham was still active in political networking, and productive in writing.

In 2006, Schofield’s *Utility & Democracy: The Political Thought of Jeremy Bentham*, provided by far the most comprehensive account of Bentham’s activities in the politics of law reform between 1824 and 1832. If in Lobban’s intellectual and legal study, Bentham is treated as an isolated writer, Schofield’s account presents a different image. Schofield suggests that Bentham was a close observer of the political climate, and in the 1820s developed a twofold strategy to influence public opinion: “While publicly disseminating his ideas through the press, he worked privately to influence leading politicians, particularly those who had shown some degree of sympathy for reform.”<sup>14</sup> Then, Schofield outlines Bentham’s associations with Robert Peel and Henry Brougham, and reconstructs Daniel O’Connell’s neglected but important role in promoting Bentham’s law reform. Schofield also offers the first study of Bentham’s Law Reform Association project. These cases are analysed in a condensed way in one chapter, which leaves some room for a more detailed and expanded study. Meanwhile, Schofield lists numerous sources and historic figures who associated with Bentham. These sources and names suggest the extent and nature of Bentham’s networks, providing an opening for me to follow.

Schofield’s research focuses on the development of Bentham’s ideas. His account of Bentham’s network serves mainly as background to see what factors influenced the philosopher’s intellectual progress, which is limited in finding out the historical significance of Bentham’s networks and their political implications. Also, Schofield’s study does not cover all of Bentham’s law reform activities, such as Bentham’s prison reform, which has been thoroughly examined by Janet Semple. From 1786 to 1813, Bentham not only wrote enormous manuscripts on various projects, but also actively lobbied for the Panopticon. As Semple observes, “Bentham emerges as a personality very different from the reclusive philosopher of popular mythology.”<sup>15</sup> Semple makes use of Bentham’s correspondence to reconstruct his Panopticon network. Bentham approached his father and

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<sup>13</sup> Philip Schofield, “‘Professing liberal opinions’: The common law, adjudication and security in recent Bentham scholarship,” *The Journal of Legal History* 16, (1995), 362.

<sup>14</sup> Philip Schofield, *Utility & Democracy: The Political Thought of Jeremy Bentham* (Oxford University Press, 2006), 306.

<sup>15</sup> Janet Semple, *Bentham’s Prison: A Study of the Panopticon Penitentiary* (Oxford University Press, 1993), 1.

brother, the reforming Whigs, William Pitt's administration, and government lawyers. A vivid picture of private lobbying is presented. Moreover, Semple carefully analyses the change of Bentham's attitudes towards officials, lawyers, and MPs, in the context of Georgian politics. She argues that Bentham's attitudes reflected his complex personality, the authoritarian attitude of British elites towards reform during the age of French Revolution and war, and the impact of earlier reforming ideas such as John Howard's prison design.<sup>16</sup>

Another case study is Bentham's relationship with the land law movement between 1826 and 1832. Although Mary Sokol's estimate of Bentham's theoretical influence is not much different from Lobban's, she adds many details of Bentham's personal associations with the commissioners who investigated the land laws from 1828. Sokol also analyses Bentham's writings in their specific contexts, and argues:

Bentham had two approaches in his dealings with fellow lawyers and the Real Property Commission. Mostly he was content to argue specific points as they were raised by others, and this could be called his public agenda, which was to bring his ideas to bear on as many of the issues raised as possible...But Bentham also had another, a secret agenda, which was to write about and plan for an all-comprehensive utilitarian reform of property law.<sup>17</sup>

For example, Sokol notes that Bentham excluded his criticisms of James Humphreys' *Observations on the Actual state of the English Laws of Real Property with the Outlines of a Code* (1826) from his published review, which demonstrates that Bentham moderated his radical agenda in public when he saw no clear advantage in doing otherwise.

Semple and Sokol's studies have uncovered how Bentham utilised networks of reforming lawyers and politicians to project law reform in the press and parliament. However, the networks are still viewed as background factors for explaining Bentham's intellectual development. This preference continues in the latest case study of Bentham's relationship with Henry Brougham, by Chris Riley in 2019. Riley has closely read Bentham's commentary on Brougham's proposals to reform local courts, and points out the importance of political culture as the historical context to understand both men: the "debate between Bentham and Brougham might be able to be better contextualised among

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<sup>16</sup> Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary*, 273.

<sup>17</sup> Mary Isobel Sokol, "Jeremy Bentham and the Real Property Commission of 1828," (PhD dissertation, University College London, 1994), 23, 94.

competing Whig and Tory schemes”.<sup>18</sup> Furthermore, Riley reconstructs Bentham’s thought process, or how Bentham applied utilitarianism to judge Brougham’s commitment to reform. The implication of Riley’s work for future research is that it demonstrates how little we have explored about the lived dimension of ideas, especially in private dialogues and unpublished writings. As Fred Rosen has argued, Bentham’s ideas were not produced in an isolated environment.<sup>19</sup>

## II Bentham, the Enlightenment, and reformers’ networks

The above section shows that the current estimation of Bentham’s impact on the early-nineteenth-century law reform movement, mainly takes an intellectual approach. Legal and intellectual historians have found few direct contemporary references to prove the causality between Bentham’s ideas and the rise of the law reform movement. This thesis attempts to add a new perspective from which to examine Bentham’s contribution, especially through his role as an agent of Enlightenment beliefs. More specifically, it aims to cast a new light on Bentham’s impact by using and interpreting Bentham’s massive correspondence through the lens of cultural history. Instead of using Bentham’s correspondence to trace his intellectual development, a cultural approach aims to reconstruct Bentham’s epistolary networks, and to discuss the interactions between Bentham and other law reformers.

The choice of a cultural approach to Bentham’s correspondence is not only stimulated by the idea of looking at an old question from a different perspective, but also inspired by recent historiography. Firstly, according to Peter Burke and Donald Kelley, by comparison with intellectual history, cultural history emphasises collective beliefs rather than individual psychology and mental phenomena.<sup>20</sup> Following this distinction, the Enlightenment in its collective dimension, not the ideas of individual thinkers, is a suitable subject for cultural history. This point was stressed by John Gascoigne and Roy Porter’s studies of the English Enlightenment. Both Gascoigne and Porter have argued that more attention should be placed to “a large mass of intellectually less eminent figures”. The activities of those less studied figures, such as Joseph Banks, played a key role in shaping the deferential

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<sup>18</sup> Chris Riley, “The Hermit and the Boa Constrictor: Jeremy Bentham, Henry Brougham, and the Accessibility of Justice,” *The American Journal of Legal History* 60, (2019), 4.

<sup>19</sup> Fred Rosen, “Review of William Thomas, *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817-1841*,” *The Bentham Newsletter* (May 1981), 62.

<sup>20</sup> Peter Burke, *What is Cultural History?* (Polity Press, 2004), 49-50. Donald Kelley, “Intellectual history and cultural history: the inside and the outside,” *History of the Human Sciences* 15, (2002), 2.

character of the English Enlightenment, whereby new ideas coexisted harmoniously with established values. The “Enlightenment in England became part of the everyday currency of intellectual and social life”.<sup>21</sup> Or as Peter Clark has concisely argued, “the broad membership of societies may have promoted a wider, more participatory Enlightenment than the brilliant but elitist cultural worlds found in France or Germany”.<sup>22</sup>

Bentham was first and foremost an Enlightenment figure, and his contribution to the politics of law reform would therefore be expected to contain some features of Enlightenment thought. The first aspect of this is Bentham’s scientific character. As A.D. Lindsay wrote in the preface to Halévy’s book, Bentham and his followers deeply believed “in the possibilities of applying to the study of man and society the principles and methods of the physical sciences”.<sup>23</sup> Bentham aspired to be the “Newton” of moral sciences. In *A Fragment on Government* (1776), young Bentham observed his own time with enormous optimism: “The age we live in is a busy age; in which knowledge is rapidly advancing towards perfection...Correspondent to *discovery* and *improvement* in the natural world, is reformation in the moral.”<sup>24</sup> Clearly Bentham was observant of the scientific networks around him. He and his younger brother Samuel Bentham, the navy architect, associated with Fellows of the Royal Society, discussing inventions such as the air pump to be installed in the Panopticon prison.<sup>25</sup> Bentham’s scientific optimism brings to mind studies by Ian Inkster, Adrian Desmond, Richard Holmes, Jenney Uglow, and Michael Brown, who have shown how Britain’s vigorous informal scientific networks encouraged competing views of society and politics, and enriched the meaning of political participation.<sup>26</sup> The Lunar Society of Birmingham (1756) discussed Rousseau’s ideas and welcomed the collapse of the Bastille in July 1789. The Physical Society at Guy’s Hospital organised a controversial public lecture on “Animal Vitality” in January 1793, proposing “an openly materialist thesis that no ‘spark of life’ was divinely conferred, and that no soul was implanted by some external

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<sup>21</sup> John Gascoigne, *Joseph Banks and The English Enlightenment: Useful Knowledge and Polite Culture* (Cambridge University Press, 1994), 3,33-4. Roy Porter, *Enlightenment: Britain and the Creation of the Modern World* (Penguin Books, 2000), 11-23.

<sup>22</sup> Peter Clark, *British Clubs and Societies 1580-1800: The Origins of an Associational World* (Oxford University Press, 2000), 443.

<sup>23</sup> Élie Halévy, *The Growth of Philosophic Radicalism*, v.

<sup>24</sup> *A Comment on the Commentaries and A Fragment on Government*, ed. J.H. Burns and H.L.A. Hart (The Athlone Press, 1977), 393.

<sup>25</sup> Bentham to John Forster, April/May 1778, in *The Correspondence of Jeremy Bentham* [hereafter *Correspondence*], vol. 2, ed. T.L.S. Sprigge (The Athlone Press, 1968; UCL Press, 2017), 110.

<sup>26</sup> Ian Inkster, *Scientific Culture and Urbanisation in Industrialising Britain* (Ashgate, 1997). Adrian Desmond, *The Politics of Evolution: Morphology, Medicine, and Reform in Radical London* (University of Chicago Press, 1992). Richard Holmes, *The Age of Wonder: How the Romantic Generation Discovered the Beauty and Terror of Science* (Pantheon Books, 2008). Jenny Uglow, *The Lunar Men: The Friends who made the Future 1730-1810* (Faber & Faber, 2003). Michael Brown, “‘Bats, Rats and Barristers’: The *Lancet*, libel and the radical stylistics of early nineteenth-century English medicine,” *Social History* 39, (2014), 182-209.

source”.<sup>27</sup> The disadvantaged medical classes’ *The Lancet* (1823) promoted “an essentially Benthamite” vision of medicine, appealing for “meritocracy, disinterestedness and, above all, scientific expertise”.<sup>28</sup> The Society for the Diffusion of Useful Knowledge in London (1826) advocated a milder attitude towards political change, turning “the thinking artisans and middle classes away from the gutter-press infidels”.<sup>29</sup>

Bentham’s self-designated field was moral science. He positioned himself alongside the leading Enlightenment figures Adam Smith, David Hume, Voltaire, and Helvetius, and aspired to be a scientific legislator. Bentham’s decision to use the law, rather than religious teaching, to achieve “reformation in the moral”, reflects his preference for the notion of a “science of legislation”, which distinguished him from Evangelical reformers such as William Wilberforce.<sup>30</sup> Moreover, Bentham’s critical attitude towards established religious teachings has been associated with the radical democratic trend of the Enlightenment.<sup>31</sup> According to Jonathan Israel, this trend was inspired by the Dutch philosopher Baruch Spinoza: “On Spinoza’s principles, society would become more resistant to being manipulated by religious authority, autocracy, powerful oligarchies and dictatorship, and more democratic, libertarian and egalitarian.”<sup>32</sup> This trend advocated the separation of science and morality from theology, arguing that moral and legal issues could be grounded solely on secular criteria.

Another way in which Bentham was a child of the Enlightenment was that his scientific optimism involved experiment and entrepreneurship, or the culture of “projecting”. The word “projector” was used by Bentham to describe himself: “I am a projector—an avowed advocate for projectors: I am as far as wishes and endeavours go an innovator: my whole life has been, and what remains of it will be, devoted to the pursuit.”<sup>33</sup> Bentham’s identification with projectors encourages one to consider whether there existed a collective pursuit to experiment with emerging scientific ideas before

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<sup>27</sup> Richard Holmes, *The Age of Wonder*, 145.

<sup>28</sup> Michael Brown, “‘Bats, Rats and Barristers’: *The Lancet*, libel and the radical stylistics of early nineteenth-century English medicine,” 207.

<sup>29</sup> Adrian Desmond, *The Politics of Evolution*, 30.

<sup>30</sup> Donald Winch, “The Science of the Legislator: the Enlightenment Heritage,” in *The State and Social Investigation in Britain and the United States*, ed. M.J. Lacey and M.O. Furner (Cambridge University Press, 1993), 63-91. Joanna Innes, “Politics and morals: the reformation of manners movement in later eighteenth-century England,” in *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford University Press, 2009), 179-226.

<sup>31</sup> Philip Schofield, “Jeremy Bentham: Prophet of Secularism,” South Place Ethical Society (2012), 5.

<sup>32</sup> Jonathan Israel, *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy* (Princeton University Press, 2010), 2.

<sup>33</sup> Quoted in Philip Schofield, “Jeremy Bentham, the French Revolution and political radicalism,” *History of European Ideas* 30, (2004), 399.

Bentham's time. Koji Yamamoto's study has proved this point. He argues that English projectors of 1640-1720 "highlighted the confidence in human art's ability to conquer nature".<sup>34</sup> This confidence survived well beyond the early eighteenth century and extended beyond England. For example, Bentham and his brother in the 1780s were actively projecting their innovative ideas in private meetings and correspondence. Jeremy Bentham hoped to be hired by an Enlightened ruler to rationalise penal laws and Samuel Bentham wanted his new shipbuilding designs to be appreciated by the public.<sup>35</sup> Bentham also invested money in the enterprises of other projectors, such as Robert Owen's New Lanark cotton mills.<sup>36</sup>

British projecting culture could not have existed without the proliferation of social networks in the eighteenth century. As Jon Mee has stated, "Eighteenth-century Britain was a heavily networked domain self-consciously committed to the dissemination of improvement."<sup>37</sup> It was not difficult for Bentham to find a supporter in those networks. When he started organising supporters for reformist schemes in the 1780s, there had been many networks which were supporting projectors; as Peter Clark has observed, if "a British Enlightenment did exist, then one of its principal engines was the Georgian voluntary societies".<sup>38</sup> Scottish spy John Macky observed in the 1720s that London had "an infinity of clubs or societies for the improvement of learning".<sup>39</sup> In 1768, Bentham was introduced to a private dining club by Dr George Fordyce the chemist, and there he made acquaintance with Joseph Banks the botanist, Robert Milne the architect, and Alexander Cumming the watchmaker.<sup>40</sup> These societies institutionalised Enlightenment beliefs, encouraging private groups and individuals to aspire to participation in public-policy making and other forms of community life. They were also the avenues for intellectual exchange and social alignment, as young Bentham was keen to make himself known in London scientific circles, and complained in 1788 how uncomfortable it was when he "could add nothing to the interest of the Club".<sup>41</sup>

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<sup>34</sup> Koji Yamamoto, *Taming Capitalism before its Triumph: Public Service, Distrust, and 'Projecting' in Early Modern England* (Oxford University Press, 2018), 5.

<sup>35</sup> Ian R. Christie, *The Benthamites in Russia, 1780-1791* (Berg, 1993).

<sup>36</sup> Estrella Trincado & Manuel Santos-Redondo, "Bentham and Owen on entrepreneurship and social reform," *The European Journal of the History of Economic Thought*, (2014), 252-277.

<sup>37</sup> Jon Mee, "Introduction," *Journal for Eighteenth-Century Studies*, (2015), 475.

<sup>38</sup> Peter Clark, *British Clubs and Societies 1580-1800: The Origins of an Associational World* (Oxford University Press, 2000), ix.

<sup>39</sup> Quoted in Peter Clark, *British Clubs and Societies 1580-1800*, 1.

<sup>40</sup> T.L.S. Sprigge ed. *The Correspondence of Jeremy Bentham*, vol. 1, (UCL Press, 2017), xxviii.

<sup>41</sup> *The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols. (Edinburgh, 1838-43) [hereafter Bowring], x. 183.

Access to the networks of improvement was uneven, and Bentham's eagerness reflects his social position. The young, obscure, and briefless barrister was sensitive to his social inferiority and was not alone in envisioning an egalitarian future. Thomas Paine, William Godwin, Richard Price, Joseph Priestley, and their followers were advocating that by "ingrafting representation upon democracy we arrive at a system of government capable of embracing and confederating all the various interests and every extent of territory and population".<sup>42</sup> Radical intellectuals' aspiration for democratic sociability and governance is often linked with the concept of "the bourgeois public sphere" proposed by Jürgen Habermas, who admired the pragmatic and democratic traditions in Anglo-American thought, and emphasised the function of coffee houses in constructing a British "authentic public" which protected inclusive critical discussion from "courtly convention". A clear boundary between open associations and private associations was drawn, and the tradition of private associations "fell prey to its own ideology" at the turn of the eighteenth century.<sup>43</sup>

In 2011 David Lemmings observed an emerging scholarly orthodoxy in eighteenth-century studies that describes "the 'public sphere' of relatively open association" as one of "the most creative characteristics of English society".<sup>44</sup> Paul Langford's interpretation forms a key part of this orthodoxy. With the enrichment and rise of the middling entrepreneurs from the 1750s, clubs proliferated and became vehicles for expressing new literary and philosophical aspirations of "a dynamic, increasingly urban society". Although there were barriers to regulate the size and social conduct of associations, "all aspiring to gentility were expected to mix freely, without the crippling respect for rank and hierarchy which was associated with the artificial manners of an earlier age".<sup>45</sup> Increasingly open associational activities helped to shape a democratic political culture. As in the Middlesex elections in the 1770s and 1780s, the weapons of the parliamentary reformers were "the pamphlet and the treatise, their ammunition facts and statistics, their battleground the debating clubs and literary societies".<sup>46</sup>

James Epstein developed the study of diverse public spheres by analysing their relationship with the law: "The public sphere is never independent of the law's sanction, for the law can demand that the

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<sup>42</sup> Jonathan Israel, *A Revolution of The Mind*, 69.

<sup>43</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (The MIT Press, 1989), 35, 57.

<sup>44</sup> David Lemmings, *Law and Government in England during the Long Eighteenth Century: From Consent to Command* (Palgrave Macmillan, 2011), 13.

<sup>45</sup> Paul Langford, *A Polite and Commercial People: England 1727-1783* (Oxford University Press), 100, 101-2.

<sup>46</sup> *Ibid.*, 720.

public sphere account for itself within the law's own domain... 'Free' speech was only possible outside such public spaces [of the coffee house, tavern, debating club, street, or meeting room]; free publication was only possible for privately printed and circulated works."<sup>47</sup> Here, Epstein defined a clear boundary between public and private spheres. Private spheres, such as the small and exclusive clubs of Enlightenment writers who were strictly pursuing "rational sociability and the truth-bearing properties of unrestricted conversation", were not considered dangerous by the authorities. Moreover, Epstein suggests that these private activities were too intellectual to be politically influential. Their conversations were full of abstract principles which were inaccessible to the less educated.

However, as Anna Clark has observed, the ascendancy of the public sphere as a key heuristic concept produced a tendency of "celebrating all that was local, popular, feminine, fluid and open as opposed to the denigration of all that was national, official, masculine, static, and closed".<sup>48</sup> Popular associations were romanticised, but private networks were neglected. This tendency perhaps needs a correction. According to John Brewer, in the early and middle eighteenth century "[m]ost lobbies recognised that large-scale demonstrations were not the means to achieve their ends. It was far better to employ a small body of well-informed and well organised lobbyists".<sup>49</sup> Private communication led by an expert group was preferred for several reasons. When parliamentary sessions became regular and predictable, and the accessibility of parliamentary information was improving, interest groups realised that the traditional tactic for redress of grievances, presenting a petition, became increasingly difficult and expensive. Instead, the cost was much lower for a small body to attend long parliamentary days and solicit MPs personally. Thus, interest groups concentrated on searching for people of connection, expertise, and reputation. Small standing committees were established to take the role of representatives of the interest groups, and they stayed in the metropolis to monitor the House of Commons proceedings. By the late eighteenth century, this had become a common commercial practice: "Such committees...met regularly in one [*sic*] the coffee houses or taverns in the Palace Yard...Here they coached witnesses before they appeared before the house or a select committee, [and] treated both officials of the commons and MPs to food and drink."<sup>50</sup>

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<sup>47</sup> James Epstein, *In Practice: Studies in the Language and Culture of Popular Politics in Modern Britain* (Stanford University Press, 2003), 95.

<sup>48</sup> Anna Clark, "Contest Space: The Public and Private Spheres in Nineteenth-Century Britain," *Journal of British Studies* 35, (1996), 273.

<sup>49</sup> John Brewer, *The Sinews of Power: War, Money and the English State 1688-1783* (Harvard University Press, 1989), 195.

<sup>50</sup> *Ibid.*

Among the professions who played a key role in private lobbying, Brewer emphasised the legal profession. Legislative drafting and other procedures all required specialised knowledge and administrative skills which privileged lawyers. Bentham had mixed feelings about the role of lawyers in legislation during his lobbying for the Panopticon. On the one hand, he firmly believed that he was superior to the government lawyers in producing a useful law so that his ultimate failure upset him intensely and led him to think that these lawyers were corrupt, and that the procedures of legislation had been abused. On the other hand, he allied with some reform-minded working lawyers and sought the combination of his philosophy with their practical knowledge and connections. The latter situation became a pattern in Bentham's career as a reformer. After the Panopticon, he continued to search for reform-minded working lawyers.

Bentham's associational world was closely linked with the world of English lawyers. He occupied a chamber in Lincoln's Inn for many years and became a governing member (a bencher) from 1817. He met lawyer friends there through daily conversations, dinner parties, joint subscription for a foreign periodical, and his own publications. His lawyer friends such as Samuel Romilly<sup>51</sup>, Charles Sinclair Cullen<sup>52</sup>, and Joseph Parkes<sup>53</sup> actively supported law reform. These facts relate Bentham to the associational culture of the bar. David Lemmings has argued that in the late eighteenth century, the bar became more of an exclusive and aloof community than ever before. With the decline of legal business, legal education, and communal life from the late seventeenth century, the bar had gradually given up the idea of a popular and inclusive community. Judges and barristers became keen on displaying their professional and social superiority over attorneys and non-lawyers. Social dinners developed "rules of etiquette designed to insulate barristers from 'improper' contact with clients, witnesses, and especially attorneys".<sup>54</sup> Legal education became more about cultivating a gentlemanly environment to enhance the association between barristers and aristocrats. Fees were raised higher as the propertied elite became willing to pay more. This trend was sustained by the

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<sup>51</sup> Samuel Romilly (1757-1818), a well-connected Chancery practitioner, Solicitor-General in the Whig government of 1806-7, and leader of criminal law reform movement in parliament in 1808-18. His relationship with Bentham is the theme of my first chapter.

<sup>52</sup> Charles Sinclair Cullen (1788-1830), grandson of famous Scottish medical professor William Cullen, commissioner of bankrupts, and played an active role in assisting Bentham to establish a Law Reform Association from December 1829 to June 1830. This history of this association is the theme of my fourth chapter.

<sup>53</sup> Joseph Parkes (1796-1865), legal expert in election politics supporting Bentham's radical and Whig friends, founder and chief editor of a legal magazine called *The Jurist* (1827-1833). The history of this journal and Parkes' role will be discussed in my fifth chapter.

<sup>54</sup> David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford University Press, 2000), 302. Francis Calvert Boorman, "The political space of Chancery Lane, c. 1760-1815," (PhD dissertation, Institute of Historical Research, University of London, 2013), 130-6.

transformation from aristocracy to plutocracy in the late eighteenth century, while the new rich often emulated aristocrats' lifestyle and patronising attitude towards the less privileged.<sup>55</sup>

In the middle of the eighteenth century, the volume of litigation was at its lowest point for centuries, and barristers struggled to survive. They tactically made procedures more complex in order to receive higher fees. Successful practitioners such as John Scott (Lord Eldon) actively encouraged such practices and opposed any substantial change. Under the rule of leaders like Eldon, the culture of the bar upset Bentham, who said that "great oppression is exercised by the seniors towards the juniors".<sup>56</sup> Bentham also persuaded his first client (a suitor) to give up prosecution because the complexity of procedure meant that he would be charged more money than he claimed. Later, Bentham used this experience as an example to attack judicial corruption in *Indications Respecting Lord Eldon* (1825), and in 1831 *The Examiner* also reported Bentham's experience: "These things, and others of the same complexion, in such immense abundance, determined me to quit the profession...I found it more to my taste to endeavour...to put an end to them, than to profit by them."<sup>57</sup>

However, as David Sugarman has demonstrated, reform only became a popular topic among lawyers' voluntary societies from the mid-nineteenth century.<sup>58</sup> It appears that lawyers in general were slower to respond "the age of reform" than other social groups, and Bentham's criticism of the legal profession received little approval in public political debates, as legal historians have argued. However, this thesis aims to pay more attention to private spheres. The lived dimension of Bentham's ideas might modify Habermas' neat distinction between public and private spheres. As Roy Porter has suggested, "real people politicking" or "the strategies of contesting elites within the ideas market" in "shifting boundaries between the public and private" should be given more attention in understanding the institutional changes of late Georgian England.<sup>59</sup> This thesis agrees with Porter that the boundary between private and public spheres was always shifting, fluid, and blurred. Adding to this picture, Bentham's networks from the 1790s to the 1830s reveal more of the ambiguities between public and private spheres and their political implications.

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<sup>55</sup> Paul Langford, "The Uses of Eighteenth-Century Politeness," *Transactions of the Royal Historical Society* 12, (2002), 311-331. Boyd Hilton, *A Mad, Bad, and Dangerous People? England 1783-1846* (Oxford University Press, 2006), 110-194.

<sup>56</sup> Bowring, x. 186.

<sup>57</sup> "Plunderage of the Chancery Suitors", *The Examiner*, Feb 27, 1831, 139.

<sup>58</sup> David Sugarman, "Bourgeois collectivism, professional power and the boundaries of the State. The private and public life of the Law Society, 1825 to 1914," *International Journal of the Legal Profession* 3, (1996), 100.

<sup>59</sup> Roy Porter, "Rethinking Institutions in Late Georgian England," *Utilitas* 6, (1994), 65-80.

### III Chapter Organisation

Bentham's activity in the 1820s is the least studied part of the existing historiography because his later correspondence has not been edited and published. Thanks to the help of the Bentham Project of UCL, I received in 2018 a digital manuscript of the forthcoming volume 13, which includes the letters from July 1828 to Bentham's death in 1832. Along with the published 12 volumes of Bentham's *Correspondence*, these newly edited letters indicate that Bentham actively communicated with some of the leading law reformers of his time. Specifically, there are 62 surviving letters with the Whig lawyer Samuel Romilly (1757-1818); 31 surviving letters with the Tory politician Robert Peel (1788-1850); and 49 surviving letters with the Irish leader Daniel O'Connell (1775-1847). The scholarly usage of these letters is fragmented. James Crimmins discovered most of the surviving letters between Bentham and O'Connell, and produced a general account on the two men's relationship between 1828 and 1831.<sup>60</sup> Norman Gash and Boyd Hilton have made a partial usage of Bentham's letters with Peel.<sup>61</sup> No case study on Romilly's relationship with Bentham has been made. Therefore, the aim to reconstruct Bentham's networks and analyse their relationship with reform culture, has only been partially realised. This thesis aims to use the letters with all three men to uncover a longer history of Bentham's networking.

The selection of the three men is justified by the following reasons. Firstly, they are important either to the general law reform opinions of the time, or to Bentham's own thinking about law reform. Romilly and Peel have received unevenly attention in the historiography of criminal law reform.<sup>62</sup>

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<sup>60</sup> James E. Crimmins, "Jeremy Bentham and Daniel O'Connell: Their Correspondence and Radical Alliance, 1828-1831," *The Historical Journal* 40, (1997), 359-387.

<sup>61</sup> Norman Gash, *Mr. Secretary Peel, The Life of Sir Robert Peel to 1830* (Longmans, 1961), 308-343. Boyd Hilton, "The gallows and Mr Peel," in *History and Biography: Essays in Honour of Derek Beales*, ed. T.C.W. Blanning and David Cannadine (Cambridge University Press, 1996), 88-112.

<sup>62</sup> Of Romilly's role, see Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750, vol. 1, The Movement for Reform* (Stevens & Sons Limited, 1948), 497-525. Richard R. Follett, *Evangelicalism, Penal Theory and the Politics of Criminal Law Reform in England, 1808-30* (Palgrave Macmillan, 2001), 46-66. Of Peel's role, historians debated on his motives, or how liberal and humane he was during the 1820s, Norman Gash, *Mr. Secretary Peel*, 308-343. V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford University Press, 1994), 566-579. Boyd Hilton, "The gallows and Mr Peel," 88-112. K.J.M. Smith, "Anthony Hammond: 'Mr. Surface' Peel's Persistent Codifier," *Journal of Legal History* 20, (1999), 24-44. Simon Devereaux, "Peel, Pardon and Punishment: The Recorder's Report Revisited," in *Penal Practice and Culture 1500-1900: Punishing the English*, ed. Simon Devereaux and Paul Griffiths (Basingstoke, 2004), 258-284. Richard A. Gaunt, *Sir Robert Peel: The Life and Legacy* (I.B. Tauris, 2010), 59-80. Brenda Gean Mortimer, "Rethinking Penal Reform and the Royal Prerogative of Mercy during Robert Peel's Stewardship of the Home Office 1822-7, 1828-30," (PhD dissertation, University of Leicester, 2017). My Peel chapter develops Smith and Devereaux's insights about the cultural and political contexts in the 1820s, and argues that personal political stress and religious identity influenced Peel's attitude towards law reform in general and Bentham in specific.

O'Connell did not leave many parliamentary speeches on judicial reform, and was not involved in any law reform commissions either. Understandably most legal historians have not paid much attention to him. However, he left many letters with Bentham and one of the key topics of those letters is law reform, which provides sufficient reason for constructing a parallel chapter to follow those on Romilly and Peel.

Secondly, the three law reformers can represent the three main political factions that were dominant at the time: Whig (Romilly), Tory (Peel,) and Radical (O'Connell). This is important for observing how "political" Bentham's networking was, and also the nuances of Bentham's utilitarian language in communicating people of different political ideologies. Also, the relationships of the three men with Bentham happened in a roughly sequential order. Romilly's friendship with Bentham was forged before the French Revolution when Bentham and many Whigs were communicating and embracing radical political possibilities for a more meritocratic and openminded society. Romilly's unexpected death in 1818 put an end to Bentham's collaborative relationship with the Whig party. Bentham was disappointed with Romilly and other Whig lawyers such as James Mackintosh at issues like codification and constitutional reform. When the Whigs were experiencing a difficult time in searching unifying and popular agendas in the late 1810s and early 1820s, Bentham looked to abroad for launching legislative projects. Before Henry Brougham approached him in late 1827 for preparing a law reform speech, however, Bentham's attention had been attracted by Robert Peel's law reform projects. Peel, a young energetic Tory Home Secretary with a growing reputation for effectiveness and practicality from 1822, stirred Bentham's mind, and gave the aging reformer (then 74) hopes that Peel might approve his plans because of their similar approach to administrative reform. Moreover, recent studies on Brougham and Bentham have revealed their sharp intellectual division, and how angrily Bentham reacted when he felt betrayed by Brougham's promises. Bentham felt that Brougham had abused his expertise for a project of very different nature, which stimulated Bentham to accuse Brougham's moral and intellectual qualities.<sup>63</sup> Such a revelation makes Bentham's continuous attempts to lobby Peel more logical as well. The thesis omits Henry Brougham for two reasons. Firstly, Bentham's relationship with the Whigs has been covered by the Romilly chapter, and to discuss the interactions between Bentham's universalism and the political divisions after the French Revolution, is this thesis' central theme, and adding Brougham in may lead

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<sup>63</sup> Chris Riley, "The Hermit and the Boa Constrictor: Jeremy Bentham, Henry Brougham, and the Accessibility of Justice." 1-26.

discussion to a relatively uncertain direction. Secondly, Brougham's relationship with Bentham has already been discussed in the literature (e.g. Riley, Lobban).

O'Connell's involvement clearly shows the element of opportunism in Bentham's networking. In February 1828 Bentham was either ignored or directly criticised in the House of Commons by Brougham and Peel.<sup>64</sup> He felt increasing difficulties in directing these two to accept utilitarianism. In the following months, Bentham published anonymous newspaper articles to criticise Brougham and Peel's law reform ideas. In a mixed mood of uncertainty, disappointment, and loss, Bentham noticed a newspaper article (the *Morning Herald*) on 15 July 1828 which recorded O'Connell's public speech on 10 July after he had won the by-election of County Clare, and mentioned Bentham as his mentor and law reform as his priority in parliamentary politics. Bentham immediately approached the rising radical politician, and pushed himself into the world of learning the techniques of popular politics in a transforming age which public opinion was becoming a dominant but uncertain force, in competition against the Whigs, Tories, and other Radicals.

After discussing individual law reformers, the thesis will analyse Bentham's Law Reform Association. The sources relating to the Law Reform Association have been carefully documented by Philip Schofield.<sup>65</sup> This opens a door for me to explore more details about the individuals involved and their relationship with Bentham. The last chapter is based on a legal periodical called *The Jurist or Quarterly Journal of Jurisprudence and Legislation* (1827-1833), which has been digitised in the Hein Online Law Journal Library. Such an arrangement of five cases aims to recover the tendency of Bentham's networking, and how his private networks sustained radical law reform. In the first three cases, Bentham's lobbying was mainly personal and private. The fourth case reveals that Bentham took a more active strategy and attempted to attract a popular following. The fifth case discusses Bentham's role as an ideological icon for a younger generation of law reformers.

The choice of Law Reform Association as the fourth chapter and *The Jurist* as the fifth chapter, is determined by the thread of Bentham's law reform networking. During his communication with O'Connell, Bentham was encouraged by the prospect that O'Connell might help to organise a popular association and bring Bentham's democratic and anti-lawyer ideas out at wider networks.

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<sup>64</sup> HC Deb., 7 Feb. 1828, vol. 18, 127-247. HC Deb., 29 Feb. 1828, vol. 18, 894.

<sup>65</sup> Philip Schofield, *Utility & Democracy*, 304-336.

Closely following Bentham's network strategizing, the Law Reform Association is both a significant event in Bentham's political life, and a consequence of his previous networking experiences. Bentham's planning of the Association revived some of his formal political contacts. Briefly, Bentham was driven by his typical opportunistic approach after having noticed that law reform had been described as a national agenda in the King's Speech on the State Opening of Parliament of 1830. On the other hand, Bentham was driven by a growing anxiety to assert his version of law reform after Peel had portrayed the issue as highly technical in nature, and dissuaded many non-lawyer parliamentarians. Leading figures in judiciary introduced piecemeal and particularistic approach to limit the pace and direction of law reform. In this de-politicalising process, while law reform was supported by cross-party members, Bentham's radical voice was of limited influence. He felt that the water of reform was muddied by insincere participants and speakers, and developed a sense of urgency to purify opinions.

*The Jurist* is a law periodical, a collective anonymous publishing project organized by several editors and contributed by many authors, and sustaining this project from 1827 to 1833 (in 1830 and 1831 it was inactive) required communication and networking between editors and contributors. By adding *The Jurist* into my narrative, one purpose is to reveal and analyse more forms of Bentham's law reform networking. The reason for discussing it after the Law Reform Association chapter, is that it was established without Bentham's direct involvement, by contrast with Bentham's initiative in communicating with Romilly, Peel, and O'Connell, and recruiting members for the Law Reform Association, which suggests that *The Jurist* can reflect the spread of Bentham's influence beyond his core circles. Moreover, *The Jurist* tasked itself to instruct British readers to view legislation and jurisprudence as scientific knowledges, and criticised the existing system of legal training as comparatively outdated, useless, and confusing. With such a specific aim, it is unsurprising that most identified participants are young law students and openminded practitioners, which suggests that *The Jurist* can reflect how young reform minded lawyers viewed Bentham's role in their relatively independent campaign. Thus, the three factors, its relationship with Bentham, publishing purpose,

and membership, explain why *The Jurist* is more suitable for analysing Bentham's law reform networking results than the *Westminster Review*.<sup>66</sup>

In Chapter One, Bentham's relationship with Samuel Romilly will be discussed. Their friendship persisted from 1784 to Romilly's death in 1818. During these years, Romilly was often asked by Bentham to advise on law reform projects such as the Panopticon prison, Scottish civil court reform, and codification. Romilly was a successful lawyer and a well-respected Whig politician who was Solicitor General in the short-lived Whig government of 1806-7. Romilly's connections were helpful when Bentham struggled to approach government lawyers for the Panopticon. Additionally, Romilly connected Bentham with the Whig party during the French Revolution and war. However, different attitudes towards the prospect of radical reform separated Bentham from the Whigs. Romilly's unsupportive attitude towards Bentham's codification project also hastened this separation and increased Bentham's disappointment with the English lawyers.

The conflicts with the Whig reformers in 1817 and 1818, and there being no immediate prospect of a reforming government, diminished Bentham's enthusiasm for lobbying British elites for radical law reform until his correspondence with Home Secretary Robert Peel in 1826. Peel's criminal law reforms gave Bentham new hope. Chapter Two will discuss the relationship between Peel and Bentham. Bentham tried to convince Peel to codify the common law, reduce the salary of police magistrates, and reform the jury system. Peel rejected all these requests, publicly denied any association with codification, and attacked Bentham in parliament. Bentham was not discouraged by the negative responses. Instead, he exploited Peel's compromise over Catholic Emancipation in April 1829, and devised new strategies to influence Peel. The result of Bentham's lobbying will be analysed in detail.

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<sup>66</sup> The more famous Benthamite quarterly publication *Westminster Review* was established, with Bentham's funding (£5,000) and decision to appoint John Bowring, not James Mill, as its chief editor in late 1823. It was aimed to be the official organ of utilitarian reformers who endeavoured for a comprehensive change of British institutions such as school system, the Church of England, parliamentary reform, judicial system and so on, and covered a wider range of topics than *The Jurist*, and so its relevance to judicial reform topics is looser. Besides, the *Westminster Review* has got more scholarly attention. George L. Nesbitt, *Benthamite Reviewing: The First Twelve Years of the Westminster Review 1824-1836* (Columbia University Press, 1934). Frank W. Fetter, "Economic Articles in the Westminster Review and Their Authors, 1824-51," *Journal of Political Economy* 70, (1962), 570-596. Mark Turner, "Defining Discourses: The 'Westminster Review', 'Fortnightly Review', and Comte's Positivism," *Victorian Periodical Review* 33, (2000), 273-282. Michael J. Turner, "Radical Opinion in an Age of Reform: Thomas Perronet Thompson and the 'Westminster Review'," *History* 86, (2001), 18-40.

Chapter Three will discuss Bentham's relationship with Daniel O'Connell. When O'Connell first won the by-election of County Clare in July 1828, he declared himself a Benthamite reformer, with law reform to be a priority agenda once entering parliament. Why would O'Connell be motivated to be a Benthamite law reformer? What were the factors that influenced O'Connell's practice of law reform? I aim to add the context of competing ideas of reform among Bentham, Whigs, Tories and O'Connell. It will be argued that O'Connell's public alliance with Bentham should be contextualised in his personal negotiations with Whigs and Tories. O'Connell's support for Bentham was heavily influenced by the purpose of increasing his bargaining power against the Tories and Whigs. Bentham's correspondence with O'Connell reveals that although in his eighties, Bentham was still energetic in politics.

Chapter Four will discuss Bentham's mobilisation for the Law Reform Association from December 1829 to late 1830. Bentham put great energy into contacting friends to join, designing the rules of administration, and advertising the project. As a result, the association managed to have one meeting on 2 June 1830, which several MPs attended. This project left two lists of names who promised to join the association. By examining these names and their relationship with Bentham, this chapter aims to answer these questions: Who supported Bentham, and why they were interested in Bentham's law reform? How did Bentham manage to build a network and what was the political impact of the Association?

The last chapter is about *The Jurist*. This law journal was founded in March 1827 by KC Henry Bickersteth and Joseph Parkes without Bentham's knowing, but the journal dubbed Bentham the leader of law reformers. It attracted numerous contributors, mostly lawyers, and published 97 articles, mostly anonymous, between 1827 and 1833. Through Bentham, utilitarianism inspired a considerable number of lawyers such as Sutton Sharpe<sup>67</sup> and Edward Strutt<sup>68</sup> to question the common law from philosophical and political viewpoints. I have identified 19 persons involved in this publishing project, and will reconstruct the history of this journal by analysing their connections. Also, through identified articles, I will examine the authors' attitude towards Bentham. Lastly, *The Jurist* received praises from some of the leading reformist newspapers such as the *Examiner* and the *Morning Chronicle*, and criticism from conservative legal writers such as John James Park. An

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<sup>67</sup> Sutton Sharpe (1797-1843), barrister and nephew of the famous poet Samuel Rogers, edited *The Jurist*.

<sup>68</sup> Edward Strutt (1801-1880), barrister and Chancellor of the Duchy of Lancaster (1852-4), contributed at least one article to *The Jurist*.

examination of the journal's membership and literary impact suggests that Bentham's impact on law reformers was more significant than David Lieberman, Michael Lobban, and Philip Handler<sup>69</sup> have estimated.

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<sup>69</sup> Philip Handler follows Lieberman's interpretation to separate Bentham from the Baconian reformist trend. See his "James Mackintosh and Early Nineteenth-Century Criminal Law," *The Historical Journal* 58, (2015), 757-779.

# Chapter I: Samuel Romilly

In 1784, Bentham had dinner with Samuel Romilly, who had enjoyed *A Fragment on Government* (1776). The dinner place was Chancery Lane, near the Inns of Court, where both Bentham and Romilly resided as barristers. The topic of the dinner was social, not political, and they discussed personal hobbies. Bentham liked the fact that Romilly was a cat lover: “Our love for pusses—our mutual respect for animals—was a bond of union.”<sup>1</sup> This friendship was deepened when Bentham returned from his journey to Russia (August 1785-February 1788). By 1788, both were invited by the former Prime Minister Lord Lansdowne to his country estate at Bowood, where the regular guests included innovative writers and scientists (Joseph Priestley and Richard Price) and reforming Whig politicians (Charles James Fox and Richard Sheridan).<sup>2</sup> Lansdowne had been impressed by Bentham’s *Fragment on Government* and Romilly’s *Observations on a Late Publication entitled Thoughts on Executive Justice* (1786).<sup>3</sup>

In August 1788, Louis XVI’s agreement to summon the Estates-General excited Lansdowne’s network. Lansdowne was “a noted Francophile and a diplomat with extensive connections”.<sup>4</sup> He facilitated Romilly’s travel in France in the summers of 1788 and 1789, recommending the young lawyer to French politicians and writers. In November 1789, he invited Bentham to join Romilly in “a weekly meeting club proposed to be formed of the friends of the new principles”, discussing French events.<sup>5</sup> Both Bentham and Romilly were asked to write a guidebook to introduce British parliamentary procedure for the National Assembly. Meanwhile, Bentham wrote *Draught of a New Plan for the Organisation of the Judicial Establishment in France*, expecting the application of his judicial ideas. These literary and political activities strengthened their friendship. They exchanged opinions of each other’s work and Romilly also corrected Bentham’s written French, and recommended Étienne Dumont (tutor of Lansdowne’s son Lord Wycombe) to edit Bentham’s writings. From then on, Romilly became a much-trusted literary advisor to Bentham.

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<sup>1</sup> Bowring, x. 186.

<sup>2</sup> Emmanuelle De Champs, “Jeremy Bentham at Bowood,” in *An Enlightenment Statesman in Whig Britain: Lord Shelburne in Context, 1737-1805*, ed. Aston Nigel and Orr Clarissa Campbell (Boydell & Brewer, 2011), 234.

<sup>3</sup> *Memoirs of The Life of Sir Samuel Romilly, written by himself; with a selection from his correspondence. Edited by his sons*, 3 vols. (John Murray, 1840), vol. 1, 328.

<sup>4</sup> Emmanuelle de Champs, *Enlightenment and Utility: Bentham in French, Bentham in France* (Cambridge University Press, 2015), 97.

<sup>5</sup> *Ibid.*, 99.

During the French Revolution and war, Romilly largely succeeded in slowing down the publicity of Bentham's political radicalism, stopping the publication of his criticism of William Pitt's government, the common law, and jury system. However, after 1815, the domestic political environment encouraged Bentham to choose a bolder publication strategy in the frontline of public debates about institutional reforms. The political differences between Bentham and Romilly were publicised in 1818 when Bentham criticised Romilly during the election.<sup>6</sup> In private, Bentham was much upset by Romilly's review of *Papers relative to Codification and Public Instruction; including Correspondence with the Russian Emperor, and divers constituted authorities in the American United States* (1817, hereafter *Papers relative to Codification*) in the 1817 issue of the *Edinburgh Review*, and formed the opinion that as a Whig lawyer Romilly could not be a democrat. A study of their relationship uncovers the Whig element in the politics of law reform within Bentham's epistolary networks. Romilly's opinions of writings and schemes such as the Panopticon prison, Scottish civil court reform, and legal codification revealed the Whig approach of reform to Bentham. Romilly and many Whig reformers became disillusioned about the prospect of a radical change in the British constitution after the French Revolution. In terms of law reform, they resisted radical changes to the common law.

Previous studies have not reached a consensus about their relationship. Élie Halévy and Patrick Medd incline to see Romilly being more influenced by Bentham, not the other way around, by interpreting Romilly's writings and speeches as a simplified version of Bentham's legal ideas.<sup>7</sup> William Thomas has emphasised Romilly's independence in politics and jurisprudence, citing Romilly's resistance to Bentham's mechanical materialistic worldview, and his identification with Jean-Jacques Rousseau's romanticism and the Whig constitutional tradition from 1688. Moreover, Romilly was a more conventional, successful, and popular political actor than Bentham, and his connections and advice were important for Bentham's networking. Romilly's "death removed the most important political ally Bentham had, the man who could not merely restrain Bentham's extravagances, but understand his aims, and who might in time have helped to realize his legal reforms".<sup>8</sup> However, Thomas viewed Bentham as an isolated writer who was aloof to politics. Richard R. Follett has also downplayed Bentham's impact, and argued that Romilly's parliamentary

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<sup>6</sup> William Thomas, *The Philosophic Radicals*, 44.

<sup>7</sup> Élie Halévy, *The Growth of Philosophic Radicalism*, 299. Patrick Medd, *A Life of Sir Samuel Romilly Lawyer and Reformer* (Collins, 1968), 70.

<sup>8</sup> William Thomas, *The Philosophic Radicals*, 44.

campaign for reforming penal statutes had little to do with Benthamism. Instead, Follett discussed with more details Romilly's intermediary role between Bentham and the broader political world.<sup>9</sup>

This chapter aims to analyse Bentham's correspondence with Romilly. Four themes will be discussed in a roughly chronological order. The first is the Panopticon prison scheme. Bentham tried to acquire the government's approval for building his ideal prison. During the negotiation, Romilly was a conduit for and representative of Bentham's interest. Bentham requested Romilly to press the government lawyers harder but finally realised that both he and Romilly lacked the necessary bargaining power. The second theme is about reforming the Scottish Court of Session. In 1806, Romilly was appointed Solicitor General. During a visit to Scotland, Romilly observed that many young Scottish advocates were interested in the English jury system, and sought the introduction of it to Scotland in civil cases. He kept Bentham informed and advised the philosopher to write a plan. Bentham prepared the plan in the form of a series of public letters addressed to the Prime Minister Lord Grenville. However, the writing was not completed when Grenville's government was dismissed and Romilly resigned. Bentham then developed a radical plan, encouraging Romilly to recommend codification in Scotland. The third theme is libel prosecution. From 1792 to 1810, Bentham critically reviewed the common law, jury-packing, and the history of the Panopticon. He consulted Romilly about publishing them. Romilly's responses and Bentham's decisions will be analysed to see how their political differences became enlarged, and why Bentham became more impatient of Romilly's Whig allegiance. The fourth section will focus on Romilly's review of Bentham's *Papers relative to Codification* in the *Edinburgh Review*. This document and Bentham's comments reveal the breakdown of a loose alliance in the politics of reform between Bentham and the Whigs.

## 1.1 The Panopticon Prison

The problems of English prisons were much exposed in the press after the high sheriff of Bedfordshire John Howard's campaigning for prison reform in the 1770s. The war with American colonists between 1776 and 1783 influenced the transportation of convicted criminals, and Thames ships were modified to become prisons whose conditions were poor, causing high mortality rates. Bentham had long abhorred the harshness and irrationality of the English criminal law, and had been

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<sup>9</sup> Richard R. Follett, *Evangelicalism, Penal Theory and the Politics of Criminal Law Reform in England, 1808-30* (Palgrave Macmillan, 2001), 132.

looking for opportunities to apply his philosophy of reformation into practical problems. He came up with the idea of the Panopticon, a new form of prison, with the systematic surveillance of inmates.<sup>10</sup>

Bentham's Panopticon was based on a different conception from that of the Penitentiary Act of 1779, which viewed religious commitment as the basic element of one's morality and believed that hard labour as a form of physical suffering could convert criminals into religious men, thereby achieving the improvement of morality. Bentham was sceptical of religion's psychological influence. As Janet Semple has argued, "For Bentham, the object of a man's life was to avoid pain and maximize pleasure; the idea of redemption through suffering was repugnant to him; Christianity was a sanction to be used for keeping order."<sup>11</sup> The utility principle inspired Bentham to design the Panopticon (meaning "all-seeing place"), a round building where the inspector would occupy a lodge in the centre and through the designs of windows, blinds, and lights, could see the inmates. But they would not be able to see him. The inmates thus formed an opinion that they were being watched regardless of whether the inspector was watching or not. Bentham believed that the notion of being constantly supervised could best regulate the inmates' behaviour and facilitate the inspector's management. Then, through well-calculated plans of reformation, convicts could be best reformed.

In 1793, Bentham organised a Panopticon model show at his house and invited Prime Minister William Pitt to attend, and Pitt's visit and oral support greatly encouraged Bentham. However, Bentham soon met legal difficulties and realised that, under the Penitentiary Act of 1779, he would have to be appointed by the Crown as a commissioner to build a national penitentiary. Otherwise, the Panopticon would only be viewed as a personal concern which was unqualified for government financing.<sup>12</sup> Moreover, as there was no vacancy in the commission, Bentham was forced to persuade parliament to pass a new law to authorise the Panopticon. Pitt's government promised to support Bentham in the House of Commons.<sup>13</sup> However, there were objections from the government lawyers. On 15 April 1794, Bentham wrote to his stepbrother Charles Abbot, who was a successful barrister, "I hope to God you may have been able to do something with the S[olicitor].G[eneral].: if not, we perish...Mr. L[owndes]. is exercising a negative upon the Bill, a negative which I fear will be effectual. I have not seen him."<sup>14</sup> Solicitor General John Scott and Parliamentary Counsel to the

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<sup>10</sup> David Cannadine, *Victorious Century: The United Kingdom, 1800-1906* (Penguin, 2017), 40.

<sup>11</sup> Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford, 1993), 93-4.

<sup>12</sup> *Ibid.*, 169.

<sup>13</sup> Bentham to an unknown correspondent, c. 11 Aug. 1793, *Correspondence*, vol. 4, ed. A.T. Milne (UCL Press, 2017), 440.

<sup>14</sup> Bentham to Charles Abbot, 15 Apr. 1794, *Correspondence*, vol. 5, ed. A.T. Milne (UCL Press, 2017), 27-8.

Treasury William Lowndes are the two government lawyers referred to. Bentham feared that Lowndes would revise and remove the essential designs of the Panopticon.

Bentham's fear became reality and the final bill, which eventually became the Penitentiary Act of 1794, was substantially different from Bentham's draft. The act still did not enable Bentham to select the land on which the prison would be built, but authorised the Treasury to do so. The 1794 Act was also much simpler than Bentham's conception, which had set out "fundamental safeguards for the health and welfare of the prisoners...restrictions on the powers of the governor".<sup>15</sup> Therefore, Bentham had to lobby the government lawyers harder. But this was difficult for Bentham because he was an outsider and still relatively unknown. Romilly, on the other hand, was a rising figure in the Court of Chancery and Whig clubs, and was to be appointed King's Counsel in 1800. By 1802, he was considered as "the head of the profession both in point of legal accomplishments, general information, and respectability".<sup>16</sup> Therefore, Bentham often asked Romilly to act on his behalf when negotiating with the official lawyers.

Bentham's Panopticon clearly attracted Romilly's approval. On 2 September 1793, during a visit to Scotland, Romilly wrote to Bentham, "I should reproach myself if I were not to give you some account of a panopticon which is building in this City."<sup>17</sup> Romilly saw a semi-Panopticon prison in Edinburgh and learnt that it had recently been built by Scottish architect James Adam. Romilly was told that Adam had taken the idea from Bentham's brother, the naval architect Samuel Bentham. Romilly then reported the details of the building: "It is a semicircular building and differs from your plan very materially in this respect that the cells in which the Convicts are to work are not placed at the outer extremity of the building but look upon the annular well in the Center of which the Inspector's room is placed."<sup>18</sup> Romilly also drew a picture and gave critical observations such as the want of air in the cells.

Apparently Romilly believed in the superiority of Bentham's Panopticon. On 9 March 1794 Romilly commented that he totally approved of Bentham's bill, but was pessimistic about its prospect:

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<sup>15</sup> Janet Semple, *Bentham's Prison*, 174.

<sup>16</sup> *Memoirs and Correspondence of Francis Horner, M.P. Edited by his brothers, Leonard Horner*, 2 vols. (John Murray, 1843), vol. 1, 182.

<sup>17</sup> Romilly to Bentham, 2 Sep. 1793, *Correspondence*, vol. 4, 469.

<sup>18</sup> *Ibid.*

“There is a great deal too much merit in the bill for it to have the smallest chance of passing.”<sup>19</sup> Semple describes Romilly’s observation as “masterly tact”.<sup>20</sup> It is accurate that Romilly was more politically mature than Bentham. Romilly foresaw the conservative objections that Bentham soon faced. By late April 1794, Bentham had been forced to listen to the instruction of the government lawyers, moulding his own philosophic creation into a form that would suit contemporary practice. As Semple notes, “The law officers, Sir John Scott, the Attorney-General, and Sir John Mitford, the Solicitor-General, were, if not obstructive, unhelpful and contributed largely to the procrastination that drove Bentham to despair.”<sup>21</sup> Whenever Bentham managed to present a draft contract, the lawyers would either reject it straightforwardly or wait months to reply. Bentham visited the Treasury many times, waiting for hours at the lobby for a conversation with the Treasury Solicitor, Joseph White. However, no matter how hard he pressed his arguments, Bentham received indifferent and unclear responses. In this context, Romilly’s help, though not significant enough to change the fate of Panopticon, boosted Bentham’s confidence on various occasions.

For instance, in July 1794, Romilly recommended to Bentham a legal ally called John Anstruther, who was a Scottish Whig lawyer. John Anstruther was the Chief Justice of the North Wales Great Sessions, and Solicitor General to the Prince of Wales. Intellectually, he shared with Bentham a common interest in Enlightenment ideas. He had been a student of John Millar at the University of Glasgow in the early 1770s. Millar was Regius Professor of Civil Law from 1761 to 1800, and his work *Observations Concerning the Distinction of Ranks in Society* influenced Scottish jurisprudence greatly. These factors indicate that John Anstruther lived in an intellectual environment open to innovative ideas. He might well have heard Bentham in Lansdowne’s salon or at a Whig dinner club, and he expressed an interest in the Panopticon to Romilly. Therefore, Romilly wrote to Bentham, “I told him[Anstruther] I would use my Interest with you to procure him a sight of it [a Panopticon model].”<sup>22</sup> Moreover, Romilly shrewdly added that Anstruther “is very intimate with the [Lord] Chancellor and has considerable influence on him”.<sup>23</sup> Romilly practised in the Court of Chancery, and the then Chancellor was Alexander Wedderburn. Wedderburn was a Scot as well, and politically he was a moderate Whig who had followed the Duke of Portland to join in Pitt’s wartime cabinet in January 1793. Intellectually, Wedderburn had been an active member of Edinburgh’s club life, advocating a series of social improvement measures, and even once speaking for the radical Wilkes

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<sup>19</sup> Romilly to Bentham, 9 Mar. 1794, *Correspondence*, vol. 5, 17-8.

<sup>20</sup> Janet Semple, *Bentham’s Prison*, 173.

<sup>21</sup> *Ibid.*, 193.

<sup>22</sup> Romilly to Bentham, 27 Jun. 1794, *Correspondence*, vol. 5, 49-50.

<sup>23</sup> *Ibid.*, 50.

in the House of Commons. Romilly must have known Wedderburn's history and formed the opinion that he could be an ally.

However, the connection with Anstruther and Wedderburn appears not to have been effective enough to defy Scott's obstruction. In April 1797, Bentham found suitable land in Tothill Fields, Westminster, and attempted many times to contact the Treasury to discuss legal matters. Since January 1797, the government lawyers had delayed giving a definite answer to Bentham's request. In comparison to Bentham's limited influence, Romilly managed to find out Scott's attitude: "He says it is the most unlike an Act of Parliament he ever saw."<sup>24</sup> Several days later, on 1 May, Romilly wrote, "I have attempted several times but in vain to speak to the Atty. and Solr. Genl. I will renew my Attempts tomorrow."<sup>25</sup> Eventually, Romilly learnt the exact legal reason why the bill was rejected, from the Solicitor General, who stated that "the bill was general and that a general bill might in particular Cases be productive of great Injustice".<sup>26</sup>

However, this information did not help much. In December 1797, Romilly learnt that Scott was too busy with other documents to read Bentham's. This time Romilly felt his influence limited as well, and suggested that Charles Butler, an influential Roman Catholic conveyancer, might be a better negotiator. Because Butler and Scott had studied the law in Lincoln's Inn under the same tutor, Matthew Duane the Roman Catholic conveyancer, and Scott had been friendly with Butler and Duane for many years.<sup>27</sup> On 5 March 1798, Scott finally approved the draft but insisted that the bill must be regarded as an enclosure bill, which meant that Bentham would have to wait until the next parliamentary session.<sup>28</sup> Irritated by the continued delays, Bentham grumbled that the Treasury and law officers were forcing him to quit his scheme by the threat of financial ruin.<sup>29</sup>

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<sup>24</sup> Romilly to Bentham, 26 Apr. 1797, *Correspondence*, vol. 5, 365.

<sup>25</sup> Romilly to Bentham, 1 May 1797, *ibid.*, 366.

<sup>26</sup> Romilly to Bentham, 19 May 1797, *ibid.*, 368.

<sup>27</sup> Duane taught Scott for six months without charge. Scott described this help as having "taken a great load of uneasiness off my mind, as in fact our profession is so exceedingly expensive, that I almost sink under it". Quoted in Rose Melikan, *John Scott, Lord Eldon, 1751-1838: The Duty of Loyalty* (Cambridge University Press, 1999), 3.

<sup>28</sup> Before any petition for enclosing land could be presented to the Commons, written notice had to be fixed on the church door of the relevant area for three Sundays in the months of August and September immediately preceding the parliamentary session in which the petition was to be presented. Sheila Lambert, *Bills and Acts: Legislative Procedure in Eighteenth-Century England*, (Cambridge University Press, 1971), 129-149.

<sup>29</sup> Bentham to George Rose, 23 February 1798, *Correspondence*, vol. 6, ed. J.R. Dinwiddy (Clarendon Press, 1984), 7.

Romilly noticed on 2 May 1798 that Scott and Mitford had not read Bentham's paper yet. He pressed hard on them to allow Bentham to see the revised draft before it was transmitted to the Treasury, but this request was rejected. Romilly also enquired whether they had promised Bentham a reply stating any objections, and the answer was, "no recollection of it". This attitude upset Romilly, who admitted that he "could make nothing of" these officers.<sup>30</sup> Afterwards, Romilly continued to assist with Bentham's Panopticon, which turned out to be a long, complex struggle. In early 1803, Bentham was again in a situation which required the government lawyers' approval. Romilly in due course lobbied the new Attorney General, Spencer Perceval, who appeared to be more accessible.<sup>31</sup> However, in June, Bentham admitted the failure of Panopticon.<sup>32</sup> This news exhausted Bentham's interest in the Panopticon for some years.

However, Bentham's reputation was growing in Whig circles. In 1803, Romilly introduced Samuel Parr, a famous Whig political writer nicknamed the Whig Samuel Johnson, to Bentham with these words: "[H]e is so eager in his praise of you to all the world...he had had a long Conversation about you with Cha[rles] Fox so that you see he has formed a party for you has given it a name and is canvassing for the ablest recruits to it."<sup>33</sup> Samuel Parr and Charles James Fox later visited Bentham and saw the Panopticon model.<sup>34</sup> When Fox came into power in 1806, the young journalists of the *Edinburgh Review* called for Bentham's expertise. In 1815, the Scottish philosopher Dugald Stewart said that no writer "can be more exact and judicious" than Bentham when analysing the law of nature.<sup>35</sup> Also, Stewart was a mentor to many Whig politicians, including Henry Brougham, Lord Henry Petty, and Lord John Russell. Stewart's long friendship with Romilly, and their common interest in rationalising the law, indicates that there were more spheres of communication between the philosophical radicals and philosophical Whigs than historians have identified.<sup>36</sup> Therefore, although politically Romilly largely failed to facilitate the Panopticon, socially and intellectually he enlarged the impact of Bentham's ideas.

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<sup>30</sup> Romilly to Bentham, 2 May 1798, *Correspondence*, vol. 6, 26.

<sup>31</sup> Romilly to Bentham, 5 Mar. 1803, *Correspondence*, vol. 7, ed. J.R. Dinwiddy (Clarendon Press, 1988), 207.

<sup>32</sup> Sir Charles Bunbury to Bentham, 15 Jun. 1803, *ibid.*, 240.

<sup>33</sup> Romilly to Bentham, 13 Feb. 1803, *ibid.*, 200-1.

<sup>34</sup> Parr to Bentham, 8 Feb. 1803, *ibid.*, 198.

<sup>35</sup> J.H. Burns, "Bentham and the Scots," *Journal of Bentham Studies*, (2004), 12.

<sup>36</sup> Biancamaria Fontana, *Rethinking the Politics of Commercial Society: The Edinburgh Review 1802-1832* (Cambridge University Press, 1985), 160. Stefan Collini, Donald Winch and John Burrow, *That Noble science of Politics: A study in nineteenth-century intellectual history* (Cambridge University Press, 1983), 91-126.

One important French contact Romilly brought for Bentham was Étienne Dumont (1759-1829). Born in Geneva, educated as a protestant minister, and active in anti-aristocratic politics, but depressed by the oppressive political environment, Dumont had looked for job opportunities abroad. From 1786, he was employed by Lord Lansdowne as a family tutor and librarian. There Dumont renewed his friendship with Romilly. The two first met in 1781 in Geneva during Romilly's visit to his sister, who had married one of Dumont's friends, John Roget (also an admirer of Rousseau). Then, at Bowood, they read together about Whig traditions and Continental ideas. To native English Whigs, Romilly and Dumont represented the cosmopolitan side of Lansdowne's salon.

As already mentioned, Romilly recommended Dumont to edit and translate Bentham's manuscripts on the science of legislation. It turned out to be a turning point of Bentham's literary career when Dumont produced *Traité de législation civile et pénale* in Paris in 1802. Through Romilly and Dumont, Bentham's theory of legislation acquired a certain popularity in France. In September 1802, Bentham visited Paris to see what kind of "impact" *Traité de législation civile et pénale* had made, and whether there would be a better chance for the French government, then under Napoleon's rule, to adopt utilitarianism. During the visit, Bentham was accompanied by Romilly and Dumont, and the private social dinners Bentham attended were entirely arranged by Dumont. Moreover, *Traité de législation civile et pénale* was reviewed favourably by Dumont's friend Jean-Antoine Gallois, a politician in the circle of Napoleon's chief diplomat Charles Maurice de Talleyrand. Bentham was recommended to any nation interested in improvement through reforming legislation, as Gallois wrote: "we think the publication of such a book will be regarded as a blessing for mankind".<sup>37</sup> Steadily *Traité* became a best seller and in April 1803 a copy was formally presented to the *Corps législatif* in Paris.

Bentham's rising reputation did not change the fate of the Panopticon. In June 1810, Romilly, now a former Solicitor General and a leading Whig MP, spoke in the House of Commons, requesting the government to consider the Panopticon. However, Romilly's motion was defeated.<sup>38</sup> Then, in early 1811, the government's attitude softened, and Bentham was contacted about whether he was willing to undertake a modified prison building scheme. He agreed, and in March a House of Commons Committee was appointed to examine the laws relating to the scheme. Though Romilly was not a commissioner, he attended the committee's meeting to support Bentham's friends

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<sup>37</sup> Emmanuelle de Champs, *Enlightenment and Utility Bentham in French, Bentham in France*, 155, 157-8.

<sup>38</sup> Janet Semple, *Bentham's Prison*, 265.

Wilberforce and the Whig MP for Midhurst, James Abercromby.<sup>39</sup> However, the committee was dominated by those who viewed John Howard's theory as superior to Bentham's Panopticon. On 21 January 1812, the committee's chairman, George Holford, abandoned Bentham's plan in the House of Commons. After Holford's speech, Romilly rose to defend Bentham, claiming that "[t]he House would do great injustice to Mr. Bentham's plan", which was more economical and efficient in reforming convicts.<sup>40</sup> On 20 March, Romilly made another effort to defend Bentham's interest, saying that the Panopticon had been approved by Pitt and Lord Melville, two distinguished former statesmen, and that Holford's plan should be amended. However, Romilly failed again. The next day, he wrote to Bentham, "I did for you yesterday as well as I could, not as well as I wished, but better than I expected."<sup>41</sup> The "better [than] expected" result was the committee's decision to compensate Bentham for his investment. Later Romilly provided advice on how to conduct the process of compensation.

During the Panopticon years, Bentham collected sources that he hoped would prove the hypocritical nature of government members' attitudes towards the constitution. For example, on 27 August 1802, Bentham sent to Romilly a letter by the Home Secretary, Lord Pelham, to show how the minister had treated Bentham. Pelham's letter was addressed to Charles Bunbury, MP for Suffolk, who had been interested in Bentham's Panopticon scheme since 1791. Bunbury acted on behalf of Bentham to contact Pelham. On 20 August, Bunbury wrote to Bentham, "I have received the enclosed letter from Lord Pelham, to whom I wrote in favour of the Panopticon Prison, and your strong claims on Government."<sup>42</sup> Pelham's letter stated, "I have received Mr Bentham's papers...it appears to me that to give him any false hopes, would in the present state of his mind, produce the very worst effects."<sup>43</sup> Seven days later, Bentham explained to Romilly: "[T]he 'papers' there spoken of, are papers breathing fire and flame, full of scorn and menace. No small part of the spirit which animated them was extracted from a former opinion of yours...Should their cowardice prove true to me...it will raise the British Constitution in your estimation a few pegs."<sup>44</sup> Seemingly Bentham had debated with Romilly about the British constitution, and his estimation was lower than Romilly's. But Romilly encouraged Bentham to persuade Pelham that rejecting the Panopticon would mean that he preferred to breach the constitution. The background of this argument was the comparison of the

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<sup>39</sup> Romilly to Bentham, 1 Jun. 1811, *Correspondence*, vol. 8, 158.

<sup>40</sup> *Hansard House of Commons Debates* [hereafter HC Deb.], 21 Jan. 1812, vol. 21, 238-9.

<sup>41</sup> Romilly to Bentham, 21 Mar. 1812, *Correspondence*, vol. 8, 242.

<sup>42</sup> Bunbury to Bentham, 20 Aug. 1802, *Correspondence*, vol. 7, 79.

<sup>43</sup> *Ibid.*, note.

<sup>44</sup> Bentham to Romilly, 27 Aug. 1802, *ibid.*, 91.

Panopticon prison with transportation to Botany Bay (began in 1787). Bentham argued that transportation was a violation of a series of laws including the Habeas Corpus Act of 1679 which protected British subjects from “illegal imprisonments beyond the seas”.<sup>45</sup> By emphasising Romilly’s partnership, Bentham invited his Whig lawyer friend to observe Pelham’s response.

## 1.2 The Scottish Civil Court

While the Panopticon project was in dire straits, there was some good news: the formation of the Grenville–Fox ministry in February 1806. Two of Bentham’s old acquaintances, Romilly and Lord Henry Petty, were appointed respectively as the Solicitor General and Chancellor of the Exchequer. Pitt died on 23 January 1806. The new Whig ministry was eager to embrace the idea of reform, distinguishing its members from Pitt’s followers. It was thought that extensive law reform in Scotland would be an excellent showcase of the Foxite Whigs’ fitness to govern. The change of government opinion on Scottish affairs captured Bentham’s attention instantly.<sup>46</sup> On 18 June 1806, in the House of Lords, Grenville moved 15 resolutions to reform the Court of Session. Soon Bentham acquired a copy of Grenville’s speech from Romilly.<sup>47</sup>

During a visit to Scotland in autumn 1806, Romilly kept Bentham informed about the inner situation of the Scottish bar. Many young lawyers felt optimistic about reforming the Court of Session, awaiting some kind of publication which could provide intellectual guidance for reform. Romilly encouraged Bentham to write such a guide. However, this time Romilly more explicitly restrained Bentham’s enthusiasm, for fear that his old friend might ignore the political difficulties once again. Romilly understood that the bitter experience of the Panopticon had radicalised Bentham’s attitude towards lawyerly interference and politicians’ hypocrisy. Bentham had raised his expectations too high after Prime Minister Pitt’s informal approval in 1793. And he had been incautious in evaluating the political difficulties in promoting his innovative project. As Bentham’s lawyer friend, Romilly had witnessed how unfairly the government lawyers had treated Bentham. Thus, he reminded Bentham to be more sensitive this time: “The Lord Advocate tells me, that the project is universally popular;

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<sup>45</sup> Bentham to Bunbury, 9 Aug. 1802, *ibid.*, 72. Of a more detailed analysis, see Bentham, *Writings on Australia*, VI. *A Plea for the Constitution*, ed. Tim Causer and Philip Schofield, pre-publication version (The Bentham Project, 2018), accessed online 24 July 2021, <https://discovery.ucl.ac.uk/id/eprint/10055304/1/6.%20Plea.pdf>

<sup>46</sup> J. H. Burns, “Bentham and Scots,” *Journal of Bentham Studies* 7, (2004), 1-12.

<sup>47</sup> Romilly to Bentham, 18 Jul. 1806, *Correspondence*, vol. 7, 352.

but from other quarters, I have heard a very different account. The old lawyers...do not at all relish it."<sup>48</sup>

On 12 September 1806, Romilly brought more information. On 12 July, a meeting of the Faculty of Advocates had debated Grenville's resolutions. The lawyers who were against the reform proposed a motion to form a committee to investigate the resolutions. "It was settled that if the Motion should be carried the Persons to be named as the Committee should be those who it was known were most adverse to any Reform or as they express it to any Innovation".<sup>49</sup> The friends of the reform managed to adjourn the meeting until November, and the adjournment was carried by a majority of about 80 to 50, which displayed the popularity of reform among Scottish lawyers. However, Romilly continued to emphasise the principal difficulty faced by the reforming lawyers. Grenville's resolutions aimed to introduce the English jury system to Scotland in civil causes.<sup>50</sup> The Court of Session "sat as a body in the French style, and all fifteen judges...deliberated on cases and gave their judgements without the inconvenience of a jury".<sup>51</sup> The introduction of juries would not only involve a check to the power of judges, but also a change in pleading. Scottish lawyers were not sure how far their present forms of pleading would be changed, and what kind of facts would have to be presented to the jury. In other words, they were disputing whether to assimilate the English jury procedures completely or partially. In addition, the Act of Union 1707 protected the existing rules of the Court of Session. Romilly thought that the opponents of reform would use this act as an argument against the introduction of juries.<sup>52</sup>

At the same time, Romilly was actively introducing Bentham's ideas in Whig circles. Romilly was a role model to young Whig lawyers, especially those who had travelled to London from Scotland in search for professional success, such as Henry Brougham and Francis Horner. Brougham and Horner were also the founders of the *Edinburgh Review*, which quickly became a successful "press agent" for the Whigs from 1802. In London, they often visited Romilly's house, discussing intellectual and political topics in front of a bust of Bentham. As Bentham described to his brother on 5 March 1807, they were "fed by Romilly. At Romillys he [Francis Jeffrey, another Edinburgh Reviewer] saw of course the J.B.ian [Jeremy Benthamian] bust and must have learnt completely of Horner how the

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<sup>48</sup> Romilly to Bentham, 5 Sep. 1806, *ibid.*, 372.

<sup>49</sup> Romilly to Bentham, 12 Sep. 1806, *ibid.*, 374.

<sup>50</sup> *Hansard House of Lords Debates* [hereafter HL Deb.], 18 Jun. 1806, vol. 7, 732.

<sup>51</sup> Jim Smyth and Alan McKinlay, "Whigs, Tories and Scottish Legal Reform c. 1785-1832," *Crime, History & Societies* 15, (2011), 114.

<sup>52</sup> Romilly to Bentham, 12 Sep. 1806, *Correspondence*, vol. 7, 375.

land stood [sic].”<sup>53</sup> Bentham believed that his bust impressed Jeffrey. Earlier in 1807, Jeffrey had published an article in the *Edinburgh Review* to call for law reform in Scotland, praising Bentham as “by far the most profound and original thinker who has yet been formed in that [i.e., English] school of jurisprudence” and wished “he could be prevailed on to write on our present subject”.<sup>54</sup>

Romilly’s other social activities also improved Bentham’s reputation. He arranged Bentham’s first meeting with the three Edinburgh Reviewers at Holland House, the social centre of the Whigs.<sup>55</sup> In May 1807, Bentham was asked by Romilly to attend a Whig social dinner to mingle with politicians, journalists, celebrities, and merchants.<sup>56</sup> In August, Romilly again invited Bentham to a smaller Whig dinner, where the famous Whig conversationalists John Whishaw and Richard Sharp were expecting the philosopher.<sup>57</sup> By profession, Whishaw was a lawyer and Sharp was a merchant. They were popular among the Whigs, and Whishaw even acquired the nickname of the “Pope” of Holland House. Later Whishaw became Bentham’s arbitrator in dealing with the Treasury over the issue of negotiating the compensation for the Panopticon scheme. Whishaw also acted as the executor of Romilly’s will, and as guardian to his children.

However, in late March 1807, Grenville’s government was dismissed and Romilly resigned the position of Solicitor General. Bentham had not been able to produce a workable plan for the Court of Session until June 1807, which was published in 1808 under the title of *Scotch Reform...In a series of Letters addressed to the Right Hon. Lord Grenville* (hereafter *Scotch Reform*). He asked Romilly to transmit it to Grenville, expecting him to speak in favour of it in the House of Lords.<sup>58</sup> This plan was a response to Romilly’s encouragement on 27 May 1807, when Romilly had invited Bentham to join a dinner with Whigs, and asked, “Why have not your Letters to Ld. Grenville appeared?”<sup>59</sup> Bentham must have privately discussed with Romilly the strategy of writing public letters. In April 1807, Bentham wrote to his brother, “Romilly and Dumont have both seen” *Scotch Reform*, “both much pleased with it: Romilly more especially”.<sup>60</sup> In August, *Scotch Reform* was one of the few books Romilly brought on vacation.<sup>61</sup> It discussed a series of topics about judicial procedure, including the

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<sup>53</sup> Bentham to Samuel Bentham, 5 Mar. 1807, *ibid.*, 416.

<sup>54</sup> Francis Jeffrey, “Proposed reform of the Court of Session,” *Edinburgh Review*, (Jan. 1807), 483.

<sup>55</sup> Bentham to Samuel Bentham, 22 Aug. 1805, *Correspondence*, vol. 7, 325.

<sup>56</sup> Romilly to Bentham, 27 May. 1807, *ibid.*, 429.

<sup>57</sup> Romilly to Bentham, 12 Aug. 1807, *ibid.*, 441.

<sup>58</sup> Bentham to Romilly, 15[?] Jun. 1807, *ibid.*, 433.

<sup>59</sup> Romilly to Bentham, 27 May 1807, *ibid.*, 429.

<sup>60</sup> Bentham to Samuel Bentham, 9-10 Apr. 1807, *ibid.*, 425.

<sup>61</sup> *Memoirs of the Life of Sir Samuel Romilly*, vol. 2, 234.

appeal process, pleading, the role of juries and the value of written and oral testimony.<sup>62</sup> However, Romilly's interest in *Scotch Reform* appeared to be merely intellectual, not enough to motivate him to speak for it in parliament.

Romilly's hesitation stimulated Bentham to press him to support a radical plan that would codify Scottish law. On 14 May 1808, Bentham consulted Romilly about the codification plan. He sent Romilly a document headed "Propositions designed to serve as a basis for an offer proposed to be made in the form of a Petition to the House of Commons".<sup>63</sup> If Romilly thought there was a chance of persuading parliament, Bentham would devote himself to writing the code. Bentham also invited Romilly for a private meeting: "then I could have full time for consulting you about the requisite papers, and the plan of intrigue. Friends I should hope might not be altogether wanting for such a purpose."<sup>64</sup> It was the first time Bentham had used the strategy of petitioning, and he appeared to be unfamiliar with the related conventions and parliamentary procedure, which is why he needed to ask for Romilly's advice. Bentham also expected Romilly to summon some MP friends. Bentham then introduced the structure of the intended petition. The first part would contain the reasons in favour of the code, or why codification was the best solution to the forms of pleading and jury trial. The second part would be the reasons why Bentham could be trusted as the legislator or draftsman. Bentham anticipated the objection against an offer by an Englishman undertaking to draw up a body of law for Scotland.

Bentham further explained the nature of his offer by comparison with the official plan of establishing a commission to review the Court of Session. This plan was proposed by Lord Chancellor Eldon on 10 August 1807, and passed into law on 4 July 1808 as 48 Geo. III, c. 151. Bentham did not want to be appointed to the commission, and asked Romilly not to use his political clout in such a direction. "To be one of them, I have neither expectation nor desire. The task for which I wish to offer myself is of a very different kind. In offering myself for it, especially the terms considered, I certainly do not attempt to stand in any body's way."<sup>65</sup> Instead, Bentham wanted parliament to accept his personal offer through Romilly's petition. However, there was no precedent for such an unconventional style

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<sup>62</sup> *Scotch Reform; considered, with reference to the Plan, proposed in the Late Parliament, for the regulation of the Courts, and the Administration of Justice, in Scotland: with Illustrations from English Non-reform: in the course of which divers imperfections, abuses, and corruptions, in the Administration of Justice, with their causes, are now, for the first time, brought to light. In a series of Letters, addressed to the Right Hon. Lord Grenville* (London, 1808) (Bowring, v. 1-53).

<sup>63</sup> Bentham to Romilly, 14 May 1808, *Correspondence*, vol. 7, 483.

<sup>64</sup> *Ibid.*, 484.

<sup>65</sup> *Ibid.*

of petitioning. It was also unusual for an Englishman to recommend himself to draft a body of laws for Scotland. But Bentham believed in Romilly's support and was confident that he would be persuaded by the utilitarian reasoning in the document and by a private conversation: "This I make no doubt of your thinking: this I make as little doubt of your being ready and willing to say in the House, if in and by saying it you saw any prospect of success."<sup>66</sup> Bentham also welcomed others to contribute to the code. He thought that such a reform should be discussed openly in the press so that the code could receive more critical reviews than any selected official commission.

Bentham knew that his strategy was unconventional, and Romilly's personal commitment was not enough to persuade other MPs at the present stage. Therefore, he added a more practical reason. If Romilly's motion were rejected "by the influence of the present Administration, still it might be not altogether without fruit".<sup>67</sup> If the next government could be more supportive, then Romilly's motion could be a precedent preparing way for the next endeavour. For Romilly's motion, Bentham planned to get Francis Horner's support. Horner was MP for Wendover in Buckinghamshire, but "being a Scotchman, should stand up and say" that he supported Bentham's codification proposal as the best means of regulating jury trials and providing an accessible and fair judicial service for the public. Codification was described as a method to increase both professional and public checks on the power of judges.<sup>68</sup> Speaking of codifiers, Horner would emphasise Bentham's personal experience in jurisprudence and public spiritedness:

A man, who, though to be sure he has not yet prepared any such work, having never had any encouragement so to do, has however for these four and forty years been preparing himself for preparing it: and for his encouragement, neither wanting nor choosing to accept of money, wants nothing but such assurance as the House may be disposed to give.<sup>69</sup>

Bentham expected parliament to accept his voluntary offer, and in terms of his credibility as a legislator, the endorsement of Horner and Romilly was thought to be sufficient. Bentham hoped that Horner's speech would highlight the point that Romilly, as an eminent working lawyer, fully believed in the merits and feasibility of Bentham's code. The intended effect was to persuade other lawyer MPs that the code was realistic. Moreover, Bentham argued that his reform would not reduce the

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<sup>66</sup> Ibid., 485.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid., 485, 487.

<sup>69</sup> Ibid., 485.

business of “the most eminent among the lawyers”. In other words, Bentham thought that codification could build a meritocratic system in the profession.

Romilly was not convinced by Bentham’s claims. He explained to Bentham on 20 May that because the code had not been written he could not review it to give an opinion.<sup>70</sup> On the same day, Bentham replied to Romilly to ask for a more clarified explanation of why the arguments in the “Propositions designed to serve as a basis for an offer proposed to be made in the form of a Petition to the House of Commons” were not enough. Bentham compared his offer with the task of the Court of Session commission. Both were merely giving a promise of completing the task in the future. But if the commissioners were authorized and paid, why could he not be treated equally? Bentham could not believe in the possibility that Romilly would doubt his expertise: “Now this work, is a work, for the execution of which I have been endeavouring to qualify myself any time these 40 years, and which no other person that you know of, qualified or unqualified, is so much as *disposed* to execute.”<sup>71</sup>

Bentham reminded Romilly of his own previous complaint about the commissioners being ill qualified, and asked for an explanation as to why he could not express this criticism in parliament. Moreover, Bentham emphasised the voluntary nature of his offer. Why were Romilly and parliament willing to pay the commission, while objecting to Bentham? In late May 1808, Romilly replied. He thought Bentham’s request too unconventional, “a step totally different from the usual course of parliamentary proceedings”.<sup>72</sup> But Romilly did not clarify which part was unconventional. He only explained: “Petitions complaining of grievances are laid on the table of the House, but as to plans for the public advantage, they must be the subject of some specific motion...by some member proposing that they should be the subject of a law.”<sup>73</sup> Romilly claimed that he was not persuaded to support codification, and thus objected to proposing such a motion for Bentham. Moreover, the idea of transforming all laws into a code seemed beyond Romilly’s imagination; as he said, “If anybody can execute such an enterprise as you project...I believe it is you; but I do doubt whether even you can execute it.”<sup>74</sup>

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<sup>70</sup> Romilly to Bentham, 20 May 1808, *ibid.*, 488.

<sup>71</sup> Bentham to Romilly, 20 May 1808, *ibid.*, 489.

<sup>72</sup> Romilly to Bentham, [?] late May 1808, *ibid.*, 504.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

### 1.3 Libel Prosecution

By Romilly's judgement, Bentham's criticism of the law and government tended to provoke government opposition. This section will analyse Romilly's role in dissuading Bentham from publishing *Truth versus Ashurst; or law as it is, contrasted with what it is said to be* (hereafter *Truth versus Ashurst*) in 1793; *A Picture of the Treasury, with a Sketch of the Secretary of State's Office under the Reign of the Duke of Portland, under the Administrations of the Rt. Hon. W. Pitt and the Rt. Hon. H. Addington* (hereafter *A Picture of the Treasury*) in 1802; and *The Elements of the Art of Packing, as applied to Special Juries, particularly in Cases of Libel Law* (hereafter *The Elements of the Art of Packing*) in 1810. Bentham took Romilly's suggestions about all three writings, and delayed the publication of *Truth versus Ashurst* and *The Elements of the Art of Packing* until the arrival of a favourable publishing climate in the 1820s. *A Picture of the Treasury* was never finished and printed.<sup>75</sup> On the other hand, through private communications, Bentham continued to reveal the problems of the law and government to Romilly, expecting the latter to admit the necessity of radical reform.

*Truth versus Ashurst* was related to the French Revolution and its impact on political debates in Britain. "Ashurst" referred to a judge of King's Bench called William Henry Ashurst. On 19 November 1792, Ashurst delivered a charge to a Middlesex Grand Jury, denouncing the French Revolution and its English admirers. After the September Massacres in France, the name of reform became repulsive to many Englishmen. Ashurst thought it would be a good occasion to respond to the popular feeling in a grand jury trial, telling the jury and other audiences that the common law, especially the jury trial, was a blessing to Englishmen: "Gentlemen, there is no Nation in the world that can boast of a better System of Government than that under which we have the happiness to live."<sup>76</sup> Ashurst's charge was soon printed by many loyalist societies such as the Constitutional Association, and "circulated with no small industry", as Bentham wrote.<sup>77</sup> Bentham disagreed with Ashurst and wrote a pamphlet in response. Bentham analysed Ashurst's arguments one by one, pointing out how

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<sup>75</sup> Bentham to Dumont, 29 Aug. 1802, *ibid*, 97 note 14. Bentham to Romilly, 31 Mar. 1811, *Correspondence*, vol. 8, 117 note 4.

<sup>76</sup> *The advantage of a national observance of divine and human laws. A discourse in defence of our admirable constitution. By a country post-master. To which is added, Mr. Justice Ashurst's most excellent charge to the Grand Jury, for the county of Middlesex* (J. Bush, 1792), 23.

<sup>77</sup> *Truth versus Ashurst; or Law as it is, contrasted with what it is said to be* (London, 1823) (Bowring, v. 232).

deceptive they were. For example, Ashurst said, “No man is so low as not to be within the law’s protection.” Bentham wrote that the truth was totally different. The poor were excluded from access to justice, and as the law was so uncertain and complex, the rich were at the mercy of lawyers. How “comes this? From extortion, monopoly, useless formalities, law-gibberish, and law-taxes”.<sup>78</sup>

After Bentham prepared the manuscript, he sent it to Romilly for advice on publication. In January 1793, Romilly replied, “the publication of it is not likely to do good, and may do harm. The praise given to the French would, I have no doubt, throw discredit on all the truth it contains.”<sup>79</sup> *Truth versus Ashurst* did contain some positive comments on French law and its reform. Refuting Ashurst’s claim that the English law was intelligible to every man, Bentham mentioned the French practice of transforming the unwritten laws, traditions, and customs “into *statute law*”. Bentham approved of this codification effort, and wrote, “The French have done many abominable things, but is this one of them?” He reminded his readers to notice that the Revolution had also produced certain achievements.<sup>80</sup> Bentham also praised the French statutes as being concise and accurate, “with no more words than necessary: not like” the English statutes, “in which I have seen a single sentence take up thirteen such pages as would fill a reasonable volume, and not finished after all: and which are suffered with repetitions and words that are of no use, that the lawyers who draw them may be the better paid for them”.<sup>81</sup> This was attacking both the intellect and morality of English legislative drafting.

Bentham accepted Romilly’s advice and did not publish *Truth versus Ashurst*. In any case, Bentham’s time had been devoted to the Panopticon scheme and he could not afford a public debate against Ashurst. Furthermore, Romilly’s warning was realistic. Had it been published, *Truth versus Ashurst* would have been prosecuted for libel during the time of anti-French sentiment. As Bentham observed in *Truth versus Ashurst*, printed after September 1792, “Lawyers are very busy just now in prosecuting men for *libels*”, but what no judge “has ever done, or ever will do, is to teach us how we are to know what *is*, from what is *not*, a *libel*”. Bentham complained of politicians and lawyers using the law as a discriminative weapon against their opponents: “Oh, my dear countrymen, I fear this

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<sup>78</sup> Ibid., 233.

<sup>79</sup> Romilly to Bentham, Jan. 1793, *Correspondence*, vol. 4, 415.

<sup>80</sup> Bowring, v. 236.

<sup>81</sup> Ibid.

paper is a sad libel, there is so much truth in it.”<sup>82</sup> There was some truth to Bentham’s observation. In 1792, the Attorney General Archibald Macdonald issued 19 ex officio prosecutions for libel. Although Fox’s Libel Act gave the jury full powers over the libel proceedings, it failed to improve the disadvantaged position of the accused. Loyalist jurors could be even more biased than government lawyers, and their anti-French and anti-reform sentiment could be easily mobilised. Besides, the prosecution procedure still allowed judges and lawyers to mislead the jury by interpreting the evidence unfavourably to the accused. Thus, in political libel trials, “the odds were often stacked in favour of the prosecution”.<sup>83</sup>

The libel law did not deter Bentham from writing criticism of the government. In August 1802, Bentham attempted to expose the government’s treatment of his Panopticon project, expecting to enlighten and mobilise popular opinion. Bentham started working on *A Picture of the Treasury* in March 1802, and completed a section headed “On the dispensing power exercised by the Duke of Portland and his confederates” in May.<sup>84</sup> He sent the section to Romilly for publication advice. On 1 November 1802, Romilly replied, “I see no objection to any part of them, but their violence, and the very strong expressions...I really think there is exaggeration in what you say of the Duke of Portland...I do not think that it is a case to talk of a conspiracy formed to assume a legislative power.”<sup>85</sup> Then Romilly concluded that Bentham’s writing, if published, would be prosecuted as a libel on Portland personally. Bentham replied on 2 November, trying to persuade Romilly that *A Picture of the Treasury* was not a libel, urging Romilly to read his evidence (a private letter of Portland): “As to the violence, it would cost me nothing but the trouble of correction to give that up: but the question is, whether the substance could or could not be published safely, when purged from the violence...The word *libel*, from your pen, alarms me.”<sup>86</sup>

*A Picture of the Treasury* records Bentham’s dealings with officials, presenting a vivid description of the daily politics of British administration between 1799 and 1803. Janet Semple has observed:

A picture takes shape of the great men of the Treasury unprotected by guarded entrances and hierarchies of subordinates, working in rooms from which they would emerge into corridors full

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<sup>82</sup> Ibid., 234.

<sup>83</sup> Michael Lobban, “Treason, Sedition and the Radical Movement in the Age of the French Revolution,” *Liverpool Law Review* 22, (2000), 206.

<sup>84</sup> Bentham Dumont, 29 Aug. 1802, *Correspondence*, vol. 7, 97 note 14.

<sup>85</sup> Romilly to Bentham, 1 Nov. 1802, *ibid.*, 154.

<sup>86</sup> Bentham to Romilly, 2 No. 1802, *ibid.*, 155.

of anxious suppliants waiting to press their cases...Bentham lurked in the passages and ante-rooms for days and weeks on end consorting with clerks and porters, awaiting a chance to pounce upon his prey.<sup>87</sup>

In the part criticising Portland, who was Home Secretary between 1794 and 1801, Bentham argued that Portland illegally exercised his executive power, “obstructing, and if possible preventing, the execution of an imperative Act of Parliament...in consequence, of such conspiracy, that the execution of that Act has hitherto been prevented”.<sup>88</sup> Bentham then selected a series of private letters of Portland and his undersecretary John King as evidence showing Portland’s ignorance of the Penitentiary Act of 1794, “preventing Parliament from putting Convicts where Parliament chose to have them put...but he must put them into places of his own choice, where Parliament chose not to have them put”.<sup>89</sup> Portland’s letter of 18 October 1799, cited by Bentham, prioritised transportation over the Panopticon prison, and described the latter only as a temporary depot.<sup>90</sup>

There is no other surviving letter between Bentham and Romilly after Bentham’s reply on 2 November 1802 can tell whether Romilly accepted Bentham’s interpretation of Portland’s letter. However, Bentham neither completed *A Picture of the Treasury* nor publicised his criticism of Portland’s letter, which might suggest that he accepted Romilly’s opinion. Perhaps *A Picture of the Treasury* was too politically controversial in its discussion of the constitutional question of the conflict between executive and legislative powers.<sup>91</sup> In the 1790s, questioning the government’s interpretation of the constitution could hardly win popular support when the propaganda of national security had been used so efficiently by Pitt and his supporters.<sup>92</sup> Bentham felt less confident and decided to return to law reform. Meanwhile, Romilly’s warnings about libel prosecution stimulated his interest in exploring the logical fallacies of existing judicial procedure. In 1809 and 1810, he prepared a critique against jury-packing.

*The Elements of the Art of Packing* was a critical response to the libel trials of the winter of 1808-1809. Portland’s government had prosecuted 26 printers and publishers for libel against the

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<sup>87</sup> Janet Semple, *Bentham’s Prison*, 219.

<sup>88</sup> Transcript of Box 120, fol. 570, Bentham Papers, UCL Special Collections, accessed via Transcribe Bentham, 20 June 2021. <http://transcribe-bentham.ucl.ac.uk/td/JP/120/570/001>

<sup>89</sup> Ibid., accessed via Transcribe Bentham, 20 June 2021. <http://transcribe-bentham.ucl.ac.uk/td/JP/120/570/002>

<sup>90</sup> Janet Semple, *Bentham’s Prison*, 248.

<sup>91</sup> Ibid., 249.

<sup>92</sup> Clive Emsley, “Repression, ‘Terror’ and the Rule of Law in England during the Decade of the French Revolution,” *The English Historical Review* 100, (1985), 801-825.

reputation of the British army and its Commander-in-Chief the Duke of York. Such a large number of prosecutions created fear among journalists, who lamented the erosion of the freedom of speech by unfair libel trials, especially through jury-packing. In the summer of 1809, Bentham was planning to expose the unfair trial procedure and jury-packing with his journalist friend James Mill, thereby hoping to mobilise public opinion to press the government to arrange transparent and fair trials by reforming the existing procedure. On 25 July 1809, Mill wrote to Bentham, "As to 'Elements,' for the outcoming of which I appear to be far more impatient than you...it must be...*published* in six weeks."<sup>93</sup> Bentham was clearly encouraged, writing in the same year that "public opinion has been turned against the Ministry, or rather against all Ministries, and in favour of Parliamentary Reform as the only remedy".<sup>94</sup>

Why were Bentham and Mill so confident? The credibility of Portland's government had been seriously damaged by the Duke of York scandal. In the summer of 1808, the Duke of York's former mistress Mary Anne Clarke had spread rumours in the press that the Duke of York had allowed her to sell army commissions. In January 1809, parliament came to interfere and started an inquiry of 12 parliamentary days, which "became a piece of public theatre, with the pert and saucy Mrs. Clarke, who cheerfully admitted all the charges and implicated the duke, the star attraction".<sup>95</sup> Meanwhile, outside parliament, large protest meetings were organised in Glasgow, Cardiff, Huddersfield, Westminster, Sheffield, and so on. 10,000 people attended the Westminster meeting, and 5,000 in Sheffield, demanding correction of corruption in high places.<sup>96</sup>

The prosecution of the 26 printers and publishers was reported by *The Times* on 20 February 1809.<sup>97</sup> *The Times* argued that the reason why they were targeted was their support for Major Denis Hogan's *Appeal to the Public*, which had supplied details apparently confirming rumours of corruption. Hogan claimed that "he had been passed over for promotion because he had refused to meet Mrs. Clarke's demands".<sup>98</sup> *The Times* discredited Hogan's claim, describing the 26 prosecuted as misguided: "And what is the origin of these men's offences? An error common to them with the prosecutor—a belief

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<sup>93</sup> James Mill to Bentham, 25 Jul. 1809, *Correspondence*, vol. 8, 37.

<sup>94</sup> Bentham to John Mulford, 1809, *ibid.*, 60.

<sup>95</sup> "The Duke of York Scandal, 1809," The History of Parliament, accessed 21 June 2021, <https://www.historyofparliamentonline.org/periods/hanoverians/duke-york-scandal-1809>

<sup>96</sup> Philip Harling, "The Duke of York Affair (1809) and the Complexities of War-Time Patriotism," *The Historical Journal* 39, (1996), 982.

<sup>97</sup> *The Times*, Feb 20, 1809, 3.

<sup>98</sup> "The Duke of York Scandal, 1809," The History of Parliament, accessed 21 June 2021, <https://www.historyofparliamentonline.org/periods/hanoverians/duke-york-scandal-1809>

in the respectability of Major Hogan's character".<sup>99</sup> Such an interpretation of the libel trials did not convince Bentham. On the contrary, he wrote *The Elements of the Art of Packing* to refute *The Times*. Bentham argued that *The Times* "materially" misinterpreted the event to support its uncritical approval of the government prosecutor, who supported the Duke of York's attack on Hogan's character. Bentham appealed for a critical and rational examination of Hogan's claim, to inform the public whether it was a lie or not. If Hogan's claim proved to be authentic, then there was no libel, and the government should withdraw the prosecutions.

Furthermore, Bentham criticised the existing procedure of libel prosecution. "Libel law as it stands, or rather as it floats, is incompatible with English liberties."<sup>100</sup> The Libel Act of 1792 did not give a clear definition of libel, but authorised the jury to decide whether a publication was libellous. Such an arrangement produced the possibility that the jury's opinion could be manipulated by the government prosecutor. "Most prosecutions were commenced by the Attorney General's ex officio information, thereby eliminating the twin filters of preliminary and Grand Jury hearings; consequently, at trial defendants would have no prior detailed knowledge of the prosecution's case".<sup>101</sup> Moreover, the jury could be "packed", and the process of packing was the topic that *The Elements of the Art of Packing* exhaustively analysed.

Bentham argued that special jurors had been a political tool of the government since the Stuart dynasty, "a *standing* body of assessors, instruments tenanted in common by the leading members of administration, by the judges, and by the other crown-lawyers—troops enlisted, trained, and paid by the crown-lawyers—liable to be cashiered".<sup>102</sup> The special jurors were wrongly believed to be a more professional and trustworthy force than ordinary jurors in checking the power of judges. In fact, according to Bentham, the institution of special jury was created to better deceive the public. Bentham described special juries as "a special engine of Corruption".<sup>103</sup> He not only analysed the supposed mechanisms of deception and corruption, but also provided massive evidence from

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<sup>99</sup> Quoted in *The Elements of the Art of Packing, as Applied to Special Juries, particularly in Cases of Libel Law*, first printed in 1810 (London, 1821) (Bowring, v. 65).

<sup>100</sup> Bowring, v. 66.

<sup>101</sup> Keith Smith, "Securing the State, the Institutions of Government, and Maintaining Public Order," in *The Oxford History of the Laws of England*, vol. 13, ed. William Cornish, J Stuart Anderson, Ray Cocks, Michael Lobban, Patrick Polden, and Keith Smith (Oxford University Press, 2010), 335.

<sup>102</sup> Bowring, v. 67.

<sup>103</sup> *Ibid.*, 76.

reforming sheriffs such as Richard Philips.<sup>104</sup> Philips' letter to the Lord Chief Baron of the Exchequer on 4 April 1808 was cited and critically reviewed. For example, Philips observed that the same individuals were selected as special jurors in every trial and argued that this was caused by official negligence. But Bentham interpreted Philips' observation as evidence of the existence of a secret payroll which listed those employed by the government, and argued that the situation was not caused by negligence but by the deliberate policy of aiming to manipulate trials.<sup>105</sup> Bentham then concluded that a biased jury was a product of secretive cooperation between the sheriffs and the Home Office. Bentham's observation is confirmed by Philip Harling, who has demonstrated that special jurors "were men ostensibly of greater wealth and learning than common jurors, who were supposed to be selected randomly from lists drawn up by the sheriffs".<sup>106</sup> In theory, a sheriff organised the jury pool of 48 candidates randomly from all the eligible freeholders within his jurisdiction, so that no party could determine the political sentiments of the candidates. In practice, the jury-selection process was corrupt at every step. The sheriff's book of all eligible freeholders received no public examination, and was easily subject to political manipulation. Some special jurors were selected from a government payroll. They "earned at least a guinea a week for regularly serving...the master of the crown office who presided over the selection process worked hard to ensure that a small crew of trading special jurors...would tilt jury sentiment in favour of the government".<sup>107</sup>

On 31 January 1810, Romilly gave the advice not to publish *The Elements of the Art of Packing*: "I have not the least doubt that Gibbs would prosecute both the author and the printer...you will hardly, I think, reconcile to yourself the involving your printer in the same calamity."<sup>108</sup> Vicary Gibbs was the Attorney General who had prosecuted the 26 printers and publishers. He was a much more aggressive prosecutor than previous Attorney Generals. Between 1808 and 1810, he filed 42 ex officio informations of libel, in contrast to the 14 filed by his predecessors between 1800 and 1807.<sup>109</sup> Romilly might have told Bentham on an earlier occasion about Gibbs' tough attitude towards seditious publication. On 9 June 1809, Romilly had had a conversation with Gibbs in the House of Commons. On that day, Gibbs had planned to bring a bill to strengthen the government's power of suppressing seditious activities. Romilly, who viewed Gibbs' Bill as "a most insidious attack

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<sup>104</sup> Richard Philips (1767-1840) was elected high sheriff of London for 1808, and published *A Treatise on the Powers and Duties of Juries, and on the Criminal Laws of England* in 1811, which was cited by Bentham as an authoritative source.

<sup>105</sup> Bowring, v. 122.

<sup>106</sup> Philip Harling, "The Law of Libel and the Limits of Repression, 1790-1832," *The Historical Journal* 44, (2001), 116.

<sup>107</sup> *Ibid.*, 117.

<sup>108</sup> Romilly to Bentham, 31 Jan. 1810, *Correspondence*, vol. 8, 60-1.

<sup>109</sup> R.A. Melikan, "Gibbs, Sir Vicary 1751-1820," in *The Oxford Dictionary of National Biography* (2009).

upon the liberties of the people”,<sup>110</sup> had managed to stop Gibbs. Now, however, Romilly felt powerless to stop Gibbs from prosecuting Bentham.

Bentham accepted Romilly’s advice, and did not publish *The Elements of the Art of Packing* until 1821. Including *Truth Versus Ashurst*, which was to be published in 1823, Bentham produced several subversive writings about law and government which were not immediately published, and only circulated in private networks, because of Romilly’s advice. This confirms William Thomas’ observation that Romilly’s prudence successfully restrained Bentham’s radicalism.<sup>111</sup> However, Thomas perhaps romanticised the Whig party under the leadership of Earl Grey as embodying the best organisation of British reforming politics, “which combined pragmatism and a strong sense of historical precedent”.<sup>112</sup> Such praise tends to erase the party’s difficult period. Romilly became less active in politics after the collapse of the Whig government in 1807. He seemed to have lost interest in reforming politics. In August 1807, Romilly wrote to Dumont, “What is passing abroad, and what is passing at home, affords us but a melancholy prospect.”<sup>113</sup> War and the tightening restrictions on discussion greatly discouraged moderate reformers. The shadow of the extremism of the French Revolution troubled them, instilling doubts about Enlightenment ideals. At the same time, Romilly developed a more deferential attitude towards the British constitution.<sup>114</sup> His parliamentary diary often referred to constitutional principles such as limiting the power of the Crown by the law, and the separation of government into executive, legislative, and judicial branches. Romilly was also convinced of the popularity of the constitution. As he wrote in 1794 in a letter to Dumont:

[T]here are indeed many persons here who wish a total overthrow of our constitution, and many more who desire great changes in it; but the great majority of the nation, and particularly the armed part of it, (which is at present a very large portion, for volunteer regiments have been raised in every county,) are most ardent zealots for maintaining our constitution as it is, and disposed to think the reform of the most palpable abuse, which has been of long continuance, as a species of sacrilege.<sup>115</sup>

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<sup>110</sup> *Memoirs of the life of Sir Samuel Romilly*, vol. 2, 289-90.

<sup>111</sup> William Thomas, *The Philosophic Radicals*, 44.

<sup>112</sup> *Ibid.*, 440.

<sup>113</sup> *Memoirs of the Life of Sir Samuel Romilly*, vol. 2, 233.

<sup>114</sup> Richard R. Follett, *Evangelicalism, Penal Theory and the Politics of Criminal Law Reform in England, 1808-30*, 58.

<sup>115</sup> *Memoirs of the Life of Sir Samuel Romilly*, vol. 2, 45.

Romilly's hesitation in radical reform might have produced an opposite effect which intensified Bentham's critical attitude towards Whiggism. During the French Revolution and the Whig government of 1806-7, Bentham's politics was largely in line with that of the Whigs. Bentham called the Whig government "*our Ministry*" in a letter to his brother in April 1807.<sup>116</sup> However, as Schofield has noted, Bentham's reaction to the French Revolution was very different than that of the Foxite Whigs. While the latter were upholding Britain's mixed form of government, Bentham was advocating the principle of utility as the sole principle of any legitimate governance.<sup>117</sup> Moreover, both the Panopticon project and the effort to reform Scottish law made Bentham more disappointed at Romilly's moderate approach. In light of Romilly's warnings, Bentham agreed to give up the publication of *The Elements of The Arts of Packing*, but his disagreement with Romilly's gradualism was growing.

## 1.4 Codification

The publication of the *Plan of Parliamentary Reform, in the Form of a Catechism, with reasons for each Article, with an Introduction, shewing the necessity of radical, and the inadequacy of moderate reform* (hereafter the *Plan of Parliamentary Reform*) in 1817 marked Bentham's open separation from the Whig reformers.<sup>118</sup> Bentham could no longer restrain his disapproval of their hesitation and divisions in parliamentary reform. The Whig campaign for parliamentary reform in 1816 and 1817 lacked unified leadership, and within the party, members were divided on the direction and content of reform, disagreeing over what the proper scope of civil liberties should be. The Spa Fields riot in November and December 1816 and the attack on the Prince Regent on 28 January 1817 interrupted the Whig leaders' union. "Grenville's concerns about threats to public order led him to favour a repressive approach at odds with the traditionally libertarian Foxite view."<sup>119</sup> The left-wing leaders Brougham and Grey were alarmed by the party split, publicly objecting to the radical programme proposed by John Cartwright, Henry Hunt, and other radical leaders. In this polarised atmosphere, Bentham joined with the radicals attacking the Whigs.

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<sup>116</sup> Bentham to Samuel Bentham, 9-10 Apr. 1807, *Correspondence*, vol.7, 424.

<sup>117</sup> Philip Schofield, "Jeremy Bentham and the British intellectual response to the French Revolution," *Journal of Bentham Studies* 13, (2011), 2.

<sup>118</sup> Stefan Collini, Donald Winch, John Burrow, *That Noble Science of Politics*, 98.

<sup>119</sup> William Anthony Hay, *The Whig Revival, 1808-1830* (Palgrave Macmillan, 2005), 62.

The *Plan of Parliamentary Reform* argued that the country and the constitution were in an alarming state. Individual liberties were limited by a series of repressive policies, which Bentham termed “Gagging Bills”, including the Habeas Corpus Suspension Act 1817 and the Seditious Meetings Act 1817, both passed in March. Bentham interpreted these laws as evidence of an ineffective constitution, and the solution was radical parliamentary reform: “Long had this sole possible remedy against the otherwise mortal disease of misrule, been regarded by me as the country’s only hope.”<sup>120</sup> Bentham sarcastically analysed the logic of those who claimed that the British constitution was perfect, or that any reform proposal was a conspiracy of those allying with the French to enslave the British. The anti-reformers created a popular fear “with the sacred name of reform on their lips, and nothing better than riot or pillage in their hearts”; “let but a dozen or a score of obscure desperadoes concert mischief in a garret or an alehouse, fear will be pretended—prudence and wisdom mimicked—honest cowards will be made to acquiesce and to cooperate by feigned cowardice...our own Matchless Constitution—matchless in rotten boroughs and sinecures!”<sup>121</sup>

Bentham also thought that a radical solution was necessary because the Whigs were bogus reformers. Bentham claimed that he had once thought the Whigs could be the friends of the people, but recent events suggested that “on no occasion...can the people receive any the slightest chance” of assistance from the parliamentary Whigs.<sup>122</sup> The arguments repudiating the Whigs’ moderate reform have been analysed in detail by Philip Schofield. As he suggests, the pamphlet reminded readers that

the key to political conduct...would be found in the state of interests, and not in professions and protestations. It was possible that a particular individual would not conform to the general rule, due to “the un conjecturable play of individual idiosyncrasies”, but there could be no doubt that a group of men, and particularly a political party “the motives of which are in so great a degree open to universal observation”, would act according to their interests.<sup>123</sup>

Following this logic, it makes sense to review the Whigs’ professions of support for reform, to see whether their party interest was prioritised over the public interest.

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<sup>120</sup> *Plan of Parliamentary Reform* (London, 1817) (Bowring, iii. 435).

<sup>121</sup> Bowring, iii. 435-7.

<sup>122</sup> *Ibid.*, 534.

<sup>123</sup> Philip Schofield, *Utility & Democracy*, 154.

The *Plan of Parliamentary Reform* did not discuss the common law, apart from an observation that the rule of common law was an imagined rule.<sup>124</sup> Bentham had on a private occasion criticised the Whig lawyer James Mackintosh's theory of the common law. In 1799, after the publication of *A Discourse on the Law of Nature and Nations*, Mackintosh had been invited to deliver lectures at the Honourable Society of Lincoln's Inn. He had argued that the substance of common law required no major revision because it had already grown into a "true philosophy" over the years.<sup>125</sup> Moreover, in terms of reform, Mackintosh had highlighted the importance of traditional wisdom and intellectual elites in restraining radicalism.<sup>126</sup> Bentham had attended the lectures and had been introduced to Mackintosh personally. However, he disapproved of Mackintosh's theory. In 1808, Bentham wrote a letter to Mackintosh and claimed that his justification for the common law was "a waste of talents". Further, Bentham argued that lawyers had made use of his lectures to empower their "sophisms", "in readiness to be employed in the service of right or wrong, whichever happened to be the first to present the retaining fee".<sup>127</sup>

The common law was an important element of Whig justifications of the liberal character of the British constitution in the eighteenth century. In political debates, the Whigs argued that the constitution was in constant danger of being corrupted by the Crown and Tories, and that it was their historical role to correct this tendency, as they had successfully done during the Glorious Revolution of 1688. Accordingly, they felt comfortable about William Blackstone's theorisation of the British constitution, which placed the common law in the centre.<sup>128</sup> On the other hand, when the common law was viewed as a source of liberal values, parliamentary activism attracted criticism. Legal writers who identified themselves as the supporters of Whig values, for example, Romilly, concentrated on reforming the statutes. As David Lemmings observes, Romilly's main concern was to correct "a growing culture of positive government which challenged and ultimately supplanted older expectations about citizenship and *active* consent for the rule of law derived from popular participation in juridical processes and the cultural legacy of the common law".<sup>129</sup>

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<sup>124</sup> Bowring, iii. 487.

<sup>125</sup> *Memoirs of The Life of The Right Honourable Sir James Mackintosh*. Edited by his sons, Robert James Mackintosh. Second Edition. 2 vols. (London, 1836), vol. 1, 112.

<sup>126</sup> Philip Handler, "James Mackintosh and Early Nineteenth-Century Criminal Law," 760-1.

<sup>127</sup> Bentham to Mackintosh, 1808, *Correspondence*, vol. 7, 465.

<sup>128</sup> A.D. Kriegel, "Liberty and Whiggery in Early Nineteenth-Century England," *The Journal of Modern History* 52, (1980), 259-60, 262. H.T. Dickinson, *Liberty and Property: Political Ideology in Eighteenth-Century Britain* (Weidenfeld and Nicolson, 1977).

<sup>129</sup> David Lemmings, *Law and Government in England during the Long Eighteenth Century, From Consent to Command*, 178, 141.

We have previously mentioned Romilly's anonymous review of Bentham's *Papers relative to Codification* in the November 1817 issue of the *Edinburgh Review*. The review expressed Romilly's cautious attitude towards codification, which had also been a feature of his rejection of Bentham's codification offer to Scotland in 1808. In the 1817 review, Romilly recommended that his readers should observe the experimental implementation of Bentham's idea in Geneva, and, should it be successful, to consider its application in England. This is a reference to Bentham's friend Dumont's recent activity in the Genevan Representative Council. In May 1817, Dumont had been appointed a member of the commission for the preparation of a new penal code, and had advocated the application of Bentham's ideas.<sup>130</sup> Although disapproving of Bentham's optimism concerning the immediate application of codification in England, Romilly did not discourage further public discussion: "The question, whether the common, or unwritten law, be better calculated than a written code, to provide effectually for the security of men's persons and properties, in a state as far advanced as England is in civilization and refinement, is one of very great public interest."<sup>131</sup> If Romilly's attitude towards codification was vague and uncertain, his attitude towards the common law was more likely to irritate Bentham. Romilly's attitude was in the middle between Mackintosh's praise and Bentham's rejection. Romilly criticised the common law, but by Bentham's standard, his criticism was too mild, and his hesitation in accepting codification was evidence that being a lawyer, Romilly prioritised professional over public interest.

Romilly complained that the common law was too uncertain to be a positive rule of conduct. Unlike statutory laws, the common law had no fixed form and rule of expression. The statutes expressed their commands in direct and positive terms but in the common law, "we can arrive at a knowledge of it only through its interpreters and oracles—the Judges".<sup>132</sup> If the judges' discretionary power were unregulated, the common law would be a disorganised collection of the private opinions of individual judges. This situation caused delay of justice whenever a new question confused judges who "profess themselves unqualified immediately to decide".<sup>133</sup> Delayed process forced litigants to spend more time and money, which made them angry about the cost and efficiency of legal proceedings. Romilly also admitted that the people had no control over the common law, which was a violation of the British constitutional principle that "we are to be governed by no laws but those to

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<sup>130</sup> Cyprian Blamires, *The French Revolution and the Creation of Benthamism* (Palgrave Macmillan, 2008), 302.

<sup>131</sup> "Bentham on Codification," *Edinburgh Review* (Nov. 1817), 222.

<sup>132</sup> *Ibid.*, 222.

<sup>133</sup> *Ibid.*, 223-4.

which the people have, by their representatives, given their consent”; the common law judges were “not the representatives of our choice, but the servile instruments of our monarchs”.<sup>134</sup>

However, such objections to the common law were not sufficient to persuade Romilly to accept codification. In the review, he claimed that Bentham exaggerated and misrepresented the problems of the common law. These two opinions were expressed without giving much explanation, and such a general and vague style of attack could be more damaging because it discouraged the readers of the *Edinburgh Review* from treating Bentham’s writings seriously. “Nothing, in our opinion, can be more injudicious than the manner in which he[Bentham] has, in his various writings, combated existing evils”.<sup>135</sup> On the other hand, Romilly gave a concise opinion as to why English lawyers were unable to transform the common law into a code. Legal education under the common law system cultivated a particularistic mindset. To survive and prosper, a lawyer felt compelled to focus on a few branches. Narrow-minded legal experts found it difficult to understand their colleagues from a different branch of law. Romilly argued that if “the task of compiling a complete code of laws were now to be undertaken, the subject would probably be divided into its different branches, and each would be assigned to those” acknowledged experts. However, there was no centralised leadership in England that could supervise a project like codification that required so much rational deductive planning. Moreover, such a logic of planning was very different from conventional legislation. After all, Romilly argued, “it is chance, not the qualifications of the legislator, which determines upon what he shall legislate”.<sup>136</sup> Furthermore, Romilly did not support Bentham’s idea of a legislative science. In his view, British MPs were ill-qualified legislators, creating legal language that was equally as “uncertain, intricate, obscure, perplexed, [and] inconsistent” as the common law.<sup>137</sup> He did not share Bentham’s optimistic view that MPs could become sufficiently enlightened to replace lawyers and become scientific legislators.

On 7 January 1818, Bentham noticed Romilly’s review.<sup>138</sup> One week later, he commented that Romilly’s review was a calculated response from the Whig party to his public support of radical reform. The critical part of Romilly’s review

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<sup>134</sup> *Ibid.*, 232.

<sup>135</sup> *Ibid.*, 237.

<sup>136</sup> *Ibid.*, 232.

<sup>137</sup> *Ibid.*, 233.

<sup>138</sup> Bentham to John Herbert Koe, 7 Jan. 1818, *Correspondence*, vol. 9, ed. Stephen Conway (Clarendon Press, 1989), 143.

contains a confession—not the less conclusive for being *express*—of the truth of the picture given in Plan. Cat. [*Plan of Parliamentary Reform, in the Form of a Catechism*] of the Whigs. Church cat. [*Church of Englandism and its Catechism Examined*] follows up the blow given in Plan Cat: it goes to the destroying of the whole mass of that matter of corruption which while the Tories feed upon in possession, the Whigs feed upon, and will continue feeding upon while they are anything, in expectancy...As to Romilly when he came to the part in which Sinecures and the overpay of overpaid Offices, with all the other parts of the Mammon of unrighteousness, which he toils to have his share in the disposal of are rolled in the kennel, not improbably, being galled and alarmed, and hence foreseeing more vexation than amusement he stopped there.<sup>139</sup>

The criticism of Romilly's motivation was expressed to John Herbert Koe, Bentham's literary assistant, in a private letter. Bentham chose not to criticise Romilly publicly. However, in private networks, to his close friends of radical political disposition, Bentham interpreted Romilly's review as evidence of the Whig party's decline and corruption, insisting that the Whigs could not be trusted as the friends of the people. As an old friend, Bentham knew Romilly's moral integrity and intellectual power well, which made him even more shocked and upset about Romilly's criticism that Bentham was "injudicious" in attacking the common law. The immediate explanation Bentham thought of was that Romilly had been corrupted by sinister interests. In other words, Romilly's personal interest as a shareholder of the legal profession was a more important force than his commitment to reform and the public interest. If Romilly could be corrupt, those Whigs whose moral integrity and intellectual power were weaker, were even more likely to be corrupt. On 14 January 1818, Bentham wrote to the radical organiser Francis Place, "[W]hat leisure time he [Romilly] had he found it more expedient to employ not improbably after consultation with brother Whigs, in the manner that you know of."<sup>140</sup> Formerly, although Bentham was upset by Romilly's growing conservatism, he had still been confident of Romilly's democratic spirit, stating that Romilly was "more democratic than the Whigs".<sup>141</sup> After reading the review, however, Bentham was convinced that Romilly was trapped in Whig politics, although sentimentally he was a democrat. Bentham wrote on 6 December 1818, shortly after Romilly's death: "His sentiment in favour of the cause of the people went as far as ours. By avowing them in public, he should do harm (he said) to himself, and no good to the cause."<sup>142</sup> On the other hand, Bentham's comments suggest that the growth of democratic sentiment hastened his

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<sup>139</sup> Bentham to John Herbert Koe, 14 Jan. 1818, *ibid.*, 145-6.

<sup>140</sup> Bentham to Francis Place, 14 Jan. 1818, *ibid.*, 147.

<sup>141</sup> Bentham to John Mulford, c.21 Dec. 1812, *Correspondence*, vol. 8, 298.

<sup>142</sup> Bentham to Francis Place, 6 Dec. 1818, *Correspondence*, vol. 9, 294.

separation from the Whig party. In addition, the Whigs also made further public statements against Bentham's radical politics. After Romilly's criticism of Bentham's legal thinking, the *Edinburgh Review* launched an attack on Bentham's political thinking in 1818. Written anonymously by James Mackintosh, the review of Bentham's *Plan of Parliamentary Reform* further publicised the Whig party's strategy of distancing themselves from the democrats. Mackintosh interpreted Bentham's proposal of universal suffrage as a road leading to the tyranny of the majority, arguing: "That the majority of a people may be a tyrant as much as one or a few, is most apparent in the cases where a state is divided, by conspicuous marks, into a permanent majority and minority", such as Ireland.<sup>143</sup>

## Conclusion

From the 1780s to 1818, Romilly played a key role in maintaining the loose intellectual alliance between Bentham and the Whig reformers. However, unlike Bentham, Romilly restrained his philosophical passion, and in parliamentary debates he spoke in moderate and cautious language. To Bentham, this delicate strategy of speaking politely, appropriately, and even deferentially, was exhausting. Romilly constantly suffered the pain involved in self-questioning his moral and intellectual integrity whenever the oppressiveness of the bar conflicted with his egalitarian and humanitarian ideals, as his memoirs suggests.<sup>144</sup> In practice, Romilly always chose to compromise, which attracted sarcastic comments from Bentham. During the Westminster election in 1818, Bentham wrote a handbill to state that "being a lawyer, a Whig, and a friend only to moderate reform", Romilly was unfit to be elected.<sup>145</sup> In his last years, Bentham remembered Romilly's adherence "to the aristocrats. Romilly had the ear of the chancellor [Lord Eldon], and so he got some of his little miniature reforms adopted...In the Court of Chancery great oppression is exercised by the seniors towards the juniors. Many attempts had been made to set the matter right; but Romilly adhered to the aristocrats."<sup>146</sup>

To radical reformers like Bentham, Romilly's self-imposed restraint was viewed as a sign of weakness in pursuing liberal causes. While Romilly and some Whig reformers were promoting criminal law reform, their moderate approach did not attract Bentham. Instead, Bentham moved closer to

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<sup>143</sup> James Mackintosh (anonymous), "Universal Suffrage," *Edinburgh Review* (Dec. 1818), 185.

<sup>144</sup> Reading Romilly's memoirs, R.A. Melikan observed that Romilly had habit of introspection which caused occasions of mental turmoil. Melikan, "Romilly, Sir Samuel, 1757-1818," *Oxford Dictionary of National Biography* (2008).

<sup>145</sup> *Memoirs of the Life of Sir Samuel Romilly*, vol. 2, 365.

<sup>146</sup> Bowring, x. 186.

radicals like James Mill and Francis Place in arguing for radical religious, educational, and constitutional reforms in domestic politics. In terms of law reform, because he felt strong resistance in Britain, Bentham shifted his attention abroad, through his transnational networks, offering codification to American, Russian, and Genevan leaders.<sup>147</sup> After Romilly's death in 1818, Mackintosh took the leadership among parliamentary Whigs on the issue of criminal law reform,<sup>148</sup> but Bentham did not show the same interest in allying with him as he had done with Romilly. Meanwhile, the diminishing prospect of a reforming government sapped Bentham's enthusiasm for lobbying British elites for radical law reform. Bentham turned to his social network of radicals, and enriched his resources in public spheres by funding the *Westminster Review*, further distinguishing himself from the Whigs. On the other hand, law reform ceased to be an exclusively Whig cause when Robert Peel became Home Secretary from 1822, and skilfully made the topic part of the government agenda, displaying an interest in and capability to deliver large-scale reform. In this context, from 1826, Bentham started to lobby Peel.

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<sup>147</sup> Philip Schofield and Jonathan Harris, ed., *"Legislator of the World": Writings on Codification, Law, and Education* (Clarendon Press, 1998), xi-lviii.

<sup>148</sup> Philip Handler, "James Mackintosh and Early Nineteenth-Century Criminal Law," 757-779.

## Chapter II: Robert Peel

Jeremy Bentham's private contact with the Tory Home Secretary Robert Peel (1788-1850) concerning a series of law reform measures between 1826 and 1832 is a central example of his strategy of promoting utilitarianism in legislation.<sup>1</sup> Bentham had attempted to persuade the Whig reformers to accept codification in the 1810s, but had failed. From 1817, he started championing radical parliamentary reform in the press, and his writing and publication of the *Radical Reform Bill* consolidated his alliance with the leaders of the Hampden Club, Thomas Holt White and Major Cartwright.<sup>2</sup> He also engaged in an education reform project, the Chrestomathic School; he contacted and advised the radical agitator Sir Charles Wolseley on his trial; he published in 1820 *The King against Sir Charles Wolseley, Baronet, and Joseph Harrison, Schoolmaster, set down for trial, at Chester, on the 4th of April 1820*, which set out his criticisms of the government's abuse of the law.<sup>3</sup> In his networks, Bentham commented on the trial of Queen Caroline (1820), and helped to organise the London Greek Committee.<sup>4</sup> These activities expanded his networks. By 1823, Bentham was viewed as an intellectual leader by many radical intellectuals. Those people, including James Mill, Francis Place, John Bowring, and Henry Bickersteth, were described by contemporaries as "Benthamites" or Bentham's disciples.<sup>5</sup> They developed networks in the press (the *Westminster Review* from 1823 and *The Jurist* from 1827) and in London's learned societies (the Political Economy Club from 1821 and the London Debating Society from 1825). Through public media and private conversations, Bentham and his disciples were actively promoting the idea that the existing common law and parliamentary statutes needed a radical, rational reform through codification. Their effort echoed the legal codification movements in Continental Europe, especially the Napoleonic Code. However, Bentham emphasised the superiority of his codification principles and expected British legislators to recognise their merits.

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<sup>1</sup> This timeline is based on their 31 surviving letters, which were transcribed in the 12th and 13th of *Correspondence*. The volume 12 is published. See Luke O'Sullivan and Catherine Fuller, ed., *The Correspondence of Jeremy Bentham*, vol. 12 (Clarendon Press, 2006). The volume 13 is in the process of editing. The Bentham Project of UCL kindly supplies me the digital and transcribed version of their 13 letters after April 1827. The citations hereafter will only mention the original source.

<sup>2</sup> Stephen Conway, "Introduction," in *Correspondence of Jeremy Bentham*, vol. 9, xxiv.

<sup>3</sup> Bentham to Wolseley, 3 Apr. 1820, *ibid.*, 414.

<sup>4</sup> Fred Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought* (Clarendon Press, 1992).

<sup>5</sup> According to *The Oxford English Dictionary*, the first public use of "Benthamite" is made by *The Times* on 8 November 1826 citing Irish poet Thomas Moore's poem "The Ghost of Miltiades": "The Ghost of Miltiades came at night, And he stood by the bed of the Benthamite". Accessed May 22, 2021, <https://www-oed-com.libproxy.york.ac.uk/view/Entry/17782?redirectedFrom=benthamite#eid23261085>.

Meanwhile, lawyers outside Bentham's circles also began to discuss codification. In the summer of 1826, with the publication of a leading conveyancer James Humphreys' book *Observations on the Actual state of the English Laws of Real Property with the Outlines of a Code*, the idea of codification attracted many legal writers' comments. However, most working lawyers held a critical attitude, believing that codification would cause more damage than benefit to the common law. They labelled codification a synonym of absolutism and thus dangerous to the Englishman's freedom, which was guarded by the common law and jury system.<sup>6</sup> Meanwhile, in the wider literary sphere, in September 1826, *The Quarterly Review* made the following comment: "We are not fond of the term 'Code'; and fancy that there is something imperial and arbitrary in its sound...so un-English an appellation".<sup>7</sup> Just before these anti-codification opinions became prevailing, on 19 August, Bentham recommended codification and Humphreys' book to Peel.

Bentham regarded himself "as ministering to" Peel's "beneficent designs".<sup>8</sup> On 9 March 1826, Peel announced a plan to submit a bill to improve the administration of justice to the House of Commons.<sup>9</sup> This encouraged Bentham to think that Peel could be persuaded to accept his advice, so he started a private correspondence with Peel from 1 April 1826. However, Bentham did not offer any law reform measures before August, except that on 13 April, he sent Peel a copy of *Draught of a New Plan for the organisation of the Judicial Establishment in France* [hereafter *Draught of a New Plan*].<sup>10</sup> Peel received Bentham's work but made no comment. On 8 May, Bentham asked for Peel's support for journalist James Buckingham's libel case.<sup>11</sup> Bentham tactically characterised Peel as one of "the liberal part of the English Ministry" who "so recently declared, of the beneficial effects of a free press".<sup>12</sup> Then, on 19 August, encouraged by Humphreys' book and Peel's polite attitude, Bentham made his first law reform offer.

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<sup>6</sup> Michael Lobban, *The Common Law and English Jurisprudence 1760-1850*, 195-291. Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828," 72-5. K.J.M. Smith, "Anthony Hammond: 'Mr. Surface' Peel's Persistent Codifier," 36-7; "The Sources and Form of the Criminal Law: The Medium of Change and Development: Consolidation or Codification?" in *The Oxford History of the Laws of England*, vol. 13, 187-193.

<sup>7</sup> At the same time, the journal was calling for more able expertise: "a new code, the validity or sufficiency of which it is for others than ourselves to determine". "Review of Observations on the actual State of the English Laws of Real Property, with the Outline of a Code," *The Quarterly Review*, (Sep. 1826), 563, 577.

<sup>8</sup> Bentham to Peel, 19 Aug. 1826, *Correspondence*, vol. 12, 239.

<sup>9</sup> HC Deb., 9 Mar. 1826, vol. 14, 1214.

<sup>10</sup> Bentham raised the topic of body-supply for medical study on 1 April. And Bentham explained that the work on judicial establishment might be useful for Peel's plan to reform English judicial administration, *Correspondence*, vol. 12, 205-8, 210.

<sup>11</sup> Buckingham's periodical the *Calcutta Journal* was prosecuted and convicted for libel by the East India Company in 1823.

<sup>12</sup> Bentham to Peel, 8 May 1826, *Correspondence*, vol. 12, 214. Bentham also mentioned his *Codification Proposal* having had Peel's acceptance. Of Buckingham's libel case, see G.F.R. Barker, "Buckingham, James Silk 1786-1855" in *The Oxford Dictionary of National Biography* (2008).

Bentham's first request was for Peel's permission to work with Humphreys in codification. Peel diplomatically refused but left an impression that he respected Bentham's legal expertise and wanted to continue their communication by enclosing three parliamentary bills in the letter.<sup>13</sup> On 14 January 1827, Bentham tried to persuade Peel to adopt an economical design of police magistrates' salary, and recommended codification as the best way to provide accessible justice, expressing an intention to abolish special pleadings and equity.<sup>14</sup> Then, on 3 February and 26 March, Bentham tried again to argue for the utility of codification.<sup>15</sup> Peel did not respond to the codification topic. On 7 April, Bentham recommended a radical amendment of Peel's Jury Act 1825, but was firmly rejected.<sup>16</sup> After Peel's indifferent or negative attitude, Bentham appeared to be discouraged for a while. No surviving letter is found until April 1829, when Peel was asked to instruct the commissioners of inquiry into the superior common law courts to answer Bentham's questions.<sup>17</sup> This request was rejected firmly as well.<sup>18</sup> Afterwards, in the surviving letters of 1830, Bentham made no further similar requests, apart from a promise to assist in preparing Peel's judicial fee reform bill. However, Peel chose to prepare the bill without Bentham's assistance.<sup>19</sup>

The question of why Bentham failed to acquire Peel's support has only received limited attention.<sup>20</sup> This question is relevant to Bentham's impact on the early-nineteenth-century law reform movement. In line with David Lieberman's reconstruction of a Baconian law reform tradition, recent legal historians tend to stress two factors that limited Bentham's legislative achievement.<sup>21</sup> Jurisprudentially, the Baconian tradition, which focused on reforming statutes without challenging the common law judges, played a dominant role in British legal thinking and thus marginalised Bentham. Politically, the French associations of the word "codification", and Bentham's proclaimed political radicalism, were disliked by many lawyers and politicians.<sup>22</sup> In this jurisprudential-political interpretation, Peel is viewed as a key figure whose "natural and overwhelming political inclination

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<sup>13</sup> Peel to Bentham, 2 Sep. 1826, *Correspondence*, vol. 12, 249 and note 3. Presumably the three bills which Peel sent to Bentham were enacted as "An Act for consolidating and amending the Laws in England relative to Larceny and other Offences connected therewith", "An Act for consolidating and amending the Laws in England relative to malicious Injuries to Property", and "An Act for consolidating and amending the Laws in England relative to Remedies against the Hundred" (7 & 8 Geo. IV, cc. 29, 30, 31, respectively).

<sup>14</sup> Bentham to Peel, 14 Jan. 1827, *ibid.*, 270-3.

<sup>15</sup> Bentham to Peel, 3 Feb. 1827, *ibid.*, 314.

<sup>16</sup> Bentham to Peel, 7 Apr. 1827, and 9 Apr. 1827, *ibid.*, 338-341.

<sup>17</sup> Bentham to Peel, 22 Apr. 1829, University College London Library, Bentham Papers [hereafter UC], Box xi, fo. 334-6.

<sup>18</sup> Peel to Bentham, 29 Apr. 1829, UC xi. 337.

<sup>19</sup> Peel to Bentham, 18 May 1830, UC xi. 364.

<sup>20</sup> Norman Gash, *Mr. Secretary Peel* (Longmans, 1964), 331-4. Philip Schofield, *Utility & Democracy*, 306, 313-5, 332.

<sup>21</sup> David Lieberman, *The Province of Legislation Determined, Legal theory in eighteenth-century Britain*.

<sup>22</sup> David Lieberman, "The Challenge of Codification in English Legal History," Presentation for the Research Institute of Economy, Trade and Industry (RIETI), July 12, 2009. Anne Brunon-Ernst, "Bentham, Common Law and Codification," *CM—DU Common Law – Grands systèmes de droit contemporain* 2, (2017), 1-20.

was to regulate the content and pace of reform” against the Whig and radical reformers.<sup>23</sup> Moreover, his deferential attitude towards the common law judges was particularly marked, which is interpreted as a contributing factor to Bentham’s failure.<sup>24</sup> This chapter aims to develop the insights of these historians by reconstructing Bentham’s private networking in detail. It will be demonstrated that Bentham was observant of high politics, especially Peel’s personal situations in the context of the Catholic Emancipation movement in early 1829, and collected information from private sources to design lobbying strategies that would test Peel’s commitment to reform.

## 2.1 Codification and Consolidation

The word “codification” was coined by Bentham in 1806, meaning “the action or practice of reducing laws or rules to a code, or organizing them into a systematic collection”.<sup>25</sup> By comparison, the word “consolidation”, used by Peel in reference to his method of reform, was an older word; and in legislation, it means the combination of two or more bills, acts, or statutes into one.<sup>26</sup> However, as the word “codification” was relatively new, contemporaries felt perplexed in distinguishing between the two terms.<sup>27</sup> The lack of clarity in terminology might attract speculation concerning what Peel’s real intention was. Before Peel clarified his terminology in February 1827, his use of the word “consolidation” was subject to Bentham’s manipulation. In August 1825, Bentham wrote to Venezuelan statesman Simón Bolívar that “the necessity of a real and all-comprehensive Code...is now at length making itself sensible...Intentions of this sort have even been declared in the English Parliament by the Home Secretary [Peel].”<sup>28</sup>

However, on 19 August 1826, writing privately to Peel, Bentham distinguished codification from consolidation. Codification, as Bentham explained, meant to codify the common law into statute law. Consolidation, as defined by Bentham, meant to consolidate two or more existing statutes into fewer, which was irrelevant to the common law. Bentham argued that if Peel stopped at

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<sup>23</sup> K.J.M. Smith, “Anthony Hammond: ‘Mr. Surface’ Peel’s Persistent Codifier,” 38.

<sup>24</sup> Lieberman, “The Challenge of Codification in English Legal History,” 14. Lobban, “‘Old wine in new bottles’: the concept and practice of law reform, c. 1780-1830,” 125.

<sup>25</sup> *The Oxford English Dictionary Online*, accessed December 15, 2020.

<https://www-oed-com.libproxy.york.ac.uk/view/Entry/35603?redirectedFrom=codification#eid>.

<sup>26</sup> *The Oxford English Dictionary Online*, accessed December 15, 2020. <https://www-oed-com.libproxy.york.ac.uk/view/Entry/39693?redirectedFrom=consolidation#eid>.

<sup>27</sup> Smith, “Anthony Hammond Mr Surface Peel’s Persistent Codifier,” note 2.

<sup>28</sup> Bentham to Simón Bolívar, 13 Aug. 1825, *Correspondence*, vol. 12, 140.

consolidation, and left the common law untouched, the only use of this reform would be “alleviating their[lawyers’] labours: leaving the rule of action throughout as incomprehensible to non-lawyers, as before; especially if the lengthy and involved phraseology...be *persevered in*”. Bentham continued to emphasise the evils of not clarifying the law, as if he were liberating the law from the legal profession’s tyranny, writing that the “*Legislative power is in effect subordinate to the Judicial: the Judges complying with, or frustrating and in effect over-ruling, the Statute law*”.<sup>29</sup>

What was the reason behind Bentham’s inconsistent interpretation of Peel’s “consolidation”? The timing is important. When writing to Simón Bolívar in 1825, Bentham had been impressed by Peel’s achievements in rationalising some parts of the criminal statutes, such as the Gaol Act of 1823 and the Jury Act of 1825. In his first letter on 1 April 1826, Bentham directly praised Peel for those policies.<sup>30</sup> On 13 April, Bentham sent his *Draught of a New Plan*, encouraging Peel to read the measures of codification suggested in this pamphlet.<sup>31</sup> Bentham hoped that the pamphlet could be a guidebook for Peel to draft a bill to improve judicial administration, a plan which had been announced by Peel in the House of Commons in March.<sup>32</sup> However, Peel appeared to be indifferent to Bentham’s pamphlet. Although on 18 April he wrote to Bentham asking to keep the pamphlet longer, Peel did not add any of its measures into his bill, which passed its third reading in the House of Commons on 28 April and became a statute (7 Geo. IV c. 64).<sup>33</sup>

A comparison of *Draught of a New Plan* with “An Act for improving the Administration of Criminal Justice in England” (7 Geo. IV c. 64) can help to explain Bentham’s criticism of Peel’s compromise in favour of the legal profession. Bentham’s pamphlet was printed in 1790 and circulated in France in hopes of winning approval from the revolutionary government. The pamphlet proposed a radical systematic change of the whole established administration. It aimed to provide maximal judicial accessibility for all citizens and proposed to set up numerous new local courts across the whole country. The distribution of courts would be regulated by the size, population, and administrative function of each place. The capital city would set up a supreme court of appeal. Each local district would set up its own district court and district court of appeal to achieve the separation and balance of judicial powers. Every court would only have one presiding judge, to be elected by local voters in

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<sup>29</sup> Bentham to Peel, 19 Aug. 1826, *ibid.*, 241.

<sup>30</sup> Bentham to Peel, 1 Apr. 1826, *ibid.*, 205.

<sup>31</sup> Bentham to Peel, 13 Apr. 1826, *ibid.*, 210-1.

<sup>32</sup> HC Deb., 9 Mar. 1826, vol. 14, 1214.

<sup>33</sup> Peel to Bentham, 18 Apr. 1826, *Correspondence*, vol. 12, 212.

the same manner as a political election. The payment of a judge would be from public funds instead of private fees. There would be regular examination of judges by higher officials and ordinary citizens. By contrast, Peel's plan was not much about the accessibility and regulation of judicial powers. Instead, it concentrated on clarifying the rules of how to exercise judicial power in cases of felony. By comparison with Bentham's, this plan was highly detailed and narrow in scope. It also directly opposed the idea of a single judge presiding and insisted that if evidence could not be presented to multiple judges the suspect should not be committed to prison. But if evidence were examined by two or more judges, external checks would no longer be needed, and no reform of the appeal system was suggested.

In the letter to Peel, Bentham blamed lawyers for having manipulated the Home Secretary into producing such an allegedly discriminative law which failed to protect the public interest. Bentham questioned the moral integrity of the lawyer MPs and Law Lords, accusing them of interfering with Peel's ongoing reform and sacrificing the non-lawyers. Lawyers were thus divided from other social groups, and dismissed as a parasitic profession. Secondly, as the common law was left unreformed, judges were still more powerful than legislators in law-making, for they enjoyed great influence both in the legislature and judiciary.<sup>34</sup> Without codification, the common law language would continue to be obscure and perplexing, forcing the public to rely on the judges. However, why should one have to listen to a judge and not use one's own intellect? Bentham had long insisted that the best way to achieve the greatest happiness of the greatest number was to liberate every individual from the ruling few, that they might act as the best judges of their own interests.<sup>35</sup> This equalitarian attitude directly challenged Peel's paternalism.

Continuing the analysis, Bentham argued that a deeper cause of the "*Subdespotism of the Judges*" was the executive, because the problem of the common law was so obvious that it "cannot be a secret to *Cabinets*". That is to say, a series of governments had deliberately failed to act in the public's benefit. Rather, successive governments had acted despotically, deliberately conniving with the judiciary to use the law as an instrument of despotism over the legislature. Because technical, parliamentary law-making took a long time and was more likely to meet troublesome objections. By

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<sup>34</sup> Judges were allowed to be elected as MPs, and in some rare cases they would serve as members of the Cabinet until the end of the nineteenth century. Lord Chief Justice Ellenborough in 1806 accepted a Cabinet seat, accessed December 1, 2020. <https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/justice-sys-and-constitution/>.

<sup>35</sup> Schofield, *Utility & Democracy*, 48-50.

contrast, a judge could create a new interpretation to be referred to as a precedent, “at the expence of a few words, in a few minutes...without any the smallest responsibility”.<sup>36</sup>

However, as Bentham asked, was the common law really a political tool of the executive? Did the “Cabinet and the Great Land-holders in both Houses—Tories and Whigs together” best secure their interest through the common law? Bentham tried to divide lawyers from traditional political elites who were Tories and Whigs in the context. He argued that “if then these same *ruling few* have confidence enough in their own strength”, they would be aware that the common law failed to best secure their interest. He also mentioned that there was an aspect of the interest of the ruling few “which is opposite to the interest of the *subject-many*”, and suggested that for now the ruling few had no confidence and relied on “the support of the lawyers for the protection of that part of their interest”.<sup>37</sup> This expression conveyed a warning that, with the march of intellect, and as the common law was demystified by reformers like Bentham and his ever increasing disciples, lawyers would no longer be capable to deceive the subject many. If the law were not corrected in time, social conflicts would appear more frequently. Therefore, clearly the common law could not provide “universal security” and was daily weakened through the publicity of its flaws.

Next, Bentham suggested that codification could be “establishable without Parliamentary Reform”. The aim of codification was to build a system that would operate “without any deviation, to the ends of justice”. Then Bentham explained his understanding of justice. It was the realisation of the will of the legislative authority, which was defined by Bentham as the sovereign power in a community. He argued that the judiciary should be subservient to the legislature, and that its function was to facilitate the realisation of justice. This understanding of the relationship between the judiciary and legislature reflected Bentham’s ideal constitution. In contrast to this ideal, the judiciary had long been overruling parliament by using the common law to confuse both the executive and legislature. Therefore, to clarify the common law by codification, making it intelligible to non-lawyers, was a method to provide more safeguards to increase the accountability of judges. This argument leads to another ideal. Bentham believed that a universally intelligible legal language could be devised. And the problem of the common law was a linguistic or intellectual problem. With reformers like John Horne Tooke endeavouring to write a “*Universal Grammar*”, Bentham believed that a “*Universal*

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<sup>36</sup> Bentham to Peel, 19 Aug. 1826, *Correspondence*, vol. 12, 241.

<sup>37</sup> *Ibid.*, 242.

*Legislation*” could be written as well, especially since James Humphreys had already started to codify the land laws.<sup>38</sup>

Two weeks later, in responding to Bentham, Peel admitted that the vague and undefined law was an evil and emphasised that he was trying to clarify the law.<sup>39</sup> However, he did not clarify his attitude towards codification. He appeared to be content with the type of policy that Bentham opposed, which would lessen the work of lawyers but still leave the law equally perplexing to laymen. Moreover, from February 1827, Peel became a firm opponent of codification. He argued that codification was to change the substance of the law, and this method would rather weaken the law’s “strength” and cause “practical inconvenience”.<sup>40</sup> In 1830, Peel added a new reason against codification: “the more concise any legal Code was made, the more its interpretation was left to the discretion of the Judge...making a Code...would be too concise to embrace more than general principles”, which would cause more technical difficulties on the pretext of regulating judicial discretion, and thus damage the administration of justice.<sup>41</sup>

Bentham’s debate with Peel over the questions of whether the common law should be codified and how best to conduct statute consolidation, was closely related to the wider European law reform movement. With the resolutions of sixteenth-century religious wars and the separation of moral and scientific discussions from theology, law reform increasingly attracted the attention of Enlightened monarchies and philosophers. Inspired by the Roman Emperor Justinian’s *Corpus Juris Civilis*, numerous rulers and jurists endeavoured to unify and simplify local customs and laws into national codes. Enlightened jurists were driven by the desire to improve the human condition through more rationalised laws, and rulers saw those reforms as a useful way to strengthen their political power after they had been persuaded by philosophers to believe in the superiority of reason over religious beliefs. Although they had different purposes, the allying forces of philosophers and rulers facilitated a series of codification projects, including the Prussian code of 1794, the Austrian general civil code of 1811, and the French *code civil* of 1804.<sup>42</sup>

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<sup>38</sup> Ibid., 245. See also David Bewley, *Gentleman Radical: A Life of John Horne Tooke, 1736-1812* (Tauris, 1998).

<sup>39</sup> Peel to Bentham, 2 Sep. 1826, *Correspondence*, vol. 12, 249.

<sup>40</sup> HC Deb., 22 Feb. 1827, vol. 16, 641-2.

<sup>41</sup> HC Deb., 18 Feb. 1830, vol. 22, 677.

<sup>42</sup> Horst Klaus Lücke, “The European Natural Law Codes: The Age of Reason and the Powers of Government”, *University of Queensland Law Journal* 31, (2012), 7-38.

British legal writers were aware of these foreign discussions and practices of law reform. As David Lieberman has demonstrated, throughout the eighteenth century, the Roman law tradition and the writings of European jurists, such as Cesare Beccaria's *On Crimes and Punishments* (1764), continuously served as an intellectual stimulus for British lawyers. Before Bentham, there had been William Blackstone and Lord Mansfield, who borrowed Roman legal doctrines.<sup>43</sup> However, Bentham's predecessors viewed statutes as the main problem, insisting that through periodical digest (statute consolidation), the English legal system could be updated and improved. In contrast, Bentham radically denied this professional consensus and saw the common law as the main problem. As John Dinwiddy observes, Bentham "saw the English legal system as an intractable and disordered accumulation of precedents and practices, shot through with technicalities and fictions and incomprehensible to everyone except professional lawyers".<sup>44</sup> Also, influenced by the belief in science shared and promoted by contemporary industrial inventors and continental *philosophes*, Bentham developed a utilitarian philosophy of legislation, and devoted himself to writing a comprehensive code, transforming the common law into legislation, and thereby making the law intelligible to all.

Bentham's desire to clarify the language of the law was congenial to many but they held different opinions as to whether the law could be understandable to all or only to the professionals. To many, including Peel, Bentham's radical aim was unrealistic and too speculative. As mentioned above, Peel accepted the consensus that the common law should not be radically changed. It was also politically safe for a Tory politician to insist on this point, because in the French Revolution and war, the Tory party had justified its legitimacy to rule by highlighting the link between the common law and political stability. As the then Prime Minister William Pitt the younger had said to the House of Commons in 1792, Britain's liberal constitution, in which the common law was a key element, by "raising a barrier equally firm against the encroachments of power, and the violence of popular commotions, affords to property its just security".<sup>45</sup>

Besides, the legal profession had long worried that the common law was being marginalised by parliamentary interference. Around the middle of eighteenth century, leading barristers and judges had begun to expressly resist the activism of parliament. In 1756, Lord Chancellor Hardwicke

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<sup>43</sup> David Lieberman, *The Province of Legislation Determined*, 29-122.

<sup>44</sup> John Dinwiddy, *Bentham* (Oxford University Press, 1989), 2.

<sup>45</sup> Frank O'Gorman, "Pitt and the 'Tory' Reaction to the French Revolution", in *Britain and the French Revolution, 1789-1815*, ed. H.T. Dickinson (MacMillan Education, 1989), 28.

complained in the House of Lords that “now...every member of the other House takes upon him to be a legislator...our statute books are increased to such an enormous size, that they confound every man who is obliged to look into them”.<sup>46</sup> By the 1820s, the judiciary’s suspicions were still strong. Hardwicke’s successor Lord Eldon was known for his resistance to parliamentary interference. For nearly 25 years, except for about 14 months between 1806 and 1807, Eldon held the highest judicial position in the land and built a tremendous patronage network to support his belief that judicial “institutions kept back the flood waters of anarchy”.<sup>47</sup> That was why Eldon once told Peel that he would reject “any Bill, materially affecting the Justice to be administered in the country”.<sup>48</sup> Also, it appears that Eldon’s immediate reaction to Peel’s speech of 9 March 1826 was negative.<sup>49</sup> Peel was still a junior in the cabinet in 1826 and he was conscious that Eldon was an important ally in the crucial Catholic question. Moreover, he had to secure Eldon’s support for law reform, for otherwise Eldon’s influence on Law Lords in the Upper House would be a serious obstacle. In this context, Bentham’s 1825 pamphlet against Eldon and his mockery of Eldon’s personality in a letter to Peel on 26 March 1827 only deterred Peel from supporting Bentham.<sup>50</sup>

## 2.2 Legal Officers’ Aptitude

On 14 January 1827, in a letter to Peel, Bentham wrote that he maintained a critical view of Peel’s measure for increasing the salaries of the metropolitan police magistrates and limiting the candidates to barristers of at least three years’ standing.<sup>51</sup> Bentham had in 1825 published a pamphlet on this topic.<sup>52</sup> On 21 March 1825, Peel proposed in the House of Commons “A Bill to amend an Act for the more effectual Administration of the Office of Justice of the Peace, in and near the Metropolis”. On 20 May 1825, Peel’s bill received the royal assent (6 Geo. IV, c. 21) and as Home Secretary he was empowered to raise magistrates’ annual salaries from £600 to £800. This act

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<sup>46</sup> David Lemmings, *Professors of the Law*, 321-2.

<sup>47</sup> R.A. Melikan, *John Scott*, 325.

<sup>48</sup> Quoted in Richard R. Follett, *Penal Theory and the Politics of Criminal Law Reform in England, 1808-30*, 175.

<sup>49</sup> Whig leader George Tierney noted that Eldon “very much disapproves of what he is doing”. Tierney to Holland, British Library Add. MS 51584 (12 Mar. 1826). Quoted in “Peel, Robert 1788-1850,” in *The History of Parliament: The House of Commons 1820-1832*, ed. David R. Fisher (Cambridge University Press, 2009), accessed 12 December, 2020.

<sup>50</sup> *Indications respecting Lord Eldon, including History of the pending Judges’-Salary-Raising Measure* [hereafter *Indications respecting Lord Eldon*] (London, 1825) in *Official Aptitude Maximized Expense Minimized*, ed. Philip Schofield (Clarendon Press, 1993), 203-90.

Bentham to Peel, 26 Mar. 1827, *Correspondence*, vol. 12, 333.

<sup>51</sup> Bentham to Peel, 14 Jan. 1827, *ibid.*, 271.

<sup>52</sup> *Observations on Mr. Secretary Peel’s House of Commons Speech, 21 March 1825, introducing his Police Magistrates’ Salary Raising Bill* [hereafter *Observations on Mr. Secretary Peel*] (London, 1825) in *Official Aptitude Maximized Expense Minimized*, 157-98.

amended an 1822 act “for the more effectual Administration of the Office of a Justice of the Peace in and near the Metropolis, and for the more effectual prevention of Depredations on the River Thames and its Vicinity, for Seven Years” (3 Geo. IV, c. 55). The 1822 act had set the annual salary of a magistrate at £600, and it would have expired in 1829, but with Peel’s intervention, a higher salary plan was discussed and achieved for those stipendiary magistrates. Stipendiary magistracy was a recent institution in Britain, which had first been established by the Metropolitan Justices Act of 1792 (32 Geo. III, c. 53), with the salary set at £400.

Stipendiary magistracy was a precursor of Britain’s modern police force. It aimed to replace the traditional policing system, which heavily relied on voluntary magistrates and a paid but unreliable system of espionage, with a more coordinated, centralised, and professional system under the direct supervision of the Home Secretary. Peel played a key role in persuading reluctant landed elites to accept the idea of professional policing. In eighteenth-century Britain, the idea of a standing police had often been associated with a standing army and Oliver Cromwell. During the French Revolution, professional policing was suspected of being foreign and unpatriotic. As Norman Gash has written, there was “a deep-rooted popular prejudice” that imagined police “as an arbitrary and oppressive engine of executive tyranny”.<sup>53</sup> When raising the topic in the House of Commons, Peel was often confronted by negative opinions. He had chaired a parliamentary committee to investigate the existing organisation of the London police in 1822. Despite his efforts, the committee refused to enlarge the power of the police, and concluded that “it is difficult to reconcile an effective system of police, with that perfect freedom of action and exemption from interference, which are the great privileges and blessings of society in this country”.<sup>54</sup>

By 1825, through Peel’s persistent presentation of criminal statistics proving the inefficiency and moral corruption of the espionage system in preventing major popular protests such as the Peterloo massacre of 1819, the House of Commons softened its tone. On 21 March 1825, Peel presented the salary-raising bill, arguing that “since the institution of police magistrates, the business which devolved upon those individuals had, owing to various acts of parliament, independently of the increase of population, greatly augmented”.<sup>55</sup> Such a change required better qualified candidates. This raised another question about how to attract those experienced lawyers to give up their

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<sup>53</sup> Norman Gash, *Mr. Secretary Peel*, 310.

<sup>54</sup> *Ibid.*, 313.

<sup>55</sup> HC Deb., 21 Mar. 1825, vol. 12, 1128.

previous occupation. Peel argued that an annual salary of £600 could not realise this aim and that “in future, the Secretary of State should be empowered to give to each police magistrate the sum of 800l. per annum”.<sup>56</sup> Peel believed that experienced barristers were the best candidates to conduct the policing task in London. They were better than experienced voluntary magistrates, who were rejected by Peel’s argument that voluntary magistrates were useful mainly in the countryside, where local connections with landlord and tenant were an important factor in policing, but in a metropolis, such advantages disappeared, and voluntary magistrates would feel that the cases were too complicated to manage. In short, Peel believed that voluntary magistrates lacked the training and legal expertise to deal with the situation in London.

After Bentham learnt of Peel’s speech, he wrote a pamphlet to disprove him. The “Observations on Mr. Secretary Peel’s House of Commons Speech” was published in May 1825, and advertised in the *Morning Chronicle* of 13 May 1825.<sup>57</sup> This pamphlet demanded that the Home Secretary explain why the existing police magistrates with an annual salary of £600 were ill qualified. Bentham quoted Peel’s earlier words, reported by *The Times* and the *Morning Chronicle*, which praised those officers as men performing their duties “to the great satisfaction of the country”. Then Bentham asked, if Peel’s words were correct, why did he now complain about the poor qualifications of the same persons in the House of Commons? Bentham mocked Peel’s self-contradiction: “What a scene is here! The Right Hon. Gentleman at daggers drawn with himself!”<sup>58</sup> Then Bentham analysed the motives which had driven Peel to make such a public mistake. He argued that the Home Secretary was under pressure from existing officers who were too impatient to wait for the expiration of the 1822 act. Furthermore, Bentham suggested that Peel was acting as a government patron who looked out for his intimate associates. Bentham claimed that he had seen a document called “Cabinet Minister’s Red Book”, which listed the prices for which official positions could be bought and sold. When a cabinet minister wanted to legitimise the increase of the price of a position, it had been a common practice for him to draft a bill for the consideration of parliament: “All official persons whose salaries had risen or should hereafter rise to a certain amount, might be added to the Test and Corporation Acts.”<sup>59</sup> And if anyone dared to suggest publicly that an officer was a partaker of this corruption either as a buyer or as a patron, he risked being prosecuted by a parasitic judge.

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<sup>56</sup> HC Deb., 21 Mar. 1825, vol. 12, 1129.

<sup>57</sup> Philip Schofield, ed., *Official Aptitude Maximized Expense Minimized*, xxix.

<sup>58</sup> *Observations on Mr. Secretary Peel*, in *Official Aptitude Maximized Expense Minimized*, 161-2.

<sup>59</sup> *Ibid.*, 163.

Now, in 1827, Bentham reraised such questions to Peel, this time privately. Bentham mentioned French practices to justify a more economical arrangement.<sup>60</sup> The French equivalent to an English police magistrate received an annual salary of £50. Those French magistrates served under the *Justices de Paix*, which was a national system of local courts aiming to provide simple, fast, and accessible justice to those who lived away from a metropolis. Bentham provided a series of the latest numbers about this system. By 1827, France had established 2,854 local courts, each under a single judge. In addition, there were 892 commercial courts (*Tribunaux de Commerce*) which were presided over by more than one judge, 1,600 courts of first instance (*Tribunaux de premiere instance*), and so on. These statistics clearly showed that France managed to provide accessible justice with a more economical arrangement. Therefore, Bentham expected Peel to redistribute the annual salary of £800, “to each Judge of the local Judicatories, in the number necessary to produce universally accessible justice”.<sup>61</sup>

On 3 February 1827, Peel replied and insisted that his measure of increasing salaries was “much better policy” for a metropolis like London. And it was naïve to think, Peel implied, that officers would perform “gratuitously” and accept a lower salary than £800 a year. The difficulty of policing a metropolis required a higher salary than elsewhere.<sup>62</sup> One year later, on 29 February 1828, Peel repeated this view in parliament, directly attacking Bentham’s ideas as unrealistic and pro-French.<sup>63</sup> Peel simply ignored Bentham’s taunts about his contradictory statements concerning police magistrates, and insisted that the increased workload justified this salary raise. As for Bentham’s French statistics, Peel denied their suitability to England. In the shadow of the French Revolution, Tory politicians often rejected pro-French ideas as unpatriotic and dangerously inimical to the British constitution. This simple conservative rhetoric prevailed in early-nineteenth-century political debates because the conservatives effectively mobilised the popular belief that the established order could protect their liberty and prosperity, whereas French ideas could not.<sup>64</sup> On the other hand, through private letters, Bentham received a response from Peel. To Bentham, this was a better result than with the 1825 pamphlet which Peel did not respond to. Moreover, Peel’s response was a written letter which could easily be used as evidence to write another critical pamphlet against Peel’s reformist reputation. Bentham indeed made use of Peel’s private letter to write a series of pseudonymous letters, published in the *Morning Herald* in April and May 1828, which will

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<sup>60</sup> He had mentioned the salary of a French policeman in the 1825 pamphlet. See *ibid.*, 195.

<sup>61</sup> Bentham to Peel, 14 Jan. 1827, *Correspondence*, vol. 12, 271.

<sup>62</sup> Peel to Bentham, 3 Feb. 1827, *ibid.*, 312.

<sup>63</sup> HC Deb., 29 Feb. 1828, vol. 18, 894.

<sup>64</sup> Emma Vincent Macleod, “British Attitudes to the French Revolution”, *The Historical Journal* 50, (2007), 694.

be analysed later.<sup>65</sup> The timing of these letters was interesting, as they came after Peel's attack on Bentham in parliament, which encourages one to wonder whether Bentham's later action was a fightback.

Bentham also privately questioned Peel's Jury Act of 1825 (6 Geo. IV, c. 50). On 7 April 1827, Bentham sent Peel an extract entitled "Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection", and informed him that he had contacted some MPs, and a relevant bill to amend Peel's Jury Act would be brought before parliament.<sup>66</sup> He argued that Peel's jury reform failed to improve individual jurors' performance. The "Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection" was an extract from Bentham's *Constitutional Code*. In the published version of 1830, Bentham added a long footnote to argue that Peel's measure failed to make the jury system a check to the judges. Peel's Jury Act was still "a feeble and very imperfect *check*".<sup>67</sup> Two days after Bentham's letter, Peel replied with a firm rejection: "I am not prepared to bring in a Bill for the alteration of the Jury act in the mode you suggest".<sup>68</sup>

Bentham's criticism of Peel's jury reform followed the same line as his criticism of Peel's police magistrate reform. He viewed Peel's stated intention of improving legal officers' aptitude as a way of concealing his real intention of building a network of political patronage. Bentham's letter only gave a brief opinion, but in the footnote of "Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection", he gave a longer justification. Bentham quoted Peel's Jury Act to argue that Peel had done nothing to solve the problems of jury selection. Although Peel had made improvements to clarify the qualifications of potential jurors and the legal officers who could be trusted to appoint them, Bentham argued that these measures were not enough to put an end to corruption. Bentham had extensively exposed the abusive usage of jury selection in recent criminal investigations in his 1821 pamphlet *The Elements of the Art of Packing*. According to James Oldham, this pamphlet was influential in stimulating popular criticism and persuading parliament to make adjustments.<sup>69</sup>

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<sup>65</sup> Of a concise analysis of Bentham's letters, see Schofield, *Utility & Democracy*, 314-5.

<sup>66</sup> Bentham did not mention any MP's name, but one of the contacted MP is Edward Southwell Ruthven, through John Bowring's connection. See Bentham to Peel, 7 Apr. 1827, *Correspondence*, vol. 12, 339, note 6.

<sup>67</sup> Jeremy Bentham, *Constitutional Code; for the use of All Nations and All Governments professing Liberal Opinions*, vol. 1, (London, 1830), 446.

<sup>68</sup> Peel to Bentham, 9 Apr. 1827, *Correspondence*, vol. 12, 341.

<sup>69</sup> James Oldham, "Special juries in England: Nineteenth century usage and reform", *The Journal of Legal History* 8, (1987), 153.

The “Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection” was sent to Peel for the purpose of being a practical guidebook. This 11-page tract concisely listed prospective measures to improve Peel’s act. Bentham argued that the principle of selection should be by *chance* rather than by *choice*.<sup>70</sup> Peel’s act continued the practice of selection by legal officers’ personal choice and this practice could not guarantee the accountability of the jurors. As had been revealed by Bentham in *The Elements of the Art of Packing*, legal officers, mostly sheriffs, often exercised their power discriminatively for the interest of the Crown and government.<sup>71</sup> In the “Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection”, Bentham observed that Peel’s act confirmed the power of the sheriffs and judges of great criminal courts led by King’s Bench, and there was still no effective check upon their conduct. However, the British constitution proudly stated that the jury system was a check to despotism. Bentham denounced such a statement as hypocrisy and argued that the existing way of jury selection was in fact a “most powerful *instrument*” for despotism to distort justice.<sup>72</sup> Therefore, Bentham proposed the method of lottery under public scrutiny to select jurors.

Bentham argued that freedom from any political influence was the first step. Other procedures should then be devised for the purpose of the best realisation of justice. Like the police magistrates, individual jurors should receive constant training and public examination to guide their conduct during an investigation or a trial. Bentham did not believe that endorsement by a senior officer could guarantee the moral and intellectual aptitude of a juror. Instead, he thought that the judicial institution should provide better policies. For example, there should be “Question Books” distributed to the jurors that they might better equip themselves with the special knowledge, such as chemistry or mechanics, required in a case. And they would receive regular questioning to check their knowledge. Lotteries would be used to select the examiners and examined so that the chance for political interference was minimized. In the examinations, all questions would “have had place in the lottery”.<sup>73</sup>

This idea of training and examination anticipated the Northcote–Trevelyan Report of 1854.

Bentham’s insistence of using a lottery to block patronage powers was in line with the principle of an impartial civil service which formed the basis of the 1854 report. In addition, Bentham’s ideas

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<sup>70</sup> Bentham’s highlights, see *Constitutional Code*, 444.

<sup>71</sup> Bowring, v. 122.

<sup>72</sup> *Constitutional Code*, 445.

<sup>73</sup> *Ibid.*, 441.

inspired reformers such as Charles Trevelyan and John Stuart Mill, who contributed to the reforming ideology in the mid-nineteenth century and directly participated in administrative reforms.<sup>74</sup> More specifically, through Bentham's disciples Joseph Hume, Henry Parnell, and James Graham, utilitarianism was spread and accepted by the public accounts commission of 1828, and more transparent and accountable procedures were adopted in the accounting practices of central government, which paved the way for further reforms for improving official aptitude.<sup>75</sup>

However, Bentham's suggestion to professionalise jurors did not receive a positive legislative response. The Juries Act 1870 did not mention training and examination for jurors.<sup>76</sup> Instead, in civil cases, the jury trial was in decline. The County Courts Act 1846 introduced juryless trial in civil cases and this practice turned out to be popular among legal professionals. Meanwhile, working lawyers did not think it important, like Bentham, to help ordinary citizens to acquire legal knowledge. On the contrary, they were seeking to monopolise legal work and dismissed judicial amateurism by comparing a jury to a quack doctor.<sup>77</sup> The Common Law Procedure Act 1854 gave civil litigants the choice of whether to have a jury trial, which further contributed to its unpopularity. As for criminal trial juries, the transformation from altercation to adversary trial in the last quarter of the eighteenth century "substantially eliminated the practice of jurors questioning witnesses, requesting further witnesses to be called, and commenting on witnesses and their evidence in open court during the trial".<sup>78</sup> The role of jurors was thus fixed as passive observers rather than active participants. In this situation, Bentham's ideal of semi-professional jurors could hardly find an echo.

## 2.3 Lobbying Strategy

On 22 April 1829, Bentham wrote to Peel, claiming that "*Opinion has changed*" because Bentham's "aptitude to afford useful information" was now more widely acknowledged. Some top lawyers regarded him as "a Scholar to his Master" and "the only man by whom that subject has been made

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<sup>74</sup> John Richard Edwards, "Professionalising British central government bureaucracy c. 1850: The accounting dimension", *Journal of Accounting and Public Policy* 30, (2011), 221.

<sup>75</sup> John Richard Edwards and Hugh T. Greener, "Introducing 'mercantile' bookkeeping into British central government, 1828-1844", *Accounting and Business Research* 33, (2003), 51-64.

<sup>76</sup> James Oldham, "Special juries in England: Nineteenth century usage and reform," 159.

<sup>77</sup> Conor Hanly, "The decline of civil jury trial in nineteenth-century England," *The Journal of Legal History* 26, (2005), 265.

<sup>78</sup> Anand Sanjeev, "The Origins, Early History and Evolution of the English Criminal Trial Jury," *Alberta Law Review* 43, (2005), 428.

as study of for that purpose and who in that study has been engaged for more than 60 years [*sic*]”.<sup>79</sup> With such confident self-advertising, Bentham again endeavoured to ask for cooperation with the Home Secretary. This time, Bentham targeted the royal commission of the common law courts, appointed by Peel in 1828. Bentham believed that the selected commissioners belonged to “the particular and confederated interest of lawyers, official and professional taken together (for shortness I say Judge & Co.)”. He planned to attack them in the press, emphasising the notion that public opinion was an impartial judge. However, before the proposed attack, Bentham asked Peel to arrange a meeting between himself and the commissioners, so that he might correct them privately to avoid public conflict.

In a manuscript entitled “Reformists Reviewed” dated August 1829, Bentham described Peel as “the pseudo reformist”.<sup>80</sup> However, in the letter of 22 April, Bentham idealised Peel’s personal character:

The person I am addressing has two natures; that of the Home Secretary and that of Mr Robert Peel. The Home Secretary is in league with Judge and Co.: this is matter of certainty. But in the breast of Mr. Robert Peel may have place some sparks of regard for the present good opinion of the civilized world, for the future good opinion of posterity, and even of sympathy for the happiness and misery of the subject many, here and now.<sup>81</sup>

Bentham saw Peel’s institutional character as being in danger of being corrupted. Moreover, Bentham stressed that a liberal character was Peel’s true self, whereas his reluctance to commit to radical reform was “circumstantial”.<sup>82</sup> Specifically, it was the situation Peel occupied, the administrative life he was so used to, that blinded him. John William Flood has argued that this character analysis reflects Bentham’s individualistic philosophy, which “saw the group as unable to violate its own selfish interests”, although “one man was to achieve the impossible task of bringing a majority of the group over to the proper course”.<sup>83</sup>

However, it is argued here that the character analysis was Bentham’s lobbying strategy. After all, this letter was written on 22 April 1829, which was an unprecedented moment, when Peel compromised his Protestantism to support Catholic emancipation. The royal assent had been given to the Roman

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<sup>79</sup> Bentham to Peel, 22 Apr. 1829, UC xi. 334-6.

<sup>80</sup> Sokol, “Jeremy Bentham and the Real Property Commission of 1828,” 120.

<sup>81</sup> Bentham to Peel, 22 Apr. 1829, UC xi, 334-6.

<sup>82</sup> *Ibid.*

<sup>83</sup> John William Flood, “The Benthamites and Their Use of the Press,” (PhD dissertation, University College London, 1974), 202-3.

Catholic Relief Act on 13 April 1829. Bentham had been involved in the inner politics of this event through his contact with the Catholic leader Daniel O'Connell, who even visited Bentham in March and thus may have discussed tactics for negotiating with ministers.<sup>84</sup> Through his alliance with a successful and experienced political negotiator, Bentham felt more sure of influencing Peel.

Politician Peel did a U-turn and surprised many. In one sense, when Bentham contacted him, Peel's reputation as a liberal or reformer was at its peak, though only temporarily. As Gaunt observes, "Peel's reputation was transformed from that of 'Orange Peel', the oppressor of the Catholics of Ireland and the 'Coryphaeus' of the Church, to 'Peel emancipated'."<sup>85</sup> And some Whig leaders like Henry Brougham commented that Peel was "far more to be trusted" than Wellington "for liberal courses".<sup>86</sup> However, the new image also brought new pressure. The Relief Act did not please the anti-Catholics. Peel was thus vulnerable to many of his anti-Catholic rivals. Peel felt the urgent need to justify his decision and repair his protestant reputation. For example, Peel wrote on 3 April 1829 to the novelist Sir Walter Scott, "You will think I am now mad on the Catholic question", and passionately asked for Scott's support in the press. In terms of his self-justification, Peel highlighted the fact that he was acting purely as a disinterested statesman who could sacrifice himself for the public benefit: "I knew too much to make it possible for me to take any other course than that which I have taken. The time is past when either party can coquet any longer with the Catholic question".<sup>87</sup> The danger of being assassinated was real, and Peel was also concerned about other threats to himself and the government. The former Prime Minister Spencer Perceval's tragedy of 1812 was still a fresh memory for Peel, who felt that he was exposed to "condemnation [which] assumed every form, and varied in every degree, from friendly expostulation and the temperate expression of conscientious dissent to the most violent abuse, and the imputation of the basest motives".<sup>88</sup> After a self-justification, Peel concluded: "I can with truth affirm, as I do solemnly affirm in the presence of Almighty God...I was swayed by no fear except the fear of public calamity, and that I acted throughout on a deep conviction, that those measures were not only conducive to the general

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<sup>84</sup> O'Connell to his wife, 6 Mar. 1829, in *The Correspondence of Daniel O'Connell* [hereafter *O'Connell Corr.*], vol. 4, ed. Maurice R. O'Connell (Dublin Stationery Office for the Irish Manuscripts Commission, 1977), 20.

<sup>85</sup> Richard A. Gaunt, *Sir Robert Peel, The Life and Legacy*, 30.

<sup>86</sup> Quoted in "Peel, Robert (1788-1850)," in *The History of Parliament: The House of Commons 1820-1832*, note 197, accessed December 20, 2020. [https://www.historyofparliamentonline.org/volume/1820-1832/member/peel-robert-1788-1850#footnote197\\_s4b6b3e](https://www.historyofparliamentonline.org/volume/1820-1832/member/peel-robert-1788-1850#footnote197_s4b6b3e).

<sup>87</sup> Peel to Scott, 3 Apr. 1829, in *Sir Robert Peel from his private papers*, vol. 2, ed. Charles Stuart Parker (London, 1899), 99-100.

<sup>88</sup> *Sir Robert Peel from his private papers*, vol. 2, 106.

welfare, but that they had become imperatively necessary”, especially to protect the “interests of the Church and of institutions connected with the Church”.<sup>89</sup>

At around the same time, Bentham used the same strategy of character analysis on another minister. On 9 April 1829, Bentham offered to the Governor-General of India, Lord William Bentinck, suggestions relevant to the latter’s ongoing judicial reforms, and wrote:

Whatever is done for the benefit of British India through your means it is by you yourself by means of the weight the authority of your name that it must be done [*sic*]. It will not in any member which the labour has or at present has any the least prospect of having has any person who to the intellectual ability adds the desire to give support to these your so generous and enlightened endeavours. By what you have done already you have placed yourself at a height which no such mind as Mr Peels, is or will ever be able to reach. Your endeavours and his are in a state of diametrical opposites: As to the rule of action, your endeavours are to render it knowable: his to keep it from being so: As to justice your endeavours are to render it accessible: his to keep it inaccessible...He is a genuine disciple of Lord Eldon: and is either a dupe or an accomplice of those irreconcilable enemies of mankind—the existing fraternity of lawyers.<sup>90</sup>

This not only idealised Bentinck’s liberal or enlightened character, but also used divisive language to separate Bentinck from his colleagues.

On the other hand, by comparison with the letter to Peel on 22 April, it was clear that Bentham said different things for the consumption of different audiences. On 9 April Bentham described Peel as “either a dupe or an accomplice” of the evil lawyers but on 22 April Bentham said that Peel’s true self was a liberal. Both descriptions were produced after Peel’s change of position concerning the Catholic question. How might we understand this contradiction? Did Bentham not think of the possibility that Bentinck might inform Peel of Bentham’s harsh comment? Bentham perhaps thought that there was no contradiction in the two descriptions. The harsh comment referred to Peel’s institutional identity. As for Peel’s individual identity, Bentham portrayed him as a victim of the corrupt political and judicial system, emphasising the manipulative power of the senior judges.

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<sup>89</sup> *Ibid.*, 108.

<sup>90</sup> Bentham to Bentinck, 9 Apr. 1829, UC x. 175-8.

The argument that politicians were misled by judges on the subject of law reform had been put forward by Bentham in 1828. On 7 April, 15 April, and 8 May 1828, three public letters on Peel's law reform were published in the *Morning Herald* under the pseudonym "Parcus", who allegedly lived in Birmingham, but Bentham was the author.<sup>91</sup> The first letter, "Peel, Bentham, and Judges' Salaries", started by asking why Peel had mentioned Bentham in his speech in the House of Commons on Henry Brougham's law reform plan. The letter did not give the date of the speech, but left a footnote: "See Mirror of Parliament, No. V, p. 449", which can be followed up to confirm the authenticity of the quotation, attributed to Peel: "A gentleman [Bentham] who is famous for possessing a great knowledge of our Law, and whose works are pretty generally known".<sup>92</sup> The letter then pressed Peel to clarify his position in relation to Bentham and senior judges such as Eldon and Tenterden (Charles Abbott, Lord Chief Justice of King's Bench between 1818 and 1832). If Peel approved of Bentham's expertise, he must have known and even approved of Bentham's attacks on "the Eldons and the Tenterdens", whose knowledge of the law was dismissed as "garbage". The letter also recommended Bentham's *Rationale of Evidence* to Peel and other readers if they had not been able to distinguish Bentham's ideal law from the beliefs of the judges.

A clear boundary between authentic experts and fake experts was thereby drawn, and there was an ongoing ideological war between them. Peel was expected to take a side as soon as possible, and he needed instruction. The letter aimed to enlighten Peel's mind, helping him identify who were the fake experts. In addition to Eldon and Tenterden, the letter also mentioned Solicitor General Nicholas Tindal and King's Counsel Edward Sugden (who became Solicitor General after Tindal in 1829). The fake experts placed their selfish interest above the public, and their legal knowledge served the purpose of manipulating laymen, including Peel. If Peel continued to consult them while drafting the law reform bills, as he had admitted doing on 9 March 1826 when he thanked Tenterden for his assistance with the Jury Act 1825, he would be misled to a great extent.<sup>93</sup> In this context, Peel's recent public approval of Bentham's expertise was interpreted as heralding a possible positive change in the Home Secretary's future law reform.

However, as the three pseudonymous letters showed, in early 1828, Bentham thought that the chance to persuade Peel was slim. The second letter, "Peel and Munificence; --Bentham and

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<sup>91</sup> Bentham's authorship is identified by Luke O'Sullivan and Catherine Fuller. See Joseph Parkes to Bentham, 7 May 1828, *Correspondence*, vol. 12, 478 note 5.

<sup>92</sup> "Peel, Bentham, and Judges," *Morning Herald*, Apr 7, 1828.

<sup>93</sup> HC Deb., 9 March 1826, vol 14, 1238.

Niggardliness”, described the high judges as Peel’s masters.<sup>94</sup> The first letter and the third letter, the latter entitled “Peel, Tenterden, Bentham, and Law Reform”, described Tenterden as Peel’s oracle. Moreover, the third letter mentioned Peel’s personality in private life, and regretted the fact that “a most amiable man” had made the most oppressive laws by the instruction of Tenterden and his associates. Furthermore, it complained that Peel was a victim of the constitution which gave lawyers too much power: “Enclosed in one skin two beings of opposite characters! This is among the mysteries which our matchless Constitution Hatches.”<sup>95</sup>

By blaming the legal profession’s control of the law and the constitution, Bentham tried to create a schism between Peel and the judges. In early 1828, he conducted this task by writing five pseudonymous letters (the abovementioned three of them analysed Peel’s law reform and the other two discussed law reform in general), allying himself with the editor of the *Morning Herald*. This episode is proof that Bentham mobilised his networks and tried to shape a reforming public opinion to press Peel to clarify his position. The *Morning Herald* acted in concert with Bentham, as the fifth Parcus letter (29 May 1828, and the fourth letter published on 28 May) showed. While the fifth letter did not mention Peel, it clearly demonstrated the influence of Bentham’s networking when Parcus was portrayed as a wise advisor, instructing Herald, the personification of the newspaper, to discern the tricks of lawyers.<sup>96</sup> The *Morning Herald* was a rising star in the press in the 1820s: it quintupled its sales within eight years by publishing boisterous accounts of criminal cases.<sup>97</sup> In 1827 and 1828, its proprietor and editor Henry Thwaites was a frequent guest at the Court of King’s Bench for libel accusations, and his cases often received wide publicity in *The Standard* and the *Morning Chronicle*.<sup>98</sup> On 26 April 1827, the *Morning Chronicle* published a libel case in which Thwaites was the defendant, and the plaintiff Harnett, who was an attorney of King’s Bench, claimed that Thwaites’ recent newspaper report could exile him from society and destroy his business. However, Thwaites cleared himself of the charge smoothly and displayed impressive courtroom eloquence; as the *Morning Chronicle* wrote, “The Editor, Mr. Thwaites, immediately expressed his readiness to insert any court-statement” to point out a witness’ misrepresentations.<sup>99</sup>

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<sup>94</sup> “Peel and Munificence; --Bentham and Niggardliness”, *Morning Herald*, Apr. 15, 1828.

<sup>95</sup> “Peel, Tenterden, Bentham, and Law Reform,” *Morning Herald*, May 3, 1828.

<sup>96</sup> “Inquiry-Splitting and Reform Quashing Commission Jobs,” *Morning Herald*, May 29, 1828.

<sup>97</sup> Stephen Koss, *The Rise and Fall of the Political Press in Britain volume one: The Nineteenth Century* (Hamish Hamilton, 1981), 49.

<sup>98</sup> “Court of King’s Bench, July 17. Cochrane V. Thwaites,” *The Standard*, Jul. 18, 1828. “Court of King’s Bench, April 25. Harnett V. Thwaites,” *Morning Chronicle*, Apr. 26, 1827.

<sup>99</sup> “Court of King’s Bench, April 25. Harnett V. Thwaites,” *Morning Chronicle*, Apr. 26, 1827.

Bentham wrote to O'Connell on 30 September 1828: "Mr. Thwaites and I are upon the most friendly terms."<sup>100</sup> Having capable friends in the press helped to boost Bentham's confidence in his own public influence, and by the time he wrote to Peel on 22 April 1829, he believed that he had successfully launched an attack against the corrupt lawyers in the press. The war "I am necessitated to make upon [Judge & Co.] ...is universally known and universally felt".<sup>101</sup> With the support of the *Morning Herald*, Bentham's statement was not overstated. Moreover, it was likely to intimidate Peel, who was still anxiously digesting the consequences of Catholic Emancipation. Besides, Bentham claimed to Peel that "from time to time accident brings to my ear opinions entertained by Mr. Robert Peel in favour of such my appropriate aptitude [of legislation]".<sup>102</sup> Such a claim was suggesting that Bentham had spread an impression that Peel had admiration for Bentham's expertise. The first Parcus letter cited *Mirror of Parliament* to prove the point. On 9 November 1826, Bentham wrote to Central American statesman Manuel José Arce: "*Peel*, I learn from various and unquestionable authority, makes no secret, either among his most confidential friends or in mixt companies, of his regarding me as the only individual by whom any correct or comprehensive conception is embraced of the business of legislation." Bentham also stated that Peel had been in contact with him, and that "in one of his letters to me, the words Private and confidential were inscribed".<sup>103</sup> Bentham was spreading an impression that he had influence on Peel in his networks.

Who encouraged Bentham's high impression? His nephew George Bentham stayed with him in 1826, and observed that John Bowring, the editor of the *Westminster Review*, played a key role: "J.B. [Bentham] imagines that Peel will come and codify with him at Q.S.P....Peel is weak-minded, hampered by the lawyers, and nothing good will come of it; however, J.B. will threaten him with injuring his reputation abroad, and Peel will be obliged to come to! This is the effect of Bowring's gross flattery."<sup>104</sup> George Bentham's words contain some important information, regardless of his dislike of Bowring. Bowring used the *Westminster Review* to develop a network of radical intellectuals, and collected information favourable to Bentham. Bowring believed that the *Westminster Review* attracted men of better intellectual and moral qualities than the *Edinburgh Review* and the *Quarterly Review*, and that its success was a result of the growing appeal of utilitarianism to non-aristocratic men. He must have encouraged Bentham's belief that

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<sup>100</sup> Bentham to O'Connell, 30 Sep. 1828, in *The Irish Monthly*, (1883), 431-3.

<sup>101</sup> Bentham to Peel, 22 Apr. 1829, UC xi. 334-6.

<sup>102</sup> Ibid.

<sup>103</sup> Bentham to Manuel José Arce, 9 Nov. 1826, *Correspondence*, vol. 12, 258.

<sup>104</sup> George Bentham, *Autobiography, 1800-1834*, ed. Marion Filipiuk (University of Toronto Press, 1997), 273.

democratisation was happening. As Bowring declared, more non-aristocrats were becoming “historians of the first class, eminent poets...the wisest and the wittiest of our literary men, political economists of the highest authority, statisticians...whose standard took the emphatic device, ‘The greatest good of the greatest number’”.<sup>105</sup> Furthermore, Bowring was in line with Bentham’s strategy of separating Peel from the judges. He inserted the following words into his autobiographical notes, prepared for publication: “I have seen him [Peel] perambulating the Queen’s Square Place garden with the venerable sage (Bentham), discussing matters of law-reform [*sic*]”.<sup>106</sup> Those words were published in 1877, and had they been published before Bentham’s death, the public would have received another impression of Peel’s closeness with Bentham. Besides, Bowring perhaps wrote the article “Mr. Peel’s Improvement in Criminal Law” published in January 1827 in the *Westminster Review*, which advocated the idea that Peel could work with “an enlightened theorist”, and that their cooperation was very likely to be successful, “provided the public has been well prepared”.<sup>107</sup>

George Bentham also contributed to Bentham’s high self-estimation. Bentham transferred Peel’s three bills (sent on 2 September 1826) to George, who then prepared an answer for Peel. On 17 January 1827, Peel sent a letter to George Bentham. The letter greatly pleased both him and Bentham. Peel thanked George for the suggestions, and promised to review them in detail. His words showed a sincere appreciation: “I beg to assure you that each of the Remarks with which you have favoured me shall undergo very full consideration.” Peel also wrote that he had marked the letter as an important document, and mentioned the fact that he had sent the bills to Bentham as well. Moreover, George Bentham believed that the letter was entirely in Peel’s own handwriting, and that Peel “must have read over my letter (eighteen pages long) himself”. Soon George shared the letter and his feelings with his uncle.<sup>108</sup> The letter, along with his speculations, could provide the material to prepare a short article in the press to showcase Peel’s approval of Bentham’s expertise. Before any plan for publication, the letter was copied and circulated among Bentham’s friends. George Bentham also observed to a friend that on 9 January, Peel had written a public letter to Anthony Hammond (who had prepared a plan for codifying the laws and claimed to have Peel’s

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<sup>105</sup> *Autobiographical recollections of Sir John Bowring. With a brief memoir by Lewin B. Bowring* (London, 1877), 67-8.

<sup>106</sup> *Ibid.*, 300.

<sup>107</sup> “Mr. Peel’s Improvements in Criminal Law,” *Westminster Review* (Jan. 1827), 94. The Wellesley Index to Victorian Periodicals does not provide the authorship for this anonymous article. The claim of Bowring’s authorship is subject to any discovery of new sources.

<sup>108</sup> Peel to Bentham, 2 Sep. 1826, *Correspondence*, vol. 12, 249. George Bentham, *Autobiography, 1800-1834*, 258-9.

approval) disclaiming his association with Hammond's action. George Bentham read this episode as additional evidence of Peel's support for himself.

Through private networking, Bentham collected materials that could be used to idealise Peel and separate him from his conservative legal advisors. In April 1829, when he judged that the Catholic Emancipation movement had increased Peel's reformist reputation, Bentham felt a better chance of continuing this divisive strategy. The continuity of Bentham's lobbying in the press and in private letters showed the importance of information in private networks, and Bentham's creative use of it as a potential political resource to threaten a minister. Bentham was aware of the ambiguous boundary between public and private spheres, and managed to turn this ambiguity to his political advantage. When he told Peel in the letter of 22 April 1829 that "for carrying on this war I have no other means in my power than an appeal to public opinion through the medium of the press. Public opinion Judge", Bentham was implying that he had collected sufficient information to injure Peel's relationship with his colleagues. Moreover, when Bentham threatened to make the letter public, he was using his own reputation as a radical reformer to produce the information that Peel was supporting radical law reform. Bentham expected Peel to be intimidated by the publication of these words: "if you come will keep at the hermitage [Bentham's house] the mask you cannot but wear in the Cabinet".<sup>109</sup> The description "wearing a mask" for concealing a reformist disposition would easily be misinterpreted by Peel's new political enemies as additional evidence of a treacherous character.

Bentham recognised Peel's dilemma and tried to make use of it. This new strategy of pressing Peel at his vulnerable moments was perhaps inspired by O'Connell. On 2 November 1828, O'Connell wrote to Bentham: "It is quite true the 'fierce extremes' mingle in our estimate of men."<sup>110</sup> When O'Connell stayed in London in March 1829, he visited Bentham. Meanwhile, he deployed a similar strategy in his own networks during the crucial month when Peel's bill for Catholic Emancipation was debated in the House of Commons. On 5 March, Peel made a four-hour speech explaining his new attitude, which was in favour of a harmonious spirit between Catholics and Protestants. O'Connell felt that he needed to do something to maintain Peel's new attitude, and the strategy was to romanticise Peel's liberal spirit while at the same time warning him of the price of upsetting the Catholics. On 6 March, O'Connell expressed his approval of Peel's bill—"good, very good; frank,

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<sup>109</sup> Bentham to Peel, 22 Apr. 1829, UC xi. 334-6.

<sup>110</sup> O'Connell to Bentham, 2 Nov. 1828, *O'Connell Corr.*, vol. 8, ed. M.R. O'Connell (Blackwater Dublin, 1980), 210-12.

direct, complete”—to his secretary Edward Dwyer.<sup>111</sup> Meanwhile, opposite rumours were spreading that Wellington and Peel had contrived to separate themselves from “their old and staunch supporters”, and that Peel was “disposed if possible to make a junction with the Grey party”.<sup>112</sup> O’Connell closely observed the state of the public mind, and was anxious that Peel might be influenced by Protestant opinion and amend the bill unfavourably to Catholics. On 30 March, O’Connell consulted with his close friend Pierce Mahony about a new source he had just acquired who could be used to menace Peel. A former Commissioner of Stamps, Darcy Mahon, had contacted O’Connell and was willing to talk publicly about an event that had happened 1813: when Britain was struggling to recruit soldiers against Napoleon, Peel had been approached privately by the Catholic leader Denys Scully, who had promised that if the government would undertake to pass an Emancipation bill, 100,000 Catholics would become voluntary soldiers. Peel’s answer was rejection, but O’Connell implied that Peel had been either misled by his senior colleagues or else had feared upsetting them.<sup>113</sup> By using this source, O’Connell could both emphasise the patriotism of the Catholics, and Peel’s long personal sympathy for them.

O’Connell’s thinking also indicates that during these months there were many opinions in the press which could have influenced Bentham’s judgement of Peel’s situation. The schism between Peel and the Ultra Tories was emphasised and interpreted from different angles. On 10 February, *The Times* satirised the Ultra Tories: “Yet there are desperadoes, or idiots...who pretend to...more knowledge of facts and consequences than Mr. Peel; creatures who talk of rallying round the dotage of Lord Eldon.”<sup>114</sup> On 14 February, the *Morning Post* published a letter signed by “A Protestant Tory” claiming that Peel had abandoned his old friends and sacrificed his principles for O’Connell and his fellow Jesuits, who had become Peel’s “new Political Associates”.<sup>115</sup> In March, The *Edinburgh Review* welcomed Peel’s conversion, and argued that the Tory press’ attack on him was an abuse “in a manner disgraceful”, and that Peel “provided” the Tory party “with sense and speeches much longer than they deserved”.<sup>116</sup>

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<sup>111</sup> O’Connell to Dwyer, 6 Mar. 1829, *O’Connell Corr.*, vol. 4, ed. M.R. O’Connell (Dublin Stationery Office, 1977), 23.

<sup>112</sup> “Peel, Robert (1788-1850),” in *The History of Parliamentary: The House of Commons 1820-1832*, accessed online 28 July 2021, [https://www.historyofparliamentonline.org/volume/1820-1832/member/peel-robert-1788-1850#footnote194\\_5uudujj](https://www.historyofparliamentonline.org/volume/1820-1832/member/peel-robert-1788-1850#footnote194_5uudujj)

<sup>113</sup> O’Connell to Mahony, 30 Mar. 1829, *O’Connell Corr.*, vol. 4, 37.

<sup>114</sup> *The Times*, Feb. 10 (1829), 3.

<sup>115</sup> “To the Right Hon. Robert Peel,” *Morning Post*, Feb. 14 (1829), 3.

<sup>116</sup> “The Last of the Catholic Question, Its Principle, History, and Effects,” *Edinburgh Review* (Mar. 1829), 221-2.

However, public opinion about Peel's law reform was not as marked by controversy as his conversion to Catholic Emancipation. Apart from Bentham's Parcus letters, very few people openly questioned Peel's cooperation with the high court judges. In March 1827, the editors of *The Jurist* made the following comment on Peel's speech of 9 March 1826: "That Peel is not a lawyer appears to us rather a matter of congratulation than regret...professional habits have a natural tendency to narrow the comprehension...[and] give a sinister bias to the mind extremely unfavourable to the progress of improvement."<sup>117</sup> O'Connell claimed in a Catholic meeting in July 1828 that Peel's law reform created more problems than remedies: "he mended one hole and made five".<sup>118</sup> However, most debaters of law reform gave positive comments on the judges' expertise. The *Cumberland Pacquet, and Ware's Whitehaven Advertiser*, published on 21 March 1826, claimed that Peel "sought not instruction in legislation...evoking the sage responses of Jeremy Bentham. His was a line less ambitious, but more rational. Taking Bacon for his guide, and the judges and lawyers of his own time for assistants in his task, he secured all that the theorist of the profoundest wisdom, and all that the fullest experience could give."<sup>119</sup> On 20 February 1828, a barrister of the Inner Temple, Charles Dodd, wrote a public letter to encourage Peel to continue opposing Bentham's camp, and to believe in the harmonious relationship between lawyers and the public. The judges were not in opposition to the public good, and moreover, their judgement of the public good was more rational and practical than Bentham's.<sup>120</sup> In July 1828, the editors of *The Quarterly Review* thanked Lord Redesdale (Lord Chancellor 1802-6 and an active judicial lord in the House of Lords), Lord Eldon, and Peel, who were said to "have adopted the safe, the practical, the unassuming course of seizing on some conspicuous mischief felt in practice, and providing for it a matured remedy by legislative enactment, wisely abstaining from assailing or throwing doubts upon other matters which did not fall within the immediate scope of their plan".<sup>121</sup> The later part of this comment alluded to Peel's resistance to Bentham's plans.

The abovementioned supportive manifestos showed the popularity of Peel's gradualist and piecemeal approach to law reform, and they also warned Peel that associating with Bentham could damage his reputation as a practical and rational reformer. Peel must have been aware of these opinions, and keen to maintain that reputation during a time when his reputation for upholding a

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<sup>117</sup> "Criminal Code," *The Jurist*, Mar. (1827), 4-5.

<sup>118</sup> "Catholic Meeting," *Morning Herald*, Jul. 15 (1828). O'Connell's speech will be discussed in detail in the next chapter.

<sup>119</sup> *Cumberland Pacquet, and Ware's Whitehaven Advertiser*, 21 Mar. (1826).

<sup>120</sup> Charles Edward Dodd, *A Letter to the Right Hon. Robert Peel, on the subject of some of the legal reforms proposed by Mr. Brougham* (London, 1828), 58-9.

<sup>121</sup> "Present State of the Law," *The Quarterly Review*, Jul. (1828), 243.

Protestant constitution was under attack. In other words, he had to answer Bentham's letter and discourage its publication. Bentham threatened to publish the letter, which could only cause more controversies once Bentham's words about Peel's admiration for him were in the press. On 29 April, Peel replied to Bentham, and refused to arrange the interview with the commissioners of common law courts for Bentham on the grounds that he had no authority to interfere, and did not believe in the utility of such an interview "to promote the objects of their inquiry". Moreover, Peel emphasised that he was not afraid of being criticised by Bentham in the press: "I beg to assure you, that I have not the slightest Objection to the Publication of the Letter which you have addressed to me."<sup>122</sup> This statement was in fact a tactical warning to Bentham. If Bentham published the letter, he would receive Peel's official public letter denouncing any admiration for Bentham, just as Hammond had experienced.

Peel's clear antagonism forced Bentham to alter his overconfident tone and divisive language. On 17 May, Bentham described himself as Peel's "sincere well-wisher", and added an explanation: "Whatsoever may be my apprehensions I avoid grounding any thing upon them as if they were realities...On reconsideration of the letter of your's, with which I was honoured...it has occurred to me that perhaps you have misconceived me, or I you".<sup>123</sup> Bentham also added a lengthy explanation of his request for the interview. He phrased the words carefully lest he annoyed Peel again. In the previous request, Bentham had emphasised that the commissioners were corrupt lawyers. Now Bentham erased any such dismissive charge and simply described them as "the Gentlemen in question". Also, the interview was no longer to be compulsory, and the commissioners could decide by themselves whether to send a copy of the questions to Bentham and treat his answers in the same way as those of the legal experts who had been interviewed. Moreover, Bentham tried to convince Peel that the interview was purely an academic discussion, and that it was ungrounded to view his involvement as being improper or controversial. If Peel did not reply within seven days, Bentham would take it as proof that Peel and the commissioners could not justify his exclusion. "Should this be the result, the course which I shall have to take will be matter of pungent regret to me, but consistently with my principle it will not be an avoidable one."<sup>124</sup> This softened letter still contains a hint of menace.

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<sup>122</sup> Peel to Bentham, 29 Apr. 1829, UC xi. 337.

<sup>123</sup> Bentham to Peel, 17 May 1829, UC xi. 344.

<sup>124</sup> Ibid.

Seven days later, Bentham did not receive Peel's reply, but he did not choose to publish the letter of 22 April. Instead, Bentham thought that maintaining the impression of his friendly relationship with Peel was a better option. He did not want a public division from Peel. On 9 November 1829, he told Sutton Sharpe, the editor of *The Jurist*, that he had "had some epistolary intercourse" with Peel on the police-magistrates' salaries. Sharpe's *Jurist* had published an article on Peel's police bill (which received the royal assent on 19 June) in April. The article expressed an approving tone and tried to encourage Peel to implement semi-military measures to ensure that police magistrates strictly performed their duty.<sup>125</sup> This suggestion was approved by Bentham, but the philosopher disagreed with the article's opinion that Peel's proposal of an annual salary of £800 for each police magistrate was insufficient. That is why Bentham felt that the author "seems not to have been apprised of the existence of my Observations on Mr. Peel's Act for the raising of their Salaries".<sup>126</sup> Bentham was implying that Sharpe should encourage the author to contact him, and that as Bentham had correspondence with Peel, he could write on behalf of the author to Peel, so that his article would be better noticed. On the other hand, this episode also suggests that Bentham was still expecting Peel to appreciate his expertise, especially when Peel was reforming the policing system, a topic which had long attracted Bentham's attention.<sup>127</sup>

Although a conciliatory gesture could satisfy Peel's ego, it failed to convince him of the merits of Bentham's expertise. On 9 March 1830, Peel announced in the House of Commons that he would bring a bill to put an end to all fees taken by officers of the courts.<sup>128</sup> On 13 March, Bentham wrote to congratulate Peel's conversion to "a Law Reformist, in good earnest". Bentham continued romanticising Peel's intention as an honourable action against the corrupt lawyers. Peel was once again described as an ally in Bentham's legal war, but this time Bentham emphasised their common experience of being abused for doing the right thing. Bentham was referring to Peel's loss of the Oxford University seat after his decision on Catholic Emancipation, and predicted that the intention to abolish judicial fees would annoy his lawyer friends. "You and I are Brother Oxonians...Sixty-two years ago...I gave my vote for the father of the late Lord Liverpool. For this many years I have been *Anathema Marantha* in that seat of universal and daily perjury—and now you, Sir, even you, are fallen into the same pit with me." Then Bentham offered to draft the bill in case "lawyer-craft might

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<sup>125</sup> "The New Police Bill," *The Jurist*, Apr. (1829), 465.

<sup>126</sup> Bentham to Sharpe, 9 Nov. 1829, University College London Library, Sharpe Papers, MS 81.

<sup>127</sup> Bentham, *Writings on Political Economy, Volume III: Preventive Police*, ed. M. Quinn, pre-publication version (The Bentham Project, 2018), accessed online 24 July 2021, [https://discovery.ucl.ac.uk/id/eprint/10055084/13/Bentham\\_Preventive%20Police.pdf](https://discovery.ucl.ac.uk/id/eprint/10055084/13/Bentham_Preventive%20Police.pdf). Kim Rossmo and Lucia Summers, "Bentham and the Philosophical Nature of Preventive Policing," *International Criminal Justice Review* (2021), 263-5.

<sup>128</sup> HC Deb., 9 Mar. 1830, vol. 23, 67.

venture to oppose to the measure you have embraced".<sup>129</sup> On 15 March, Peel replied that "when this bill shall have been presented and printed I shall have great pleasure in sending you a Copy of it". It was an explicit rejection of Bentham's offer. Moreover, Peel denied Bentham's prediction that lawyers would view the bill hostilely, because he intended to compensate the officers and "leave open for free consideration unembarrassed by a reference to personal interests, the Whole Question of the amount and nature of the Remuneration which it may be fit to allot to the future officers of the Courts of Law".<sup>130</sup>

Bentham's failure to convert Peel has been described as evidence of the resilience of conservatism.<sup>131</sup> This view is further validated by the factor that even at his most vulnerable political moment, Peel still firmly resisted Bentham's menace. Bentham seized on Peel's weakness as a minister whose character was often under pressure. However, Peel did not believe that Bentham could mobilise a similar level of public support as O'Connell had done for the Catholics. And yet, he expressed absolute confidence over Bentham's judgements in the leadership of law reform policies. Moreover, in a debate on the Whig party's penal legislation, on 21 September 1831, Peel said: "I had not a doubt, that the new principles were now to be called into action...sanctioned by the sage of the law (Mr. Bentham) ...the restoration of mantraps!"<sup>132</sup>

However, Bentham's lobbying tested Peel's reformist commitment. Bentham used the ambiguous boundary between the press and private letters to maximize the effect of his opinion that Peel was misled by the official lawyers. He interpreted Peel's timidity in the Parcus letters through this perspective, and continued the same strategy in private correspondence. Although Peel was not persuaded, he must have felt Bentham's strategy annoying at the times when he was attacked and distrusted by his conservative friends. Though Peel was forced to respond, any such response, private or public, was subject to Bentham's interpretation. Bentham collected Peel's responses, used them to create an impression that his expertise was appreciated by the Home Secretary, and spread this impression in his networks and in the press. It will be demonstrated in the following chapters

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<sup>129</sup> Bentham to Peel, 13 Mar. 1830, British Library Add. MS. 40,400, fo. 94-5.

<sup>130</sup> Peel to Bentham, 15 Mar. 1830, UC xi. 353.

<sup>131</sup> Lobban, "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830," 114-135. Lieberman, "The Challenge of Codification in English Legal History," 1-15.

<sup>132</sup> HC Deb., 21 Sep. 1831, vol. 7, 449. Norman Gash interprets this source as Peel's compliment to Bentham, see *Mr. Secretary Peel*, 334.

that Bentham's strategy was adopted or shared by other law reformers, including O'Connell and the editors of *The Jurist*, who continued to put pressure on Peel.

## Chapter III: Daniel O’Connell

This chapter examines Bentham’s efforts to ally himself with the Irish Catholic leader Daniel O’Connell for the purposes of radical law reform. Between October 1828 and October 1829, Bentham provided three petitions to O’Connell to collect signatures and raise public support in Ireland for legal codification, judicial reforms, and an equity dispatch court. O’Connell responded with different levels of enthusiasm. He managed to collect about 10,000 signatures for the codification petition, and spoke in favour of the idea in the House of Commons in 1830 and 1831. With O’Connell’s support, Bentham’s codification project achieved the largest publicity it enjoyed during his lifetime. However, after July 1830, O’Connell was no longer passionate about promoting codification. Meanwhile, Bentham complained privately that O’Connell had been corrupted by the Whigs.

Their correspondence was triggered by O’Connell’s public profession of being a Benthamite law reformer in a Catholic Association meeting at Dublin on 10 July 1828, five days after the County Clare by-election, when O’Connell had become the first openly Roman Catholic MP since the Reformation. In the meeting, O’Connell mentioned that law reform was now one of his priorities, and being a “humble disciple of the immortal Bentham”, he determined to rescue the cause of law reform from the Home Secretary Robert Peel’s mismanagement.<sup>1</sup> The *Morning Herald* reported O’Connell’s speech on 15 July, and on the same day Bentham was informed and wrote his first letter to O’Connell with an enthusiastic opening: “Figure to yourself the mixture of surprise and delight which has this instant been poured into my mind by the sound of my name, as uttered by you.”<sup>2</sup> After his correspondence with O’Connell started, Bentham actively spread the news in his networks, advertising the impression that his law reform movement would have a successful future. On 25 March 1829, Bentham described the situation to French politician La Fayette: “[W]ith him [O’Connell] I have formed a close alliance. He is to use his endeavours in Parliament to place on the carpet my plan for an all embracing regeneration of the law.”<sup>3</sup> On 1 July 1829, Bentham wrote to radical MP Joseph Hume’s wife Maria Hume: “You may have heard or not heard that the King of the

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<sup>1</sup> *Morning Herald*, Jul 15, 1828.

<sup>2</sup> Bentham to O’Connell, 15 Jul. 1828, Bowring, x. 594.

<sup>3</sup> Bentham to La Fayette, 25 Mar. 1829, Cornell University Library, La Fayette Papers.

Radicals is organising an army to storm Blackstone's old castle ycleped happy Castle next campaign under Marshall O'Connell."<sup>4</sup>

O'Connell's support for Bentham has been noted by James E. Crimmins and Philip Schofield.<sup>5</sup> Law reform is not Crimmins' focus. Schofield has given law reform a central part, and added more details. However, his discussion is brief as well. I aim to add the context of competing ideas of reform among Bentham, Whigs, Tories, and O'Connell. It is argued that O'Connell's public alliance with Bentham should be contextualised in his personal negotiations with Whigs and Tories. O'Connell's support for Bentham was heavily influenced by practical considerations, such as the need to increase his bargaining power for the Irish interest. On the other hand, Bentham developed unrealistic expectations about O'Connell's commitment to his law reform petitions. It is argued that the alliance between O'Connell and Bentham was mostly tactical, and that its eventual dislocation was the result of conflicting reform priorities and political strategies.

### 3.1 Law Reform Petitions

Bentham's situation as a law reformer in July 1828 was far from ideal: he was an eighty-year-old internationally famous philosopher with no significant legislative achievement in his own country; his Panopticon prison scheme had long been forgotten in the House of Commons, while the idea of codifying all the English laws and the abolition of the common law, had been firmly denounced by many English lawyers.<sup>6</sup> By contrast, in the summer of 1828, O'Connell was enjoying a successful career as a political agitator. Regarding his personal contribution, O'Connell "effectively invented and successfully marketed" political language and activity which was separated from the revolutionary French model, and produced a unifying effect of allying the Catholic Church with the "more prosperous and 'modern' elements in both urban and rural Ireland (merchants, professionals, larger farmers, and the like) without irretrievably antagonizing (indeed, while drawing a good deal of additional support from) the poorer tenant farmers and landless labourers of the countryside".<sup>7</sup>

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<sup>4</sup> Bentham to Maria Hume, 1 Jul 1829, Hume Correspondence, British Library, Add MS 89,039/1/1.

<sup>5</sup> James Crimmins, "Jeremy Bentham and Daniel O'Connell: Their Correspondence and Radical Alliance, 1828-1831," 359-387. Philip Schofield, *Utility & Democracy*, 319-335.

<sup>6</sup> Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828," 71-78, 115-124. Michael Lobban, "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830," 118-21.

<sup>7</sup> K. Theodore Hoppen, "Riding a Tiger: Daniel O'Connell, Reform, and Popular Politics in Ireland, 1800-1847," *Proceedings of the British Academy* 100, (1999), 123.

Before the Roman Catholic Relief Act 1829 (which received the royal assent on 13 April), O’Connell’s political mobilisation focused on pressing the government to admit Irish and English Roman Catholics to parliament and other public offices. This political object was far more popular than Bentham’s codification. Catholic Emancipation had a longer history of publicity stretching back to William Pitt’s era, when emancipation had been promised during the merger of the Irish parliament into the Westminster parliament.<sup>8</sup> Also, with the support of the Catholic priesthood as organizers who encouraged and brought discipline to the large population of the Catholic peasantry, O’Connell’s campaign produced unprecedented pressure on the Protestant constitution for its sophisticated and effective management. In religious literature, O’Connell was portrayed as “an Old Testament leader shepherding a Catholic nation into its promised and rightful inheritance”.<sup>9</sup> He was much liked in popular literature as well: he told Bentham on 26 October 1828 that the freeholders of County Clare “would risk their all to vote for me as a fellow Catholic and a man long the theme of *ballads*”.<sup>10</sup>

Once such a popular political figure had expressed admiration, Bentham reacted quickly and started to influence him to be a more qualified law reformer. Bentham’s first letter to O’Connell recommended several of his own writings, including the *Codification Proposal, addressed by Jeremy Bentham to All Nations Professing Liberal Opinions* (1822, hereafter *Codification Proposal*), *Indications Respecting Lord Eldon, Including History of the pending Judges’-Salary-Raising Measure* (1825, hereafter *Indications Respecting Lord Eldon*), *Observations on Mr. Secretary Peel’s House of Commons Speech, 21<sup>st</sup> March 1825, introducing his Police Magistrates Salary Raising Bill* (1825, hereafter *Observations on Mr. Secretary Peel’s Speech*), and *The Rationale of Judicial Evidence, Specially Applied to English Practice* (1827, hereafter *The Rationale of Judicial Evidence*). In the letter, Bentham also explained how these books could improve O’Connell’s understanding of existing legal problems, and helped him to recognise codification as the best solution. O’Connell had declared in his speech, “If I go to Parliament, it will be one of the first duties I will undertake, and one of the first reforms I would attempt would be that plaintiff and defendant should both state their own case.”<sup>11</sup> Bentham cited this sentence in the letter, adding that a general rule of not excluding witnesses should be established. The existing trial procedure irrationally excluded many witnesses from stating

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<sup>8</sup> Thomas Bartlett, “Ireland during the Revolutionary and Napoleonic Wars, 1791-1815,” in *The Cambridge History of Ireland*, vol. 3: 1730-1880, ed. James Kelly (Cambridge University Press, 2018), 94-5.

<sup>9</sup> K. Theodore Hoppen, “Riding a Tiger: Daniel O’Connell, Reform, and Popular Politics in Ireland, 1800-1847,” 125.

<sup>10</sup> O’Connell to Bentham, 26 Oct. 1828, *O’Connell Corr.*, vol. 8, 208.

<sup>11</sup> *Morning Herald*, Jul 15, 1828.

their own case in front of the judge, which was criticised by Bentham as “a noxious and poisonous mixture of sale and denial of justice”.<sup>12</sup>

*The Rationale of Judicial Evidence* was intended to give O’Connell a systematic analysis of existing judicial procedure, explaining why the exclusion of evidence was “sale and denial of justice”. Bentham argued that many arguments for excluding interested parties in litigation from giving testimony were problematic, contrary to the ends of justice. For example, people with a criminal record were disqualified from giving testimony on account of their tainted moral character. But Bentham argued that such exclusion was only out of a fear of being deceived, and could not be justified as being useful to find out the truth.<sup>13</sup> After all, the convicted might hold key information, and the exclusion of his evidence would result in more uncertainty in the trial, which gave lawyers more chance to manipulate. Other writings also emphasised the corruption of legal professionals and the necessity of radical reform. When recommending the *Codification Proposal*, Bentham explained the word “codification” by comparing it with Robert Peel’s consolidation of penal statutes. As mentioned earlier, in 1826, when Peel had announced plans to consolidate the statutes, reformers including Bentham and Anthony Hammond had informed the public that Peel might transform the common law into a code. Radical reformers seem to have exploited the vague distinction between “codification” and “consolidation”, which forced the Home Secretary to clarify his opinion.<sup>14</sup> But in July 1828, in the private letter to O’Connell, Bentham felt it better to distinguish codification from Peel’s consolidation. Perhaps Bentham was uncertain about O’Connell’s attitude towards codification. In the Clare speech of 10 July, although O’Connell criticised Peel’s reforms, his criticism was vague and did not clarify which general principle he would apply. Therefore, Bentham urged him to read the *Codification Proposal*, and stressed in the letter that codification was the only method which could liberate the public from the despotism of the legal profession. As Bentham wrote, “My object is to render it possible to ‘lay gents.’ to pay obedience to all rules [by] which they are made punishable”; in other words, to keep the public informed.<sup>15</sup>

Bentham tried to persuade O’Connell to accept his terminology and critical perspective. The *Indications Respecting Lord Eldon and Observations on Mr. Secretary Peel’s Speech* were intended to give O’Connell sources and arguments to use when questioning the government and judiciary. In the

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<sup>12</sup> Bentham to O’Connell, 15 Jul. 1828, Bowring, x. 595.

<sup>13</sup> *Rationale of Judicial Evidence, specially applied to English Practice*, Bowring, vi. 385.

<sup>14</sup> K.J.M. Smith, “Anthony Hammond: ‘Mr. Surface’ Peel’s Persistent Codifier,” 24-44.

<sup>15</sup> Bentham to O’Connell, 15 Jul. 1828, Bowring, x. 595.

letter, Bentham wrote that the former Lord Chancellor Eldon (1801-6, 1807-27) and Home Secretary Peel (1822-7, 1828-30) had organised a corrupt “firm, as I term it, of Judge & Co., [which] concurred in giving to judges the power of imposing upon the people law taxes without stint, on codification of passing the whole profits into their own pockets”.<sup>16</sup> Then Bentham explained how the English judiciary system was commercialised, and justice was sold to whoever could afford the fees set by the judges. At the end, Bentham invited O’Connell to join with him in revealing the corruption to the public.

On 17 July, Bentham invited O’Connell to his house in Westminster, expecting to meet the Irish leader in person.<sup>17</sup> O’Connell replied on 3 August that he would not go to London until March 1829.<sup>18</sup> Although a personal meeting was delayed, O’Connell promised to speak for Bentham in the House of Commons: “Give me all the assistance...to qualify me for becoming in the house your *mouthpiece*.”<sup>19</sup> Bentham received O’Connell’s letter (dated 3 August) on 31 August 1828, and quickly wrote a plan about how to best use the Irish leader’s political energy. Bentham was fully confident of O’Connell oratorical skills, but suggested he should not apply them in the House of Commons, where “the most brilliant and even effective speech that man ever made, or even could make, would be a *flash in the pan* and nothing more”. Instead, O’Connell should mobilise popular support, “to petition Parliament for Law Reform”.<sup>20</sup>

This response to O’Connell’s optimistic hopes of being an effective parliamentarian suggests Bentham’s several concerns. Firstly, as his criticism of parliamentary politics showed, Bentham was disappointed with this political sphere, fearing that O’Connell’s talent would be wasted by a corrupt and indifferent parliament. Perhaps the recent failures to contact Peel and Henry Brougham still upset Bentham, who had compromised by deferring to those English elites on the assumption that they could be persuaded to accept radical reform in the future. However, Brougham’s law reform speech on 7 February 1828 diminished this hope. As Riley writes, Brougham’s speech was a defining moment that damaged Bentham’s trust; on 9 February, Bentham drafted an anonymous letter denying Brougham’s capability “to set up a simple, natural, and rational administration of justice

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<sup>16</sup> Ibid., 596.

<sup>17</sup> Bentham to O’Connell, 17 Jul. 1828, Bowring, x. 596-7.

<sup>18</sup> O’Connell to Bentham, 3 Aug. 1828, *O’Connell Corr.*, vol. 8, 199.

<sup>19</sup> Ibid.

<sup>20</sup> Bentham to O’Connell, 31 Aug. 1828, in *The Irish Monthly*, (1883), 428.

against the entanglements and technicalities of our English law proceedings”.<sup>21</sup> Moreover, on 25 August 1829, Bentham wrote to O’Connell: “Brougham...cannot take the lead in Law Reform.”<sup>22</sup>

Secondly, Bentham was not familiar with O’Connell. Without any personal meeting, he was not sure about O’Connell’s character and ability. It was reasonable for him to politely remind O’Connell of the difficulties of parliamentary politics, and the importance of maintaining the Irish leader’s popularity among the people. Bentham observed that O’Connell’s advantage was in popular politics, mobilising and agitating the Irish Catholics and their sympathizers. It was a different sphere and required a different political language than the more conventional parliamentary language.<sup>23</sup> Therefore, Bentham chose to be more cautious than O’Connell, suggesting the latter use his influence in the Catholic Association to assist law reform.

Meanwhile, Bentham felt it necessary to discuss the proposed petition carefully with O’Connell, thereby strengthening the bond with his new friend, which could either push him to be more committed, or test him to see whether he was being honest or simply tactical when he professed to be a disciple. O’Connell’s letter of 3 August 1828 promised to support Bentham after entering parliament, but Bentham wanted O’Connell’s support immediately. O’Connell explained that he could not devote himself to reform immediately: “[M]y profession gives my family at present between six and seven thousands of pounds in the year, and I cannot afford to deprive them of that sum: all I can do, is, to dedicate to political subjects, as much time as can be torn from my profession.”<sup>24</sup> This answer clearly did not satisfy Bentham. On 31 August, Bentham argued that law reform would not decrease O’Connell’s income. On the contrary, a reformed law could better protect and even increase O’Connell’s income because the reformed law would cause barristers’ eloquence to be valued more when many unnecessary complex procedures were abolished. Moreover, Bentham promised that reform would bring in “perfect harmony” between O’Connell’s personal interest and the public interest if an efficient, affordable, and accessible judicial system were established. Bentham thus encouraged O’Connell to start a campaign immediately rather than waiting for his admission to parliament.

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<sup>21</sup> Chris Riley, “The Hermit and the Boa Constrictor: Jeremy Bentham, Henry Brougham, and the Accessibility of Justice,” 6-9.

<sup>22</sup> Bentham to O’Connell, 25 Aug. 1829, University College Dublin Library, P 12/3/205.

<sup>23</sup> O’Connell’s difficulty of mastering two languages has been noted and analysed by Oliver Macdonagh, *The Life of Daniel O’Connell 1775-1847* (Weidenfeld and Nicolson, 1991), 312-334.

<sup>24</sup> O’Connell to Bentham, 3 Aug. 1828, *O’Connell Corr.*, vol. 8, 198.

Bentham was idealising both his own reforming ideas and O’Connell’s individual merits for the purpose of hastening the Irish leader’s actions for law reform. O’Connell’s reply on 13 September 1828 approved of Bentham’s ideal judicial administration. O’Connell stated that he had already applied Bentham’s procedures in practice. In judicial cases, O’Connell allowed the plaintiff and defendant to speak and debate, and found that disputes could be settled without calling for further testimony. Such a trial was speedy and cheap, and both parties were satisfied.<sup>25</sup> On 29 September 1828, O’Connell agreed in his public speeches to support codification immediately. Moreover, he gave Bentham the hope that public opinion was ready to accept codification, and that he would “take care to make it so familiar to the ‘general ear’ that no man will be abashed at bringing it directly before the consideration of ‘honourable house’”. O’Connell promised to increase the publicity of the idea in Ireland, where “the public are so worried by the workings of the present law machine that I entertain sanguine hopes of being able to effectuate a compleat reform”.<sup>26</sup> O’Connell also promised to stay at Bentham’s house for five mornings to discuss codification. Meanwhile, he asked for more instructions in the form of letters. Furthermore, he implied that he would read the relevant debates in Hansard to familiarise himself with past mentions of Bentham for the preparation of his own speech. This gave Bentham the impression that O’Connell was actively preparing for his parliamentary career and committed to increasing Bentham’s reputation. At the end of the letter, O’Connell also gently encouraged Bentham’s petition-writing: “I should be instrumental in introducing a Code and abolishing the present nefarious and atrocious System. Shall I apologise to you for setting you to work on the petitions. Be assured that they shall reach the public through the honble house.”<sup>27</sup>

### 3.1.1 Codification Petition

Bentham was fully motivated to write the codification petition speedily. He sent a draft to O’Connell in late September or early October 1828, expecting it to be received by 6 October. On 11 October, Bentham sent a new draft because he had made some amendments. He also encouraged O’Connell to make amendments.<sup>28</sup> Moreover, Bentham informed him that a supplement was in process, and

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<sup>25</sup> O’Connell to Bentham, 13 Sep. 1828, Bowring, x. 602.

<sup>26</sup> O’Connell to Bentham, 29 Sep. 1828, *O’Connell Corr.*, vol. 8, 201.

<sup>27</sup> O’Connell to Bentham, 29 Sep. 1828, *ibid.*, 202.

<sup>28</sup> Bentham to O’Connell, 11 Oct. 1828, *The Irish Monthly*, (1883), 511-2.

that once it was completed it would be delivered to him. This letter intended to give the impression that although in his eighties, Bentham was capable of writing quickly enough to act in concert with O'Connell, so that any delay in petitioning would be the young agitator's responsibility. Such a consideration also suggests that Bentham realised that O'Connell would welcome codification only when it did not conflict with his other political objects. Because as Crimmins has noted, in August and September, Bentham had been unsuccessful in persuading O'Connell to support radical parliamentary reform against the Whigs' moderate reform under the title of "constitutional reform". Bentham had also failed to coordinate O'Connell's relationship with the English radical reformer Henry Hunt, whose attack on O'Connell's compromise in the question of disenfranchising the Irish forty-shilling freeholders had pushed O'Connell to ally with the Whigs.<sup>29</sup> Luckily, law reform was a question which had little impact on O'Connell's relationship with the Whigs at this stage.

On 22 October 1828, the *Globe and Traveller* reported on a 19 October 1828 public meeting in Kilkenny:

Mr. O'Connell is to bring forward a resolution declaratory of the necessity of legal reform, and pledging the inhabitants of the different counties in Leinster to petition Parliament, praying it to encourage individuals of legal talent and research to prosecute the objects of legal reformation, by printing all such plans for a regular system of codification as may be presented for its consideration. The learned gentleman stated that he had been in correspondence with Mr. Bentham on the subject, and that two admirable plans of a code had been transmitted to him by that celebrated jurisconsult.<sup>30</sup>

On 24 October, Bentham quoted the *Globe and Traveller*, praising O'Connell's effort and adding other recent positive signs of the growing popularity of his legal philosophy in Continental Europe, for the purpose of boosting O'Connell's confidence about the cause. Bentham mentioned that on 18 October, the Dutch jurist Jonas Daniel Meyer had made a public speech, saying that "Brougham's speech was a poor affair after all; and that he [Meyer] had written as much to Sir James Mackintosh: that Brougham had forgotten the *one only* remedy—Codification."<sup>31</sup> Then Bentham mentioned a French judge (Jean Baptiste Antoine Blondeau), a German law professor (Karl Eduard Morstadt), and a Dutch utilitarian society with 12,000 members.<sup>32</sup> Bentham wrote of these foreign supporters:

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<sup>29</sup> James E. Crimmins, "Jeremy Bentham and Daniel O'Connell: Their Correspondence and Radical Alliance, 1828-1831" 386.

<sup>30</sup> *Globe and Traveller*, Oct 22, 1828.

<sup>31</sup> Bentham to O'Connell, 24 Oct. 1828, Bowring, x. 604. Jonas Daniel Meyer (1780–1834), Dutch jurist and politician, the first Jew to be admitted as a lawyer in the Netherlands.

<sup>32</sup> Jean Baptiste Antoine Blondeau (1784-1854), born at Namur and later naturalised as a French. Karl Eduard Morstadt (1792-1850), professor at the Heidelberg University. The Dutch utilitarian society was founded in 1784 with the goal of

“[O]ur voices, you see, are in no great danger of being in the condition of a voice crying in the wilderness: others, in chorus, will not be wanting.”<sup>33</sup>

O’Connell’s letter of 26 October confirmed the report in the *Globe and Traveller*. He told Bentham that he had got the County of Kerry and the Leinster provincial meetings to support the petition, and that “drafts of a Code may be called for”.<sup>34</sup> Moreover, O’Connell had read the codification petition closely and claimed that he had made some revisions. Judging from the letter (O’Connell’s revised copy of the petition has not been found), O’Connell did not agree with some of Bentham’s expressions. He felt that Bentham’s language was “unusual” and would be ridiculed in the House of Commons. This also suggests that O’Connell was envisioning his presentation and preparing a reply to potential opponents. “It would go hard if I did not return a wicked sarcasm on the present system for every sneer *at us*.”<sup>35</sup>

Bentham was pleased with O’Connell’s report. At around the same time, he sent another petition, focusing on judicial administration, to O’Connell. The two petitions were published in 1829 in the same book under the title of *Justice and Codification Petitions*.<sup>36</sup> This book included three versions of the justice petition: the “Full-length Petition for Justice” consisting of 207 pages, the “Abridged Petition for Justice” consisting of 88 pages, and the “More Abridged Petition for Justice” consisting of 15 pages. And the codification petition was nine pages long. *Justice and Codification Petitions* was published in late 1829.<sup>37</sup> In this book, Bentham advertised the codification petition by emphasising O’Connell’s support: “A Petition...having been honoured by the approbation of Mr. O’Connell...[has] been put into the hands of the *Catholic Association* for the purpose of its being circulated for signatures.”<sup>38</sup> Bentham also explained that his ultimate aim was to press parliament to consider codification, and that the immediate aim was to collect as many signatures as possible. This strategy was different from Bentham’s idea in 1808, when he had asked Samuel Romilly to present a petition

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providing accessible education for the underprivileged. Bentham’s information about the members is correct, see Janneke Weijermars, *Stepbrothers: Southern Dutch Literature and Nation-Building under Willem I, 1814-1834* (Brill, 2015), 143.

<sup>33</sup> Bentham to O’Connell, 24 Oct. 1828, Bowring, x. 605.

<sup>34</sup> O’Connell to Bentham, 26 Oct. 1828, *O’Connell Corr.*, vol. 8, 207.

<sup>35</sup> *Ibid.*

<sup>36</sup> Philip Schofield, *Utility & Democracy*, 320.

<sup>37</sup> Bentham told O’Connell on 16 October 1829 that he had sent the manuscript to the publisher on the day. Bentham to O’Connell, 16 Oct. 1829, University College Dublin Library, P 12/3/207.

<sup>38</sup> *Justice and Codification Petitions: being forms proposed for signature by all persons whose desire it is to see Justice no longer sold, delayed, or denied: and to obtain a possibility of that knowledge of the law, in proportion to the want of which they are subjected to unjust punishments, and deprived of the Benefit of their Rights* (London, 1829), (Bowring, v. 439).

to codify the Scottish law.<sup>39</sup> At that time, Bentham had not thought of collecting signatures. In 1829, however, Bentham's knowledge was greater, and he was actively connecting himself with the most influential popular political organisation of the day, the Catholic Association. This change confirms Joanna Innes and Arthur Burns' observation that "early nineteenth-century campaigners employed petitioning campaigns for a wider range of purposes than their predecessors, and learnt to employ select-committee inquiries not only to publicise their concerns, but also to give extra-parliamentary activists a platform".<sup>40</sup>

The development of popular politics also led to changes in eighteenth-century parliamentary conventions. Romilly had complained that Bentham's voluntary offer of codification was unconventional by comparison with the official appointed commission. Bentham had responded that there was no solid reason to prove the superiority of a commission over voluntary individuals. Both were projecting an idea which was to be transformed into concrete policy. Besides, a voluntary offer did not involve payment, whereas an official commission was paid from public funds.<sup>41</sup> Now, in 1829, through the publication of *Justice and Codification Petitions*, and O'Connell's public campaign, Bentham again expected his expertise to be appreciated equally as a commissioner. "Each person", he wrote, should "be afforded a chance" to debate, no matter how far his "views and wishes" differed from convention. Bentham emphasised that such openness was "the distinctive character" of the codification petition, and that free debate with maximum participation could make the law intelligible to all.<sup>42</sup>

Bentham realised that popular support could motivate an indifferent parliament. He had published a thorough analysis of the political arguments used in parliament for rejecting measures of reform in 1825<sup>43</sup>, and now he applied the counterarguments in the petition. He had explained that "the people", who were deceived by "the artifice and hypocrisy of their oppressors, having been prevented from entertaining any tolerably adequate conception of the cause, would at that time regard either with indifference or with suspicion the healing hand that should come forward with the only true and effectual remedy".<sup>44</sup> And this situation encouraged politicians to use the concept

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<sup>39</sup> See the section two of my first chapter.

<sup>40</sup> Joanna Innes and Arthur Burns, "Introduction," in *Rethinking the Age of Reform, Britain 1780-1850*, 25.

<sup>41</sup> Bentham to Romilly, 20 May 1808, *Correspondence*, vol. 7, 488-90.

<sup>42</sup> Bowring, v. 439.

<sup>43</sup> *The Book of Fallacies* (London, 1824) in *The Collected Works of Jeremy Bentham*, ed. Philip Schofield (Clarendon Press, 2015).

<sup>44</sup> *Ibid.*, 284.

of “gradualism” to limit popular enthusiasm for political involvement. Bentham now refuted this strategy by arguing that individuals should demand maximum publicity for legislation to make sure the law was readable. By contrast, the production of the common law was so obscure, and so subject to individual judges’ private interpretation, that it was a typical example of the deceptive designs of the oppressors: “To ask who it is that the common law has been made by, we learn, to our inexpressible surprise, that it has been made by nobody...it is a mere *fiction*; and that to speak of it as having any existence, is what no man can do, without giving currency to an imposture.”<sup>45</sup>

The codification petition described the common law as the worst despotism: “[W]e have never heard of any tyrant in such sort cruel, as to punish men for disobedience to laws or orders which he had kept them from the knowledge of.”<sup>46</sup> Thus, the common law should be transformed into statutes. The petition insisted that codification was just a matter of time, and that the sooner it was started the earlier it would be completed. Moreover, it underlined Bentham’s idea that parliament should invite all persons, including foreigners, to contribute their expertise. The incentive would be public acknowledgement of their contributions, which could also be a check to any inapplicable proposals designed by opponents as a strategy to obstruct codification. The nature of the reward should be voluntary, different from the existing fee or salary system, because Bentham believed that voluntary association would bring in people who really were interested in the cause. Also, a paid job “would operate as a notice of *exclusion*, to every man who could not regard himself as situated within the sphere of personal favour”. In other words, voluntary association could minimize the chances of patronage and corruption.

On 4 February 1830, Edward Dwyer, the secretary to the Catholic Association, wrote to O’Connell that “I have forwarded the Law Petition [the codification petition] with about 10,000 signatures. It will reach you on Saturday [6 February]”.<sup>47</sup> On 11 February, O’Connell presented the codification petition in the House of Commons, and read an extract of it, which emphatically attacked the common law judges as being dishonest.<sup>48</sup> After O’Connell’s presentation, parliament ordered the petition to be printed.<sup>49</sup> On 15 March Bentham wrote to O’Connell: “On the *occasion* of your motion for printing Codification matter for use of Honourable House, what say you to *another* for the

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<sup>45</sup> Bowring, v. 546.

<sup>46</sup> *Ibid.*, 547.

<sup>47</sup> Dwyer to O’Connell, 4 Feb. 1830, *O’Connell Corr.*, vol. 4, 123.

<sup>48</sup> HC Deb., 11 Feb. 1830, vol. 22, 328-32.

<sup>49</sup> *Journals of the House of Commons*, 11 Feb. 1830, vol. 85, 27.

printing of *Livingston's* Louisiana Codification matter...for it would add a *drag* to a wheel which quite drags enough without it."<sup>50</sup> Bentham explained that it was a strategy to convince more people by making parliament print relevant materials, and the more materials authorised by parliament, the greater would be the effect of encouraging the likeminded. Moreover, codes printed by order of parliament could spread to more places than any private effort. Bentham was encouraging O'Connell to use parliament as an instrument to increase the publicity and credibility of codification.

"*Livingston's* Louisiana Codification matter" refers to a letter sent by American lawyer Edward Livingston to Bentham on 10 August 1829. This letter was included as a testimonial to Bentham's legislative skill in the second supplement to the *Codification Proposal*, and printed in 1830 at Bentham's personal expense.<sup>51</sup> Bentham hoped that through parliament's orders to print, more people would be interested in this subject, and would look to Livingston's codes as proof that the subject was realistic.

In the second supplement to the *Codification Proposal*, Livingston was introduced as a "Commissioner of Codification for the State of Louisiana, United States". He had been appointed in 1821 to prepare a code of criminal law for Louisiana. By 1829, he completed work on a code of crimes and punishments, a code of procedure, a code of evidence, and a code of reform and prison discipline, but they were printed separately and partially until 1833. His letter was a request for Bentham to review these codes. He also acknowledged Bentham as an inspiration: "The perusal of your works, edited by Dumont, fortified me in a design to prosecute the subject whenever a fit occasion should offer...no one can in criminal jurisprudence, propose any favourable change that you have not recommended".<sup>52</sup> Such a personal tribute from a distinguished American lawyer, was viewed by Bentham as useful material for O'Connell's codification campaign.

In the letter to O'Connell (15 March 1830), Bentham also anticipated potential objections from parliamentary opponents. Bentham analysed two arguments against the printing of Livingston's letter, and his analysis could be viewed as a detailed instruction for O'Connell to prepare his parliamentary strategy. According to the first argument, Louisiana was a foreign land whose legislation was not relevant to Britain. Bentham refuted this on two counts. The first was that foreign experience could be valuable if critically reviewed, especially for an important topic like law reform.

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<sup>50</sup> Bentham to O'Connell, 15 Mar. 1830, Bowring, xi. 37.

<sup>51</sup> "*Legislator of the World*": *Writings on Codification, Law, and Education*, liv.

<sup>52</sup> *Ibid.*, 383-4.

The second was that Britain had been spending money on less important topics, having printed, for instance, 26 volumes of the former Nabob of Arcot's "debts, real and pretended". Why could not it print on a subject whose cost was much smaller?

Bentham thought that the second oppositional argument would cite the political differences between Louisiana (part of a republic) and Britain (a monarchy). Bentham dismissed this argument as ignorant. Louisiana codes did not discuss any constitutional law, and focused on penal and procedural laws. After this analysis, Bentham added a note privately expressing his approval of the republican system. He suggested that the Louisiana civil code should have made the management of landed property fairer than in Britain, whose system was an oligarchy disguised as a constitutional monarchy. According to Bentham, Home Secretary Robert Peel and his lawyer advisors were the timid supporters of the oligarchy: "Should Mr Peel, or any of his lawyers,--should the worthy offspring of the Scarlet Whore, whose sins are red as scarlet, dare to make opposition, remind them of the civil wars of ancient Rome, between the Patricians and the Plebeians: main cause of them, the original policy, inexorably adhered to, of keeping the rule of action in a state of uncognoscibility: the lamp of the law hidden for ever within the impenetrable, light-denying, darkness-securing bushel. [sic]"<sup>53</sup>

On 8 June, O'Connell gave a notice in parliament that "he will be pleased to take measures to have drafts or plans of a Code of Law and procedure, either in the whole or in parts, to be laid before this House" on 24 June.<sup>54</sup> On 23 June, Bentham wrote to stop O'Connell's motion. No reason of this decision was given, but presumably Bentham felt that his codes were not ready to be presented, and that an imperfect display might cause mockery. Instead, Bentham suggested presenting a codification petition which was supposed to be different from the earlier one. Again, he did not explain the reason for this repetition. Moreover, he stated that this part had been written on 13 June, but he could not remember how or why it was unsent.<sup>55</sup> This suggests poor decision-making and communication, in contrast to the competence of Bentham's earlier petition-writings. One possibility is that O'Connell's notice on 8 June stimulated Bentham to realise that he was not well prepared, and that the anxiety to produce a perfect code influenced his judgement. As a result, Bentham's letter influenced O'Connell's action. On 8 July, O'Connell withdrew the notice in

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<sup>53</sup> Bentham to O'Connell, 15 Mar. 1830, Bowring, xi. 38.

<sup>54</sup> Extract from page 740 of Votes and Proceedings, 1830, in HC/CL/JO/6/160 at Parliamentary Archives: GB-061.

<sup>55</sup> Bentham to O'Connell, 23 Jun. 1830, *The Irish Monthly*, (1883), 551.

parliament but defended Bentham's reputation by saying that all existing objections against codification were misinterpretations.<sup>56</sup> O'Connell's defence created a chance to market Bentham's codification in the future. Furthermore, O'Connell's first parliamentary session produced the most significant publicity yet for Bentham's codification, by far. No other MPs supported codification as firmly as O'Connell did.

### 3.1.2 Judicial Administration Petition

O'Connell did not present the justice petition in parliament, and his letters suggest that he did not agree with some arguments in the petition. This section will discuss the reasons why O'Connell was not much interested in promoting this petition. However, an introduction to this petition is necessary before proceeding to an analysis of O'Connell's attitude and Bentham's persuasion. The *Justice and Codification Petitions* explained that the justice petition provided a systematic analysis of the existing system of judicial procedure and establishment, which served as a preparation for proposing codification as the best remedy. The petition had three versions, and the longest version (207 pages) can facilitate a more comprehensive reading of Bentham's justifications of a system of procedure based on "the domestic system", which "pursued of course by every intelligent father of a family, without any such idea as that of its constituting the matter of an art or science". As Schofield has analysed, the intelligibility and economy of this domestic procedural system "was contrasted with the complexity and expense" of the common law, which reflects Bentham's egalitarian ideal to make justice accessible to all, "instead of being denied to the many and sold to the privileged few".<sup>57</sup>

In the longest version of the justice petition, the part which criticised English practice was from the *Rationale of Judicial Evidence*. O'Connell noticed this on 2 November 1828, writing to Bentham that "the second petition which you are preparing will I perceive contain a species of Synopsis of the essay on the 'technical System' in the 4th Vol of judicial evidence".<sup>58</sup> The justice petition argued that justice was denied to the disadvantaged many and sold to the privileged few "at an extensively ruinous price". The cause of this grievance was the arbitrary power given to judges to "pay themselves—to pay themselves what they please, so it be at the expense of suitors".<sup>59</sup> The fourth

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<sup>56</sup> HC Deb., 8 Jul. 1830, vol. 25, 1114.

<sup>57</sup> Philip Schofield, *Utility & Democracy*, 321.

<sup>58</sup> O'Connell to Bentham, 2 Nov. 1828, *O'Connell Corr.*, vol. 8, 211.

<sup>59</sup> Bowring, v. 444.

volume of *Rationale of Judicial Evidence*, under the title of “On the Cause of Exclusion of Evidence, the Technical System of Procedure” (1827), discussed in detail the judges’ power to take private fees. It argued that judges did not work for the realisation of justice but for their own profit. They viewed judicial service as purely a commodity in an unregulated market where they set the price and aimed for maximal profit. This opinion was supported by a critical examination of the administration of the common law. By comparison to legislation, the common law courts did not provide a clear and authoritative code of rules for the public (suitors) to check their accountability: “No rules were laid down beforehand: as occasion called, what was thought right, or pretended to be thought right, upon each occasion, was done; and as to rules, it was left to suitors to collect or rather frame them for themselves as they could, from the observation of what had been done. Law produced in this mode of generation has been called *common law*.”<sup>60</sup>

The *Rationale of Judicial Evidence* illustrated the procedure and terminology that lawyers had invented to monopolise the interpretation of the law, and used the word “technical” to describe them. In the note on this word, Bentham gave a sarcastic explanation emphasising that the English common law pretended to be reasonable, but its true nature was absurd. “The mental endowment displayed in the manufacture of these reasons, is, in the same dialect, called *astutia*[a Latin word, meaning ‘cunning’]; to render this into English, say folly, or knavery, or both together...in jurisprudence [of common law]. In Folly, Knavery sees one of her most useful instruments and best friends.”<sup>61</sup> By this logic, Bentham characterised the “technical system” as “the fee-gathering or fee-collecting system” by which lawyers placed their personal interest higher than the public interest in conducting judicial services. Accordingly, the *Rationale of Judicial Evidence* argued that the fee-gathering system had 19 devices or procedural arrangements to promote the sinister interest of the established judicature. The first device was the exclusion of the parties from the presence of the judge, and this exclusion was criticised by O’Connell publicly in July 1828. The common recognition of this problem was one of the earliest topics of O’Connell’s correspondence with Bentham. The other 18 devices which facilitated judicial corruption might have broadened O’Connell’s mind, helping him to organise counterarguments. They included the marginalisation of local courts, disorganised competition among the central courts, blind fixation of times for the operations of procedure, and so on.

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<sup>60</sup> Bowring, vii. 197.

<sup>61</sup> *Ibid.*

The justice petition listed 14 devices that were adapted from the *Rationale of Judicial Evidence*. Here is a table comparing the devices in both documents side by side:

The justice petition <sup>62</sup>	The <i>Rationale of Judicial Evidence</i> <sup>63</sup>
1. Parties excluded from judges' presence.	1. Exclusion of the Parties from the presence of the Judge.
2. Language rendered unintelligible.	2. Tribunals out of reach, or swallowing up the Inferior Courts.
3. Written instruments, where worse than useless, necessitated.	3. Bandyng the cause from Court of Court.
4. Mendacity licensed, rewarded, necessitated, and by judge himself practised.	4. Blind fixation of Times for the operations of Procedure.
5. Oaths, for the establishment of the mendacity, necessitated.	5. Sittings at long Intervals.
6. Delay in groundless and boundless lengths, established.	6. Motion Business.
7. Precipitation necessitated.	7. Decision without thought, or Mechanical Judicature.
8. Blind fixation of times for judicial operations.	8. Chicaneries about Notice.
9. Mechanical, substituted to mental judicature.	9. Principle of Nullification.
10. Mischievous transference and bandying of suits.	10. Mendacity-Licence.
11. Decision on grounds avowedly foreign to the merits.	11. Ready written Pleadings.
12. Juries subdued and subjugated.	12. Principle of Jargon, or Jargonization.
13. Jurisdiction, where it should be entire, split and spliced.	13. Fiction.
14. Result of the fissure—groundless arrests for debt.	14. Entanglement of Jurisdictions.
	15. Means of securing Forthcomingness uselessly diversified.
	16. Creation of Needless and Useless Offices.

<sup>62</sup> Bowring, v. 446.

<sup>63</sup> Bowring, vii. 226-310.

	17. Sham pecuniary checks to Delay, Vexation, and Expense.
	18. Double-fountain Principle.
	19. Laudation of Jurisprudential Law.

The second device was unintelligible language, equivalent to the 12th device in the *Rationale of Judicial Evidence*, “Principle of jargon, or jargonization”. Its third device was related to the 11th device (“Ready-written pleadings”) in the other book. Its fourth device paralleled the 10th device (“Mendacity-license”). Its fifth device was partly drawn from the “Mendacity-license”. Its sixth and seventh devices were related to the latter’s fifth device, “Sittings at long intervals”. Its eighth device was developed from the fourth device, “Blind fixation of times for the operations of procedure”. Its ninth device was formed out of the seventh device, “Decision without thought, or mechanical judicature”. Its 10th device was related to the third device, “Banding the cause from court to court”. Its 11th device was related to the ninth device, “Principle of nullification”. Its 12th and 13th devices were related to the 14th device, “Entanglement of jurisdictions”. The 14th device in the justice petition, “Result of the fissure--groundless arrests for debt”, was a new analysis.

How might we view the differences between the *Rationale of Judicial Evidence* and the justice petition? Was Bentham’s knowledge of the abuses of the courts augmented between 1827 and November 1828? Was his analysis persuasive to O’Connell? On 29 September 1828, O’Connell had written to Bentham, “The exhibition of ‘the fee gathering’ or rather, ‘fee encreasing System’ has ceased I believe for some time in England, but I have seen it in full work in Ireland. Our Chief Baron was distinctly convicted of it by a parliamentary commission. The Honourable House did of course deal leniently with him. Lord Norbury was another instance of it. I have some details on these subjects which will enliven the discussion of the principal matter when we come to debate it in parliament.”<sup>64</sup> O’Connell could supply some details about the corrupt Irish judges but implied that Bentham’s observation was outdated when describing the English judges. He perhaps expected Bentham to be more specific and accurate, or to pay more attention to revealing the problem in Ireland.

On 2 November 1828, O’Connell continued to imply that Bentham’s observation was outdated:

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<sup>64</sup> O’Connell to Bentham, 29 Sep. 1828, *O’Connell Corr.*, vol. 8, 202.

Permit me to remark to you that the feegathering principle is now apparently if not really terminated by the exclusion of fees and increase of salary. Will it not therefore be absolutely necessary to speak of it as a bye gone principle which *was* in full operation for centuries and until it produced the present vicious perfection in excluding justice, that is, the petition must distinctly recognise the present System of Salaries whilst its [*sic*] traces the evils that now exist to the original and long continued principle of feegathering.<sup>65</sup>

However, this passage was inconsistent with O’Connell’s letter of 29 September, in which he had admitted that the fee-gathering principle was in full work in Ireland. What happened between the two months? O’Connell perhaps thought that the problem was too complex for non-professionals to comprehend and that there was little chance of mobilising sufficient support, perhaps because he reviewed his previous experience and was discouraged. In the letter of 29 September, the reference to the Chief Baron was to Standish O’Grady, Lord Chief Baron of Ireland 1805-31. In 1821, O’Grady had been accused of taking illegal fees after an investigation by a parliamentary commission into the Irish Courts of Justice, but the commission did not recommend any measures against him. Lord Norbury, Chief Justice of the Court of Common Pleas in Ireland 1800-27, was accused in 1819 of the same problem but likewise escaped any proceedings.<sup>66</sup> O’Connell had petitioned for Lord Norbury’s removal from the bench in 1826, but Norbury was only induced to resign in 1827 by the offer of an Earldom.<sup>67</sup> The point made in O’Connell’s petition did not concern Lord Norbury’s corruption but rather his physical inability to conduct judicial services. O’Connell’s petition was presented by Whig MP James Scarlett on 5 May 1826. “He [O’Connell] begged it to be understood that he preferred no imputation on the honour or integrity of the learned lord. He alleged simply, that he [Norbury] was incapaci[ta]ted from the adequate performance of his judicial duties, by the infirmity and debility consequent upon old age...he would frequently fall fast asleep in the middle of the trial at which he was presiding”.<sup>68</sup>

However, in private letters, O’Connell could confidently criticise corruption in the judiciary. On 9 June 1827, having discovered that Norbury was about to resign, O’Connell wrote to his friend, the Whig MP Maurice Fitzgerald (Knight of Kerry):

Lord Norbury has been at length bought off the Bench by a most shameful traffic. What a dolt that man must be—if there be any such—who wonders at the state of Ireland, which has had

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<sup>65</sup> O’Connell to Bentham, 2 Nov. 1828, *ibid.*, 211.

<sup>66</sup> O’Connell to Bentham, 29 Sep. 1828, *ibid.*, 202 note 4 and 5.

<sup>67</sup> Ronan Keane, “Toler, John, first earl of Norbury 1745-1831,” in *The Oxford Dictionary of National Biography* (2008)

<sup>68</sup> HC Deb., 5 May 1826, vol. 5, 911.

its Chief Justice of the Common Pleas in the hands of a sanguinary buffoon for more than twenty years, and has its Equity distributed by the irritable, impatient, bigoted...our indignation is boiling over.<sup>69</sup>

O'Connell's different expressions in the private and public spheres were influenced by a rising ideology of judicial independence which romanticised individual judges' morality. Judges "were prominent public characters, whose utterances were frequently in the newspapers. The unabashed exhibition of individual personality traits on the bench was regarded as normal and the bar generally accommodated itself to the foibles of the bench except when pressed to extremes."<sup>70</sup>

O'Connell's hesitation did not discourage Bentham. On 18 November 1828, Bentham wrote to O'Connell that the justice petition was an innovation, and implied that he was not afraid of criticising judges' morality in public: "The object it aims at is quite different from that of any other Petitions that ever was". Bentham admitted that such a petition could be rejected simply for being unconventional. However, he was determined to set a precedent to see the reaction of parliament. Moreover, he firmly believed in his own observation: "[T]he course I have taken, in the body of the petition, is to bring to view a state of things the existence of which is undeniable, and which, according to my conception, gives me an incontestable right to make the completest and most conclusive case that it is in my power to make for my proposed remedy." Bentham emphasised his expertise, pressing O'Connell to give up his disapproval. However, his strategy was to encourage O'Connell to continue the editing and to view the petition as his own work: "[M]y plan is this: not a syllable that does not meet with your full concurrence must appear; for nothing that you do not approve of must you in any way be responsible." If O'Connell were unwilling to take the risk of denying the integrity of the judiciary in public for fear of libel prosecution, Bentham emphasised his courage in the hope of motivating O'Connell: "I see no reason, why, in my own name, and on my own responsibility, I should not be at liberty to publish it."<sup>71</sup>

Bentham's rhetoric of moral courage did not persuade O'Connell. On 16 February 1830, O'Connell wrote to Charles Sinclair Cullen (a bankruptcy commissioner and recent disciple of Bentham)<sup>72</sup>:

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<sup>69</sup> O'Connell to the Knight of Kerry, 9 Jun. 1827, *O'Connell Corr.*, vol. 3, 323.

<sup>70</sup> Patrick Polden, "The Judiciary," in *The Oxford History of the Laws of England*, vol. 11, 1820-1914: *English Legal System*, ed. William Cornish and others (Oxford University Press, 2010), 987. Conor Hanly, "The decline of civil jury trial in nineteenth-century England," 255-9.

<sup>71</sup> Bentham to O'Connell, 18 Nov. 1828, *The Irish Monthly*, (1883), 512-3.

<sup>72</sup> Cullen played an active role in Bentham's Law Reform Association, see my chapter 4.

I adopt the “spirit of the petition for justice.” That petition is my legal creed. I do not believe it to be infallible...The fee-gathering system has been attacked in Ireland thus far—the fees are all now paid to the government. The pecuniary emoluments of the judges are fixed and are not affected by the amount of the fees, directly or indirectly. Even the officers, whom the judges appoint, are now paid by fixed salaries. We are therefore suffering from the odious effects of “fee-gathering” in former times although that source of increase of mischief is slackened. In attacking the fee-gathering system I must not forget that this is the existing state of facts.<sup>73</sup>

O’Connell maintained that the fee system was largely a past issue but that its “odious effects” were serious. Then, on the next day, O’Connell said in parliament that “all judicial fees ought to be abolished”.<sup>74</sup> Basically, O’Connell diplomatically avoided giving clear support for Bentham’s petition, but was willing to speak out against the fee system independently. This suggests O’Connell’s unwillingness to produce the public impression that he was a dogmatic disciple of Bentham.

### 3.1.3 Equity Dispatch Court Petition

On the other hand, when O’Connell’s relationship with the Tory government and the Whig party was in difficulty, he cultivated a radical public persona, and Bentham observed and used this pattern to lobby O’Connell to support a new petition. After the passage of the Roman Catholic Relief Act in April 1829, O’Connell was prevented from taking his seat by an unsupportive House of Commons because he had been elected before the act and thus still had to take the old version of the parliamentary oath, which denied the authority of the Catholic Church.<sup>75</sup> O’Connell felt that he had been betrayed by the government and his Whig friends. Privately, O’Connell thought that the Tory government had “most grossly violated” the promise not to make the oath issue a government question. And he read this result as proof of “Tory falsehood and hypocrisy and Whiggish *uncertainty*”, planning to resort to the press to “expose the Ministry to the derision and contempt of the public”.<sup>76</sup> The planned speech was published on 25 May 1829 in the *Morning Chronicle*. O’Connell protested: “[T]he House of Commons have deprived me of the right conferred on me by the people of Clare. They have, in my opinion, unjustly and illegally deprived me of that right; but

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<sup>73</sup> O’Connell to Cullen, 16 Feb. 1830, *O’Connell Corr.*, vol. 4, 130.

<sup>74</sup> HC Deb., 17 Feb. 1830, vol. 22, 573.

<sup>75</sup> The Act of Supremacy 1559 required any person taking public or church office in England to swear allegiance to the monarch as Supreme Governor of the Church of England. Failure to do so was to be treated as treasonable. O’Connell refused to take the oath of supremacy on 20 May 1829.

<sup>76</sup> O’Connell to Charles Sugrue, 20 May 1829, *O’Connell Corr.*, vol.4, 63.

from their decision there is no appeal, save to the people. I appeal to you.”<sup>77</sup> Then he stressed that despite the passage of the Catholic Relief Act, “many political and practical grievances and oppressions” still existed, requiring someone “to correct” them. Accordingly, he proposed a wide variety of reforms, including the clarification of legal language and a comprehensive reorganisation of judicial administration. This high-profile manifesto quickly attracted Bentham’s attention, who thought that it was the time to introduce a new law reform plan.

On the same day that O’Connell’s speech was published in the *Morning Chronicle*, Bentham wrote to him, “Herewith, goes to you a something you could little have been in expectation of. A projected Institution which has sprung out of my ‘Petition’, since you saw me”.<sup>78</sup> It appeared that after their first meeting on 8 March<sup>79</sup>, Bentham was inspired to write a plan designing a new local court called the “Equity Dispatch Court”. By 25 May, Bentham had completed a draft and sent it to O’Connell. On 28 May, O’Connell replied that he agreed with this idea and promised to support its application. “There must be a dispatch Court. There is a pressing and daily increasing necessity for such an experiment.”<sup>80</sup>

The Equity Dispatch Court was a scheme for clearing the backlog of business in the Court of Chancery, but why did Bentham think of this and recommend it to O’Connell? Perhaps Bentham felt it difficult to change O’Connell’s opinion of the fee system, and realised that the justice petition was too general, and that a more specific topic could have a better chance of winning O’Connell’s support. Bentham also noticed that O’Connell was interested in reforming the Court of Chancery. O’Connell told him on 28 May: “Luckily the new Chancery bill—and justices of peace bill are postponed until next session.”<sup>81</sup> The “new Chancery bill” referred to Lord Chancellor Lyndhurst’s bill for facilitating the administration of justice in suits and other proceedings in equity. Lyndhurst first introduced the bill on 8 May but only very briefly. On 12 May, he explained the reasons in detail in the House of Lords, arguing that the delays in the Court of Chancery had not been remedied in 1825 by the publication of the 1824 commission’s report. He strongly complained of the procedure of hearing: “When I inform your lordships, that eighteen months may elapse between the setting down of a cause for hearing and the hearing itself, your lordships will feel the extent of the grievance of

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<sup>77</sup> *Morning Chronicle*, May 25, 1829, 3.

<sup>78</sup> Bentham to O’Connell, 25 May 1829, University College Dublin Library, P 12/3/203.

<sup>79</sup> O’Connell to his wife, 6 Mar. 1829, *O’Connell Corr.*, vol. 4, 20.

<sup>80</sup> O’Connell to Bentham, 28 May 1829, *O’Connell Corr.*, vol. 8, 215.

<sup>81</sup> *Ibid.*

which I am complaining.”<sup>82</sup> This recognition of delays and a massive backlog should have been approved by O’Connell and Bentham. However, they could hardly agree with Lyndhurst’s remedy, which proposed to create a new judge in the Court of Chancery to transact the equity business of the Court of Exchequer and the Court of Chancery.

On 21 May, because of Lord Eldon’s objection, Lyndhurst’s bill was rejected.<sup>83</sup> This news not only pleased O’Connell, but also encouraged Bentham, for he could now use Lyndhurst’s speech to advertise the Equity Dispatch Court. Lyndhurst had emphasised how his measure could save senior judges’ time and workload, but Bentham’s petition promised suitors that the establishment of dispatch courts could save them “a great deal of time and money, and to render a correct judgement in their case more likely”.<sup>84</sup> The dispatch courts would be administered by a unified procedure. This mode of procedure was described as “summary procedure” and had been in use in the small-debt judicatories called Courts of Requests and Courts of Conscience, “held by *Justices of the Peace* when acting singly, or otherwise than in General Sessions,--those held by *Bankruptcy Commissioners*: add to these, Courts MARTIAL, and Committees of either House of *Parliament*, when employed in the elicitation of *evidence*.”<sup>85</sup> The summary procedure was interchangeable with the domestic procedure, and both allowed the interested parties to state their own cases, and then the judge would summarise their arguments. This procedure could simplify the existing complex pleading system, making written pleadings unnecessary, and thereby speeding up trials. On the other hand, concerning the aptitude of those single-presiding judges, the petition recommended popular election and examination to check this. Judges should not be chosen by the politics of patronage, but by the suitors through the “ordinary mode in use in elections;--by ballot, to exclude danger of offence”.<sup>86</sup>

The approval of a successful democratic leader of O’Connell’s stature encouraged Bentham to draft a parliamentary bill for the scheme. On 25 August, Bentham wrote to O’Connell, “Dispatch Court Bill wants not much of being completed. My friend, Bickersteth, who, in his capacity of silk gownsman at the Chancery Bar, is quite overwhelmed with business, approves of the Bill without reserve.”<sup>87</sup> Henry

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<sup>82</sup> HL Deb., 12 May 1829, vol. 21, 1277.

<sup>83</sup> HL Deb., 21 May 1829, vol. 21, 1493-1507.

<sup>84</sup> Philip Schofield, *Utility & Democracy*, 324.

<sup>85</sup> *Equity Dispatch Court Proposal; containing a plan for the speedy and unexpensive termination of the suits now depending in Equity Courts. With the form of a petition, and some account of a proposed Bill for that purpose* (London, 1830) (Bowring, iii. 299-300).

<sup>86</sup> *Ibid.*, 300.

<sup>87</sup> Bentham to O’Connell, 25 Aug. 1829, *The Irish Monthly*, (1883), 517.

Bickersteth had been appointed King's Counsel in 1827.<sup>88</sup> The mention of Bickersteth was intended to reassure O'Connell with the knowledge that a leading lawyer also shared their democratic sentiment. As a working lawyer, O'Connell had referred to his own courtroom experience to disapprove of Bentham's observation of the fee system. Now Bentham was using the testimonial of another successful working lawyer, who practiced in the Court of Chancery, to convince O'Connell of the practicality of the equity dispatch court. The effect was promising. On 22 October 1829, O'Connell wrote to Bentham, "If you think it right, I will begin with 'Despatch Court,' that is, the first or second day of the session."<sup>89</sup> However, O'Connell did not fulfil this promise after he was permitted to return to parliament from 4 February 1830. By January 1831, Bentham had given up on pressing O'Connell on this issue.<sup>90</sup>

On the other hand, in their letters of 1829, O'Connell continuously gave Bentham the hope that the equity dispatch court could trigger large-scale law reform. As Riley has noted, the equity dispatch court was Bentham's strategy after he had realised the difficulty of advertising large-scale changes to judicial administration. Bentham recognised that "he ought to devise an interim solution...It was because of the dire state of the court of chancery, the blame for which he placed upon Lord Eldon, that he considered such a measure to be a matter of urgency."<sup>91</sup> This recognition might also have been influenced by O'Connell's promise that after the dispatch court, "then the natural, as opposed to technical procedure—at least a petition on this subject: then an address to procure 'a Code'. Every day I will have a petition on some one or more law-abuse. It seems to me that it will be useful to have a talk on this subject almost every day. So many people have to complain of the expense and delay of the law, that thus stimulating the expression of public opinion cannot but be useful".<sup>92</sup> However, these promises of petitioning and stimulating public opinion could hardly be realised once O'Connell was trapped in the politics of Westminster.

## 3.2 Parliamentary Politics

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<sup>88</sup> Bickersteth was an admirer of Bentham's legal ideas and funded a legal magazine in 1827 called *The Jurist*, spreading and defending Bentham's ideas. See my chapter 5 on *The Jurist*.

<sup>89</sup> O'Connell to Bentham, 22 Oct. 1829, *O'Connell Corr.*, vol. 8, 221.

<sup>90</sup> Chris Riley, "Jeremy Bentham and Equity: The Court of Chancery, Lord Eldon, and the Dispatch Court Plan," *The Journal of Legal History* 39, (2018), 47.

<sup>91</sup> *Ibid.*, 40.

<sup>92</sup> O'Connell to Bentham, 22 Oct. 1829, *O'Connell Corr.*, vol. 8, 221.

Without the support of Whig MPs, O'Connell could only attract limited approval in parliament. When the 1830 session of parliament was opened on 4 February 1830, the opening speech, delivered by the Lord Chancellor to both Houses, contained the utterance: "His Majesty commands us to acquaint you, that His Attention has been of late earnestly directed to various important Considerations connected with Improvements in the general Administration of the Law."<sup>93</sup> This was the first time in Bentham's lifetime that law reform had been recognised as such an important part of the national agenda. And O'Connell rose to respond to the "King's Speech": "[T]hanks to the right hon. Secretary (Mr. Peel) for his successful attempts to break down some of the legal defects which deformed the system. But we should proceed further; banish the barbarities of special pleading, and cause all our courts to act upon one consistent and defined principle."<sup>94</sup>

Then O'Connell challenged Peel's law reform motion on 18 February 1830. When Peel suggested abolishing the separate jurisdiction of the Admiralty Court in Scotland, O'Connell replied that all the courts should be united "so that justice could be obtained by one simple and intelligible mode of proceeding...for all people in the recovery of their rights".<sup>95</sup> However, O'Connell was alone. His supposed allies, the Radical MPs Francis Burdett and Joseph Hume, who had been instructed by Bentham to support O'Connell, did not speak after the following words of O'Connell's: "The principle of Codification was good...what the right hon. Gentleman opposite [Peel] was now doing, and what he had done, in consolidating the principles of two hundred and seventy-two Statutes into eight, was Codification, and he ought to proceed until he had established a complete Code."<sup>96</sup> Peel responded that he was not a codifier:

The suggestion of the hon. Member [O'Connell] as to Codification, was one in which he could not go with him...the more concise any legal Code was made, the more its interpretation was left to the discretion of the Judge...thus the adoption of a Code would be open to one of the hon. And learned Member's strongest objections—that of an *ex post facto* law for a new case in the discretionary interpretation of the Judge.<sup>97</sup>

Peel's argument which distorted the idea of all-comprehensive language as a language of extreme concision, puzzled O'Connell, for he could not demonstrate that a code which had not yet been written could give the judges more discretionary power or not.

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<sup>93</sup> HL Deb., 4 Feb. 1830, vol. 22, 3.

<sup>94</sup> HC Deb., 4 Feb. 1830, vol. 22, 95-6.

<sup>95</sup> HC Deb., 18 Feb. 1830, vol. 22, 674.

<sup>96</sup> HC Deb., 18 Feb. 1830, vol. 22, 676. Bentham to O'Connell, 18 Dec. 1829, University College Dublin Library, P12/3/209.

<sup>97</sup> HC Deb., 18 Feb. 1830, vol. 22, 677.

On 9 March, when O'Connell suggested a local court system to "facilitate the administration of justice at every man's door", the Solicitor General and Tory MP Edward Sugden dismissed the idea on the grounds that "the local magistracy would become mixed up with the interest of families, and it was hardly possible to avoid partiality".<sup>98</sup> Meanwhile, O'Connell's idea, which could be extended to link with Bentham's equity dispatch court, was associated with the French system by certain speakers. Whig MP Cutlar Fergusson, for instance, said that "it was most desirable to carry justice home to every man's door, but he doubted whether it were possible to find a sufficient number of judges to put such a scheme, on the French plan, into execution".<sup>99</sup> Then a more serious attack on O'Connell came from the Attorney General James Scarlett, who said "he could not agree with the hon. Member for Clare in what he had said with respect to special pleading, as he considered the present system unobjectionable...the hon. Member for Clare...was wrong also in his wish to carry cheap justice to every man's door. One disadvantage of many judges was the uncertainty of the law, the decision of one tribunal in France being often at variance with another."<sup>100</sup> O'Connell's measure was thus labelled as "French" and inapplicable in Britain. After Scarlett's speech, Hume rose to speak but his focus was to question whether Scarlett made "a sneer of ridicule" against Bentham, instead of responding to the issues of special pleading and of the local court system, which could have directly assisted O'Connell.

On 8 June, O'Connell gave notice that "he will be pleased to take measures to have drafts or plans of a Code of Law and procedure, either in the whole or in parts, to be laid before this House" on 24 June.<sup>101</sup> However, this codification notice was not recorded in either the *Hansard House of Commons Debates* or volume 85 of the digitised *House of Commons Journal* (8 June 1830).<sup>102</sup> Whether this was due to a deliberate action or simple neglect is unknown. In any case, O'Connell still received no support from the Radicals or Whigs. Then, on 18 June in a debate about the Attorney General's administration of justice bill, O'Connell's calls for radical change, which repeated some key points from Bentham's justice petition such as abolishing the separation between law and equity, was criticised as "too wide a range" and "too general and theoretical" to be offered a specific reply.<sup>103</sup>

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<sup>98</sup> HC Deb., 9 Mar. 1830, vol. 23, 65.

<sup>99</sup> *Ibid.*, 67.

<sup>100</sup> *Ibid.*, 69.

<sup>101</sup> Extract from page 740 of Votes and Proceedings, 1830, in HC/CL/JO/6/160 at Parliamentary Archives: GB-061.

<sup>102</sup> HC Deb., 8 Jun. 1830, vol. 25, 88-176; *Journal of the House of Commons: Volume 85, 1830*, 526-532. British History Online, accessed November 16, 2020, <http://www.british-history.ac.uk/commons-jrnl/vol85/pp526-532>.

<sup>103</sup> HC Deb., 18 Jun. 1830, vol. 25, 514.

However, Bentham failed to provide a codification bill and on 23 June, he asked O’Connell to withdraw the scheduled motion on 24 June, and support Francis Burdett’s presentation of the codification petition: “Before your Notice was given, Burdett (I was told) stood engaged to present a Petition from me, praying that any such contributions to an all-comprehensive Code, as I shall send in, may be printed for the use of Members by Order of Honble House.”<sup>104</sup> It seems that Bentham was simply using parliament as a platform to increase the publicity of codification, and to call for collaborators. However, the price of this strategy was that it placed O’Connell in an isolated and awkward situation when facing serious challenges such as Peel’s questioning about how concise the code would be. On the other hand, Bentham’s strategy was based on his high estimate of O’Connell’s speaking power, which was an impression O’Connell himself constantly gave to Bentham in his letters, writing for instance that he could respond to opponents with brilliant “wicked sarcasm”. Bentham also gave O’Connell a wrong impression of his capability for legislative drafting. O’Connell’s notice on 8 June was not a plan which Bentham knew about in advance, but was based on an estimate that Bentham could prepare the bill in a short time. But O’Connell did not anticipate that on 23 June, the day before his promised date to present the bill, Bentham would inform him to cancel the motion. O’Connell was likely to feel surprised and even embarrassed when he realised that Bentham was advertising an ideal and not preparing a concrete bill.

O’Connell may also have become upset by Bentham’s ineffective networking. On 19 April, Bentham managed to get 11 MPs’ signatures for the Law Reform Association (discussed fully in the next chapter), whose main agenda was codification, and O’Connell was one of them.<sup>105</sup> However, the other 10 MPs, including Francis Burdett, did not give any support for O’Connell’s codification campaign. On 17 June, Bentham wrote to Burdett that “you were kind enough to undertake [the codification petition]—not merely to present to Honourable House, but to imbed in your speech”.<sup>106</sup> Bentham planned that if there were any objections to Burdett’s speech, O’Connell and Hume would rise to refute them. This would be a collective action and a display of Bentham’s influence in parliament. On the other hand, in case O’Connell felt reluctant to let Burdett take the lead, Bentham explained that Burdett was good at leading a debate, and “which he is less, if at all, fit for—is—the making a reply to Opponents. This is what you [O’Connell] are fit for in a superior and ultra-

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<sup>104</sup> Bentham to O’Connell, 23 Jun. 1830, *The Irish Monthly*, (1883), 550.

<sup>105</sup> “Law Reform Association Proposal,” UC cix, fo. 326, 15.

<sup>106</sup> Bentham to Burdett, 17 Jun. 1830, Bodleian Library, MS. Eng. Lett d. 97, fo. 26-7. Printed in Bowring, xi. 50-1. Bowring introduces this letter as follows: “But Burdett did not undertake the task. He answered Bentham that he would consider of it; and Bentham considered this as a withdrawal”.

superlative degree.”<sup>107</sup> However, Burdett did not cooperate with Bentham’s plan and O’Connell withdrew his notice to bring a codification bill on 8 July, which has been viewed by Schofield as a mark of “the effective end of Bentham’s direct attempts to introduce codification into the United Kingdom”.<sup>108</sup> This observation is largely correct because after July 1830, O’Connell still failed to bring the bill.

In addition to O’Connell’s disappointment with Bentham’s strategy and networking, a more vital factor was the lack of support from the Whigs, especially from Brougham. The idea of codification had been marginalised before O’Connell’s campaign in 1830. As discussed in the second chapter, in February 1827, the then Home Secretary Peel refused to listen to Bentham’s instruction and described codification as a destructive innovation against English tradition. Then, in February 1828, the “most charismatic Whig spokesman in the House of Commons of the 1820s”, Henry Brougham, broke his promise to Bentham to bring “a Parliamentary commission to inquire into the state of the law preparatory to a reform with a view to the formation of a code”.<sup>109</sup> Moreover, Brougham implied in his famous six-hour long speech on law reform that codification was a dramatic action to “unsettle the minds of those numerous and ignorant classes”, and there was little possibility that uneducated classes would ever understand legal language. He argued that a code knowable to everyone could never be written.<sup>110</sup> Furthermore, the two royal commissions created in response to Brougham’s speech rejected codification. The real property commission presented its first report before parliament in 1829, and codification was rejected as unsuitable for the British.<sup>111</sup> The other commission also presented its first report in 1829 but codification was unmentioned.<sup>112</sup>

Brougham’s speech did not set out a clear political position of law reform for the Whigs. When the opening speech of the 1830 parliamentary session listed law reform, Brougham did not join with O’Connell to support codification. Without Brougham’s coordination, the rest of the Whig MPs did not support O’Connell. Lord Althorp, Sir Henry Parnell, Lord Nugent, John Russell, Poulett Thomson, Charles Buller, and Sir John Newport (the Whigs Bentham planned to lobby for the Law Reform

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<sup>107</sup> Ibid.

<sup>108</sup> Schofield, *Utility & Democracy*, 334.

<sup>109</sup> Brougham to Francis Place, Jan. 1828, British Library, Add. MS 35,148, fo. 95. Quoted in Lobban, “Henry Brougham and Law Reform,” 1188.

<sup>110</sup> HC. Deb., 7 Feb. 1828, vol. 18, 130.

<sup>111</sup> Michael Lobban, *The Common Law and English Jurisprudence, 1760-1850*, 197-201; Mary Sokol, “Jeremy Bentham and the Real Property Commission of 1828,” 139-48.

<sup>112</sup> *The First Report Made to His Majesty by the commissioners appointed to inquire into the practice and proceedings of the superior courts of common law* (20 February 1829), 1-777.

Association) were silent when a debate on law reform occurred. Their indifference to law reform, especially codification, was further manifested in the general election of 1830. Brougham chose parliamentary reform, corn law revision, and abolishing slavery as the key election issues, and neglected judicial reform.<sup>113</sup> After the election, which returned a Tory majority, when Brougham discussed law reform in the House of Commons his attitude was moderate and cautious. For example, he said in a petition for criminal law reform that he agreed with Peel in principle but differed “in some matters of detail”.<sup>114</sup>

Brougham also moved for leave to bring his local jurisdiction bill on 10 November.<sup>115</sup> This bill is worth noting because Brougham had marginalised Bentham publicly on this topic in July 1830. In an anonymous article in the *Edinburgh Review* entitled “Abstract of the Bill for Establishing Courts of Local Jurisdiction—Ordered by the House of Commons to be printed 21st June, 1830”, Brougham had at first praised Bentham’s critical analysis of the law: “[I]t is the greatest service ever rendered to the country which he adorns, by any of her political philosophers.”<sup>116</sup> However, he went on to criticise Bentham’s inability “to amend the law safely and securely” and for being out of touch with public opinion. In Brougham’s view, the public at large was not enlightened enough to carry out Bentham’s plans. The people’s law reformer was not Bentham but Brougham, because his estimate of public opinion was accurate while Bentham’s was flawed. Brougham claimed that in legislation he relied on common sense, and would “always remember that he is dealing with men, not with things...that of these the habits and even the prejudices of the people are the most considerable. He must therefore only introduce changes as far as he has prepared the people for their reception.” Bentham, on the other hand, was said to have “a problem to solve with certain data prescribed to him”, and to falsely believe that he had the power to change being as one might change a machine.<sup>117</sup> In short, Bentham was unrealistic and mechanical, and therefore unfit to legislate.

Brougham’s confidence in reading public opinion was shared by other Foxite Whigs.<sup>118</sup> From November 1830, with the formation of Earl Grey’s government and Brougham’s promotion to the

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<sup>113</sup> William A. Hay, *The Whig Revival, 1808-1830*, 166. In the *Leeds Mercury* (31 Jul. 1830), Brougham’s public speech was recorded as “I believe there are three questions...Parliamentary Reform, a Revision of the Corn Laws, and the extinction of Colonial Slavery”. Besides, the East India Company’s monopoly was mentioned as well.

<sup>114</sup> HC Deb., 19 Nov. 1830, vol. 1, 589.

<sup>115</sup> HC Deb., 10 Nov. 1830, vol. 1, 359.

<sup>116</sup> Brougham is the sole author of the article, according to the *Wellesley Index to Victorian Periodicals, 1824-1900*. Brougham, “Law reform—district courts,” *Edinburgh Review*, (Jul. 1830), 482.

<sup>117</sup> *Ibid.*, 483.

<sup>118</sup> Philip Handler, “James Mackintosh and Early Nineteenth-Century Criminal Law,” 770.

office of Lord Chancellor, it was more difficult for O'Connell to identify himself with Bentham's radicalism. Before, O'Connell's challenges to Peel may have been approved by the opposition Whigs. Now, however, Grey's government was expecting a new general election that would increase their seats in the House of Commons, and thus sought to moderate their political tone to attract more conservative-minded voters. Taming O'Connell's radicalism also became a political aim for the Whigs, for instance when they asked what O'Connell's requests were other than the repeal of union between Britain and Ireland. On 7 December 1830, O'Connell listed 12 political "wants" which could persuade him to suspend repeal agitation. Codification and judicial administration reform were not on the list.<sup>119</sup> Oliver MacDonagh has observed that O'Connell's requests aimed to promote the interests of Irish Catholics, and that this list shows that O'Connell "may well have decided" that "the Catholic card was now the one to play" in his bargaining with the Whigs.<sup>120</sup> However, repeal agitation was still the most formidable card that O'Connell kept hold of, to use if he judged that there was a chance to secure a government compromise. After all, O'Connell had successfully persuaded the former Prime Minister through a similar strategy of intimation during the Catholic Emancipation movement when he had displayed sufficient popular influence in public while had been negotiating with the ministers in private. Therefore, O'Connell continued to agitate for repeal in January 1831. O'Connell's action forced the ministry to respond, and then after a series of dramatic events in January and February (the arrest of O'Connell and the by-election of Kilkenny), both parties compromised by acknowledging each other's political energy and the devastating consequence of their conflict. By early March 1831, O'Connell agreed to suspend the repeal question and allied with the Whigs in parliamentary reform debates. Now, political cooperation with the Whig ministry, and thereby sustaining a liberal majority in elections for the purpose of exchanging support in furtherance of Irish interests, became O'Connell's priority.

Therefore, just before he visited Bentham on 20 March 1831, O'Connell had formed a firm alliance with the Whig government. At the dinner at Bentham's, O'Connell received a series of instructions related to codification, Brougham's bankruptcy bill, Peel's Jury Act, and so on. The next day, Bentham wrote to O'Connell a "Proposed agenda for O'Connell: regarded as consented to by O'Connell last night".<sup>121</sup> However, O'Connell did not follow Bentham's instructions to present these measures in parliament. In explaining O'Connell's inaction, Crimmins has noted that the personal relationship of the two men had worsened due to Bentham's criticism of O'Connell's Catholicism in

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<sup>119</sup> O'Connell to Richard Newton Bennett, 7 Dec. 1830, *O'Connell Corr.*, vol. 4, 244-5.

<sup>120</sup> Oliver MacDonagh, *The Life of Daniel O'Connell 1775-1847*, 326.

<sup>121</sup> Bentham to O'Connell, 21 Mar. 1831, *The Irish Monthly*, (1883), 554-5.

late 1829.<sup>122</sup> This observation is problematic for it only uses the surviving letters in a partial way. Bentham's criticism of Catholicism happened earlier than O'Connell's participation in the Law Reform Association project and his notice of 8 June 1830. If O'Connell's attitude towards Bentham had cooled to the degree Crimmins claims, why did O'Connell actively support radical law reform measures in parliament in early 1830? Also, Bentham's letters of 15 March and 23 June 1830 contain no information to support Crimmins' observation that "Bentham attempted to repair" their alliance.<sup>123</sup> It is more likely that Crimmins overinterprets the letters where Bentham expressed his objections to Catholicism, so as to stress the religious and national mistrust between the two reformers. He even writes that by the end of 1829, "too much had been said and there was no going back", and that "the rift...stood little chance of being repaired".<sup>124</sup> However, the period (July to December 1830) described by Crimmins as "a silence" between the two men still saw some communications, though indirectly. On 25 October 1830, the London newspaper *Sun* reported that in a Dublin public meeting, O'Connell had said, "The great Jeremy Bentham was his master, and that great man said that laws were made for the happiness of the many, and not for the gain of the few."<sup>125</sup> On 31 October, Bentham wrote to Cullen (who served as a go-between when Bentham did not know O'Connell's address during election time) to forward O'Connell a copy of *Jeremy Bentham to his Fellow-Citizens of France, on Houses of Peers and Senates*.<sup>126</sup> On 18 July 1831, in a debate on the payment of the law commissioners in the House of Commons, O'Connell said: "Our system of law ought to be remodelled. It was of no use to attempt to patch up the old system...It would on the whole, be infinitely better, to form a new and complete code, particularly as an after had been made by a celebrated individual to devote his time and attention to this subject."<sup>127</sup>

I argue that party politics provides a more important context than religious and national prejudices for understanding O'Connell's cooling attitude towards Bentham in 1831. Bentham's letter of 31 January 1831 is a source to support this argument. In this letter, Bentham discussed a recent political event that O'Connell was involved in. Having been arrested on 18 January on the charge of having conspired to organize subversive meetings for a repeal of the Acts of Union of 1800, O'Connell had

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<sup>122</sup> Crimmins, "Jeremy Bentham and Daniel O'Connell: Their Correspondence and Radical Alliance, 1828-1831," 381-3. Crimmins mistakenly writes the date of the crucial letter that he uses to prove the change of their relationship. Bentham's letter describing O'Connell as "a tool in the hands of the Jesuits" should be written on 8 December 1829 rather than 8 December 1830. See *ibid.*, 382 note 147.

<sup>123</sup> Bentham to O'Connell, 15 Mar. 1830, Bowring, xi. 37-8. Bentham to O'Connell, 23 Jun. 1830, *The Irish Monthly*, (1883), 550-2.

<sup>124</sup> Crimmins, "Jeremy Bentham and Daniel O'Connell: Their Correspondence and Radical Alliance, 1828-1831," 383.

<sup>125</sup> "Metropolitan Orphan Society Dinner," *Sun*, Oct 25, 1830.

<sup>126</sup> Bentham to Cullen, 31 Oct. 1830, New York Public Library Montague Collection.

<sup>127</sup> HC Deb., 18 Jul. 1831, vol. 4, 1444.

the option to challenge the government through a legal battle. The Home Secretary Melbourne told the lord lieutenant Anglesey to be careful about the historic constitutional rights to discuss and petition. Meanwhile, O'Connell had the support of the Irish lawyer Thomas Wallace, who spoke of Anglesey's charges as "illegality...[which] greatly endangers public liberty".<sup>128</sup> Wallace suggested that once the case was commenced in King's Bench and a jury called, O'Connell's rights would be recovered. Three days later, on 22 January, O'Connell had a private meeting with some representatives of the government but reached no agreement.<sup>129</sup> Then, on 25 January, King's Bench started to examine O'Connell's case. Meanwhile, the Attorney General Thomas Denman applied for a writ of attachment against Patrick Lavelle (the proprietor of *The Freeman's Journal*) for contempt of Court.<sup>130</sup> The *Morning Chronicle* reported the news on 29 January. Two days later, Bentham argued, with a detailed justification, that Denman had violated the freedom of the press, expecting O'Connell to make use of his reasoning in court.<sup>131</sup> O'Connell replied to Bentham on 22 February that he and his friends (including the printers of the *Freeman's Journal* and the *Morning Register*) "have formed a resolution" to use Bentham's reasonings in their defence. However, O'Connell added: "I have now reason to believe that the case will never be called on. At present my belief is that it will be suffered to rest in oblivion."<sup>132</sup> This suggests that O'Connell had given up the idea of a legal fight to embarrass the government and King's Bench. Also, O'Connell received Bentham's letter on 4 February, but he chose not to consult with Bentham during the next 18 days.<sup>133</sup>

It was in the context of negotiating with the Whigs that O'Connell made the following apology to Bentham: "I am ashamed to call myself your disciple...I feel under the necessity of limiting my exertions to the amelioration of the institutions of one of the finest, but most oppressed portions of the human race."<sup>134</sup> This implies that Bentham's radical reforms were too idealistic for the current

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<sup>128</sup> Oliver MacDonagh, *The Life of Daniel O'Connell 1775-1847*, 326-7. Wallace to O'Connell, 19 Jan. 1831, *O'Connell Corr.*, vol. 4, 257. However, MacDonagh neglects the chance for O'Connell to win this legal battle and embarrass the Whigs.

<sup>129</sup> O'Connell to Thomas O'Mara, 22 Jan. 1831, *ibid.*, 266.

<sup>130</sup> Denman explained that Lavelle assisted O'Connell to publish an inflammatory letter after O'Connell and his associates were charged and in bail, and then the letter was read to display O'Connell's dismissive attitude towards the law. "Attachment Against the Freeman's Journal," *Morning Chronicle*, Jan 29, 1831, 1.

<sup>131</sup> Bentham to O'Connell, 31 Jan. 1831, Bowring, xi. 62-3.

<sup>132</sup> O'Connell to Bentham, 22 Feb. 1831, *O'Connell Corr.*, vol. 8, 229.

<sup>133</sup> O'Connell wrote to his go-between Richard Bennett about "the terms" that he was negotiating with the government on 13 February, see *O'Connell Corr.*, vol. 4, 273-4. On 28 February, O'Connell discussed his negotiation in the House of Commons. HC Deb., 28 Feb. 1831, vol. 2, 1006-30. O'Connell firmly denied that he would plead guilty. However, MacDonagh writes (without giving any reference) that O'Connell pleaded guilty. MacDonagh, *The Life of Daniel O'Connell 1775-1847*, 328. By comparison, M.R. O'Connell's account is accurate: "The proclamation act was due to expire at the end of the current parliamentary session (it ended in April 1831). O'Connell relied on procrastination, and the trial of him and his lieutenants was protracted until May 1831 when the government (in need of O'Connell's support for the reform bill) used the fact that the proclamation act had expired as a pretext for dropping the charges". *O'Connell Corr.*, vol. 4, 258.

<sup>134</sup> O'Connell to Bentham, 22 Feb. 1831, *O'Connell Corr.*, vol. 8, 229-30.

political climate. On 1 March 1831, Lord John Russell introduced a ministerial plan of parliamentary reform, and on the next day, O'Connell wrote that "the reform plan gives me great satisfaction". On 5 March, he wrote a public letter to the People of Ireland which endorsed the government's plan as his prime goal.<sup>135</sup> On the same day, O'Connell failed to visit Bentham, who had sent an invitation one week earlier.<sup>136</sup> Then, on 9 March, Bentham sent another invitation and settled the date as 19 March.<sup>137</sup> By 12 March, because Bentham had not received a reply, he wrote to O'Connell:

I am sorry to have to add that, so far as regards matters between you and me, I know not what to make of you: and that on pain of suffering uneasiness to an indefinite amount in addition to a very large amount of which you have been the cause, I *must* know what to make of you...If before Thursday next I do not hear from you appointing a day on which you will call upon me or dine with me (naming which) or if having thus made the engagement you do not fulfil it (sickness or unforeseeable necessity excepted) I shall conclude...it is your determination, never, if you can help doing so, to see me any more...P.S. Do not (I beg of you) ascribe to any unkind feeling toward you what is above. I assure you simply and deliberately that no such feeling has place, notwithstanding the sorrow, which has place.<sup>138</sup>

On 15 March, Bentham suggested to change the date to 20 March.<sup>139</sup> Eventually O'Connell came on 20 March.<sup>140</sup>

From 26 February to 20 March, Bentham persistently invited O'Connell, who clearly became less interested in this alliance. Bentham used the word "sorrow" to describe his sentiment to O'Connell. However, another source suggests that Bentham's sentiment was more complex. A visitor called George Wheatley, who stayed at Bentham's during this period, wrote: "Twice I have been disappointed in seeing O'Connell here, and almost begin to despair of the opportunity, as J.B. seems offended at him, and not without reason, as the aforesaid wondrous Irish leader seems to shirk a meeting, judging from the notes I have heard read from him, without giving a direct refusal, either fearing J.B. may give him a talking to, or ask him to make some motion unpalatable to the ministry whom he [O'C.] is courting, and with whom he is beyond doubt trying to patch up some unprincipled treaty of peace".<sup>141</sup> Given the fact that O'Connell kept Bentham as an outsider in relation to his

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<sup>135</sup> O'Connell to his wife, 2 Mar. 1831, *O'Connell Corr.*, vol. 4, 283-4 and note 1.

<sup>136</sup> On 26 February 1831 Bentham replied to O'Connell's letter of 22 February and set a dinner arrangement on Saturday 5 March 1831, see Bowring, xi. 64.

<sup>137</sup> Bentham to O'Connell, 9 Mar. 1831, *The Irish Monthly*, (1883), 552.

<sup>138</sup> Bentham to O'Connell, 12 Mar. 1831, *ibid.*, 553.

<sup>139</sup> Bentham to O'Connell, 15 Mar. 1831, *ibid.*, 556.

<sup>140</sup> Bentham to O'Connell, 21 Mar. 1831, *ibid.*, 554.

<sup>141</sup> Kris Grint, ed., *A Visit (in 1831) to Jeremy Bentham by George Wheatley* (The Bentham Project, 2015), 27.

negotiations with the Whigs, this account is plausible. When O'Connell was moving closer to the government, he felt it unsuitable to be publicly allied with Bentham's radicalism. O'Connell justified his alliance with the government in a debate on reform and his personality, on 14 April. He said in the House of Commons that "he was quite willing, when an opportunity offered of correcting abuses, to sacrifice the theory of Reform to its practice...when he found that that Government, which had commenced prosecutions against him, were about to concede Reform to the country...he did sacrifice his personal feelings to lend them his support in conferring a benefit on the country".<sup>142</sup>

However, this speech does not suggest that O'Connell abandoned "the theory of Reform". He did not end his alliance with Bentham in March 1831 either. O'Connell was still making use of Bentham's reputation afterwards. The nature of their relationship is more complex than Crimmins suggests because O'Connell's use of radicalism was constantly influenced by circumstances and by his relations with the Whig government. More importantly, O'Connell often needed Bentham's alliance either to repair or improve his own reputation because he was often under the pressure of being criticised as an unprincipled politician. To clear such charges, O'Connell explained several times in public that he did not compromise in his dealings with the government for personal advancement.<sup>143</sup> One example of his disputed moral reputation is from 28 February 1831 in the House of Commons, when he was asked why he had given up his chance of acquittal by a Jury and had not asked to delay the trial and waited the Proclamation Act to be expired. O'Connell answered that he had feared "the consequences to the peace of his country by the excitement which the trial would inevitably have produced", and had argued that "all business would be at a perfect stand-still in Dublin during the five or six days the trial would last". However, his explanation was interrupted by someone in the gallery who shouted very loudly, "That's a lie".<sup>144</sup>

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<sup>142</sup> HC Deb., 14 Apr. 1831, vol. 3, 1350.

<sup>143</sup> Ibid. Also, HC Deb., 28 Feb. 1831, vol. 2, 1006-30. Soon after O'Connell's arrest on 18 January 1831, the rumour that he would compromise to the government for his personal advantage was circulating in both the Radical and Whig circles. On 16 February Stanley made a statement to reject the rumour that the government agreed to make compromise with O'Connell. On the next day newspapers like the *Morning Chronicle* and the *Morning Post* reported the statement. The statement included O'Connell's offer to plead guilty. On 12 February O'Connell made a public speech to deny a statement from the *Dublin Evening Post*: "That laying Journal said, last night, that I had pleaded guilty to fourteen counts in the indictment. A greater falsehood was never published, even in that Paper". This meeting is also reported on 17 February in the *Morning Chronicle*. On 16 February, O'Connell asked the *Pilot's* editor Richard Barrett to contradict Stanley's statement. See O'Connell to Barrett, 16 Feb. 1831, *O'Connell Corr.*, vol. 4, 274. The *Pilot* published O'Connell denial on the same day, see *ibid*, note 3, and MacDonagh, *The Life of Daniel O'Connell 1775-1847*, 329.

<sup>144</sup> HC Deb., 28 Feb. 1831, vol. 2, 1010.

Therefore, whenever O’Connell evaluated the political climate and felt a need to call Bentham, he would not hesitate to do so. As long as Bentham’s brand of radicalism was useful to him, O’Connell would not give up this connection. Besides, Bentham was still providing ideas to him. Crimmins writes that the meeting of 20 March 1831 was the last meeting between O’Connell and Bentham.<sup>145</sup> However, in April 1831, Bentham contacted O’Connell to ask for his attendance at a scheduled parliamentary debate on the registry of deeds bill on 20 April.<sup>146</sup> Also, in early May, Bentham mentioned to James Mill that O’Connell was pledged to move and support in parliament the equity dispatch court bill.<sup>147</sup> This letter suggests that O’Connell had recently contacted Bentham. Another example is, O’Connell’s relationship with the Whig government, and especially with the Chief Secretary for Ireland, Edward Stanley, was weakened in July 1831 after the general election in May when O’Connell had not gained rewards for his support in private interviews with Stanley in June. On 18 July in the House of Commons, O’Connell called for codification and invoked Bentham to strengthen his uncompromising attitude towards reform.<sup>148</sup> However, the Whig government soon found a way to discipline O’Connell. Lord Brougham and Lord Holland determined to “win (or rather buy) O’Connell over [to] a permanent alliance”, and on 26 October 1831, O’Connell was offered “a patent of precedence admitting him to the inner Irish bar—an honour and advantage which he had coveted for twenty years”.<sup>149</sup> Such political rewards were something that Bentham could not offer. Moreover, Brougham made another attack on Bentham’s judgement as biased and “unfounded” on 15 October 1831.<sup>150</sup> As Brougham was promoting O’Connell’s status among the Whigs, any praise of Bentham would be taken as a challenge to Brougham’s expertise in law reform. Afterwards, until Bentham’s death in June 1832, O’Connell made no further recommendation of codification.

## Conclusion

This chapter set out to analyse the alliance between Bentham and O’Connell in the context of party politics between 1828 and 1830. When O’Connell expressed an interest in law reform in July 1828, Bentham started corresponding with the Irish leader to promote his vision of the legal system. In his efforts to provide O’Connell with petitions concerning codification, judicial administration, and the

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<sup>145</sup> Crimmins, “Jeremy Bentham and Daniel O’Connell: Their Correspondence and Radical Alliance,” 383.

<sup>146</sup> Bentham to John Tyrrell, 15 Apr. 1831, British Library Add. MS. 34, 661, fo. 16-17.

<sup>147</sup> Bentham to James Mill, early May 1831, Yale University Library, John Stuart Mill Papers, MS 350. The date is inferred from the apparent reference to Sir Samuel Bentham’s death on 30 April 1831.

<sup>148</sup> HC Deb., 18 Jul. 1831, vol. 4, 1444. MacDonagh, *The Life of Daniel O’Connell 1775-1847*, 336-9.

<sup>149</sup> *Ibid.*, 338-9.

<sup>150</sup> HL Deb., 15 Oct. 1831, vol. 8, 810-2. Brougham revealed Bentham’s name on 17 October in a reply to the Duke of Cumberland’s question. See *ibid.*, 17 Oct. 1831, vol. 8, 821-2.

equity dispatch court, we see that Bentham, though at an old age, was still energetic in writing, networking, and planning for law reform. Moreover, the choice of petitioning as a tactic reflected the radicalisation of Bentham's politics. He mentioned to O'Connell that he was so disappointed with the Tory-dominated parliament that he would implement an extra-parliamentary strategy to attract popular support.

Bentham's petitioning scheme achieved a certain amount of public support in 1829 and 1830. Of the three petitions, the codification petition acquired the greatest share of O'Connell's attention. Accordingly, O'Connell spoke in favour of Bentham's code in various public meetings, collected about 10,000 signatures through the Catholic Association, and presented the petition in the House of Commons in February 1830. O'Connell also promoted codification in June and July 1830 and July 1831 in parliament. His mentions of codification marked the most significant publicity of this policy during Bentham's lifetime. As for the petition for justice, O'Connell expressed some doubts over Bentham's judgement about the judicial fee system. Although he answered Bentham's request to advertise this petition, O'Connell reserved his own opinion and did not present the petition in parliament. The equity dispatch court petition was neglected as well.

In seeking English allies for O'Connell, Bentham also only achieved limited success. O'Connell found himself very much isolated in the House of Commons when promoting Bentham's ideas. The Law Reform Association and Burdett especially did not give the support that Bentham hoped. Even worse, Bentham's networking clearly showed his reduced popularity among the Whigs after Henry Brougham's law reform speech in February 1828. The Whigs were generally indifferent to Bentham's radical approach, especially after July 1830, when Brougham publicly marginalised Bentham through the *Edinburgh Review*, and after Bentham's failure to provide a bill for O'Connell.

Crimmins argues that the relationship between the two men irrevocably cooled from late 1829, when Bentham criticised O'Connell's religious passion, and that Bentham underestimated the influence of religious and national prejudices on O'Connell's attitude towards English radicals.<sup>151</sup> However, by focusing on the timing of O'Connell's parliamentary speeches for codification, this chapter has noted that party politics and O'Connell's circumstances (whether he needed to amplify or tone down his radical reputation) played a more important role in determining O'Connell's

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<sup>151</sup> Crimmins, "Jeremy Bentham and Daniel O'Connell: Their Correspondence and Radical Alliance, 1828-1831," 384-7.

attitude towards Bentham. O'Connell's reading of and association with Bentham served to increase his reputation as a principled radical, or the people's reformer. This is clear from O'Connell's self-defence in October 1829, after he had been attacked as unprincipled and as having compromised with the political powers for personal advancement (an accusation O'Connell often suffered in 1829-31):

The third charge is, that I hoisted the standard of radicalism. It is insinuated that I became a radical out of revenge for being excluded from my seat. Such insinuation is totally false. I was always an avowed, perhaps an ostentatiously avowed radical. I expressed my radicalism in London during the passing of the bill, and that avowed was circulated in the English newspapers. Yes, it is quite inevitable that I should hoist the standard of radicalism, because I am deliberately, and upon principle, of the political sect of the "Benthamites." Our maxim, our motto, and our object is—the greatest good of the greatest possible number.<sup>152</sup>

Because political needs largely influenced O'Connell's action to ally with or dissociate from Bentham in parliament, we can see a fluctuation of his attitude after July 1830. The general election triggered by King George IV's death witnessed the growing popularity of liberal Whigs like Brougham and parliamentary reform as a party agenda. In early November 1830, when Wellington unskillfully rejected any compromise in parliamentary reform, the prospect of a Whig government became a reality. However, this greatly complicated O'Connell's situation, for now he had a better platform to realise his promises to his Irish followers. He had to decide what his priorities were to be. Meanwhile, the lack of support he experienced in early 1830 must have influenced his attitude towards Bentham's law reform. Moreover, Bentham's public hostility towards Brougham now became a real issue in his political bargaining with the Whigs. In 1828, when the prospect of a Whig government had been small, O'Connell had been able to attack Brougham's leadership in law reform much more easily than during Brougham's tenure as Lord Chancellor. Also, it was Brougham who played an active role in the Whig cabinet to pursue a more friendly relationship with O'Connell. When Brougham secured O'Connell's trust by the offer of a patent, which allowed O'Connell to enter the inner Irish bar, in October 1831, it became more unlikely that O'Connell would endorse Bentham's radical reform and thereby upset the Lord Chancellor. From this perspective, O'Connell's shifted political and personal priority ultimately influenced his relationship with Bentham in a way

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<sup>152</sup> *Globe and Traveller*, Oct 9, 1829.

that marginalised Bentham's ideals. And the largest cause of his marginalisation seems to have been Brougham.

## Chapter IV: The Law Reform Association

In December 1829, Jeremy Bentham began to make plans for a voluntary association to recruit law reformers. His immediate aim was to assist O'Connell, who was to take up his seat in the House of Commons in February 1830. During the following six months, Bentham put great energy into preparation, contacting friends to join, designing the structure and administration of the association, and writing and distributing a proposal to propagandise its agenda. As a result, the association managed to have one meeting on 2 June 1830, which several MPs attended. Although no further collective activities occurred, this project left two lists of names of those who had promised to join. On 6 February 1830, 33 names were listed by Bentham as "Members proposed for the Initiatory Association".<sup>1</sup> On 2 March 1830, 13 names were listed as "Members already engaged".<sup>2</sup> Among these two groups, 25 members expressed clear positive responses. There were 11 members of the House of Commons: Daniel O'Connell (Clare), Sir Francis Burdett (Westminster), John Smith (Midhurst), Joseph Hume (Aberdeen), Henry Warburton (Bridport), John Wood (Preston), Robert Otway-Cave (Leicester), John Berkeley Monck (Reading), John Marshall (Yorkshire), William Marshall (Petersfield), and Daniel Sykes (Hull); and three members of the House of Lords: Lord Radnor, Lord Reay, and Baron Peter King. Along with these politicians, the other 11 members were James Mill, Francis Place, Lord Weymouth (Thomas Thynne junior), John Abel Smith (the son of MP John Smith), army officers Leicester Stanhope and Perronet Thompson, barristers Charles Sinclair Cullen and John Evans, Jewish leader and banker Isaac Goldsmid, James Garth Marshall (the son of MP John Marshall), and Richard Taylor the printer. These members were people with diverse interests, covering commerce, law, military, and the press. Also, they were from different nations of the United Kingdom: O'Connell came from Ireland; Hume, Lord Reay, and Cullen from Scotland; Evans from Wales; and the others from England.

Could the abovementioned MPs accept O'Connell's leadership in law reform? Bentham recognized this problem at an early stage. On 18 December 1829, he told O'Connell that Burdett would "be a proper person to take the lead: so, I was assured by a friend who applied to him in person".<sup>3</sup> Then, on 23 June, Bentham further explained to O'Connell:

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<sup>1</sup> UC lxxxv. 196 (6 Feb. 1830).

<sup>2</sup> UC lxxxv. 195 (2 Mar. 1830).

<sup>3</sup> Bentham to O'Connell, 18 Dec. 1829, University College Dublin Library, P12/3/209.

One reason why he [Burdett] should be the Mover rather than you is—that besides his being more in favour with Honble corruptionists, than you, & thus standing a better chance for obtaining a hearing for so unusual an address, he is more in favour with the Reporters lately with so much propriety yclept the 4th Estate—however if what I hear just now is true you have in pay a Reporter of your own: still the only reservoirs into which that pump will inject your speeches are the Irish Newspapers.<sup>4</sup>

Bentham was referring to the growing influence of parliamentary reporting; in 1828, the *Edinburgh Review* had commented that “the gallery in which the reporters sit, has become a fourth estate of the realm”.<sup>5</sup> Bentham noticed that in comparison with O’Connell, Burdett was more popular among English MPs and English newspapers. For better publicity, Bentham persuaded O’Connell to follow Burdett’s motion. This arrangement also reflects Bentham’s anxiety about limited parliamentary support for law reform.

On 1 July 1829, responding to a list of names drafted by Joseph Hume about the supporters of law reform, Bentham wrote, “Was if after the second or only the first bottle that he [Joseph] wrote to me these words ‘I think the whole of the Members whose names are in the inclosed paper will support legal reform’. Poor gentleman! I hope the course of legal ‘reform’ is not quite so desperate, but that a few more Members may be found supporting it.”<sup>6</sup> Bentham was clearly disappointed. From this perspective, the Association project can also be seen as a response to Joseph Hume, for Bentham was determined to assemble supporters through his own networking. The philosopher aspired to be the leader of reformers not only through his writings but also through his networks. Now there were powerful friends and a favourable political climate, Bentham did not want to be a hermit who waited patiently for others to realise the value of his writings, but aspired to live to see the substantial progress of his ideas in legislation.

However, the task to persuade a reluctant legislature to accept Bentham’s intellectual leadership was difficult. Michael Lobban writes that nineteenth-century law reform was largely managed by lawyers, “who sought piecemeal, pragmatic reform” and “took up positions which had been discussed in earlier periods, rather than seeking radical new departures”.<sup>7</sup> Many legal writers in the

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<sup>4</sup> Bentham to O’Connell, 23 Jun. 1830, National Library of Ireland, MS 13,648 (3).

<sup>5</sup> Quoted in Kathryn Chittick, “Dickens and Parliamentary Reporting in the 1830s,” *Victorian Periodical Review* 21, (1988), 151.

<sup>6</sup> Bentham to Maria Hume, 1 Jul. 1829, British Library, Hume Correspondence, Add. MS. 89,039/1/1.

<sup>7</sup> Michael Lobban, “‘Old wine in new bottles’: the concept and practice of law reform, c. 1780-1830,” 117.

early nineteenth century were suspicious of Bentham's idea that "the common law was essentially unknowable, since it was all *ex post facto*, and that it needed replacement by a new legislated code".<sup>8</sup> Instead, most lawyers recognized the necessity of law reform as a response to the pressure of business since the rapid increase of litigation from the 1790s. In other words, law was thought to be a technical issue over which only experienced and successful practitioners could have the intellectual leadership. These practitioners did not consider the problem of law as a philosophical and political question which was flawed in principle and influenced by sinister interest groups, as Bentham had been claiming for many years. Moreover, in dealing with law reform debates in parliament, the government party in the 1820s, led by the Home Secretary Robert Peel, was keen to have "inquiries staffed by legal experts, rather than to have them dominated by politicians".<sup>9</sup>

Against these negative factors, Bentham determined to recruit as many as new supporters as possible, especially politicians and MPs. The fact that 22 members are identified having given positive responses, most of whom were politicians, reveals a different picture of law reform from Lobban's. By analysing these members' attitudes towards Bentham's lobbying, this chapter suggests that law reform in the late 1820s became a political and even philosophical question, broader than the technical and professional question regarded by most conservative law officers. To date, only Philip Schofield and James E. Crimmins have studied the Association. Schofield provided a concise survey of Bentham's activities.<sup>10</sup> Crimmins argued that the Association reflected Bentham's intention "to broaden the base of the reformers, pulling into the reform effort moderate Whigs who, though they were reluctant to follow Bentham's lead in politics, could be counted on to work with the radicals to reform English law and judicial practice".<sup>11</sup> Building upon their findings, I will add the context of the parliamentary politics of early 1830, after law reform was announced as a national policy in the King's Speech on 4 February, and explore Bentham's use of public opinion in justifying and organising the Association, and the impressions that he made on its members and opponents.

## 4.1 Epistolary Networking

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<sup>8</sup> *Ibid.*, 118.

<sup>9</sup> *Ibid.*, 125.

<sup>10</sup> *Ibid.*, 327-333.

<sup>11</sup> James E. Crimmins, *Utilitarian Philosophy and Politics: Bentham's Later Years* (Continuum International Publishing Group, 2011), 158.

The earliest surviving account about the Law Reform Association is Bentham's letter to lawyer Henry Bickersteth on 7 December 1829. He invited Bickersteth to his house to discuss not only his latest writings, but also the issue of the Law Reform Association. He wrote:

I hope to see you take in a new measure of agitation for law reform, the success of which Tyrrell tells me will in no small degree depend upon your taking part in it...Tyrrell, who enters into it most cordially, will be able, if you happen to come across him, to tell you more or less about it...Burdett has promised to take a part in it. It is the forming a Law-Reform Association on the ground of my petition.<sup>12</sup>

This letter suggests that Bentham had already contacted lawyer John Tyrrell and politician Francis Burdett and obtained their approval. At this stage, Bentham was willing to recruit lawyers but on 21 April 1830, he changed his mind and wrote, "[I]t is unanimously agreed, that partly for their own sakes partly for that of the public, no such call shall be made to any more of the lawyer class, official or professional, for this purpose. Not even Bickersteth, who is a most cordial friend to law refm."<sup>13</sup> The reason why Bentham changed in this point will be discussed later. In addition to the above information, the earliest account also points out that the Association was based on Bentham's *Justice and Codification Petitions*, printed in the spring of 1829, and published before December 1829.<sup>14</sup>

In a later account, Bentham wrote that the day he had conceived of the Association was 1 December. In a letter to Leicester Stanhope on 11 December 1829, Bentham wrote:

In the Morning Chronicle...appeared a short letter, conveying an idea of an institution for this purpose. Much about this time, I knowing nothing of the above, the same idea came into my head, and began to be communicated to those around me: of the number were Bowring & Cullen the Barrister...Cullen has been about it already to divers M.P.s and other influentials, of whom his report as this matter is in general favourable: he dined yesterday at Joseph Hume's.<sup>15</sup>

According to Bentham's account, his thought appeared on the same day as the publication of an open letter conveying a similar idea in the *Morning Chronicle* on 1 December. This letter was entitled

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<sup>12</sup> Bentham to Henry Bickersteth, 7 Dec. 1829, in T.D. Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, 2 vols. (London, 1852), vol. 1, 383–4.

<sup>13</sup> Bentham to John Smith, 21 Apr. 1830, British Library Add. MS 33,546, fo. 410-11.

<sup>14</sup> The reason why the publication was before December is deduced from the fact that Bentham's friend and journalist John Black had the book in November 1829. See Bentham to John Black, 21 Nov. 1829, New York Public Library, Montague Collection. Besides, *The Examiner* of 29 November 1829 mentioned that Bentham just completed a work "Petitions for Justice and Codification".

<sup>15</sup> Bentham to Leicester Stanhope, 11 Dec. 1829, University College London Library, Stanhope Collection, no. 31.

“Proposal for an Association for Promoting Legal Reform” and signed “Unus”.<sup>16</sup> It is not certain who the author was or whether Bentham wrote the letter. But evidence suggests that the author might have been Bentham or someone who was influenced by him. For example, on 21 November 1829, Bentham had written to the editor of the *Morning Chronicle*, John Black, encouraging him to read the *Justice and Codification Petitions* and give his comments.<sup>17</sup>

The “Proposal for an Association for Promoting Legal Reform” expressed similar ideas to those in Bentham’s petitions. Unus claimed that the present is “the age of voluntary association” and that “the united efforts of individuals” had proved to be efficient in encouraging governments to further good causes:

[V]oluntary association, however, can give continuity to effort by the facility which it affords for taking up the tasks which are laid aside by individuals through age, infirmity, change of purpose, and death. It tends also to give steadiness to the exertions of individuals. It can supply funds when necessary, and, by the multiplicity of its counsellors, it can furnish that wisdom which individuals alone may not possess...

Driven by this belief in the cooperation of virtuous citizens, Unus proposed the establishment of “The British and Foreign Association for Promoting Legal Reform”. Even more importantly, Unus stated a legal ideal which was in line with Bentham’s. In order to achieve the realisation of justice, “it will be only necessary to make generally known the simple institutions of nature and of justice”.<sup>18</sup> The accessibility of justice and the citizen’s right to be informed were vital in Bentham’s legal reasoning, as Lobban has observed.<sup>19</sup> In terms of specific measures, Unus encouraged readers to subscribe to the Association, so that the funds could be used to organize public meetings and circulate printed works, with the aim of diffusing “a knowledge of the defects of existing Legal Institutions, and the best remedies for these defects”. Further, the Association would collect and present petitions to parliament, “watch over” the legislature’s measures, and hold correspondence with foreign reformers, forming an international alliance to improve the human condition globally.<sup>20</sup>

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<sup>16</sup> *Morning Chronicle*, Dec 1, 1829.

<sup>17</sup> Bentham to John Black, 21 Nov. 1829, New York Public Library, Montague Collection.

<sup>18</sup> *Morning Chronicle*, Dec 1, 1829.

<sup>19</sup> Michael Lobban, *The Common Law and English Jurisprudence*, 121.

<sup>20</sup> *Morning Chronicle*, Dec 1, 1829.

Except the influential *Morning Chronicle*, on 1 December, another national daily, *The Standard*, reprinted Unus's letter.<sup>21</sup> Bentham then interpreted Unus' letter as a positive sign that the time was ripe to establish the Law Reform Association. On the other hand, as discussed in the last chapter, throughout 1829, O'Connell continuously offered Bentham the hope that through their alliance, a utilitarian law reform could be achieved. In December 1829, O'Connell was preparing to become an MP. On 1 February 1830, O'Connell wrote to Bentham that "Just set me down on the Law Reform association".<sup>22</sup> On 4 February 1830, he finally entered the House of Commons. After swearing the oath of allegiance, he "seated himself in Mr. [Joseph] Hume's place and shook hands, and entered into conversation with sir F. Burdett".<sup>23</sup> Now three of Bentham's politician friends, Hume, Burdett, and O'Connell, were publicly allied in parliament, and in December, Bentham had been behind the scenes facilitating this alliance, as his letter to O'Connell suggests: "I am using my endeavour to form a Law Reform Association for our support. The greatest part of those whom I looked to,--M.P.'s in particular...the prospect is already a flattering one Burdett enters into it warmly...John Smith M.P. whose influentiality cannot be a secret to you has, with divers other M.P.s signified his accession by Letter [to] Joseph Hume."<sup>24</sup> In addition, O'Connell might have summarised the techniques necessary for organising a successful political association for Bentham's benefit, as he did later for Thomas Attwood, the founder of the Birmingham Political Union.<sup>25</sup>

At first, as already mentioned, Bentham was willing to involve practising lawyers in his plans for the Association. After Bowring and Cullen, he contacted John Tyrrell and Henry Bickersteth, both of whom were practising lawyers. Bentham's correspondence with Tyrrell began in 1829, after Tyrrell had been appointed to the real property commission. Since then, Tyrrell had worked closely with Bentham on various law reform plans.<sup>26</sup> Bickersteth, who became King's Counsel in 1827, had entered Bentham's network of London radicals by 1818 at the least, when he helped to establish Francis Burdett's alliance with Bentham for parliamentary reform.<sup>27</sup> Bentham also contacted the former Attorney General to the East India Company Robert Cutlar Fergusson, who might have been introduced to Bentham by Leicester Stanhope in 1826.<sup>28</sup> Fergusson was an experienced reformer. In the 1790s, he had been active in Irish and Foxite Whig circles, and had published a pamphlet on the

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<sup>21</sup> *The Standard*, Dec 1, 1829.

<sup>22</sup> O'Connell to Bentham, 1 Feb. 1830, National Library of Ireland, MS 34, 985.

<sup>23</sup> HC Deb., 4 Feb. 1830, vol. 22, 56.

<sup>24</sup> Bentham to O'Connell, 18 Dec. 1829, University College Dublin Library, P12/3/209.

<sup>25</sup> O'Connell to Thomas Attwood, 16 Feb. 1830, *O'Connell Corr.*, vol. 4, 128-9.

<sup>26</sup> Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828," 139-48.

<sup>27</sup> Bickersteth to Bentham, 25 Feb. 1818, in T.D. Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol. 1, 322.

<sup>28</sup> Bentham to Leicester Stanhope, 27 Jul. 1826, *Correspondence*, vol. 12, 229.

electoral reform of Scottish counties in 1792.<sup>29</sup> Fergusson had also defended his Irish radical friends in a trial for high treason in 1798. Burdett had been introduced to Fergusson in 1796, and one year later they had been voted in as honorary members of the London Corresponding Society (founded in January 1792). Furthermore, in July 1827, Burdett hosted a dinner which Bickersteth and Fergusson attended and discussed law reform.<sup>30</sup> Along with Fergusson, Stanhope also received Bentham's invitation. Stanhope's friendship with Bentham started in early 1823, and in September 1823, Stanhope acted as an agent of the London Greek Committee that carried a draft of Bentham's *Constitutional Code* to Greece.<sup>31</sup>

Irish politician Sir John Newport, MP for Waterford, might have been contacted by Joseph Hume under Bentham's instructions on 5 March 1830.<sup>32</sup> Bentham described Newport as an "able and indefatigable Law Reformer" and had sent his *Equity Dispatch Court Proposal* to him at an earlier time. Bentham thought that Newport would join the Association, and nudged Hume and Burdett to contact Newport. However, the result of this lobbying is unclear, for no record of Newport's response has been found. Newport was an influential Anglo-Irish Whig politician and had been MP for Waterford continuously from 1802.

On 1 April 1830, the Radical Whig aristocrat Lord Peter King presented a law reform petition in the House of Lords:

[He said] he had been intrusted with a Petition respecting the Administration of Justice in this country, which for several reasons was entitled to an attentive and serious consideration. It was most numerously signed, and by persons of the highest respectability, resident in the metropolis. Amongst the signatures would be found that of the most eminent lawyer at the Irish bar, (Mr. O'Connell) and the petition, he was given to understand, had been drawn up by the celebrated author of the "Fragment on Government," and of the "Defence of Usury," (Mr. Jeremy Bentham), whose knowledge of jurisprudence was so eminently conspicuous in his writings.<sup>33</sup>

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<sup>29</sup> Robert Cutlar Fergusson, *The proposed reform of the counties of Scotland impartially examined: with observations on the conduct of the delegates* (Edinburgh, 1792).

<sup>30</sup> C. Sarah Hodlin, "The political career of Sir Francis Burdett," (PhD dissertation, University of Oxford, 1989), 8, 11, 169.

<sup>31</sup> Leicester Stanhope to Bentham, 5? Or 12? Aug. 1823, *Correspondence*, vol. 11, ed. Catherine Fuller (Clarendon Press, 2000), 281.

<sup>32</sup> Bentham to Joseph Hume, 5 Mar. 1830, British Library Hume Correspondence Add. MS, 89,039/1/1.

<sup>33</sup> HL Deb., 1 Apr. 1830, vol. 23, 1118-9.

On the next day, Bentham wrote a letter to invite King to his house for dinner. Bentham highlighted the fact that “I have given up as utterly incompatible with my pursuits, the practise of paying or receiving visits except for necessary business”.<sup>34</sup> The subject of the dinner conversation was the Law Reform Association, and Bentham’s letter was attached to a copy of the Association proposal. In addition, Bentham asked King to mention the idea to Lord Radnor. This request shows that Bentham was well informed of the friendship between the two liberal aristocrats. As for Lord Radnor, Bentham implied that he had known him many years ago. In a letter to Burdett in May 1811, almost nineteen years earlier, Bentham had mentioned the fact that Radnor had just visited him.<sup>35</sup> By 1830, the intimacy between the two had apparently declined, but on the day King replied to Bentham (5 April), Bentham also forwarded a copy of King’s letter to Radnor.<sup>36</sup> Two days later, a good result had been achieved, as Lord Radnor wrote to Bentham: “The object is so desirable...I will gladly become a member of your society—and beg you to set my name down as a subscriber of £5 annually.”<sup>37</sup>

What was the content of King’s petition? In the *Journals of the House of Lords*, King’s petition can be identified. It was composed of six requests: the first asked the House of Lords to invite “all Persons so disposed to send in, each of them, a Plan of an all-comprehensive Code of Laws”. The second asked the House for the printing of any codification proposal, which would mean that the intellectual work of someone outside parliament would be respected “in like Manner as Acts of Parliament are at present”. The third asked the House not to exclude any person who aspired to be a voluntary contributor. Even a foreigner’s work should be given equal contribution. The fourth asked the House to acknowledge the petitioners’ knowledge about the expense of printing the experimental code drafts. The fifth and sixth points were devised to control the expense of printing in case someone might try to misuse public money by misleading the House. The fifth asked that “no such Contributor shall receive the Benefit of the Accommodation thus afforded unless” there was a good reason. The sixth asked the House to be ready to “put a stop at any Time to the printing of any such Draft; after which, should the Impression be continued, it will be at the Contributor’s own Expence”. In this situation, the House should send the printed drafts to the contributor who reserved the power to use the draft to make “a virtual Appeal to public Opinion” to see whether his intellectual work could be valued outside parliament.<sup>38</sup>

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<sup>34</sup> Bentham to King, 2 April 1830, University College London, Denis Roy Bentham Collection, MS Add. A.1.47.

<sup>35</sup> Bentham to Burdett, May 1811, *Correspondence*, vol. 8, 147.

<sup>36</sup> King to Bentham, 5 April 1830, British Library Add. MS 33,546, fo. 391-2. Bentham to Radnor, 5 April 1830, University College London, Denis Roy Bentham Collection, MS Add. A.1.48.

<sup>37</sup> Radnor to Bentham, British Library Chadwick Tracts, C.T. 84.

<sup>38</sup> *The Journal of the House of Lords (1688-1834)*, vol. 62, 1 April 1830, 185.

This information suggests that King's petition was the same as Bentham's codification petition, presented by O'Connell on 11 February 1830.<sup>39</sup> How had Bentham's petition come to King without Bentham knowing? It might have been O'Connell who contacted King. On 17 September 1831, O'Connell asked his secretary Edward Dwyer to give some parliamentary reform petitions to a group of Whig Lords including Grey, Brougham, King, and Radnor.<sup>40</sup> O'Connell's letter suggests that he was on good terms with King. Another piece of information, however, indicates that there might have been someone else who contacted King. Bentham's first letter to King on 2 April 1830 started with the phrase, "a friend of mine happened yesterday to be in the House of Lords at the time of the favourable mention you were pleased to honour me with".<sup>41</sup> This friend cannot be O'Connell, who arrived at Dublin on 27 March 1830 and stayed in Ireland until 21 April 1830.<sup>42</sup> While it is uncertain whether this "friend" of Bentham's is the person who gave King the petition, this information at least suggests Bentham's intention of showing that he had friends who were in parliament and could approach King easily.

King succeeded to the title of 7th Baron King of Ockham in 1793 and was always a devoted Foxite Whig. He was famous for his expertise in the currency question and for his hostile attitude towards the corn laws. He was viewed as an economist and the question of codification never appeared to interest him before 1 April. In March 1830, he presented petitions which asked for the repeal of the corn laws in Irvine (Scotland) and Worcestershire.<sup>43</sup> On 29 March, he moved a series of resolutions on the corn laws and asked for the a free import of foreign corn.<sup>44</sup> On the next day, the *Morning Post* described the corn laws as King's "favourable topic".<sup>45</sup> However, on 10 April, the *Sheffield Independent* reported King's law reform petition with the title "BENTHAM PETITION FOR JUSTICE". The report did not reveal who gave the petition to King but claimed that it was written by Bentham, "the author of the 'Book of Fallacies' and other valuable works". It also stressed that the petition was "very numerously signed, praying for improvement in the Laws. The Petitioners particularly objected to the Common Law, which they represented as no law at all, but a pure fiction."<sup>46</sup>

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<sup>39</sup> HC Deb., 11 Feb. 1830, vol. 22, 328-332. *The Journal of the House of Commons (1688-1834)*, 11 Feb. 1830, vol. 85, 26-7.

<sup>40</sup> O'Connell to Edward Dwyer, 17 Sep. 1831, *O'Connell Corr.*, vol. 4, 352.

<sup>41</sup> Bentham to King, 2 April 1830, University College London, Denis Roy Bentham Collection, MS Add. A.1.47.

<sup>42</sup> *Freeman's Journal*, Mar 29, 1830. O'Connell to Bishop Doyle, 21 Apr. 1830, *O'Connell Corr.*, vol. 4, 154-5.

<sup>43</sup> *The Standard*, Mar 12, 1830. *Salisbury and Winchester Journal*, Mar 29, 1830, 4.

<sup>44</sup> HL Deb., 29 Mar. 1830, vol. 23, 966-974.

<sup>45</sup> *Morning Post*, Mar 30, 1830.

<sup>46</sup> *Sheffield Independent*, Apr 10, 1830.

The *Sheffield Independent* was owned by the liberal journalist Robert Leader. Leader's son Robert Eadon Leader later graduated from the University of London and allied himself with the Benthamite John Arthur Roebuck, who represented Sheffield in parliament from 1849 to 1868 and again from 1874 to 1879. Eadon Leader published a biography of Roebuck in 1897.<sup>47</sup> Note also that James Silk Buckingham became one of the first two MPs for Sheffield in 1832. In January 1830, Buckingham was in communication with Bentham, and I will discuss their relationship later. In 1829, Buckingham did a tour of lectures in England and Scotland. During this tour, while Buckingham did not lecture at Sheffield, a local newspaper called the *Sheffield Iris* proposed to help Buckingham to get himself elected as an MP, indicating his popularity in this manufacturing town.<sup>48</sup> In short, these links suggest that King's petition was closely linked to Bentham's expanding networks.

On 5 April 1830, Bentham contacted John Marshall, attaching to his letter six copies of the "Law Reform Association proposal". These copies had been drawn up at Marshall's suggestion to be given to potential participants.<sup>49</sup> This indicates that Bentham was expecting Marshall to advertise the Association among his friends, especially MPs. On an earlier occasion, Marshall promised to recruit his sons and Daniel Sykes, MP for Hull, into the Association.<sup>50</sup> One of his sons was William Marshall, MP for Petersfield, who was in Bentham's list of "Members already engaged", dated 2 March.<sup>51</sup> After the composition of Bentham's letter on 5 April, it is not clear whether Marshall introduced new members. By comparison with the 2 March list, out of the names in the 19 April copy of the proposal, the new members were O'Connell, Peter King, Lord Reay, Lord Radnor, James Mill, Levi Ames, John Evans, Lord Weymouth, and Francis Place.<sup>52</sup> Among them, Lord Reay, Levi Ames, and John Evans had no direct contact with Bentham. Reay might have been introduced by John Abel Smith, as argued below. Levi Ames might have been a friend of Marshall's, for they were both unitarian businessmen who were interested in philanthropic and intellectual activities. As for Evans, Cullen is most likely to have contacted him, for they were the only two practising lawyers on the list.

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<sup>47</sup> S.O. Addy, "Robert Eadon Leader, An Appreciation," *Transactions of the Hunter Archaeological Society*, (1924), 213. A reproduced online version, accessed 30. Sep. 2020, <https://www.sheffieldhistory.co.uk/forums/topic/6883-robert-eadon-leader/>

<sup>48</sup> James Silk Buckingham, *Improved Syllabus of Mr. Buckingham's Lectures on the Oriental World, preceded by A Sketch of his life, travels, and writings, and of the proceedings on the East India Monopoly, during the past year* (London, 1830), 35.

<sup>49</sup> Bentham to John Marshall, 5 Apr. 1830, Lancashire Archives, The Stephen Marshall Documents, DDX 412/71.

<sup>50</sup> Bentham to Joseph Hume, 23 Mar. 1830, British Library, Hume Correspondence, Add. MS, 89039/1/1.

<sup>51</sup> UC lxxxv. 195 (2 Mar. 1830)

<sup>52</sup> "Law Reform Association Proposal," 15.

On 31 May 1830, Bentham encouraged James Mill to become a committee member of the Association. The management committee would consist of three or five members. It is not known whether James Mill agreed and attended the first meeting on 2 June 1830, because no record of the meeting appears to have survived. On 1 June 1830, Isaac Goldsmid wrote to Bentham that he would be an anonymous supporter, and would donate some money for the Association. Goldsmid wrote, "I am much flattered by your kind note and I set the highest value on it as affording me some Consolation for what I trust I may call my temporary defeat."<sup>53</sup> "The note" suggests that Bentham had contacted Goldsmid. On 17 May 1830, Goldsmid had drafted a Jewish Disabilities bill to be presented in parliament by Sir Robert Grant, which had been defeated.<sup>54</sup> After he noticed the result, Bentham wrote an encouraging letter to Goldsmid. In return, Goldsmid supported Bentham's Association. Goldsmid has been described by his modern biographer as "a devotee of utilitarianism".<sup>55</sup>

Albany Fonblanque, then the chief political writer at *The Examiner*, was also approached by Bentham. On 23 December 1829, Bentham wrote to Fonblanque that Cullen would visit him soon and discuss the latest situation of the Association.<sup>56</sup> Fonblanque must have known Bentham from a very young age because his father, the lawyer John Fonblanque, was Bentham's tenant at Lincoln's Inn in the early 1800s. In May 1827, Bentham wrote to Albany Fonblanque to invite him for dinner in Bentham's house. From then on, the young journalist became an active member in Bentham's circle. In July 1827, Bentham and Fonblanque exchanged letters discussing *The Rationale of Judicial Evidence*.<sup>57</sup> Then, on 19 August, 26 August, and 16 September, *The Examiner* advertised the work. On 14 October 1827, *The Examiner* published a lengthy review to introduce Bentham's ideas.<sup>58</sup>

Another journalist, James Silk Buckingham, was also in contact with Bentham concerning the Association. It is not certain whether it was Bentham's idea or Buckingham's, but by 13 January 1830, they had agreed that Buckingham would give lectures on a tour around Britain to advertise the Association. On 13 January, Bentham wrote to Stanhope that this decision was "the fruit of the

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<sup>53</sup> Goldsmid to Bentham, 1 Jun. 1830, British Library Chadwick Tracts, C.T. 84.

<sup>54</sup> HC Deb., 17 May 1830, vol. 24, 784-814.

<sup>55</sup> Geoffrey Alderman, "Goldsmid, Sir Isaac Lyon, first baronet 1778-1859," in *The Oxford Dictionary of National Biography* (2004)

<sup>56</sup> Bentham to Albany Fonblanque, 23 Dec. 1829, British Library of Political and Economic Science, Letter Collection, vol. 4, fo. 55-6.

<sup>57</sup> Bentham to Albany Fonblanque, 11 Jul. 1827, and Albany Fonblanque to Bentham, 12, Jul. 1827, *Correspondence*, vol. 12, 370-1.

<sup>58</sup> *The Examiner*, Oct 14, 1827, 642.

interview” between him and Buckingham.<sup>59</sup> On 26 January, Buckingham wrote to Bentham that he had calculated the cost of the tour and drafted an outline of the lectures. The lectures would have three divisions. Of the first lecture, Buckingham gave the following summary:

General Importance of good Institutions as above every other consideration in promoting the prosperity and happiness of nations. With striking examples of the effects of bad institutions from the history of the most distinguished nations of the world. Summing up—the show that great wealth is an evil in a nation unless just distribution can be secured:—and that this depends entirely on the nature of the laws—and the mode of their administration.

Of the second lecture, its outline promised that it would attack English laws directly “with as many powerful illustrations from facts as can be collected, both in Civil and Criminal Judicature—with forcible comments on each”. Then, in the outline of the third lecture, Buckingham argued that the “causes” of English legal problems were “to be found in the sinister interest of the various parties, Legislators, Judges, Barristers, Attornies and Officers of Courts in the ambiguity and complication of details”.<sup>60</sup> Such an analysis characterised the existing system as authoritarian and self-serving, and suggested that the complexity of existing legal language and procedure had been created to restrict the accessibility of justice to the public. This view treated the legal problem as a political issue. Bentham was eager to receive Buckingham’s plan, as he told Stanhope on 26 January.<sup>61</sup> He also informed Stanhope that Buckingham’s lecture was planned to start at Derby, close to Stanhope’s family estate Elvaston Castle. Perhaps Bentham was implying that Stanhope should use his family influence to assist Buckingham in attracting an audience or in advertising the lectures. However, Buckingham’s planned lecture tour for the Law Reform Association was abandoned after the Association’s first meeting in June 1830 failed to raise enough funds.<sup>62</sup>

Bentham even tried to solicit the Tory Prime Minister the Duke of Wellington. On 29 November 1828, he sent the *Extract from the Proposed Constitutional Code, Entitled Official Aptitude Maximised, Expense Minimised* (1826) to Wellington.<sup>63</sup> On 22 March 1829, Bentham claimed himself as the “leader of the Radicals” in another letter to Wellington, who had had a duel with Lord Winchilsea on the previous day concerning a disagreement over the Catholic Relief Bill. Bentham

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<sup>59</sup> Bentham to Stanhope, 13 Jan. 1830, University College London Library, Stanhope Collection, no. 32.

<sup>60</sup> James Silk Buckingham to Bentham, 26 Jan. 1830, UC lxxxv. 189-90.

<sup>61</sup> Bentham to Stanhope, 26 Jan. 1830, University College London Library, Stanhope Collection, no. 07.

<sup>62</sup> Buckingham to Bentham, 4 Jun. 1830, British Library Add MS. 33,546, fo. 424-5.

<sup>63</sup> Bentham to Wellington, 29 Nov. 1828, *ibid.*, 256-8.

argued that Wellington's behaviour endangered the passing of the Emancipation bill. Out of moral indignation, Bentham wrote:

[I]f to personal and physical, you add *moral* courage, I will tell you what to do. Go to the House of Lords. Stand up there in your place, confess your error, declare your repentance, say you have violated your duty to your Sovereign and your country, and promise that on no future occasion whatsoever...will you repeat the offence. Here am I, leader of the Radicals (in that character as least am I, and I alone, every now and then spoken of) leader of the Radicals, more solicitous for the life of the Leader of the Absolutists, than he himself is!<sup>64</sup>

Now, on 12 December 1829, Bentham wrote two letters to Wellington on the subject of judicial reform. Concerning the Association project, Bentham wrote, "A *Law Reform Association*—a '*Noble Army of Reformists*, some of them *Martyrs*'—An Army of this sort I am raising: a *Legion of Honour*, with *Members for Grand Crosses*. There, if you will head it, will be a *tower of defence* to you: a support from *without doors*...Will you refuse the *command* thus offered?"<sup>65</sup> Wellington only acknowledged his receipt of Bentham's letters and did not answer the question.

The next most active organizer after Bentham was Cullen, who was a grandson of the Edinburgh medical professor William Cullen, and who had been appointed as a bankruptcy commissioner in 1822. He was a new disciple of Bentham's: 1 December 1829 seems to have been the date of his first visit to Bentham's house.<sup>66</sup> In 1829, Cullen published *Reform of the Bankrupt Court*, which characterised Bentham's old friend Samuel Romilly as a model Chancery lawyer: "[I]t is pertinent to my subject to note, that he was...the most variously learned and most accomplished person, and with the most philosophical capacity, of any I ever knew...he had written on the bankrupt law a simple, concise and lucid development of the principles of the law".<sup>67</sup> It is interesting to note that in the 1829 edition of the book, Cullen's hero was Romilly, and Bentham was not mentioned. However, in the second edition, which was published in 1830 when Cullen had been actively engaged with Bentham's Association project for some months, Cullen wrote that "What Bacon desired, Bentham has accomplished"<sup>68</sup>, which indicates Bentham's influence on Cullen, as will be discussed later.

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<sup>64</sup> Bentham to Wellington, 22 Mar. 1829, *ibid.*, 277-9.

<sup>65</sup> Bentham to Wellington, 12 Dec. 1829, *ibid.*, 321-33.

<sup>66</sup> Charles Sinclair Cullen to Bentham, 28 Nov. 1829, British Library Add. MS 33,546, fo. 318.

<sup>67</sup> Charles Sinclair Cullen, *Reform of the Bankrupt Court* (London, 1829), 7.

<sup>68</sup> Quoted in Michael Lobban, "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830," 121.

Cullen contacted Joseph Hume, Francis Burdett, John Berkeley Monck (MP for Reading), John Smith (MP for Midhurst), George Nugent (MP for Buckingham), Albany Fonblanque, Daniel O'Connell, and Leicester Stanhope.<sup>69</sup> In addition, Cullen also facilitated the communication between Bentham and other members. Burdett asked Cullen to vouch for him when he claimed to have read Bentham's writings diligently.<sup>70</sup> In February 1830, after Leicester Stanhope expressed his distrust of O'Connell's commitment to reform, and Bentham began to be impatient with O'Connell, Cullen wrote to Bentham that O'Connell "is wiser, *deeper* than Col. Stanhope thinks. Stanhope is so sincere and simple-hearted and has seen so many men paralysed by vanity, ambition and a weak anxiety for present triumphs and Brookes' popularity, that he is apparently unable to appreciate justly the position and character of Mr. O'Connell."<sup>71</sup> The phrase "Brookes' popularity" indicates the cause of Stanhope's suspicion. The gentlemen's club in St James's Street named Brooks's was a centre of Whig leaders' social life. O'Connell was elected to Brooks's on 27 May 1829. During his Catholic Emancipation campaign, he was often criticised as being too close to the Whigs. When he endorsed measures for the state payment of the Catholic clergy and the disfranchisement of the 40s. freeholders, English radicals like William Cobbett condemned his compromises publicly.<sup>72</sup> Even Bentham expressed some doubts to O'Connell directly.<sup>73</sup> Then Stanhope's opinion was heard by O'Connell. On 16 February 1830, O'Connell wrote to Cullen: "You may assure your friend, Stanhope, that he mistakes me much if he thinks me at all doubtful on 'the fee-gathering system', or that I fall short of the full measure of relief which Bentham contemplates".<sup>74</sup> The quarrel between O'Connell and Stanhope reveals how difficult it was to persuade those strong characters to cooperate with each other and put their doubts aside. Between Catholics and Protestants, the Irish and the English, radicals and Whigs, there were so many divisions which could cause doubts and disputes. However, Cullen actively fixed problems and smoothed communications, and his constructive role was appreciated by Burdett and O'Connell. Lastly, Bentham also consulted Cullen about the size of paper for printing the "Law Reform Association Proposal", and the number of copies to be printed.<sup>75</sup>

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<sup>69</sup> Bentham to Leicester Stanhope, 11 Dec. 1829, University College London Library, Stanhope Collection, no. 31. Charles Sinclair Cullen to Bentham, 23 Dec. 1829, British Library Add. MS. 33,546, fo. 351. Bentham to Albany Fonblanque, 23 Dec. 1829, British Library of Political and Economic Science, Letter Collection, vol. 4, fo. 55-6. O'Connell to Cullen, 16 Feb. 1830, *O'Connell Corr.*, vol. 4, 129-30. Bentham to Stanhope, 26 Mar. 1830, University College London Library, Stanhope Collection, no. 9.

<sup>70</sup> Burdett to Bentham, 22 Feb. 1830, Bodleian Library, MS Eng. Lett. d. 97, fo. 25.

<sup>71</sup> Cullen to Bentham, 2 Feb. 1830, British Library Add. MS. 33,546, fo. 369-70.

<sup>72</sup> Fergus O'Ferrall, *Catholic Emancipation: Daniel O'Connell and the Birth of Irish Democracy, 1820-30* (Gill and MacMillan, 1985), 94-108.

<sup>73</sup> James E. Crimmins, "Jeremy Bentham and Daniel O'Connell: Their Correspondence and Radical Alliance, 1828-1831," 359-387.

<sup>74</sup> O'Connell to Cullen, 16 Feb. 1830, *O'Connell Corr.*, vol. 4, 129-30.

<sup>75</sup> Bentham to Cullen, 22 Mar. 1830, University College London Library, Denis Roy Bentham Collection, Add. MS. A. 1.53.

So far, the following members' links with the Association have not been constructed for want of direct evidence: Henry Warburton, John Wood, Robert Otway-Cave, John Berkeley Monck, Lord Reay, Francis Place, Lord Weymouth (Thomas Thynne junior), Perronet Thompson, John Evans, Richard Taylor, and Levi Ames. Among them, Bentham had especially intimate friendships with Perronet Thompson and Francis Place. Thompson purchased the *Westminster Review* from Bentham in 1828 and continued the journal's Benthamite character. As Thompson was a colonel with rich military experience, Bentham invited him to provide suggestions for the military laws in the *Constitutional Code* project.<sup>76</sup> Place had been promoting Bentham's and James Mill's utilitarian projects since 1808, and on 30 January 1830, he sent Bentham two copies of a petition for law reform.<sup>77</sup> The petition from Place might have been Bentham's justice petition, which had been sent to Place in February 1829 for the purpose of collecting signatures.<sup>78</sup>

Henry Warburton, John Wood, and John Berkeley Monck were under Joseph Hume's leadership in parliamentary politics. Warburton even got a nickname, "Mr. Hume's Echo", coined by a local newspaper close to his constituency of Bridport.<sup>79</sup> Therefore, although the evidence of Hume's contact with the three men about the Association has not yet been found, it is likely that they joined through Hume's intervention. Robert Otway-Cave is not mentioned in Bentham's surviving letters, but evidence suggests that he was on good terms with O'Connell and Burdett. O'Connell held high views of Otway-Cave as "one of the most unaffectedly honest public men in the British dominions".<sup>80</sup> Burdett sponsored Otway-Cave's admission to Brooks's in 1826, and Burdett's daughter Sophia Burdett married Otway-Cave in 1832.<sup>81</sup>

Thomas Thynne junior held a courtesy title as Viscount Weymouth and was the eldest son of Thomas Thynne, 2nd Marquess of Bath. He predeceased his father in 1837 and so never sat in the House of Lords. Weymouth's name appeared in Bentham's proposal. On 29 May 1830, Bentham wrote to Stanhope, "You had expectations from Lord Weymouth: inclosed is a circular for him."<sup>82</sup> This letter implies that both Bentham and Stanhope had contacted Weymouth. Eric Mackay, Lord Reay's name appeared in the proposal as well. No evidence suggests that Reay contacted Bentham directly. From

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<sup>76</sup> Thompson to Bentham, 6 Apr. 1830, British Library Add. MS. 33,546, fo. 393-4.

<sup>77</sup> Place to Bentham, 30 Jan. 1830, British Library, Add. MS. 33,546, fo. 368.

<sup>78</sup> Bentham to Place, 25 Feb. 1829, University of Illinois Library, Jacob Hollander MSS.

<sup>79</sup> *Dorset County Chronicle*, Dec 13, 1832.

<sup>80</sup> O'Connell to Nicholas Maher, 13 Sep. 1829, *O'Connell Corr.*, vol. 4, 98.

<sup>81</sup> "Otway Cave, Robert ?1796-1844," in *The History of Parliament: The House of Commons 1820-1832*, accessed online 20 Dec. 2020, <https://www.historyofparliamentonline.org/volume/1820-1832/member/otway-cave-robert-1796-1844>

<sup>82</sup> Bentham to Leicester Stanhope, 29 May 1830, University College London Library, Stanhope Collection, no. 34.

Reay's biographical information, it is known that he was close to John Abel Smith, to whom he left a property, Goldstone Hall, in trust.<sup>83</sup>

Richard Taylor had been printing Bentham's works since 1802. In 1822, Taylor delivered Bentham's works to Bentham's brother, Samuel Bentham, in France.<sup>84</sup> The last two members, John Evans and Levi Ames, had no known contact with Bentham. Evans was chosen by Henry Brougham as a commissioner to investigate the administration of the common law courts in 1830.<sup>85</sup> Between 1847 and 1852, Evans was MP for Haverfordwest. His first parliamentary speech, which followed a speech by Daniel O'Connell's son John O'Connell, opposed a national security bill which planned to strengthen policing in Ireland.<sup>86</sup> Levi Ames was the third son of the Bristol banker and unitarian leader Levi Ames (1739-1820). Both John Smith and John Marshall, on account of their banking and unitarian networks, are likely to have invited Ames.

## 4.2 The Most Active Members

The above section has cast light on Bentham's expansive network and the importance of friendship in assembling supporters. This section will focus on Bentham's and Cullen's writings, arguing that their legal ideals shaped the Association's agenda. In early 1830, numerous copies of the "Law Reform Association Proposal" were distributed. In this proposal, Bentham declared that the existing laws were "unknowable and unintelligible. The state of the judiciary establishment, and the system of procedure, are glaring[ly] repugnant to the ends of justice".<sup>87</sup> He argued that these problems had been "long felt by the community, to have grown up to such a height, that now for the first time, the grievance has been numbered among the subject-matters of the speech from the throne, and the attention of Parliament has been called to it".<sup>88</sup> Bentham was referring to the King's Speech on 4 February 1830. This was the first time in Bentham's lifetime that law reform had been recognised as a national agenda. Bentham viewed this statement as a sign of encouragement. He quoted the speech to justify his claim that the Law Reform Association was a loyal, patriotic, and utilitarian

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<sup>83</sup> "Rt. Hon. Erick Mackay, 7th Lord Reay 1773-1847," Profile & Legacies Summary in UCL Department of History, Legacies of British Slave-ownership database online, accessed 7 Sep. 2020, <https://www.ucl.ac.uk/lbs/person/view/8383>

<sup>84</sup> Bentham to Sir Samuel Bentham, 3 Apr. 1822, *Correspondence*, vol. 11, 52-3.

<sup>85</sup> Patrick Polden, "Local Courts," in *The Oxford History of The Laws of England, vol. 11: 1820-1914 English Legal System*, 859.

<sup>86</sup> HC Deb., 14 Apr. 1848, vol. 98, 341-2.

<sup>87</sup> "Law Reform Association Proposal," 1.

<sup>88</sup> *Ibid.*, 1-2.

project. This justification was significant because it strongly suggested to the receivers of the proposal that Bentham's reform was not politically dangerous. According to the words which Bentham quoted from the speech, law was among the "subjects of such deep and lasting concern to the well-being of his [the King] people".<sup>89</sup> This quotation expressed Bentham's flexible willingness to apply his philosophy under a monarchy. On earlier occasions, Bentham had professed republicanism and had argued for the incompatibility between a monarchy and the realisation of public utility. For example, he had written in 1822 that "by no means can Monarchy be rendered conducive to the production of the greatest happiness of the greatest number: nor therefore, according to the greatest happiness principle, be susceptible of the denomination of a good form of government".<sup>90</sup> However, these anti-monarchical words were not published. Bentham maintained them in private spheres, choosing not to express his republicanism in the press.<sup>91</sup>

On the other hand, the application of the project required a democratic force for upholding the accountability of a monarchical government. An ideal legal system must be conducive to the realisation of the public utility, for which reason Bentham started to argue for the usefulness of a democratic association. He invited anyone who interested in law reform to contribute. To Bentham, a good law was "everyone's best friend...To her the rich man owes his wealth; the poor man his subsistence; every man who is free, his freedom."<sup>92</sup> If this were so, he asked in the proposal, why were the existing laws so bad and why had the problem deteriorated into such a severe situation "in a manner hitherto so unprecedented?"<sup>93</sup> Then Bentham blamed the judiciary, who had sabotaged past legislative attempts to reform. However, what made Bentham's anti-lawyer language impressive to his contemporaries was his analysis of the mechanisms of judicial monopoly and corruption. Bentham revealed how the judiciary produced an authoritarian legal system which was opposed to the public utility: "So mighty, and down to this time so irresistible...has been the united force of sinister interest, interest-begotten prejudice, and authority-begotten prejudice."<sup>94</sup> Bentham's phrases "interest-begotten prejudice" and "authority-begotten prejudice" came from his analysis of anti-reformers' psychology. According to Malcolm Quinn's paraphrase, "Interest begotten

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<sup>89</sup> Ibid., 2.

<sup>90</sup> Jeremy Bentham, *First Principles Preparatory to Constitutional Code*, ed. Philip Schofield (Clarendon Press, 1989), 237. Philip Schofield, "Jeremy Bentham," in *Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham*, ed. Denis Galligan (Oxford University Press, 2014), 231-249.

<sup>91</sup> While Philip Schofield writes that "Bentham openly professed his republicanism", he does not provide a reference. Philip Schofield, *Utility & Democracy*, 304.

<sup>92</sup> Quoted in David Lemmings, "Law," in *An Oxford Companion to the Romantic Age: British Culture, 1776-1832*, ed. I. McCalman (Oxford University Press, 1999), 74.

<sup>93</sup> "Law Reform Association Proposal," 3.

<sup>94</sup> Ibid.

prejudice, as Bentham defined it, is a personal bias in favour of sectional or 'sinister' interests, of the kind that is expressed in an allegiance to common sense notions of virtue."<sup>95</sup> In Bentham's *Book of Fallacies*, published in 1824, he defined the "authority-begotten prejudice", as a notion that authorities had an immediate interest to support, and through a long time of official propaganda, the notion was accepted as authoritative after most people had stopped questioning its authenticity.<sup>96</sup>

Driven by a strong suspicion of the deceptive power of established law and government, Bentham argued that "no assistance that can possibly be lent by individuals, to the designs thus declared by Government, can with truth be taxed with being needless".<sup>97</sup> In other words, any popular or democratic association could not be excluded as "needless" from assisting official commissions. Following Bentham's logic, the government could have no legitimate excuse to reject voluntary reformers. For in Bentham's psychological analysis, the government was likely to pursue its sectional interest at the expense of the public, so the public should act as a democratic check. Any voluntary association of reformers should thus acquire the power to examine the application of governmental policies. As Bentham wrote, "in relation to the advisers of the Crown, in no state in which their minds can be, can an Association such as this fail to be of use: if evil-intentioned, it will be a *check* to them; if well-intentioned, but sluggish, a *spur*; if well-intentioned but timid, a *cordial* and encouragement".<sup>98</sup>

Therefore, to Bentham, an ideal law must be a democratic law which maximizes public utility. This aim would be best achieved in a democracy, but Bentham's proposal did not opt for a more aggressive approach, namely, the promotion of political or constitutional reform. Bentham explained that it was useful to separate law reform from parliamentary reform for "avoiding to shut the door against so much as a single individual, of those, in whose eyes the one object is a proper, the other an improper one".<sup>99</sup> To put it more simply, Bentham was afraid of losing the support of those who were willing to support law reform but not parliamentary reform. The Association concentrated its attention on law reform. Philip Schofield has noted this fact<sup>100</sup>, but it could be added that this focus

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<sup>95</sup> Malcolm Quinn, "The Invention of Facts: Bentham's Ethics and the Education of Public Taste," *Revue d'études benthamiennes* 9, (2011), accessed in an online version on 9 Sep. 2020, <https://journals.openedition.org/etudes-benthamiennes/346>

<sup>96</sup> *The Book of Fallacies* (London, 1824) in *the Collected Works of Jeremy Bentham*, 51-2.

<sup>97</sup> "Law Reform Association Proposal," 3.

<sup>98</sup> *Ibid.*, 6.

<sup>99</sup> *Ibid.*, 7.

<sup>100</sup> Philip Schofield, *Utility & Democracy*, 324, 329.

reflected Bentham's political sensitivity. In early 1830 law reform became the government's agenda and parliamentary reform did not. The Tories held 428 seats in the House of Commons then. If the Association's agenda had included parliamentary reform, the chance to attract MPs would have been smaller.

In the proposal, Bentham argued that all laws should be transparent and accessible to "every member of the community". The means to achieve this ideal was "a Code exhibiting a System of Judicial Procedure, or say *Adjective Law*, such as shall suffice for giving execution and effect, to every party of the main body, or say *substantive branch* of the law: --and this, with the *minimum* of delay, expense, and vexation."<sup>101</sup> Bentham believed that through this way, the performance of legal professionals would be checked by the public, and the chances for them to abuse judicial power would be minimized. If all judicial officers could follow a clear and unified procedure code, their efficiency would be improved and thus their own material interests could be secured and even increased within a more stable and democratic institutional structure.

The courts would be changed according to the new procedures as well. The number and location of courts would be decided by a calculation to make law accessible to as many as possible. Therefore, the existing courts would be examined to see whether they should be moved to different places or simply abolished. In terms of the cost to run courts, and the payment for court officers, Bentham argued there should be no more private fees because legal service was a public service. It was intended that "the public revenue [would] exonerate, as far as may be, every suitor, from those impositions, in all their shapes, by which to all who are unable to pay the amount of them, justice is denied".<sup>102</sup> Law would no longer be a commercial business and thus lawyers would not be tempted to seek more money from clients. All lawyers would then become public service providers who received payment only from the state. Accordingly, both plaintiffs and defendants would be placed in the most advantageous position to access legal services and the chances of them being neglected or mistreated would be minimised.

How did other members react to the legal ideals in the proposal? As discussed above, Cullen was the second most active member. Evidence also suggests that it was he who first persuaded Bentham to

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<sup>101</sup> "Law Reform Association Proposal," 7-8.

<sup>102</sup> *Ibid.*, 8.

write the proposal. On 7 January 1830, Cullen wrote to Bentham, “I am anxious for a prospectus of our law-reform Association.”<sup>103</sup> The proposal was completed by 22 March 1830.<sup>104</sup> In the same month, Cullen wrote to Bentham that he was waiting for John Smith’s arrival to discuss the proposal.<sup>105</sup> On 11 February 1830, Cullen wrote to John Smith a letter which stated, “[W]e shall be able to promote this national benefit by the labours of that Association for Law Reform of which you have consented to become a Member.”<sup>106</sup> In the same year, Cullen published the letter and thus the Association and John Smith’s membership received more publicity.

The first edition of Cullen’s *Reform of the Bankrupt Court* proposed a moderate remedy: “reduce the number of commissioners from 70 to 15; of the lists, from 14 to 3. Not another change need be made.”<sup>107</sup> Cullen calculated that the savings from the reduction were sufficient either to attract new full-time professional experts or to train the remaining 15 part-time commissioners to become full-time specialists. Then he stressed that with full-time commissioners, the bankruptcy commission would become a permanent court with regular opening times, and “a single commission of authority to the commissioners once for all, would be the sufficient and obvious and ordinary mode of giving jurisdiction to them in all cases”.<sup>108</sup> Moreover, far from expressing a Benthamite hostility to judicial fees, Cullen wrote: “I have resolved to omit all suggestions for the annihilation or diminution of fees, however much the public interest might be promoted by them; because I should fear, by the display of them, to raise a host of enemies to the present proposition, which I deem more important and essential than any other.”<sup>109</sup>

However, in the second edition, Cullen added Bentham’s procedural reform suggestions such as the abolition of written pleadings, which would allow interested parties to state their own cause in front of judges. Bentham argued that all parties should be allowed to attend at the earliest stage of a case, in contrast to the existing procedure, which set up many qualification-checks for a plaintiff to meet so as to establish his/her rightful claim.<sup>110</sup> Existing procedures in the common law courts, Cullen argued, meant that it could take months for a creditor to establish their claims, whereas in the

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<sup>103</sup> Cullen to Bentham, 7 Jan. 1830, British Library Add. MS. 33,546, fo. 360-1.

<sup>104</sup> Bentham to Cullen, 22 Mar. 1830, University College London Library, D.R. Bentham Collection, MS Add. A.1.53.

<sup>105</sup> Cullen to Bentham, ? Mar. 1830, British Library Add. MS. 33,546, fo. 475-6.

<sup>106</sup> Cullen, *Reform of the Bankrupt Court*, 2nd edition (London, 1830), xxi.

<sup>107</sup> *Ibid.*, 51.

<sup>108</sup> *Ibid.*, 54.

<sup>109</sup> *Ibid.*

<sup>110</sup> Michael Lobban argues that by the 1820s, a theory of pleading that justified the procedural complexity had already been predominant among practitioners. See Lobban, *The Common Law and English Jurisprudence 1760-1850*, 67-79.

courts of equity, this process could take years. The slowness, expensiveness, and complexity of these procedures could be reformed to increase the accessibility of justice, if only Bentham's suggestions were adopted. As Cullen wrote, "inquisition into the truth of their demands should be immediately made, and decision on the claims should immediately follow upon sufficient inquiry. Vide Mr. Bentham's invaluable exemplification of this principle in his Dispatch Court Proposal, about to be published."<sup>111</sup>

Moreover, Cullen argued that the following would be the case if Bentham's summary mode of procedure were adopted:

[T]o establish a debt before Commissioners of Bankrupt, the creditor has no other trouble than that of walking to Basinghall Street, if in London, or to a master extraordinary, if in the country, to make a deposition or an affidavit of his debt. Here is no expense, no plunging into a suit, no declaration, no pleading, no trial, no witness but the party himself, no verdict, no judgement, no execution, no lawyers, no fees: but the benefit of all these at once.<sup>112</sup>

This change was ideal for creditors. However, Cullen also predicted that some would argue against Bentham's measure as encouraging fictitious allegations. Responding to this objection, Cullen wrote that "it is the fault, not of the procedure [of Bentham], but of the constitution of the court, and of the time and mode of appointing assignees of the estate".<sup>113</sup> Although he did not give justification for this argument, the implication was radical. The problem of bankruptcy laws was rooted in the existing system. Bentham's ideal was not unrealistic but achievable. The high notion of judicial accessibility should be the first principle on which to construct the whole system.

Cullen also supported another of Bentham's arguments: that there should be no exclusionary rules in judging the competence of witnesses. This argument assumed that a larger proportion of the population consisted of responsible individuals than the existing legal culture could acknowledge. Moreover, all parties should be heard not exclusively by barristers, but also by solicitors and non-lawyers, to correct the current monopoly enjoyed by higher ranks of lawyer, and also to counter the Lord Chancellor's "undue influence". In the context of the early-nineteenth-century notion of individual morality, such thinking was radically egalitarian, as it denied the legal implications of the

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<sup>111</sup> Cullen, *Reform of the Bankrupt Court*, 2nd edition, xiv.

<sup>112</sup> *Ibid.*, xiv-xv.

<sup>113</sup> *Ibid.*

prevailing view of guilt as a moral stain, which discriminated against the convicted.<sup>114</sup> An egalitarian ideal was also expressed when Cullen quoted Bentham's *Traité de Législation* to define "the public interest": "The interest of individuals, it is said, must give way to the public interest. But what does this mean? Is not one individual as much a part of the public as any other? This public interest, which is thus personified, is only an abstract term, it only represents the aggregate of individual interest."<sup>115</sup>

The contact with Bentham, which raised his disciples' political aspirations, influenced Cullen's career as well. In June 1830, he announced that he would stand as a candidate in the forthcoming Chichester election. On 3 June (two days after the Law Reform Association's meeting at Bentham's house), in Derby Street, London, addressing the electors of the city of Chichester, he stated, "[M]y opinions on two of the subjects most important, not only to the country but to every county and city in it, namely, Parliamentary Reform, and Law Reform, are well known to you."<sup>116</sup> This statement suggests that Cullen was using his experience in organising the Association to advertise his qualifications as a candidate. He furthered Bentham's ideal in his canvassing. Whereas Bentham refused to allow law reform to become entangled with parliamentary reform, Cullen saw the failure of Bentham's strategy and decided to support both. Cullen justified this combination by saying that parliamentary reform was an essential precondition for Bentham's legal ideal, which "may render the administration of justice cheap and speedy, and carry it home to all men's homes or neighbourhood".<sup>117</sup> On 12 June, Cullen made a long speech at the Anchor Inn in Chichester, where "the room was crowded to excess", claiming that his aim was to promote a union between Whigs and radicals.<sup>118</sup> Although in the end he was not elected, Cullen impressed many electors with his egalitarian ideals. On 7 August, two days before the end of election, he was recommended as "a reformer, and a man of sound principles".<sup>119</sup> Afterwards, Cullen's health was deteriorating. He did not participate in the next general election (May 1831), and he died in November 1831.

### 4.3 The Impact of The Association

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<sup>114</sup> W. Wesley Pue, "Review of The Law of Evidence in Victorian England by Christopher Allen," *Victorian Studies* 43, (2001), 335-337.

<sup>115</sup> Cullen, *Reform of the Bankrupt Court*, 2nd edition, 76.

<sup>116</sup> *Proceedings at the Contested Election for the City of Chichester* (Chichester, 1830), 11.

<sup>117</sup> *Ibid.*, 12.

<sup>118</sup> "Chichester, June 12," *Southampton Herald*, Jun 12, 1830, 3.

<sup>119</sup> "Chichester Election," *Hampshire/Portsmouth Telegraph*, Aug 9, 1830, 4.

This section turns to another perspective from which to further explore the Association's impact. Scholars have not noticed that when the Association project was active, some conservative lawyers attacked Bentham's philosophy and worried that his popularity was endangering the English tradition. I argue that there was a direct link between the two phenomena. The Association project was advertised, for example, through Cullen's book. Also, O'Connell and King's petition in parliament might have drawn critics' attention to Bentham in early 1830. Moreover, Cullen at one stage asked Bentham to send a messenger to the Wyndham Club where he dined, which might have informed other members of the club of his communication with the philosopher.<sup>120</sup> The Wyndham Club, founded by the radical Whig Lord Nugent, was at No. 11, St. James' Square.<sup>121</sup> Indeed, as mentioned above, Lord Nugent was nudged by Cullen to join the Association. In addition, copies of the Association's proposal were being distributed, and the proposal stressed the lawful nature of the members' activism as responding to the king's call. Influential newspapers such as the *Globe* (London), the *Freeman's Journal* (Dublin), and local newspaper the *Hull Packet*, were all advertising the Association in January 1830. These media reported that "several distinguished members of the House of Commons have already expressed their intention of becoming members of it".<sup>122</sup> Through these channels, conservative lawyers could hardly have helped noticing that Bentham was rallying radicals such as Daniel O'Connell and Joseph Hume.

Therefore, the conservatives sought opportunities to attack Bentham. John James Park, later the first professor of English law and jurisprudence at King's College London, published in 1830 a series of public letters to Robert Peel. The first letter must have been written and published between February and November 1830 because it quoted the parliamentary opening speech on 4 February 1830 and called Peel by his ministerial title.<sup>123</sup> Peel was Home Secretary until 22 November 1830. The factor that provoked Park was Peel's growing reformist disposition. On 17 February 1830, Peel informed the House of Commons that he was planning to bring in a bill to abolish all fees payable by persons on their acquittal or other discharge from a criminal charge.<sup>124</sup> On the same occasion, following Peel's speech, O'Connell rose to say that all judicial fees should be abolished. On the next

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<sup>120</sup> Cullen to Bentham, 7 Jan. 1830, British Library Add. MS. 33,546, fo. 360-1.

<sup>121</sup> John Timbs, *Club Life of London with Anecdotes of the Clubs, Coffee-Houses and Taverns of the Metropolis*, 2 vols. (London: 1866), vol. 1, 232.

<sup>122</sup> *Freeman's Journal* (Jan 9, 1830) wrote that a correspondent from the *Globe* informed them. *Hull Packet*, Jan 12, 1830.

<sup>123</sup> *Juridical Letters; addressed to the Right Hon. Robert Peel, in Reference to the present Crisis of Law Reform* by Eunomus (London and Paris, 1830), 3.

<sup>124</sup> HC Deb., 17 Feb. 1830, vol. 22, 570-3.

day, Peel raised the issue of judicial fees regulation again in the House of Commons. This time, he promised to bring in a bill for “ascertaining the Fees and Emoluments of Officers in the Courts of Common Law”.<sup>125</sup> On 10 March 1830, the *Morning Chronicle* reported Peel’s speech of 9 March, writing, “He [Peel] had given notice of his intention to bring in a Bill to put end to all Fees taken by Officers of the Courts; and when that Bill passed, they should then be able to apply themselves to a remedy for all those defects of practice which at present formed so just a ground of complaint.”<sup>126</sup> Abolishing judicial fees was a fairly radical measure, as two years ago, Peel’s rival Henry Brougham had not been able to advocate it.<sup>127</sup> Now, after the *Morning Chronicle*’s report, Bentham quoted this newspaper and wrote to Peel on 13 March, also using it as a sign to show to his friends Peel’s reformism. For example, he wrote to O’Connell on 15 March that “the symptoms manifested in a late speech or two of his, in which he is coming round and attacking the army of Chicane in flank, at any rate, not to say in front, and, moreover, issuing a direct declaration of war against ‘Technicalities’, I even offer to look at those bills of his, if he will send them to me as he did some former ones”.<sup>128</sup> Bentham might have been expecting his friends to spread the impression that Peel was moving closer to his circle. More importantly, Bentham was not the only reader of the *Morning Chronicle*. The reformist newspaper recorded Peel’s speech using much more radical phrasing than what was recorded in *Hansard*.<sup>129</sup> The radical version of Peel’s speech was very likely to shock conservatives like Park.

Under the pseudonym “Eunomus”, Park published *Juridical Letters; addressed to the Right Hon. Robert Peel, in Reference to the present Crisis of Law Reform*, reminding Peel of the virtue of caution: “You have wisely determined to limit *your* reforms within the path of safety—you have rejected the perilous popularity which you might have attained by listening to counsels which were not wanting either in name or in number.”<sup>130</sup> The phrase “perilous popularity” referred to a scandal of February 1827, when some daily newspapers had reported that he had authorised Anthony Hammond to abolish the common law by codification. Peel’s statement rejecting Hammond’s plan was described as the right decision, but Park warned Peel: “[Y]our position is still a critical one.”<sup>131</sup> In Park’s view,

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<sup>125</sup> HC Deb., 18 Feb. 1830, vol. 22, 650.

<sup>126</sup> *Morning Chronicle*, Mar 10, 1830.

<sup>127</sup> Chris Riley, “Henry Brougham and Bentham, The Hermit and the Boa Constrictor,” 7.

<sup>128</sup> Bentham to Peel, 13 Mar. 1830, British Library Add. MS. 40,400, fo. 94-5. Bentham to O’Connell, 15 Mar. 1830, Bowring, xi. 37-8.

<sup>129</sup> The *Hansard* records a much moderate version: “he[Peel] had himself, as a preliminary measure to such a reform, slated his intention to introduce a bill for pulling an end to patent offices, and till that, and the question concerning fees were disposed of, the reform of the courts could not be proceeded with”. See HC Deb., 9 Mar. 1830, vol. 23, 67.

<sup>130</sup> *Juridical Letters*, 6.

<sup>131</sup> *Ibid.*, 3.

there was a new danger that Peel might be tempted by popularity to lead law reform away from “the path of safety”. Park argued that English society needed law reform but not of a radical kind, because neither the legal profession nor the public were prepared for it, and because “the jurisprudential philosophy is in this country in its infancy”.<sup>132</sup> Park warned that “in England, nineteen lawyers out of twenty have never yet given a thought to theory, and they are little more than the working engineers”, and that the scope for someone to pursue law reform deceptively or incompetently was huge. Bentham was described as an impostor who was “taking advantage of the peculiar condition of ignorance in which the English alone among modern nations exist of the real truths of judicial and jurisprudential science”.<sup>133</sup> Reform should be guided wisely and cautiously, but Bentham had long sought to “inoculate the public mind with a series of mendacious and ignorant assertions and theories”.<sup>134</sup> As Dinwiddy has noted, Park’s attack on Bentham relied more on rhetoric and *ad hominem* attack than on theoretical argument.<sup>135</sup> However, Park’s choice to set Bentham as his main target suggests the latter’s growing impact. Park argued that Bentham’s ideas in recent years had extended “to the Bar itself; to talented and benevolent individuals, some high in the ranks of practical eminence, and equally high as philosophers and philanthropists”.<sup>136</sup> Therefore, Park linked Peel’s longing for popularity with Bentham’s influence and described Bentham as a malicious but influential guru.

Park did not name those who were influenced by Bentham because his main goal was to warn Peel to select his own advisors more carefully, lest lawyers such as Anthony Hammond misguide him again. In this case, Hammond was suggested as one of the talented members of the bar who were influenced by Bentham. Park might have read the advertisement of the Law Reform Association in various newspapers, or read Cullen’s public letter to John Smith, or heard about Bentham and Cullen’s networking activities in a London club. Those names of influential professionals, businessmen, and politicians were likely to have convinced Park of Bentham’s growing popularity.

Another example of the conservatives’ concern about the Benthamites comes from 9 March 1830. In a parliamentary debate about how extensive law reform should be, the Attorney General stated that he had no intention of making a radical change, and that “he could not agree with the hon. Member

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<sup>132</sup> *Ibid.*, 27.

<sup>133</sup> *Ibid.*, 9, 12.

<sup>134</sup> *Ibid.*, 13-4.

<sup>135</sup> J.R. Dinwiddy, “Early nineteenth-century reactions to Benthamism,” in *Radicalism and reform in Britain, 1780-1850* (The Hambledon Press, 1992), 350.

<sup>136</sup> *Juridical Letters*, 26.

for Clare in what he had said with respect to special pleading, as he considered the present system unobjectionable".<sup>137</sup> The MP for Clare was Daniel O'Connell, who had called for the abolition of special pleadings; argued that no man should be excluded from attending court; suggested that the fees paid to lawyers for preparing documents were unnecessary; and called for local courts to be set up equally throughout the country to "facilitate the administration of justice at every man's door".<sup>138</sup> These measures were mentioned by Cullen in his published letter to John Smith, and in Bentham's 1829 *Justice and Codification Petitions* as well.

As these radical measures for judicial accessibility were in published sources and were circulating among reformers, Scarlett might have been aware that Bentham was giving instructions to O'Connell. Therefore, after objecting to O'Connell's request for reforming special pleadings, Scarlett went on to say that "there was a sect in this country containing many clever men, who were of a different opinion, but whose theories he regarded as unfounded. He knew one celebrated individual who objected to trial by jury, he knew that that individual had made many proselytes, and perhaps the hon. Member might be one of them."<sup>139</sup> The "celebrated individual" who "had made many proselytes", including O'Connell, was obviously a reference to Bentham. Moreover, the Attorney General made two allegations concerning Bentham, whose theories were described as unrealistic and a threat to the institution of the jury. The latter accusation in particular could have caused severe damage to Bentham's reputation, as the jury trial was regarded as a national source of pride by many Englishmen.

Facing such an attack from a senior law official, Joseph Hume

animadverted on some observations that had fallen from the Attorney General, conveying, as he conceived, a sneer of ridicule, directed against Mr. Bentham and the doctrines advocated by that writer and his followers. Instead of sarcastically reviling such a man as Mr. Bentham, he thought it would be well for the Attorney General if he would cultivate his principles, and labour to attain the same exalted character in the estimation of the civilized world.<sup>140</sup>

Hume stressed Bentham's internationally famous moral character as a strong reason against Scarlett's allusive ridicule. The *Morning Chronicle* gave a more positive description of Hume and

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<sup>137</sup> HC Deb., 9 Mar. 1830, vol. 23, 69.

<sup>138</sup> *Ibid.*, 63.

<sup>139</sup> *Ibid.*, 69.

<sup>140</sup> *Ibid.*, 69-70.

Bentham: “[Hume] wished very much that the Attorney-General, and the Right Honourable Gentleman (Mr. Peel) would adopt a little of Mr. Bentham’s principles. They would find that they tended more to put an end to uncertainty, and to give the decisions of the tribunals a character of uniformity than any plan ever devised.”<sup>141</sup> After Hume’s defence, Scarlett “disavowed having made any disrespectful allusion to Mr. Bentham or his writings” and claimed that he “entertained a high respect for Mr. Bentham”.<sup>142</sup>

However, Scarlett agreed that “he did speak of a sect”. And a sect of law reformers including O’Connell could only be the Law Reform Association, given the context that O’Connell had publicly claimed that when he entered the House of Commons, his first agenda would be supporting Bentham’s law reform.<sup>143</sup> Furthermore, O’Connell actively spoke in favour of Bentham’s ideas, especially codification, in the early 1830s, in the House of Commons. Therefore, the dangerous sect of theorists was bound to be interpreted as Benthamites. At least in the *Morning Chronicle’s* view, Hume defended Bentham’s reputation successfully. Meanwhile, Scarlett’s denial indirectly suggests his fear of Bentham’s friends, as does the fact that he dared not mention Bentham’s name. We might note too that Park’s attack was pseudonymous. In this respect, both Scarlett and Park seem to have been intimidated by Bentham’s networks. In addition, Cullen’s explanation of why Bentham was never prosecuted for his radical writings is correct. Cullen wrote in a public letter to John Smith that Bentham’s works “have excited the hostility of the combined forces of corruption and ignorance. Nothing but respect for his character, or a fear of the influence on a jury of his venerable presence, and of that of the distinguished friends who would have rallied round him, has saved him from the attacks of our enlightened prosecuting Attorneys-General.”<sup>144</sup> This passage was written on 11 February, and on 9 March, the Attorney General duly admitted his high respect for Bentham.

Finally, in terms of the impact of the Association project on Bentham’s popularity, the *Morning Chronicle’s* report of Hume’s speech reveals an important element. Many reformers might have accepted Hume’s argument that Bentham had devised the best plan to give the court system “a character of uniformity”. The members who supported the Association or who were solicited were from the four nations of Britain, but their court systems were much less unified than today. For example, on 9 March 1830 the debate between Scarlett and Hume was triggered by Scarlett’s

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<sup>141</sup> *Morning Chronicle*, Mar 10, 1830.

<sup>142</sup> HC Deb., 9 Mar. 1830, vol. 23, 70.

<sup>143</sup> *Morning Herald*, Jul 15, 1828.

<sup>144</sup> Cullen, *Reform of the Bankrupt Court*, 2nd edition, xiii.

motion to reform the court system in Wales, aiming to assimilate Welsh procedures into English common law procedures.<sup>145</sup> This topic raised great interest among MPs of the four nations. O'Connell argued that all British courts should be administered according to principles which could best provide justice to everyman equally. Welsh MPs disputed whether Scarlett's measure could benefit the inhabitants of Wales. Scottish MP Robert Fergusson regretted that Scarlett did not provide some remedy for the inequality of business in the different courts in England. Then Home Secretary Peel rose to speak, responding to O'Connell's criticism directly, and stating that "a preliminary measure to" unify the regulations of "all our courts" would require "a bill for pulling an end to patent offices" and settling down the issue of fees those offices were disposed of [*sic*].<sup>146</sup> Then Peel argued that it would make the Welsh courts more efficient if they were regulated in a more uniform manner with England.

Members of the Law Reform Association also shared Peel's aspiration to regulate or unify the judicial administration with more clear, rational, and authoritative rules. Their support for Bentham shows a dislike for the irregularity of the traditional laws in some areas of Britain, and a belief that unifying judicial systems could help to bring about a peaceful and happy merger of the four different nations. Law was a tool for them to make their political union more rational. Thus, the political ideals of this union could be achieved sooner. To some extent, their support for increasing the accessibility of justice reflects their democratic ideals; their desire to repeal discriminative and tyrannical laws. Bentham's universal jurisprudence instilled in them the Enlightenment optimism that knowledge was the means to create a better world.

However, Bentham and his supporters were much more radical than Peel in their extreme anti-lawyer language. In the "Law Reform Association Proposal", Bentham denied the supreme authority of the judiciary and instead, he accused the judiciary of being the cause of the problem. The ethical basis of the legal profession's autonomy was severely questioned by Bentham, who argued that the profession had been corrupted by its material interest and unchecked intellectual authority, and had thus transformed into "the united force of sinister interest". To demonstrate the legal profession's manipulative power, Bentham mentioned Oliver Cromwell's failure to reform the law. In Cromwell's time, there had been voices in favour of eliminating the profession entirely so that men might be

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<sup>145</sup> HC Deb., 9 Mar. 1830, vol. 23, 54.

<sup>146</sup> *Ibid.*, 67.

allowed to plead their own cases.<sup>147</sup> However, as Bentham wrote, “So mighty is the sinistrously operative force of one small section of the community, that the power of *Oliver Cromwell*, so all-efficient as it was to all other purposes, actually sunk under the attempt”.<sup>148</sup> Bentham was determined to separate lawyers from other members of society. He firmly believed in utilitarianism as a moral standard by which one could judge existing evils. Lawyers thus became the enemy in his envisioned battle for a good law. That is why he recalled Oliver Cromwell as a past reformer who had acquired the highest political power, and who “could subjugate England, he could conquer Scotland, he could conquer Ireland, he could intimidate France, he could astonish Europe—but he could make no effectual impression on the phalanx of the law”.<sup>149</sup> By such language, Bentham was politicising and even polarising the issue of law reform as the root of all other social problems, and thus appealing directly to the whole public. His language and popularity among reformers indeed became a force that conservative-minded legal writers could not ignore.

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<sup>147</sup> Barbara Shapiro, “Law Reform in Seventeenth Century England,” *The American Journal of Legal History* (1975), 290.

<sup>148</sup> “Law Reform Association Proposal,” 3.

<sup>149</sup> *Ibid.*

# Chapter V: The Jurist

In March 1827, Henry Bickersteth, Joseph Parkes, and Sutton Sharpe published the first issue of *The Jurist: Or, Quarterly Journal of Jurisprudence and Legislation* (hereafter *The Jurist*). From then, until February 1833, they published ten issues and 97 articles, except in 1830 and 1831 when the journal was suspended. This chapter focuses on individual authors and their connection with Bentham. It will be argued that by the late 1820s, Bentham had become the inspiration for a substantial group of young reforming lawyers. In their writings, Bentham's utilitarian legal thinking was merged with other political discourses, and the Enlightenment ideal of a rational law was popularised to some extent. Bentham's link with *The Jurist* has been mentioned by some scholars. John Diwindy has noted *The Jurist's* support for Bentham in 1829 when his idea of codification was attacked.<sup>1</sup> David Ibbetson has summarised some sources to show Joseph Parkes and Sutton Sharpe's contributions. Ibbetson suggests that Parkes' bold personality and strong conviction largely shaped the journal's clear political standing: "The journal did not fight shy of advertisement of its friends' causes."<sup>2</sup> As for Sharpe's role, Ibbetson attributed the journal's internationalism to him. Later legal historians have largely followed Ibbetson's view, without providing more details.<sup>3</sup> This chapter will add more details about Parkes and Sharpe, and discuss other identified contributors, by placing Bentham in the centre of this network.

## 5.1 Members

19 persons have been identified as relating to the network of *The Jurist*: Jeremy Bentham, Henry Bickersteth, Joseph Parkes, Sutton Sharpe, James Mill, John Arthur Roebuck, Henry Roscoe, John Samuel Martin Fonblanque, Edward Strutt, John Romilly, John Stuart Mill, James Humphreys, John Reddie, Southwood Smith, Edwin Chadwick, Jabez Henry, Henry Wheaton, Alphonse Honoré Taillandier, and Adèle-Gabriel-Denis Bouchené-Lefer; of the last three, one was American and two were French. The formation of this network will be discussed below.

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<sup>1</sup> J.R. Dinwindy, "Early-Nineteenth-Century Reactions to Benthamism," 56.

<sup>2</sup> David Ibbetson, "Legal Periodicals in England 1820-1870," *Zeitschrift für Neuere Rechtsgeschichte* (2006), 180.

<sup>3</sup> Stefan Vogenauer, "Law Journals in Nineteenth-Century England," *Edinburgh Law Review* 12, (2008), 26-50. William Cornish, J. Stuart Anderson, Ray Cocks, Michael Lobban, Patrick Polden, and Keith Smith, ed., *The Oxford History of the Laws of England: Volume, vol. 11: 1820-1914 English Legal System*, 1203.

The network of *The Jurist* started with Henry Bickersteth and Joseph Parkes. Bickersteth provided a fund (£500), while Parkes was the chief editor and manager.<sup>4</sup> By the publication of the first issue of *The Jurist* in March 1827, Bickersteth had proved himself as a successful Chancery lawyer and was to be made King's Counsel within two months. His career had greatly benefited from the change of political climate. In the early 1810s, because of his radical association, Bickersteth had had a difficult time with clients and colleagues. On 22 October 1814, Bickersteth wrote to his parents, "Business has, of course, been slack...I am frequently put to considerable difficulties, and have very often occasion to think anxiously of my situation".<sup>5</sup> During the Westminster election of 1818, Bickersteth had supported the radical candidate Francis Burdett, displeasing the bar at large. He wrote:

I soon felt the effects of my imprudence—not only did my business diminish, but persons with whom I had up to that time lived on terms of courtesy and good-fellowship, at once grew cold to me. I cannot forget the feelings which I experienced in going up Lincoln's Inn Hall the first time after the election was over: some of my fellow barristers whom I had liked, and many with whom I had always been on good terms, absolutely turned away from me. I felt this treatment severely.<sup>6</sup>

But Bickersteth survived. Gradually, his professional ability was acknowledged, and his reforming ideas attracted positive responses. In August 1824, Bickersteth was interviewed by John Herman Merivale, a Chancery commissioner whose task was to investigate the administration of the Court of Chancery. The commission was established in 1824 and chaired by Lord Chancellor Eldon. Although the commission largely consisted of conservative lawyers, Merivale has been characterised by Michael Lobban as one of the "liberal" lawyers who got "the upper hand" during the investigation: "If a whitewash had been intended, men like Merivale ensured that progressive witnesses—such as Henry Bickersteth—were called, who helped to raise wider issues and set wider agendas."<sup>7</sup> Bickersteth felt that at first his answers were criticised as "wild and visionary schemes", but that after the publication of the commission's report in 1826, he had become "a sort of authority".<sup>8</sup> When Attorney General Sir John Copley was instructed to prepare a bill to respond to the problems exposed by the report, he immediately contacted Bickersteth for advice. In 1827, when Copley

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<sup>4</sup> T.D. Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol.1, 371.

<sup>5</sup> *Ibid.*, 290.

<sup>6</sup> *Ibid.*, 327.

<sup>7</sup> Michael Lobban, "Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery, Part I," *Law and History Review* 22, (2004), 410.

<sup>8</sup> T.D. Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol.1, 357.

replaced Lord Eldon as Lord Chancellor, he promoted Bickersteth to King's Counsel in May 1827. In June, he was called to the Bench of the Inner Temple.<sup>9</sup> These promotions enabled him to finance *The Jurist*. Meanwhile, Bickersteth's evidence for the Chancery commission was a sign that radical opinion could be expressed at the official level. According to Chris Riley, some statements by Bickersteth are "pure Benthamism".<sup>10</sup> For example, Bickersteth said, "I apprehend that all partial improvements would leave the principal defect without remedy", and appealed for "a complete alteration of the whole constitution of the court".<sup>11</sup> Such a radical attitude is in line with Bentham's description of Chancery as "an open delay-shop" in *The Rationale of Judicial Evidence, Specially Applied to English Practice* (1827).<sup>12</sup>

As for personal associations, Bickersteth had long been well-connected in Bentham's radical circles. In January 1818, Bentham praised Bickersteth's character as "virtuous" because of the latter's support for the sale of Bentham's books.<sup>13</sup> Bickersteth also served as a go-between for Burdett to ask for Bentham's assistance in drafting a bill for parliamentary reform in February 1818.<sup>14</sup> Moreover, Bickersteth's commitment to democratic projects was confirmed by the leader of London radicals, Francis Place, who wrote to Bentham in the same month that "Mr Bickersteth is a very promising fellow".<sup>15</sup> Bickersteth lent money, together with Bentham and Place, to support John Wade's launch of the radical newspaper *The Gorgon*, which mostly discussed trade union issues.<sup>16</sup> When Bentham learnt about Bickersteth's interview by the Chancery commission, he asked for a copy of Bickersteth's evidence. He invited Bickersteth for dinner at Queen Square Place in February 1825, and wrote, "[Y]our evidence should come with you: I long to see it in print, but I could not afford to trust to that." Furthermore, Bentham encouraged Bickersteth to propose legal codification in parliament: "could I but live to see you coming forward in the Honourable House, Codification Bill in hand".<sup>17</sup>

Joseph Parkes entered Bentham's network in 1820. During a five-year clerkship in a law firm in Throgmorton Street (near the Bank of England), Parkes was introduced by a fellow Unitarian (John

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<sup>9</sup> *Ibid.*, 367-9.

<sup>10</sup> Chris Riley, "Jeremy Bentham and Equity: The Court of Chancery, Lord Eldon, and the Dispatch Court Plan," 55.

<sup>11</sup> *Chancery Commission Report. Presented pursuant to Address dated March 2d, 1826*, Appendix (A.) Evidence, 181.

<sup>12</sup> Bowring, vii. 216-7.

<sup>13</sup> Bentham to John Herbert Koe, 7 Jan. 1818, *Correspondence*, vol.9, ed. Stephen Conway (Clarendon Press, 1989), 143.

<sup>14</sup> Bickersteth to Bentham, 25 Feb. 1818, in T.D. Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol.1, 322.

<sup>15</sup> Place to Bentham, 26 Feb. 1818, *Correspondence*, vol. 9, 168.

<sup>16</sup> Peregrine Bingham to Bentham, 16 Aug. 1818, *ibid.*, 249 n.

<sup>17</sup> Bentham to Bickersteth, 9 Feb. 1825, in T.D. Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol.1, 357.

Bowring) to Bentham sometime between August and September 1820. Soon afterwards, Parkes joined with Bowring and Bentham to organise a social meeting for celebrating the liberal revolutions in Spain, Naples, and Portugal. Bentham taught networking skills to Parkes. Many radicals and Whigs were invited to the meeting, and some friends of Francis Burdett and John Cartwright were known for their bad temper. Bentham anticipated that such an occasion, given that it would involve drinking, might stimulate verbal or even physical conflicts. Therefore, Bentham arranged for the radicals to be the stewards in the expectation that both parties might thereby find it easier to restrict their hostile attitude towards each other.<sup>18</sup> Before this event, Parkes had already associated with Bentham's friends such as George Grote, James Mill, and Francis Place. Later, Parkes recalled Place as his "political father".<sup>19</sup>

In terms of law reform, Parkes published *A History of the Court of Chancery* in 1828, which was praised by Henry Brougham in the House of Commons, as "one of the ablest and most instructive books published of later years".<sup>20</sup> This book might have been influenced by Bentham. On 30 August 1822, Bentham wrote to Parkes that from Bowring, he had learnt about Parkes' research on the Court of Chancery. Apparently, Parkes had consulted Bowring about the topic through a letter, and Bowring transmitted the letter to Bentham, presumably for Bentham's advice. Bentham interpreted Bowring's action as approved by Parkes. According to Bentham's letter, Parkes was interested in either the 1824 Chancery commission, or the bankruptcy commission. Bentham wrote that he had "a most intense longing to see you with the commission in your pocket". And he was willing to use his network to help Parkes: "My friend Koe[John Herbert Koe, Bentham's literary assistant and a Chancery lawyer]...is gone for France, and will not return till October. His friend Maddock[Henry Maddock, equity draftsman] would be findable: and if necessary and useful I would cultivate him and bring you and him together."<sup>21</sup> Bentham's letter might have facilitated Parkes' acquaintance with Maddock, who was mentioned in *A History of the Court of Chancery* as a source of inspiration.<sup>22</sup> Bentham was praised as an authority in the book. When suggesting some measures to improve the administration of real property relations, Parkes recommended Bentham's proposal for a unified national registry system.<sup>23</sup>

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<sup>18</sup> Bentham to Bowring, 30 Sep. 1820, *Correspondence*, vol. 10, ed. Stephen Conway (Clarendon Press, 1994), 112. Bentham to José Joaquín de Mora, 26 Sep. 1820, *ibid.*, 102.

<sup>19</sup> Quote in Philip J. Salmon, "Parkes, Joseph" in *The Oxford Dictionary of National Biography* (2004)

<sup>20</sup> HC Deb., 7 Feb. 1828, vol. 18, 243.

<sup>21</sup> Bentham to Parkes, 30 Aug. 1822, *Correspondence*, vol. 11, 146-7.

<sup>22</sup> Joseph Parkes, *A History of the Court of Chancery* (London, 1828), ix.

<sup>23</sup> *Ibid.*, 397.

In 1822, Parkes moved to Birmingham and started a career as an election agent. In 1826, his social skills and legal expertise were widely acknowledged by the Whigs, especially after a legal fight about the Warwick mayoral election.<sup>24</sup> Parkes skilfully made use of this legal success to advance his liberal reputation by publishing a pamphlet, *The Governing Charter of the Borough of Warwick, with a Letter to the Burgesses on the Past and Present State of the Corporation*, in February 1827. This pamphlet used the political language of ancient constitutionalism: “the political institutions of our Saxon ancestors were undoubtedly of a POPULAR character; that is to say, their civil magistracy, from the King to the lowest municipal officer, was *elective*...elected by the People at large, although many of our historical writers have denied the fact, and endeavoured to conceal its truth”.<sup>25</sup> This shows Parkes’ familiarity with languages of reform other than utilitarianism. He was not only interested in rigorous utilitarian logic, but also shrewdly understood voters’ emotional attachment to local history and liberal values.

Parkes’ Unitarian background also provides important context to understand the organisation of *The Jurist*. Parkes’ father John Parkes was a trustee of Warwick High Street Unitarian Chapel, and a close friend of the education reformer Samuel Parr.<sup>26</sup> Parr had been a friend of Bentham’s from 1803.<sup>27</sup> Additionally, in 1824, Parkes’ social standing among the Unitarian community was elevated through his marriage to Unitarian leader Joseph Priestley’s granddaughter. Priestley was known for rational dissent.<sup>28</sup> Now, in 1827, when searching for friends for *The Jurist*, Parkes quickly summoned two Unitarians, Sutton Sharpe and Henry Roscoe, as co-editors. Sharpe’s family were regular attendants at Newington Green Unitarian Church in north London. The son of Parkes’ family minister William Field, Edwin Field (also a lawyer and reformer), and Sharpe’s brothers formed the law firm of Sharpe & Field (in Bread Street, Cheapside) in 1827. Edwin Field also married Sharpe’s sister Mary in 1830.

Roscoe’s father William Roscoe was a successful attorney of King’s Bench and a self-educated historian who wrote the internationally famous biography *Life of Lorenzo de’ Medici*. William was

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<sup>24</sup> Nancy Lopatin-Lummis, “‘With All My Oldest and Native Friends’. Joseph Parkes: Warwickshire Solicitor and Electoral Agent in the Age of Reform,” *Parliamentary History* 27, (2008), 99.

<sup>25</sup> Joseph Parkes, *The Governing Charter of the Borough of Warwick* (London, 1827), 3.

<sup>26</sup> William Thomas, *The Philosophic Radicals*, 244-5.

<sup>27</sup> Parr was introduced by Samuel Romilly, see my chapter one.

<sup>28</sup> Anthony Page, “Rational Dissent and Blackstone’s *Commentaries*,” in *Blackstone and His Critics*, ed. Anthony Page and Wilfrid Prest (Hart Publishing, 2018), 87.

also a leading organizer of several learned societies in Liverpool and London.<sup>29</sup> Furthermore, William was connected to Bentham's Whig friends such as Samuel Romilly and Étienne Dumont in their campaign for criminal law reform. He published *Observations on Penal Jurisprudence, and the Reformation of Criminals* in three parts in 1819, 1823, and 1825, which included reports on English and American prisons. In 1825, he dedicated the third part to another Whig law reformer, James Mackintosh. At the same time, he wrote to Dumont: "[A] wiser policy and a better spirit is rapidly diffusing...your own labours as by the extension you have given to those of Mr. Bentham, to whom every friend of improvement must feel the highest obligations...I consider myself as a humble associate."<sup>30</sup> The letter came with a copy of William's book. Later Bentham also received a copy.<sup>31</sup> Henry Roscoe moved to London in 1819 to study the law. He might have made the acquaintance of Parkes and Sharpe at a Unitarian meeting.

Sutton Sharpe had also grown up in a literary family. His uncle was Samuel Rogers, the banker-poet, who was very influential in London literary circles.<sup>32</sup> From the 1790s, through his regular salons in Paper Buildings (near to the Middle Temple where Sharpe registered), Rogers formed an extensive network including politicians and dissenters. He was intimate with Charles Fox, Richard Brinsley Sheridan, and Horne Tooke.<sup>33</sup> Moreover, Sharpe's father Sutton Sharpe senior was a brewer who had many painter friends. Born and raised in such a literary and artistic environment, Sharpe's first career choice was not the law, but chemistry.<sup>34</sup> Like Bentham, after having entered the legal world, Sharpe still devoted much time to scientific hobbies. He mingled with young lawyers and bankers who had similar literary tastes and political disposition. He often joined with Parkes to visit the salons held by Harriet Grote, where they were well received by James Mill and George Grote's circle, and their regular topics were political economy, utilitarianism, atheism, and the views of Jeremy Bentham and Thomas Malthus.<sup>35</sup>

Sharpe spoke fluent French, was interested in French literature, and made many friends in France. Before the founding of *The Jurist*, he had planned with French lawyer A.H. Taillandier to set up a

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<sup>29</sup> Jon Mee and Jennifer Wilkes, "Transpennine Enlightenment: The Literary and Philosophical Societies and Knowledge Networks in the North, 1781-1830," *Journal for Eighteenth-Century Studies* 38, (2015), 607.

<sup>30</sup> Henry Roscoe, *The Life of William Roscoe*, 2 vols. (London, 1833), vol. 2, 226.

<sup>31</sup> Bentham to Henry Wheaton, 31 Dec. 1827, *Correspondence*, vol. 12, 415 and note 7.

<sup>32</sup> Martin Blocksidge, *The Banker Poet: The Rise and Fall of Samuel Rogers* (Sussex Academic Press, 2013).

<sup>33</sup> Richard Garnett, revised by Paul Baines, "Rogers, Samuel 1763-1855" in *The Oxford Dictionary of National Biography* (2004)

<sup>34</sup> Doris Gunnell, *Sutton Sharpe et ses amis Français* (Paris, 1925), 8-9.

<sup>35</sup> *Ibid.*, 14-6. Joseph Hamburger, "Grote, Harriet 1792-1878," in *The Oxford Dictionary of National Biography* (2008).

legal periodical in France.<sup>36</sup> Concerning his interest in law reform, Sharpe wrote on 7 June 1827 to Bentham, “[W]hen I first became a reader and admirer of your works and as I may say a *convert* to their principles I little expected to have ever had the honor of such attention from the author.”<sup>37</sup> Another of Sharpe’s letters suggests an expanding network of young reform-minded lawyers. On 22 August 1832, Sharpe wrote to a friend called George Goff that he was pleased about the recent career and political success of Robert Rolfe, John Romilly, and Henry Warburton. Rolfe took silk and was elected as MP for Penryn and Falmouth in 1832. Romilly and Warburton were both elected for Bridport in the same year.<sup>38</sup>

So far, two more editors have been identified: John Romilly and Edwin Chadwick. Romilly’s editorship is revealed by Bentham’s letter of 14 June 1830. Bentham wrote to the American law reformer Edward Livingston: “A few days ago I saw John Romilly, Barrister, Son of the late Sir Samuel Romilly—Being one of the Co-Editors of the *Jurist*.”<sup>39</sup> John had been 16 when his father had died in 1818, and from then on he had been looked after by the well-connected Whig lawyer John Whishaw, who was Bentham’s arbiter in his Panopticon negotiations with the government.<sup>40</sup> From 1818, John Romilly had studied at Cambridge, “where a rationalist movement leading from [William] Paley made students particularly susceptible to Bentham’s doctrine”.<sup>41</sup> Some of them became reform-minded lawyers as well, including Thomas Babington Macaulay, Charles Austin, Edward Strutt and Charles Buller. In London, Romilly had registered in Gray’s Inn (his father was highly regarded there), and associated with Bentham’s London followers. His success in the 1832 election was welcomed by John Stuart Mill, who wrote: “[S]o the Elections are over. Almost all the candidates in whose success I took any personal interest, have succeeded. Among them are three men who, I expect, will *do* something: these are, Grote, Roebuck, & John Romilly.”<sup>42</sup>

Chadwick joined *The Jurist* in 1832 after Henry Roscoe’s resignation for health reasons. He was contacted by Bickersteth “to conduct the proposed new series”.<sup>43</sup> Chadwick’s modern biographer

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<sup>36</sup> David Ibbetson, “Legal Periodicals in England 1820-1870,” 180.

<sup>37</sup> Sutton Sharpe to Bentham, 7 Jun. 1827, *Correspondence*, vol. 12, 369.

<sup>38</sup> Sharpe to George Goff, 22 Aug. 1832, University College London Library, Sharpe Papers, MS. 81.

<sup>39</sup> Bentham to Edward Livingston, 14 Jun. 1830, MS in the possession of Mr John White Delafield, New York.

<sup>40</sup> Alexander Bain, *James Mill: A Biography* (London, 1882), 75.

<sup>41</sup> George Nesbitt, *Benthamite Reviewing: The First Twelve Years of The Westminster Review 1824-1836* (Columbia University Press, 1934), 26.

<sup>42</sup> J.S. Mill to Thomas Carlyle, 27 Dec. 1832 in *The Earlier Letters of John Stuart Mill 1812-1848*, ed. Francis Mineka (University of Toronto Press, 1963), 134.

<sup>43</sup> T.D. Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol.1, 371.

S.E. Finer confirms this account, and adds that Bentham facilitated this collaboration: “Consequently a committee to choose the editor for *The Jurist*, and consisting of both the Mills, Sutton Sharpe, Bickersteth, and John Romilly, had no hesitation in picking Chadwick as their man.”<sup>44</sup> Finer is correct to mention Bentham’s role. By the time Bickersteth contacted him, Chadwick was employed by Bentham and lived in Queen Square Place. Chadwick wrote in 1837:

Jeremy Bentham...was my most attached friend, I lived with him a whole year...he named me his second executor. A few years ago, Mr. Bickersteth...proposed with Mr. John Romilly...and several other lawyers who are zealous in favour of scientific reform of the law, to establish a quarterly publication called *The Jurist* for the advancement of legal science. They applied to me to conduct the work and I should probably have been supported by the most rising young men of the bar.<sup>45</sup>

The other 12 members, including Bentham, either wrote articles or supported *The Jurist* in different ways. Bentham had been not aware of the journal until he had read the first issue of March 1827. On 15 March 1827, the *Morning Post* advertised *The Jurist*.<sup>46</sup> On 5 May 1827, he wrote a letter entitled “J.B. to the editor of the Jurist Letter II” to Sutton Sharpe. Bentham used the words “inexpressibly delighted”, to encourage the young “Jurists”. Also, he provided several materials to inspire them: his review of James Humphreys’ book on land law, a supplement to the *Codification Proposal*, and three Spanish translations of his works: *Plan de provision de empleos*; *Declaración o protesta de todo individuo del cuerpo legislativo al tomar posesión de su destino*; and *Principios que deben server de guía en la formación de un código constitucional para un estado*. And he promised to send the *Rationale of Evidence and Constitutional Code* soon.<sup>47</sup>

Bentham also recommended *The Jurist* in his transnational network. Days after the letter to Sharpe, Bentham wrote to the Marquis de Lafayette: “Item the first N[umber] of an excellent periodical work which you will have the goodness to hand over to M. Rey: who I am sure will be delighted with it.”<sup>48</sup> French military leader Lafayette served as a go-between for Bentham to contact the French radical lawyer, Joseph Rey. The two Frenchmen’s friendship with Bentham had developed from the early 1820s. In 1821, Rey was exiled to London for his radical politics. Through Lafayette’s

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<sup>44</sup> S.E. Finer, *The Life and Times of Sir Edwin Chadwick* (Methuen, 1952), 36.

<sup>45</sup> Chadwick to Gulson, July 1837, University College London, Chadwick Papers, MS. 907.

<sup>46</sup> *Morning Post*, Mar 15, 1827, 2.

<sup>47</sup> Bentham to Sharpe, 5 May 1827, *Correspondence*, vol. 12, 358.

<sup>48</sup> Bentham to Lafayette, 11 and 21 May 1827, *ibid.*, 365.

recommendation, Rey was received by Bentham at Queen Square Place, and used Bentham's library for a comparative study of English and French law.<sup>49</sup> In 1826 and 1828, the two volumes of this study were published in Paris, and Bentham was cited and praised.<sup>50</sup> In September 1827, Bentham sent the second issue of *The Jurist* (published in June) to Rey, and added a description: "The Jurist is a work projected and edited without my knowledge by a set of men who all profess themselves my disciples."<sup>51</sup> Bentham also nudged Irish leader Daniel O'Connell to read *The Jurist*. In November 1829, O'Connell told Bentham: "The Jurist I read and like—I have got six numbers of it."<sup>52</sup> In February 1830, Bentham wrote to the American legislator Edward Livingston that he had commissioned an English physician, Southwood Smith, to write a review of Livingston's penal code in *The Jurist*, which "has Law Reform and Improvement for its object, and pursues that object with the best intentions, and distinguished talent".<sup>53</sup>

Bentham also looked for authors for *The Jurist*. Former Unitarian minister Southwood Smith entered Bentham's circle in 1821, advising on medical and sanitary questions for the writing of the *Constitutional Code*.<sup>54</sup> Smith was interested in Livingston's Louisiana penal code. In January 1830, after he learnt that Smith had edited Livingston's book, Bentham suggested that Smith should write for *The Jurist*: "to whose Editors Dr. Bowring mentioned the matter and they are prepared to receive it from you".<sup>55</sup> Smith agreed on 26 January, but the proposed article did not appear.<sup>56</sup>

The article "American Law" in the January 1828 issue was also a product of Bentham's networking. The article itself was a conversation in the form of "Queries and Answers" between the English lawyer Jabez Henry and the American lawyer Henry Wheaton.<sup>57</sup> Bentham was the organizer of the conversation, which had occurred at his house. During a trip to Denmark for a diplomatic mission in 1827, the former New York law reformer had visited Bentham. At Around the same time, Henry had been introduced by Bowring into Bentham's circle. On 30 July 1827, Bentham had invited Henry for "a Hermit's dinner".<sup>58</sup> Henry was a senior commissioner of inquiry into the administration of justice

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<sup>49</sup> Lloyd S. Kramer, *Lafayette in Two Worlds: Public Culture and Personal Identities in an Age of Revolutions* (University of North Carolina Press, 1996), 79.

<sup>50</sup> Rey, *Des institutions judiciaires de l'Angleterre comparées avec celles de la France*, 2 vols. (Paris, 1826 and 1828).

<sup>51</sup> Bentham to Joseph Rey, 3 Sep. 1827, *Correspondence*, vol. 12, 383.

<sup>52</sup> O'Connell to Bentham, 4 Nov. 1829, *O'Connell Corr.*, vol. 8, 222-3.

<sup>53</sup> Bentham to Livingston, 23 Feb. 1830, Bowring, xi. 35.

<sup>54</sup> R.K. Webb, "Smith, Southwood, 1788-1861," in *The Oxford Dictionary of National Biography* (2009).

<sup>55</sup> Bentham to Smith, 19 Jan. 1830, UC x. 205-6.

<sup>56</sup> Smith to Bentham, 26 Jan. 1830, British Library, Add. MS 33, 546, fo. 366-7.

<sup>57</sup> "American Law," *The Jurist* (Jan. 1828), 430-445.

<sup>58</sup> Bentham to Henry, 30 Jul. 1827, *Correspondence*, vol. 12, 374.

in the British West Indies and South American Colonies, and had returned to London from his inspection trip. At Bentham's house, Wheaton and Henry had met, and started the conversation. Later, on 31 December, Bentham wrote to Wheaton, "Thanks for your remembrance of me on the occasion of Your answer to Mr. Henry's queries".<sup>59</sup> Wheaton also left the following note in his diary: "November 10, 1827...Sent to London my amended Answers to Mr. Henry's questions on American Law. Wrote Mr. Bentham."<sup>60</sup>

James Mill contributed at least one article, judging by the fact that on 1 August 1828, Parkes wrote to Sharpe: "[W]e should send Mill twenty guineas directly for credit's sake."<sup>61</sup> This article might be "Administration of Justice in the East Indies", published in January 1829, because Mill had been a well-known expert on Indian affairs since the publication of *The History of British India* in 1818. Mill later also expressed an interest in writing an article on forgery. Parkes wrote to Sharpe on 11 December 1828: "J. Mill would do a capital article on a subject just now upmost this on the punishment of death for Forgery. Shall I ask him. He would take for his text his treatise in the Scotch Supplement Encyclopaedia, & do it excellent, and to attract some attention. Shall I ask him? As the Law Magazine started, we must come out in force."<sup>62</sup> Mill published some influential articles on law, government, education, the colonies, liberty of the press, and prison discipline for the *Encyclopaedia Britannica* in 1825. Parkes was planning to use Mill's article on forgery to compete against *The Law Magazine and Quarterly Review of Jurisprudence* (hereafter *The Law Magazine*) which had recently published its first issue in the same year.

Mill's interest in forgery was related to a recent political event. In December 1828, public attention to criminal law reform was raised by the execution of Joseph Hunton at Newgate prison for a series of forgeries. Hunton was a Quaker merchant and had mobilised dissenting networks to lobby the government for mercy. Many influential businessmen had signed petitions for Hunton's pardon. *The Times* had reported on the case closely and demanded reforms of the laws relating to forgery. However, Hunton was executed on 8 December, and this further stirred reformist opinions. The Society for the Diffusion of Information on the Punishment of Death soon set up committees in London, Edinburgh, and Dublin, to arrange lectures and press campaigns and to encourage members

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<sup>59</sup> Bentham to Wheaton, 31 Dec. 1827, *ibid.*, 417.

<sup>60</sup> Kurt H. Nadelmann, "Henry Wheaton on 'American Law' in 'The Jurist' (London)," *NYLF* 4 (1958), 63.

<sup>61</sup> Parkes to Sharpe, 1 Aug. 1828, University College London Library, Parkes Paper, MS. 31.

<sup>62</sup> Parkes to Sharpe, 11 Dec. 1828, in *ibid.*

to lobby their local MPs.<sup>63</sup> Two of the leading organizers of the Society, William Allen and Basil Montagu, were friends with Bentham, Parkes, and Mill. In this network of dissenters, merchants, and Benthamite lawyers, James Mill might have been encouraged to write an article against the death penalty for forgery. Apparently, Mill shared this idea with Parkes. Five days after Hunton's execution, Parkes asked for Sharpe's permission to contact Mill. Later, the article seems to have been published in February 1833 under the title "On the Punishment of Death", because this article discussed Hunton's case and started with a lengthy quotation from Mill's *History of British India*.<sup>64</sup>

John Arthur Roebuck might have been the author of the article "The Reformation of Criminals" in the July 1832 issue.<sup>65</sup> The evidence for this is Parkes' letter to Sharpe on 3 May 1829. Parkes wrote, "I have half done a paper on Livingston and the Louisiana Penal Code, but as Roebuck is doing a criminal article I thought I would adopt another American subject."<sup>66</sup> In 1829, Roebuck was a law student who did not get much family financial support, and thus searched for literary jobs in London, writing for the *Westminster Review*, *Tait's Edinburgh Magazine*, and the *Edinburgh Review*.<sup>67</sup> Clearly, Roebuck's literary talent was appreciated by Parkes. On an earlier occasion, Roebuck might have been solicited by Parkes to summarise Bentham's *Rationale of Evidence* for *The Jurist*. Parkes wrote to Bentham on 4 May 1828: "I can get no one to reduce the Rationale of Evidence for a Jurist article. We sadly want it done & will pay. I asked *John Mill* but he felt rather awkward as having been the *Redacteur*. I have not time to do it, nor indeed should I do it well. I have scarcely looked into the last Westminster but where it seems to be done excellently."<sup>68</sup> The said review in the *Westminster Review* of January 1828 was written by Roebuck, a fact that would have been known in Bentham's circle.<sup>69</sup>

James Mill's son John Stuart Mill contributed at least one article, "Corporation and Church Property", published in February 1833.<sup>70</sup> The article's authorship was later revealed in Mill's *Dissertations and Discussions* (1859), when it was republished under the title "The Right and Wrong

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<sup>63</sup> Phil Handler, "Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century England," *The Historical Journal* 48, (2005), 692-3.

<sup>64</sup> "On the Punishment of Death," *The Jurist* (Feb. 1833), 44-65.

<sup>65</sup> "The Reformation of Criminals," *The Jurist* (Jul. 1832), 188-198.

<sup>66</sup> Parkes to Sharpe, 3 May 1829, University College London Library, Parkes Paper, MS. 31.

<sup>67</sup> S.A. Beaver, "Roebuck, John Arthur, 1802-1879," in *The Oxford Dictionary of National Biography* (2004).

<sup>68</sup> Parkes to Bentham, 4 May 1828, *Correspondence*, vol. 12, 477.

<sup>69</sup> [John Arthur Roebuck], "Bentham's Rationale of Judicial Evidence," *Westminster Review*, (Jan. 1828), 198-250.

<sup>70</sup> "Corporation and Church Property," *The Jurist* (Feb. 1833), 1-26.

of State Interference with Corporation and Church Property”.<sup>71</sup> Also, a letter of October 1831 to his Scottish friend John Sterling suggests that young Mill (aged 25) was visualising a radical political change when preparing the article: “the Reform Bill shall have past...to write an article or two for the *Jurist* (now about to be revived) on some abstract questions of general legislation”.<sup>72</sup> This article was finished before September 1832.<sup>73</sup> Mill had contemplated a legal career in the early 1820s. He had read William Blackstone with John Austin for three or four hours during the daytime, and Bentham in the evening.<sup>74</sup> Later, Mill recalled the experience of reading Bentham as “an epoch in my life; one of the turning points in my mental history”.<sup>75</sup> Between 1824 and 1827, Mill also undertook the task of editing Bentham’s manuscripts for the *Rationale of Evidence*.

Edward Strutt contributed at least one article, entitled “Grand Juries”, and published in the June 1827 issue, a fact revealed by Bentham’s letter to the real property commissioner John Tyrrell in 1831.<sup>76</sup> In 1827, the 26-year-old Strutt was a law student of the Inner Temple, and a Cambridge MA and former president of the Cambridge Union debating society. He came from a dissenting family which was very successful in the cotton-manufacturing business. His grandfather, Jedediah Strutt, was an inventor of cotton-spinning machinery, and the business partner of Richard Arkwright.<sup>77</sup> In September 1827, Bentham assigned Strutt to deliver a cargo of books, including the second issue of *The Jurist*, to Lafayette. Bentham’s description of Strutt suggests that the sort of qualities that were valued by the reforming network of Bentham and Lafayette: “He agrees with us, I believe, entirely on the subject of government as well as that of religion. He belongs, for form sake to the profession of the Law, as being one of the main avenues to Parliament and Office: but without intention because above all need of making pecuniary profit in it.”<sup>78</sup> Bentham also mentioned that Strutt was writing for *The Jurist*, and interpreted the fact as evidence of Strutt’s literary talent.

James Humphreys and John Reddie’s articles were the only two which were not anonymous. Humphreys’ article, in the form of a letter to the editors of *The Jurist*, was published in August

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<sup>71</sup> J.S. Mill, *Dissertations and Discussions*, 2 vols. (London: 1859), vol. 1, 1-41.

<sup>72</sup> J.S. Mill to John Sterling, 20-22 Oct. 1831, in *The Earlier Letters of John Stuart Mill 1812-1848*, 80.

<sup>73</sup> J.S. Mill to Thomas Carlyle, 17 Sep. 1832, *ibid.*, 117.

<sup>74</sup> J.S. Mill to James Mill, Autumn, 1822, *ibid.*, 13.

<sup>75</sup> John M. Robson and Jack Stillinger, ed., *Autobiography and Literary Essays by John Stuart Mill* (University of Toronto Press, 1981), 67-8.

<sup>76</sup> Bentham to John Tyrrell, 19 Apr. 1831, British Library Add. MS. 34,661, fo. 18.

<sup>77</sup> J.J. Mason, “Strutt, Jedediah, 1726-1797,” in *The Oxford Dictionary of National Biography* (2011).

<sup>78</sup> Bentham to Lafayette, 2 Sep. 1827, *Correspondence*, vol. 12, 381.

1828.<sup>79</sup> By then, he had become a famous and controversial legal writer, with his *Observations on the English Laws of Real Property: With the Outlines of a Code* having been published in 1826. This book stimulated much criticism from Humphreys' fellow conveyancers.<sup>80</sup> In this context, Humphreys used *The Jurist* as a platform to respond to two critics, John Reddie and C.P. Cooper. *The Jurist* was delighted to receive Humphreys as a friend of reform: "It is with the greatest pleasure we insert a communication from so able a correspondent."<sup>81</sup> Humphreys' article was read by Reddie, who then wrote a reply, and asked *The Jurist* for it to be published. In the next issue (January 1829), Reddie's reply was published. However, *The Jurist* was clearly not supportive of Reddie's opinion, and wrote: "Having published the letter of Mr. Humphreys, we feel ourselves bound to insert the answer of Dr. Reddie, although its general tenor is directly opposed to our avowed opinions."<sup>82</sup> This episode suggests the ascendancy of *The Jurist's* impact among lawyers.

The two French authors, Alphonse Honoré Taillandier and Adèle-Gabriel-Denis Bouchené-Lefer, have been identified by David Ibbetson. Sharpe contacted them to write or provide materials. Two articles are linked to Taillandier: "Abolition of the Code Napoleon in the Rhenish Provinces" from June 1827, and "State of Crime in England and France" from January 1828. Bouchené-Lefer is linked to the article "The Judicial Establishments of France", of which part one was published in July 1832, and part two, in November 1832.<sup>83</sup> Both men were lawyers born in the late 1790s, and were therefore of the same generation as Sharpe and Parkes.

The last identified person is a bankruptcy commissioner, John Samuel Martin Fonblanque. The evidence for this is John's obituary in *The Gentleman's Magazine*.<sup>84</sup> John was close to his younger brother, the famous radical political commentator for *The Examiner*, Albany Fonblanque. Like Albany, John also admired Bentham, and wrote a complimentary essay in *The Examiner* to praise Bentham's decision to give up a profitable legal career for the sake of furthering law reform.<sup>85</sup> Moreover, John was a founder of the Cambridge Union, which brought him into contact with other

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<sup>79</sup> The date of the digital version of the fourth issue *The Jurist* is wrong as it is dated in May 1828 whereas in Humphreys' letter the date is 12 July 1828. Moreover, on 3 August the *Examiner* advertised *The Jurist*, claiming that it was just published. "Advertisements & Notices," *Examiner*, Aug. 3, 1828.

<sup>80</sup> Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828," 51-105.

<sup>81</sup> "Letter from Mr. Humphreys in Reply to Dr. Reddie and Mr. Cooper," *The Jurist* (Aug. 1828), 125.

<sup>82</sup> "Dr. Reddie's Observations on Mr. Humphreys's 'Reply'," *The Jurist* (Jan. 1829), 307.

<sup>83</sup> David Ibbetson, "Legal Periodicals in England 1820-1870," 180-1.

<sup>84</sup> "Obituary," *The Gentleman's Magazine* (1865), 801.

<sup>85</sup> "Plunderage of the Chancery Suitors", *The Examiner*, Feb 27, 1831, 139. The essay is anonymous, and the authorship is revealed in George Wheatley, *A Visit (in 1831) to Jeremy Bentham*, 20.

Cambridge admirers of Bentham. John also co-wrote *Medical Jurisprudence* with the physician John Paris, published in 1823. *The Jurist* favourably reviewed this work in January 1828.<sup>86</sup>

## 5.2 Articles

### 1. Joseph Parkes and American Codification

This section will discuss the abovementioned members' attitudes towards reform through an analysis of their identified articles. Editor Joseph Parkes' two articles will be discussed first: "Codification of the Laws of the United States", published in August 1828, and "Jurisprudence of Louisiana", published in April 1829.<sup>87</sup> Both articles supported codification and spread the optimistic view that law could be written in a language intelligible to all. In "Codification of the Laws of the United States", Parkes carefully selected extracts from American legal debates. The first extract was from the resolutions of law reform approved by the South Carolina Legislature in 1826. The ideal of plain legal language was recognized as the first duty of a legislator and a right of ordinary citizens: "[T]he rules of the common law, and the indigested condition of the statutes, render it impossible for the citizen, without professional assistance, to conform to the laws." The next extract was from Senator John Wilson's speech, which proposed to digest both the statutes and common law, and stipulated that the digest "should be printed and put in the hands of the citizens". Furthermore, Wilson claimed that codification was a civilised project; that every nation which was experimenting with codification had already made progress in the state of civilisation. This claim was emphasised by Parkes as one that "historically refuted the asserted '*impossibility for the human intellect to form the laws into a code*'".<sup>88</sup>

Parkes also reviewed New York lawyer William Sampson's pamphlet *An Anniversary Discourse, delivered before the Historical Society December 6, 1823, shewing the Origin, Progress, Antiquities, Curiosities, and Nature of the Common Law*, suggesting that it had greatly influenced the American people's attitude towards the common law. Sampson's correspondence with the French jurist Jean

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<sup>86</sup> "Medical Jurisprudence," *The Jurist* (Jan. 1828), 378-405.

<sup>87</sup> Parkes to Bentham, 4 May 1828, *Correspondence*, vol. 12, 476. Parkes to Sharpe, 3 May 1829, University College London Library, Parkes Paper, MS. 31.

<sup>88</sup> Highlighted in "Codification of the Laws of the United States," *The Jurist* (May. 1828), 50, 51.

Dupin was quoted to show how arguments for abolishing the common law were shared transnationally, and how American lawyers had updated their knowledge about the application of the *Code Napoleon*.<sup>89</sup> Then, Parkes quoted a report of the “Revisers of the Laws of the State of New York” (1827) to convince British reforming lawyers that public opinion was on their side. Parkes anticipated that the New York State Legislature would soon discuss codification. He mentioned a series of American supporters of codification, including Edward Livingston. Overall, Parkes believed that by referencing more official statements from the United States, more British lawyers might be persuaded to accept codification.

Parkes highly praised Bentham in “Codification of the Laws of the United States of America”. He wrote, “If we have not the merit on this side the ocean of affording to the New World an example and practical recommendation of this great desideratum, we have at least the credit, through our distinguished countryman Mr. Bentham, of exciting the particular attention of the North American jurists and legislatures.” To Parkes, legal codification was part of a large and transnational intellectual movement, carried out by the policies of enlightened legislatures. It was a movement of improvement, but Britain appeared to be behind the rest of the civilised nations. Therefore, Bentham’s personal efforts should be more widely publicised and praised. Parkes also mentioned Bentham’s correspondence with American President James Madison as an example of the English philosopher’s intellectual superiority. On the other hand, Parkes was aware of the controversial character of Bentham’s reputation. He mentioned that Bentham’s language of “codifying” had been severely attacked by the influential conveyancer Edward Sugden (appointed King’s Counsel in 1822 and Solicitor General in 1829): “those who, like Mr. Sugden, believe the whole legal profession to be impregnated with the virus of *Code-mania*, and to wear their heads ornamented with the craniological bump of revolutionary destructiveness”.<sup>90</sup>

In “Jurisprudence of Louisiana”, Parkes introduced the history of the Civil Code of Louisiana, showing that the relationship between codification and the common law could be conciliatory. Louisiana had been occupied by France and Spain, and its legal system combined elements from French and Spanish law. The cession of Louisiana to the United States in 1803 had introduced common law procedures such as trial by jury and the writ of habeas corpus. However, these common law

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<sup>89</sup> See also Sylvain Soleil, “‘Superseded and lost sight of?’ The Argument of the Code Napoleon during the Anglo-American Controversy of the Codification of Common Law (1820-1835),” *American International Journal of Social Science* 9, (2020), 71-81.

<sup>90</sup> “Codification of the Laws of the US,” *The Jurist* (Aug. 1828), 48, 65.

procedures were resisted by those who were accustomed to Spanish and French law. In 1806, the Louisiana State Legislature had appointed two lawyers to prepare a civil code to unify the laws in more authoritative language. In their code, there was a clause to repeal the ancient laws which were considered contrary to “the dispositions” of this project. Parkes feared that this clause would be misinterpreted by the unwritten law apologists so as argue that codification was a destructive and tyrannical force. Accordingly, he explained that the clause was a tactic: “the code came to be considered *principally* as a declaratory law; and, instead of introducing a new system to stand by itself, and to be constructed by its own context, it was regarded as an imperfect index to” the unwritten laws which “still continued in full vigour” when absorbed into the code.<sup>91</sup>

## 2. Sutton Sharpe and French law reform

Another major editor, Sutton Sharpe, worked with Alphonse Honoré Taillandier and Adèle-Gabriel-Denis Bouchené-Lefer, and produced three identified articles, “Abolition of the Code Napoleon in the Rhenish Provinces” (June 1827), “State of Crime in England and France” (January 1828), and “The Judicial Establishments of France” (part one published in July 1832, and part two published in November 1832). The first article discussed the reception of the French civil code in Prussia, with a clear preference for the arguments supporting the code. The supporters argued that the code increased the publicity of judicial proceedings and encouraged popular participation, which helped to realise social justice. Meanwhile, the preservation of the French code was not “in any degree inconsistent with, or derogatory to, the national honour”. Moreover, the supporters used history to persuade the Prussian government that it was wise to admit and learn from a foreign code: “The Romans were so far from disdaining to be taught by their enemies, that they boasted of the instruction in the art of war which they derived from their campaigns against Pyrrhus and the Carthaginians.”<sup>92</sup>

The opponents of the French civil code argued that the publicity of trials delayed judicial administration, affected the impartiality of the judges, and exposed the private affairs of individuals to the curiosity of the public. As for the jury institution introduced by French, they viewed it as empowering unqualified amateurs to interfere with the judges: “Shoemakers and tailors...were...

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<sup>91</sup> “Jurisprudence of Louisiana,” *The Jurist* (Apr. 1829), 436-7.

<sup>92</sup> “Abolition of the Code Napoleon in the Rhenish Provinces,” *The Jurist* (Jun. 1827), 246-7, 247.

incapable of forming a sound opinion of the nature of a criminal charge.”<sup>93</sup> These arguments were criticised in the article as underestimating the people’s intellect and overstating popular dislike of the codes: “Public opinion is decidedly opposed to any alteration of the French codes”.<sup>94</sup>

The “State of Crime in England and France” discussed what should be considered as the “real” scientific method for identifying the causes of crime and preventative measures. At the beginning, it attacked the former Lord Chancellor, Eldon. Eldon’s speech in the House of Lords on 30 May 1810 was quoted as an example of an outdated and flawed understanding of the concept of “science”; in the speech, Eldon had criticised William Blackstone’s support for mitigating penal statutes “as the offspring of an eager, rather than a well-informed mind.”<sup>95</sup> Then, the article discussed and compared the recent official reports produced by a British parliamentary commission and the French Garde des Sceaux (the Keeper of the Seals of France, the *ancien régime* counterpart of the minister of justice). In contrast to Lord Eldon’s opinion, the article viewed the investigative commissions as the correct way to realise scientific legislation. It argued that the government methods of collecting, managing, and analysing large-scale statistics should withstand the scrutiny of public opinion. Meanwhile, by means of the comparison, the article suggested that the French practice was more rational and could serve as a good example for Britain. Such an open attitude to foreign legislative experience, especially that of France, was unusual. The article reviewed British legislation critically, in contrast to the Tory opinions of men such as Eldon and journals such as the *Quarterly Review*. It sharply defined the Tory invocation of “science” as a “hollow spirit”. Meanwhile, the praise for the quality and sophistication of French social statistics contained a strong belief in science. Or, as David Eastwood has observed, “reformers in the eighteen-thirties regarded scientifically-derived knowledge disseminated under the imprimatur of official reports as a precondition of the rational reordering of the English state”.<sup>96</sup>

“The Judicial Establishments of France” was intended to be an introduction to Bentham’s *Draught of a New Plan for the organisation of the Judicial Establishment in France*, which had been considered for reprinting by Sutton Sharpe in 1828.<sup>97</sup> Bentham’s work was a reformist plan, which assumed that readers had already mastered a certain knowledge of French judicial administration. However,

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<sup>93</sup> Ibid., 248.

<sup>94</sup> Ibid., 251.

<sup>95</sup> “State of Crime in England and France,” *The Jurist* (Jan. 1828), 459-460.

<sup>96</sup> David Eastwood, “‘Amplifying the Province of the Legislature’: the Flow of Information and the English State in the Early Nineteenth Century,” *Historical Research* 62, (1989), 277.

<sup>97</sup> Joseph Parkes to Bentham, 4 May 1828, *Correspondence*, vol. 12, 476.

Bentham tended to overestimate the knowledge and intellect of his audience. By contrast, Sharpe expressed a different opinion in “The Judicial Establishments of France”: “[Of] the mode in which the tribunals of foreign countries are constituted, we are absolutely ignorant.”<sup>98</sup> Then the article introduced the French courts by the order of their functions, not according to the history of their evolution. The nature of this introduction was mechanical and analytical, and its language was descriptive and factual. This writing style might have been influenced by the diffusion of scientific discussions among legal writers, but it might also have been designed to make readers familiar with this sort of analytical language, as a preparation for reading Bentham.

### 3. James Mill and capital punishment

James Mill’s “On the Punishment of Death” popularised Bentham’s theoretical analysis of the same topic. In comparison to Bentham’s *Rationale of Punishment* (1830), Mill used simpler language and different political discourses. Firstly, Mill made a straightforward objection against capital punishment at the start, whereas Bentham’s opinion came after a detailed exposition concerning the definition of the measure, as well as its advantages and disadvantages. Secondly, Bentham used only utilitarian reasoning to evaluate capital punishment, whereas Mill supplemented utilitarianism with popular concepts such as “civilization”.<sup>99</sup> While Bentham was overoptimistic in thinking that his readers would accept the concept of “utility” as the most desirable and practical rule of action, Mill saw a different reality. The reputation of philosophy or rationalism after the French Revolution was much worse than Bentham estimated. As an experienced journalist, Mill tactically searched for a synthesis of utilitarianism and civic humanism. The latter was essentially a language of morality, and had a longer history and wider influence in British political debates.<sup>100</sup> Mill wrote, “Barbarians seek to gratify their spirit of vengeance by the infliction of pain on the offender: a civilized legislature desires no such satisfaction.”<sup>101</sup> This contains a moral accusation that some existing laws were irresponsible and discriminatory, and failed to protect the rights of the convicted. Mill also described a rational civilised legislator who had good qualities such as skill, patience, and disinterestedness,

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<sup>98</sup> “The Judicial Establishments of France,” *The Jurist* (Jul. 1832), 198.

<sup>99</sup> Of the concept’s Scottish background, see Bruce Buchan, “Enlightened histories: civilization, war and the Scottish enlightenment,” *The European Legacy* 10, (2005), 177-192.

<sup>100</sup> Iain Hampsher-Monk, “Civic Humanism and Parliamentary Reform: The Case of the Society of the Friends of the People,” *Journal of British Studies* 18, (1979), 70-89. J.G.A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge University Press, 1985). Donald Winch, “The Science of the Legislator: the Enlightenment Heritage,” in *The State and Social Investigation in Britain and the United States*, ed. M.J. Lacey and M.O. Furner (Cambridge University Press, 1993), 63-91.

<sup>101</sup> James Mill, “On the Punishment of Death,” *The Jurist* (Feb. 1833), 44.

and who could guide the moral reformation of the convicted. Thirdly, Mill selected better examples to attract attention. As mentioned above, Mill wrote the article in the context of Joseph Hunton's trial and thus in a favourable political climate for law reform. In the article, Mill mentioned the Hunton case to show that capital punishment was too severe, and argued that since many prosecutors and witnesses were driven by a similar belief to give up prosecution, the certainty and credibility of the law suffered damage.

#### **4. John Arthur Roebuck and prison discipline**

"The Reformation of Criminals", presumably written by the lawyer John Arthur Roebuck, appealed for prison reform. The article discussed two questions: Was it necessary to help the convicted? Was the aim practical? Regarding the first question, the article criticised the fact that English public opinion tended to be indifferent to the welfare of the convicted. By comparison, the American public was more optimistic about the reformation of criminals. As for the second question, the article argued that American prison management provided a valuable model. English prison management was influenced by a prevailing attitude which treated the convicted as an outcast of society, so that the purpose of imprisonment was not the reformation of criminals, but rather to make prison a deterrent. However, the recent development of prison discipline in America was thought to prove that the aim of reformation could be achieved without sacrificing the deterrent effect: "*The prison was probably never before so great a terror to evil doers as it is now. Good men look upon it with complacency; bad men with abhorrence till they become good [sic].*"<sup>102</sup> The article also discussed the financing of prisons in America to encourage English reformers to demand greater publicity for the management of public money. It mentioned that the Auburn prison in New York had even managed to finance itself. Less successful examples, which used a modest amount of public money, were also referred to as evidence to reveal the poor state of English prisons.

#### **5. John Stuart Mill and an enlightened parliament**

John Stuart Mill's "Corporation and Church Property" was written during the summer following the Reform Act of 1832. The first general election after the Reform Act was held between 8 December

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<sup>102</sup> Highlighted in "The Reformation of Criminals," *The Jurist* (Jul. 1832), 193.

1832 and 8 January 1833. Mill expected the article to be published before the election so that his friends who were contesting seats might benefit. As he wrote to Thomas Carlyle on 17 September 1832, "This will appear in the *Jurist*...carried on by several friends of mine, radical-utilitarians of a better than the ordinary sort",<sup>103</sup> and in the article he romanticised the Reform Act as the start of a rationalisation movement for all public institutions, implying that utilitarians were the best reformers to lead the movement.

Mill adopted Bentham's strategy of division. By idealising the Reform Act, he distinguished parliament from other public institutions. Mill urged the public to scrutinise "unreformed" public institutions, including the Church of England. To convince his audience of the necessity of reform, Mill analysed officeholders' common arguments and argued that they were designed to deceive the public, and conceal their corrupt practices. For example, officeholders argued that their right to manage an institution was justified by history, as they were maintaining the initial founders' control over the disposition of the property belonged to the institution, and such control should be absolute and permanent. Mill argued, however, that "this is to make the dead judges of the exigencies of the living", and argued that "this is not even following the wisdom of our ancestors; for our ancestors did not bind themselves never to alter what they had once established".<sup>104</sup> In other words, Mill thought that officeholders were distorting the will of institutions' initial founders for their own interest.

Mill argued that the reformed parliament should ensure that officeholders were accountable in public for their acts and omissions. In his view, such interference would be in accordance with the principle of utility: "We would prescribe but one rule...When a resolution has been taken...to alter the appropriation of an endowment; let the first object be to employ it usefully."<sup>105</sup> To ensure the usefulness of a policy, government must be open-minded and impartial. Meanwhile, Mill supported the idea of an enlightened bureaucracy. He admitted that the progress towards intellectual maturity was uneven among individuals, and that some would become enlightened earlier than the rest. In the article, Mill quoted Samuel Taylor Coleridge's concept of "clerisy" to describe a group of intellectual elites who could lead the utilitarian reformation of society: "the *lettered* class...who were appointed generally to prosecute all those studies, and diffuse all those impressions, which

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<sup>103</sup> Mill to Thomas Carlyle, 17 Sep. 1832, in *The Earlier Letters of John Stuart Mill 1812-1848*, 117.

<sup>104</sup> "Corporation and Church Property," *The Jurist* (Feb. 1833), 4.

<sup>105</sup> *Ibid.*, 15.

constituted mental culture...which fitted the mind of man, for his condition, destiny, and duty, as Man". On another occasion in the article, Mill expressed such elitism more clearly. He argued that rational reforms were always led by intellectual elites, and that those elites were minorities in any society. Admitting that the superiorities they acquired might lead to corruption and self-serving, Mill wrote that "sinister interest indeed is often found in a minority, but so, it must also be remembered, is truth: at her original appearance she must be so. All improvements, either in opinion or practice, must be in a minority at first."<sup>106</sup>

## 6. Edward Strutt and the Grand Jury

Strutt's essay "Grand Juries" was praised by Bentham as "an excellent paper" which could be read together with Bentham's writing on the Quasi-Jury in his *Constitutional Code*, as a source of inspiration for reform.<sup>107</sup> "Grand Juries" starts with a critical questioning of the prevailing opinion which identified the jury as an effective guardian of the individual freedoms of Englishmen. It ends with a radical suggestion to abolish grand juries in criminal cases. The main reason the article provided was that the institution's effect in protecting the innocent was much outweighed by "its tendency to protect committing magistrates in the abuse of their power; and thus cause the imprisonment of the innocent".<sup>108</sup> Relating Strutt's article to Bentham's proposal to establish a Quasi-Jury system to replace the existing jury system, we feel that Strutt's simpler language might have helped readers to understand the logical fallacies of William Blackstone's mystification of the common law:

So tender is the law of England of the lives of the subjects, that no man can be convicted at the suit of the king of any capital offence, unless by the unanimous voice of twenty-four of his equals and neighbours; that is, by twelve at least of the grand jury, in the first place, assenting to the accusation; and afterwards, by the whole petit jury, of twelve more, finding him guilty upon his trial.<sup>109</sup>

For example, in the "General Preliminary Observations", Bentham classified the problems with the existing jury system into two categories. The first category included six problems contrary to the

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<sup>106</sup> "Corporation and Church Property," *The Jurist* (Feb. 1833), 24, 21.

<sup>107</sup> Bentham to John Tyrrell, 19 Apr. 1831, British Library Add MS. 34,661, fo. 18.

<sup>108</sup> "Grand Juries," *The Jurist* (Jun. 1827), 200.

<sup>109</sup> *Ibid.*, 200, 190.

direct ends of justice. The second category included three problems contrary to the collateral ends of justice, namely, the “maximization of expense of justice, in the shape of delay, vexation, and pecuniary expense”.<sup>110</sup> However, the nine problems listed by Bentham were concise. They were logical deductions without concrete examples for the sake of easy comprehension. In this respect, Strutt’s article helps modern scholars or helped contemporary readers. For instance, Bentham’s first point, “the corruptness of the situation of the persons locating in this case”, was much more vividly described by Strutt, who discussed a recent poaching case to show that the selection of a grand jury could easily be influenced. The poachers from labouring classes had been charged for an assault upon the gamekeepers of a gentleman of large fortune and extensive connections. The gentleman himself was a grand juror, and being both an interested party and a judge, he interfered in the process of prosecution. “It is well known”, wrote Strutt, “that the members of Grand Juries, in general, belong to what is called the *landed interest*; that, consequently, their sympathies and prejudices must usually be enlisted in favour of that class.”<sup>111</sup> Strutt was in line with Bentham in thinking of the grand jury as a political tool rather than as a rational system. Strutt then suggested some ways to rationalise the institution if it were to be preserved, and argued that assistance from a responsible legal adviser was necessary. This suggestion echoed Bentham’s idea of the Quasi-Jury, which would consist of three members, two ordinary locals and one selected expert.<sup>112</sup>

## 7. The debate over Codification between James Humphreys and John Reddie

In August 1828, *The Jurist* published James Humphreys’ letter in reply to criticism by John Reddie and C.P. Cooper. Humphreys’ book *Observations on the English Laws of Real Property* proposed that property laws and the Court of Chancery needed some radical reform measures, including codification. His severe criticism of the existing system stirred combative responses. Scottish lawyer John Reddie published *A Letter to the Lord High Chancellor on the Expediency of the Proposal to form A New Civil Code for England* in early 1828.<sup>113</sup> Reddie suggested that Humphreys’ publication was a dangerous sign for the established order: “Men of talent have declared that the present system of Law is no longer to be tolerated; and they have been listened to. They have proposed to establish an entirely new Civil Code, to serve as a universal rule for the future; and to abrogate all Laws, not

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<sup>110</sup> *Constitution Code* (London, 1830) (Bowring, ix. 555).

<sup>111</sup> “Grand Juries,” *The Jurist* (Jun. 1827), 196.

<sup>112</sup> Bowring, ix. 559.

<sup>113</sup> The exact month is unknown, but it should be earlier than 12 July 1828, which is the date Humphreys reviewed Reddie’s work, and mentioned that Reddie’s work was a recent publication.

comprised within that Code.”<sup>114</sup> The English lawyer C.P. Cooper published *An Account of Parliamentary Proceedings relative to the Defects in the Court of Chancery, the House of Lords, and the Court of Commissioners of Bankrupt* earlier in 1828 as well. In this book, Cooper stated that Humphreys was unfamiliar with foreign codes.<sup>115</sup>

Humphreys disagreed with the two men’s reviews. Firstly, he interpreted Reddie’s criticism as the reflection of an irrational fear of codification caused by ignorance and political standing. This fear had not only been expressed by a Scottish lawyer (Reddie), but also by an influential English lawyer, KC Edward Sugden. Humphreys observed that Reddie followed Sugden to discredit the term “code” as foreign and revolutionary. However, Humphreys argued that their arguments against codification were products of their imagination, and influenced by the political sentiment against French ideas. He then claimed that when he had published the first edition of his book with the subtitle “the Outlines of a Code”, he had anticipated a strong sentimental objection from unenlightened minds. The word “Code” had been a strategy to attract more attention. Before long, however, he felt that the book had brought him more controversy than expected. Accordingly, he published a second edition which removed the word “Code”. He claimed that his second edition contained more “practical” suggestions. However, he found that Reddie had ignored the second edition, and concentrated on attacking the first edition. After a textual analysis of Reddie’s mistakes in quotation and interpretation, Humphreys argued that Reddie’s criticism had been motivated by personal interest.<sup>116</sup> By attacking a famous but controversial author, Reddie had sought to gain more publicity in order to increase his literary status. Humphreys dismissed this attention-seeking behaviour as contrary to the ideal of a disinterested public writer.

Humphreys felt that Cooper was too opinionated to examine the utility of codification rationally. There were many negative connotations about codification in Cooper’s mind which prevented him from looking at the question impartially. Meanwhile, as Cooper had already established an admirable reputation as a reformer of the Court of Chancery, Humphreys thought that prejudice must be the only explanation for Cooper’s objection. He asked: “[With] what consistency can the propounder of such uncompromising, such radical corrections in the *dispensation* of equitable

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<sup>114</sup> John Reddie, *A Letter to the Lord High Chancellor on the Expediency of the Proposal to form A New Civil Code for England* (London, 1828), 3.

<sup>115</sup> C.P. Cooper, *An Account of Parliamentary Proceedings relative to the Defects in the Court of Chancery, the House of Lords, and the Court of Commissioners of Bankrupt* (London, 1828), 429.

<sup>116</sup> “Letter from Mr. Humphreys,” 131-2.

justice object to a systematic amendment of the laws themselves?...*c'est par humeur*".<sup>117</sup> By contrast, Bentham was quoted and mentioned as a reliable authority. Humphreys defended Bentham's knowledge of the Roman laws and described Reddie's criticism as "discourteous". He also recommended Bentham's recent publication *De la Codification* to Reddie. Moreover, Humphreys emphasised that Bentham had wisely designed the measures to make a code flexible and easily updatable.

In the next issue of *The Jurist* (January 1829), Reddie's response to Humphreys was published. Reddie explained that had Humphreys' attack been anonymous, he would have ignored it. However, he viewed Humphreys' recent lectures in the London University (later University College London) as the sign of a rising reputation, so that the criticism from such a public figure could be very damaging to his own reputation. Therefore, Reddie claimed, he was forced to reply. However, he emphasised that the main purpose was not to save his personal reputation, but to help the public to take notice of Humphreys' mistakes: "I wrote not for Mr. Humphreys, but for those who might be carried away by the plausibility of his reasoning on a very abstruse and difficult department of science."<sup>118</sup>

However, Reddie's real aim was to discredit Humphreys and codification. Humphreys was accused of being an "unscrupulous partisan" for being blind to the merits of the English legal system. Reddie argued that it "will, indeed, be difficult to make this nation believe, that the laws and institutions—the steps by which civilization has hitherto advanced—have suddenly, not in particular instances, but as a whole, lost their former active and beneficial power".<sup>119</sup> Although a Scotsman, Reddie was an Anglophile and paid tribute to Francis Bacon and Matthew Hale, and he argued that Humphreys and Bentham's notions of codification were too different from the English tradition, and thereby unsuitable for England. In making this argument, Reddie simply followed most common law writers' suspicion of deductive reasoning, and felt that there was no need to look into the details of the proposals of Humphreys and Bentham because codification was purely founded on abstract principles. As he wrote, the "discussion of the particular specific changes in detail proposed by Mr. Humphreys, I distinctly waived, from a sense of the deference due to the English bar and to Mr. Sugden".<sup>120</sup> Reddie was marginalising Bentham and Humphreys. He linked them with the French theorists before the Revolution. Codifiers were conspirators who attempted to "wrest the laws from

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<sup>117</sup> *Ibid.*, 136.

<sup>118</sup> "Dr. Reddie's Observations on Mr. Humphreys's 'Reply'," *The Jurist* (Jan. 1829), 309.

<sup>119</sup> *Ibid.*, 315.

<sup>120</sup> *Ibid.*

the hands of the nation at large, and to wield them for personal aggrandisement, or the degrading purposes of party".<sup>121</sup> By contrast, he described himself as a patriotic Scottish lawyer who closely allied with Sugden and other patriotic English lawyers.

Humphreys and Reddie spoke two very different languages. They differed in attitudes towards legal reasoning (deductive or inductive), the legacy of the French Revolution, and the exceptionalism of English tradition. To those with a more nationalistic approach, Bentham was an eccentric thinker who had a foreign character associated with the terrors of the French Revolution. But to those with a more liberal or universalistic approach, Bentham's insights epitomised a progressive cultural reformation. In short, the conflicts between them were more than judicial issues, for political ideologies also played a significant part. This tendency to read Bentham from contrasting angles was so pronounced that it causes one to wonder whether Bentham became an ideological symbol which made professional conflicts more intellectually contentious.

### 5.3 The Impact of *The Jurist*

The legal profession's interest in reform was growing. Most identified authors were working lawyers. The abovementioned analysis of the identified articles shows that these lawyers viewed Bentham as their intellectual leader, and were spreading Bentham's ideas in plain language. They also defended Bentham against his critics such as Reddie, Cooper, and Sugden. From 1827 to 1833, *The Jurist* hosted a continuous debate on law reform, pressing conservative lawyers and politicians to clarify their opinions. They also continued Bentham's strategy of romanticising reform-minded politicians and MPs, and dividing them from the government lawyers and high court judges. In July 1832, *The Jurist* distinguished between "reformers of the law" and "opponents to change in it...Mr. Bentham, at the head of the one party...Lord Eldon, at the head of the other party".<sup>122</sup> This clear division between reformers and anti-reformers was provocative, and intended to influence public opinion, so as to draw a response from the identified anti-reformers. On the other hand, their divisive language also suggests an anxiety that the purity of utilitarian reform might be damaged by those who pretended to be reformers and were influencing public opinion.

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<sup>121</sup> *Ibid.*, 315-6.

<sup>122</sup> "Law Manuscript Reports and Privy Council Papers," *The Jurist* (Jul. 1832), 230.

On 11 December 1828, Parkes wrote to Sharpe:

“A Contre-Projet to the Humphreysian Code ect., by John James Park, Esq. Barrister at Law” full of stuff, and which should by all means be noticed in the *Jurist*. I have no doubt but that the gentleman in p. 88 hits you a little in “a visit to Paris during the next long vacation, and a month’s residence amongst the French advocates, etc”. In p. 89 he turns the *Jurist*. If you wish a review of it I will do it at once...Who or what is Park? Is he a Conveyancer? Drop me a line whether it should be done. The volume is open to March...he may be very well trained by a short article.<sup>123</sup>

Park’s *A Contre-Projet to the Humphreysian Code* was published in the autumn of 1828. On page 89 of the book, Park described *The Jurist* as “very clever, but not always very sound”.<sup>124</sup> On the same page Park also warned his readers not to be misled by the discussion of codification in *The Jurist*.

In 1828, Park was a studious 35-year-old conveyancer. Before writing *A Contre-Projet to the Humphreysian Code*, he had built up a reputation as a scholar of land and its laws by the publications of the *Topography and Natural History of Hampstead* (1814; 2nd edn, 1818) and *A Treatise on the Law of Dower* (1819). He had drafted a bill on tithes, which was introduced into the House of Commons in 1817 by Robert Newman. In 1823, he had published the treatise *Suggestions on the Composition and Commutation of Tithes*, based on the bill. Obviously, he viewed himself as an expert on the subject. He also wanted to develop contacts with leading conveyancers. *A Contre-Projet to the Humphreysian Code* was dedicated to John Hodgson, one of the eight members of the real property commission of 1828. Park’s dedication suggests a combative character: he described Hodgson as “a mind...unfettered by mere prejudice”, and implied that the other commissioners and some famous writers failed to reach the same standard when recommending measures for reform.

Park argued that the adoption of Humphreys’ code “would, next to revolution, be one of the greatest national calamities that could be inflicted on this country”.<sup>125</sup> He noticed and criticised Humphreys’ public letter in *The Jurist* in August 1828. Park claimed that in the letter Humphreys misunderstood the *Code Napoleon*. Then he offered a textual analysis of the code. He viewed *The*

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<sup>123</sup> Parkes to Sharpe, 11 Dec. 1828, University College London Library, Parkes Paper, MS. 31.

<sup>124</sup> John James Park, *A Contre-Projet to the Humphreysian Code* (London, 1828), 89.

<sup>125</sup> *Ibid.*, vii-viii.

*Jurist's* support for Humphreys as evidence that *The Jurist* had become an accomplice in a conspiracy to destroy the common law. Although Park claimed that his criticism was academic, his points were directed against them personally. As Mary Sokol has observed, Park could be "disingenuous" in his use of other people's arguments. For example, he called on Bentham's *Rationale of Judicial Evidence* in support of anti-reform arguments.<sup>126</sup>

Park used *The Jurist's* reports on the history of codification in the United States to oppose codification. He claimed that *The Jurist's* reports were influential but misleading. "Not having yet received from America the printed documents respecting this operation, I can only obtain my information from those extracts which have been published in this country", that is, in the fourth issue of *The Jurist*.<sup>127</sup> Park was referring to the article "Codification of the Laws of the United States of America". He accused *The Jurist* of selecting sources which exaggerated the popularity of codification. *The Jurist* had reviewed the *Speech of the Hon. John L. Wilson, Senator in the Legislature of South Carolina, on the Propriety and Expediency of reducing the Laws of the State into a Code* (1827). Park claimed that Wilson's speech contained "numerous fallacies", and that his plan "would, like that of the English redactionists, strip the law of all its historic and dialectic development; for to embrace in such a digest the arguments and comments of the judges would be impossible".<sup>128</sup> The description "redactionists" suggests a strong moral accusation against the supporters of codification. Park thought that they were deceiving the public. Moreover, *The Jurist* had published the correspondence between the American lawyer Sampson and the French lawyer Dupin on the application of the Napoleonic Code after the Revolution. Park dismissed the French experience, and argued that the lawyers and senators of the United States "should not content themselves with writing letters to M. Dupin" because all French lawyers were biased in their obsessive national sentiment in favour of codification. Instead, the real history of codification could only be learnt from the example of an impartial and enlightened country: "They should...go to the fountain heads, and draw their views from an extensive and sound acquaintance with the legal literature of the Continent, and above all with that of Germany."<sup>129</sup>

Park was competing against *The Jurist* for popular support. He divided reform into two approaches. The correct version was practical reform, "which the public are not yet fully instructed enough to

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<sup>126</sup> Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828," 74-5.

<sup>127</sup> John James Park, *A Contre-Projet to the Humphreysian Code*, 165.

<sup>128</sup> *Ibid.*, 166.

<sup>129</sup> *Ibid.*, 170.

appreciate”, so he feared that “*The Jurist* has therefore thrown the weight of professional suffrage and erudition into the scale of rash and theoretic reform, and has thereby given a passing support and importance to the crudities of half-witted reformers and ‘bookish theoriques’ which they will not fail to repay.”<sup>130</sup> In January 1829, *The Jurist* published an article entitled “Written and Unwritten Law”, which contained a review of Park’s book. According to Parkes’ letter, the review was his work. Parkes started by mocking Park’s title:

[W]e can readily conceive; for never, since the royal pedant’s “*Counterblaste to Tobacco*,” [King’s James I’s treatise against tobacco smoking, 1604] has a more exquisitely tragi-comical performance issued from the press. This hint, we flatter ourselves, will not be thrown away upon Mr. Park; for, considering that the *Projet* itself, compared with the tempestuous outpourings against codification, is “as two grains of wheat in two bushels of chaff,” it deserves his attention, whether in the second edition, the title may not be advantageously transmuted into “*A Counterblaste to Codes, by an Operative Lawyer*.”<sup>131</sup>

Parkes argued that Park’s words could also be interpreted as evidence of the growing influence of *The Jurist*:

[Park] has given us credit for talent, information, and spirit, with some small seasoning of profligacy—four as popular qualifications, as could well go to the composition of a public writer. In return, we would willingly dwell with lingering admiration upon the minutest of his many beauties; but then, where would be the end? We must be satisfied alas! with culling a few specimens; such, however, as will give the reader a tolerably correct notion of the whole work.<sup>132</sup>

Parkes then analysed Park’s 13 points against codification, arguing that his objections were a vivid example of a lawyer’s manipulative use of language for selfish interest, which perfectly fitted Bentham’s concept of “opinion-trade”. In the *Rationale of Judicial Evidence*, Bentham had explained that lawyers deliberately made the common law and statutory law uncertain and confusing so that their services could be more indispensable and expensive.<sup>133</sup>

In January 1829, *The Law Magazine* published an article entitled “Codification Controversy—Mis-statements and Mistakes of Mr. Humphreys”, which commented on Humphreys’ letter in *The Jurist*.

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<sup>130</sup> *Ibid.*, 175.

<sup>131</sup> “Written and Unwritten Law,” *The Jurist* (Jan. 1829), 217.

<sup>132</sup> *Ibid.*

<sup>133</sup> Bowring, vii. 316-18.

*The Law Magazine* was in tune with Park's opinion. Whereas Park cited the French law journal *Thémis ou Bibliothèque du jurisconsulte* in French, *The Law Magazine* translated his quotation into English. The editors of the French journal "express themselves as 'far from approving the ardour of the editor of the *Jurist*, or subscribing to the sentence of condemnation passed by him on the national institutions of his own country'".<sup>134</sup> On the other hand, *The Law Magazine's* language was more contentious. It quoted Humphreys' words in *The Jurist* to question Humphreys in the sort of tone that suggested he was the accused in a trial: "You, Mr. Humphreys...Tell us at once that you did not mean 'new,' and then there will be something to talk about but do not play the 'auceps syllabarium,' [a person who quibbles over words] unless, at least, you have a chance of gaining by it".<sup>135</sup> There is some similarity between this criticism and Bentham's concept of "opinion-trade", but this time supporters of codes were attacked for having deceived the public for sinister motives. In 1829, the editors of *The Law Magazine* were an Inner Temple law student named Abraham Hayward and a conveyancer named W.F. Cornish. Abraham was an active member of the London Debating Society and had established a reputation as a steady Tory lawyer who "could hold his own against John Stuart Mill and the other young philosophic radicals who ruled the society".<sup>136</sup>

Park and *The Law Magazine's* attacks on *The Jurist* reflected the conservative lawyers' anxiety that their professional credibility might be destroyed by a changing public opinion. As David Lemmings has observed, the bar and the common law's reputation as the safeguards of the people was in crisis in the early nineteenth century.<sup>137</sup> The emergence of *The Jurist* escalated this tendency by providing the ammunition for leading radical newspapers. On 23 September 1827, *The Examiner* described *The Jurist* as infusing "a little of the breath of life into the dry bones of 'Father Antic, the Law'".<sup>138</sup> The "dry bones" referred to those lawyers who accepted the established system. *The Examiner* criticised them being enslaved by the "shackles of routine and precedent", and therefore too narrow-minded to embrace the age of Enlightenment. On the other hand, *The Examiner* observed that before *The Jurist*, some public writers had started to investigate "the abuses and absurdity of" the "vicious" legal system. Now, with *The Jurist*, "a rising disposition in the profession itself" aspired to "reject a

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<sup>134</sup> "Codification Controversy—Mis-statements and Mistakes of Mr. Humphreys," *The Law Magazine* (Jan. 1829), 628. John James Park, *A Contre-Projet to the Humphreysian Code*, 178-9.

<sup>135</sup> "Codification Controversy—Mis-statements and Mistakes of Mr. Humphreys," 631.

<sup>136</sup> Philip Harling, "Hayward, Abraham, 1801-1884," in the *Oxford Dictionary of National Biography* (2004)

<sup>137</sup> David Lemmings, *Professors of the Law*, 326-7.

<sup>138</sup> "The *Jurist*, or Quarterly Journal of Jurisprudence and Legislation. No. II.," *The Political Examiner*, Sep 23, 1827, 593.

miserable jargon emanating from that blind enmity to social improvement".<sup>139</sup> *The Jurist* made the future of reform more promising.

*The Examiner* welcomed the fact that *The Jurist* discussed a wide range of topics, and argued that these discussions provided intellectual support for "all the leading branches of British jurisprudence, civil, military and ecclesiastical". Then it reviewed the articles in the second issue of the journal. Of the first article, "Military Law", *The Examiner* wrote that the

remarks on the inadequacy and inefficiency of the present office of Judge-Advocate General, in particular, merit attention. Our Journalists would place the law of the army under its control, and exalt it in dignity and authority, which cannot be the case while rendered a mere political appointment, with little advertence to knowledge or capability.<sup>140</sup>

This quotation suggests that *The Examiner* developed *The Jurist's* research into political criticism. Its review of the other articles, "Grand Juries", "Corporation and Test Acts", "Game Laws", and "The Dramatic Censorship", all of which were about domestic laws and institutions, expressly supported the radical weekly's political radicalism. For example, *The Examiner* argued that the "Corporation and Test Acts" showed that before the Act of Uniformity 1662, the Church of England had been a liberal institution. This argument echoed the radical view that the religious freedom of Englishmen had been ruined by a previous tyrannical parliament which had passed a law "which turned 2000 Ministers out of the Church, that completed the injustice, and consummated fraud by oppression".<sup>141</sup>

On 31 August 1827, another leading newspaper, the *Morning Chronicle*, acknowledged the intellectual superiority of *The Jurist*. Its praise for *The Jurist* came alongside the criticism that traditional lawyers had failed to produce a science of legislation. It described England as "behind several of the Continental nations...In matters of legislation, considered as a science, it is impossible to doubt that it is hardly possible for any people to be in a more backward state than the English are at this day."<sup>142</sup> This statement suggested that the common law was irrational. Then, the *Morning Chronicle* reviewed the article "Grand Juries", and disputed the writer's opinion that the institution was "evidently mischievous in the present day", and that its popularity "seems undeserving". The

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<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid., 594.

<sup>142</sup> "The Jurist, Or Quarterly Journal of Jurisprudence and Legislation—No. 2.," *Morning Chronicle*, Aug 31, 1827.

*Morning Chronicle* also supported codification. On 5 August 1828, it advertised the article “Codification of the Laws of the United States”. The correspondence between Sampson and Dupin was recommended as a just description of the progress of codification in the two nations. Dupin’s opinion that “without a Revolution France could never have obtained such an inestimable advantage” in legislation, was commended. The *Morning Chronicle* was suggesting that a revolution in the law was necessary because “our Judicial Establishments are barbarous and unsuited to the wants of the country, our laws are not a rule of action, for even the most skilful practitioners are unable to grope their way through the maze of contradictory cases”.<sup>143</sup>

## Conclusion

*The Jurist* revealed some interesting features of the reception of Bentham’s ideas in the legal profession. The younger generation of lawyers was fascinated by the charms of reform and science. In August 1828, these lawyers described Bentham “as our leader in the march of improvement”, and claimed in November 1832 that “we have on our side the great philosophic lawyer of the age, the father of law reform. But not he—not Mr. Bentham alone—the commissioners, whether of the common law or the equity bar, or those who devote themselves to the practice of conveyancing, are all of one mind.”<sup>144</sup> In an atmosphere of solidarity, they boldly advocated radical ideas and competed for popular support. They were eager to distinguish themselves from previous reformers. Samuel Romilly was criticised for underestimating “the many gross blemishes and abuses that disfigured the proceedings of” the Court of Chancery.<sup>145</sup> Brougham, in his speech in favour of law reform in February 1828, was criticised for having spoken “more tenderly than” the editors of *The Jurist* had expected about the question of the evidence of parties.<sup>146</sup> Their effort to consolidate a triple alliance between Benthamism, scientific inquiries into the law, and reform, was acknowledged by the press. The *Morning Chronicle* wrote on 5 August 1828:

[W]e expect little from such a Legislature as ours; but it is of importance that the public should be adequately impressed...We agree with an able writer in *The Jurist*, that “the first thing to be

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<sup>143</sup> “London: Tuesday, August 5, 1828,” *Morning Chronicle*, Aug 5, 1828, 2.

<sup>144</sup> “Cooper’s Account of the Court of Chancery,” 99; “Registration,” *The Jurist* (Nov. 1832), 331.

<sup>145</sup> “Criminal Code,” *The Jurist* (Mar. 1827), 5.

<sup>146</sup> “Mr. Brougham’s Speech on the Present State of the Law,” *The Jurist* (Aug. 1828), 25.

done for reform, in a country where you have an unwilling Legislature, from which everything is to be dragged by a sort of force, is to educate the public mind, which is the dragging power".<sup>147</sup>

A radical alliance was being formulated under the influence of Bentham's networks and *The Jurist*. Bentham's expanding networks and his friendship with O'Connell from the summer of 1828 were encouraging signs to lawyers who really believed in the possibility of democracy. As Bentham's approval of Strutt's public spirit showed, the members of *The Jurist* thought highly of each other. These lawyers encouraged each other to pursue high political positions and believed in their moral integrity, in contrast with lawyers outside their networks. That is why Bickersteth and Parkes independently founded the journal, and why they had a good working relationship with Bentham. In general, however, they could sustain and enlarge their own networks without Bentham's direct assistance. This suggests that the younger generation of reformers, from different religious and professional backgrounds, were unified by Enlightenment beliefs in science and by a more democratic vision of social justice. At this stage, Bentham's role was more of a cultural icon than a teacher. His measures such as codification, transparent procedure of evidence, and district courts, received different responses in *The Jurist*. Some articles were more reserved, expressing concerns about the economic cost of Bentham's reforms. But a greater proportion of articles defended and clarified Bentham's ideas so as to refute objections.

The different attitudes towards Bentham within *The Jurist* can be explained by the wider political environment. *The Jurist* observed in April 1832 that the waters of reform were muddied whenever a topic attracted reluctant public attention.<sup>148</sup> The reformers were greatly divided. Tory reformers often accused radical reformers of being unrealistic and unpatriotic, whereas Bentham distrusted both Tory and Whig reformers. In 1829, he prepared material for the article "Reformists Reviewed". Although this was unfinished and unpublished, Bentham spread his views of reformers in his private networks. The article started with three types: "As in Parliamentary so in Law Reform 1 Radical Reformists 2 Moderate do 3 Anti reformists [*sic*]", and then expanded the "Anti reformists" into two categories: the "pseudo Reformist" and the "dubious Reformist". Robert Peel was considered to be of the former category, while Henry Brougham was considered to be of the latter.<sup>149</sup>

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<sup>147</sup> "London: Tuesday, August 5, 1828," *Morning Chronicle*, Aug 5, 1828, 2.

<sup>148</sup> "History of Law Reform," *The Jurist* (Apr. 1832), 56.

<sup>149</sup> Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828," 120.

Bentham's attempts at purification inspired *The Jurist* to speak in a combative and divisive language so as to invite debate. Although some articles complained about Bentham's indiscriminate and unsparing attitude towards lawyers, *The Jurist* agreed with his judgement about the existence of sinister interest in the profession: "It is only in proportion as men are known to be free, and emancipated from the influence of professional habits, that they can be more or less fit for the great duty of examining into and redressing the abuses of a system which is become a second nature to the mass of practitioners."<sup>150</sup> Thus, real reformers should form a close bond under the leadership of Bentham, a proven radical reformer. By this logic, *The Jurist* was asking for a purification movement in the profession to distinguish between the friends and enemies of real utilitarian reform. Accordingly, commitment to Bentham's ideas, manifested by membership of his private networks, became both a unifying force to strengthen the bonds between radical reformers, and a divisive force that compelled those who preferred to hesitate or disguise their views to clarify their real intentions in public.

Lobban has argued that many lawyers were aware of the flaws of the common law long before the 1820s because of the pressures they felt in legal practice, particularly with the rapid increase of litigation since the 1790s. Law reform was largely perceived as a technical or administrative topic.<sup>151</sup> Lobban's explanation of the conservative nature of law reform in the 1820s is convincing. However, he perhaps underestimates the progress that utilitarian discourse achieved in the press, and the energy with which a group of reform-minded lawyers tried to mobilise public opinion. *The Jurist*, in this context, might enrich our understanding of the associational culture among reformers. Moreover, the language of *The Jurist* illuminates the motives of reformers. Lobban's argument tends to suggest that rationalisation of the law was driven by the profession's own interest in making their business more efficient. Although reformers were certainly motivated by material interest, this view might ignore other factors, such as Enlightenment beliefs, as reflected in the pages of *The Jurist*.

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<sup>150</sup> "Cooper's Account of the Court of Chancery," *The Jurist* (Aug. 1828), 92.

<sup>151</sup> Michael Lobban, "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830," 117-9.

## Conclusion

Law reform received fluctuating attention from the 1780s to the 1830s. Within the legal system, different branches of law received different levels of attention. Criminal laws were criticised in the 1780s, stimulated by factors such as the loss of American colonies, problems of urbanisation, and the spread of Enlightenment ideas. The poor condition of prisons was also widely publicised during this decade. In addition, criminal law reform merged with the anti-slavery movement and the reformation of manners.<sup>1</sup> As for other areas of the law, the procedures of bankruptcy and imprisonment for debt were critically reviewed by lawyers, and even some politically conservative lawyers such as Lord Eldon agreed with reform in these areas.<sup>2</sup> However, law reform did not become a popular topic until the 1820s. The fragmented levels of interest in certain areas of the law were silenced or discouraged during the French Revolution and the French Wars. Radical law reformers either chose to moderate their attitude and continue the discussion in relation to domestic politics, such as Samuel Romilly's campaign for mitigating criminal statutes in the House of Commons, or they shifted attention abroad, such as Bentham's codification offer for Russia and America.

From 1790 to 1815, law reform ideas were preserved in private discussions by learned and voluntary associations. This layer of reforming politics was the product of survival tactics during the shadow of the French Revolution and the rise of popular conservatism and militant loyalism.<sup>3</sup> It has been largely neglected by historians, who have been more interested in a latter period.<sup>4</sup> One exception is Michael Lobban. He has plausibly established the link between law reform and the revival of litigation after 1790. A new Insolvent Debtor's Court was set up in 1813 to replace the traditional method which had sought temporary relief acts and charitable activities. The pressure of business also facilitated the introduction of the civil jury into Scotland for expediting trials, and the result was the Judicature Act of 1808. The growing difficulties faced by the Lord Chancellor in chairing the Court of Chancery and the House of Lords (the highest court of appeal) explained the creation of the office of Vice-Chancellor in 1813, which started a trend in increasing the personnel of the Chancery. Individual

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<sup>1</sup> The latter two causes were led by evangelicals, who allied with criminal law reformers such as Samuel Romilly.

<sup>2</sup> Michael Lobban, "Old wine in new bottles': the concept and practice of law reform, c. 1780-1830," 126.

<sup>3</sup> Harry T. Dickinson, "Popular Conservatism and Militant Loyalism, 1789-1815," in *Britain and the French Revolution, 1789-1815*, 103-126.

<sup>4</sup> Philip Handler, "James Mackintosh and early nineteenth-century English criminal law," 757-779; "Forgery and the end of the 'bloody code' in early nineteenth-century England," 683-702; "Forging the agenda: the 1819 select committee on the criminal laws revisited," *The Journal of Legal History*, (2004), 249-268. Philip Schofield, *Utility & Democracy*, 304-336. Chris Riley, "The Hermit and the Boa Constrictor: Jeremy Bentham, Henry Brougham, and the Accessibility of Justice," 1-26.

MPs such as Sir John Newport attacked the increasing levels of fees in the superior common law courts in 1814.<sup>5</sup>

However, Lobban's focus was on parliament; law reform can be discussed in relation to other spheres as well. As Lobban and Ian Williams observed in 2020, "Whether law changes as a result of litigation initiated in the courtroom or through legislation, the form which it takes may be shaped by the groups of people initiating the change, by the networks of legal intermediaries—whether lawyers or legislators—who are tasked with implementing it, and by the wider community networks with whose expectations the law must cohere."<sup>6</sup> Bentham's epistolary networks provided private spheres for interested individuals to discuss law reform and strategies for transforming their ideas into concrete policies.

### 1. Multiple Spheres of Law Reform Politics

Lobban and Williams' view of the network's initiative-taking role also suggests the importance of private spheres and the fluid nature of the boundary between public and private life. During the late Hanoverian period, the conservatives won popular support in public political debates. The extremism and violence of the French Revolution "buttressed and entrenched fear of change even among those who regarded the constitution as imperfect". Potential reformers lacked unified and stable leadership and experienced "a harder time making their case" over the next few decades.<sup>7</sup> However, as Boyd Hilton has observed, intellectual discussion helped the Foxite Whigs "sustain cohesion".<sup>8</sup> Bentham's epistolary networks confirms this point. He contacted lawyers and politicians, offering them various schemes of reform including the Panopticon prison, a reorganisation of Scottish civil justice, a more rational and transparent jury system, and legal codification. These schemes received different responses. Some were very discouraging, warning Bentham of the risk of being prosecuted for libel. Bentham listened to his advisor Romilly's warnings and gave up the publication of the *Truth Versus Ashurst* in 1792, and *The Elements of the Art of Packing* in 1810. However, both books were published safely in the 1820s. This wait for a free political environment

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<sup>5</sup> Michael Lobban, "Old wine in new bottles': the concept and practice of law reform, c. 1780-1830," 125-9.

<sup>6</sup> Michael Lobban and Ian Williams, "Introduction," in *Networks and connections in legal history*, ed. Michael Lobban and Ian Williams (Cambridge University Press, 2020), 1.

<sup>7</sup> Joanna Innes and Arthur Burns, "Introduction," in *Rethinking the Age of Reform, Britain 1780-1850*, 13.

<sup>8</sup> Boyd Hilton, *England 1783-1846*, 346.

suggests that during the period in question, reforming or liberal opinions survived. This might be explained with reference to the fact that conservative forces in Britain were never strong enough to crush their opponents entirely, or else never wanted to do so.<sup>9</sup> But it might also be explained from a different perspective: that although reforming opinions were much marginalised and divided in national politics, many individual agents were still closely connected with the government, the legal world, and the Whigs. Such connections, and such a vibrant associational culture, enabled them to exert “influence” on the press and parliament.

This thesis has sought to identify those well-connected individuals and to understand the nature of their “influence”. Bentham’s long, resourceful life enabled him to build an extensive network. He lived from 1748 to 6 June 1832, passing away one day before the royal assent for the Reform Act. From the late 1780s, he associated with enlightened aristocrats such as Lord Lansdowne, well-connected go-betweens such as Romilly (a leading Chancery lawyer and Solicitor General 1806-7), and popular leaders such as Daniel O’Connell. He also corresponded with Home Secretary Robert Peel after 1826, pressing the Tory politician for codification, reduction of judicial salaries, and democratisation of jury selection. From 1828, after the correspondence with O’Connell, Bentham was encouraged to write three petitions, respectively for codification, judicial administration, and an equity dispatch court. He decided to open a new route towards law reform. If his previous focus had been on enlightened elites, now he aspired to collaborate with O’Connell to mobilise a popular movement for law reform. O’Connell was tasked with collecting signatures for Bentham’s petitions, and he later presented them to parliament. From December 1829, Bentham further developed this popular strategy by mobilising his correspondents to establish a voluntary association which specialised in coordinating various fragmented law reform initiatives. The Law Reform Association scheme attracted MPs, lawyers, dissenting merchants, journalists, and military officers.

Of the nature of Bentham’s “influence”, Fred Rosen has argued that his ideas became a cultural icon in the 1820s, representing Enlightenment values, and were appropriated by people to suit their own purposes. Because Bentham’s name had been linked with progressive ideals which were now in ascendancy, it acquired a legitimising power for those who sought to justify their personal goals.<sup>10</sup> To some extent, Rosen’s argument suggests that Bentham’s influence could be seen as a type of soft

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<sup>9</sup> Frank O’Gorman, “Pitt and the ‘Tory’ Reaction to the French Revolution 1789-1815,” in *Britain and the French Revolution, 1789-1815*, 21-38.

<sup>10</sup> Fred Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought*, 15-6.

power, the ability to attract rather than coerce, which shaped the preferences of audiences through appeal and attraction.<sup>11</sup> I largely agree with this understanding of Bentham's influence, and have aimed to enrich it by providing more details of Bentham's epistolary "conversations".

Bentham's language in his letters was tailored to the correspondents. To his intimate friend Romilly, who was often given the latest writings, Bentham's language was specific and bold, directly expressing his critical and realistic attitude towards the government and judiciary. For example, when complaining of the government's negligence towards his lobbying on behalf of the Panopticon prison, Bentham wrote to Romilly on 27 August 1802, "The enemy begins to squeak."<sup>12</sup> The "enemy" was Home Secretary Lord Pelham. When writing to Robert Peel, in contrast, whom he had attacked in 1825 in a pamphlet entitled *Observations on Mr. Secretary Peel's House of Commons Speech, 21<sup>st</sup> March 1825, introducing his Police Magistrates' Salary Raising Bill*, Bentham's language was polite and formal, emphasising the benefits of philosophy to Peel's liberal reputation. For example, when lobbying Peel for codification, Bentham wrote on 19 August 1826: "Your's is the option, whether to continue to be what, in appearance at any rate, you have begun to be, a *friend to mankind*, or a member of the *interior* Holy-Alliance, of oppressionists and depredationists."<sup>13</sup> To Daniel O'Connell, who represented a new hope for law reform at a time when Bentham was 80 years old, his language was enthusiastic, emphasising O'Connell's altruism and Irish merits. On 15 July 1828, in his first letter, Bentham praised O'Connell's recent public announcement of being a Benthamite law reformer:

Not only Parliamentary Reform, but Law Reform advocated. Advocated? And by what man? By one who, in the vulgar sense of profit and loss, has nothing to gain by it; but a vast (but who can say how vast?) amount to lose by it: a man at the very head of that class of 'conjurers'...Yes, only from Ireland could such self-sacrifice come; nowhere else; least of all in England, cold, selfish, priest-ridden, lawyer-ridden, lord-ridden, squire-ridden, soldier-ridden England, could any approach to it be found.<sup>14</sup>

All three correspondents were influential in politics. Through Romilly, Bentham's ideas were introduced and discussed in Whig circles, for Romilly allied himself with the opposition Whigs. As for

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<sup>11</sup> Joseph Nye, *Soft Power: The Means to Success in World Politics* (PublicAffairs, 2004).

<sup>12</sup> Bentham to Romilly, 27 Aug. 1802, *Correspondence*, vol. 7, 90.

<sup>13</sup> Bentham to Peel, 19 Aug. 1826, *Correspondence*, vol. 12, 243.

<sup>14</sup> Bentham to O'Connell, 15 Jul. 1828, Bowring, x. 595.

Peel, Bentham expected the young, ambitious Home Secretary to be enlightened enough to accept his guidance, which represented a hope to influence a conservative government from within. Through O'Connell, Bentham attempted to influence Wellington's government by demonstrating the power of popular or public opinion. These men represented different spheres of politics and through them, Bentham was involved in party politics and popular politics.

Both party and popular politics in the early nineteenth century were in transformation. As Boyd Hilton observes, "participation in public life no longer depended so acutely on the possession of property or the receipt of patronage, nor yet on subservience to a party line".<sup>15</sup> Instead, principle and ideology became more important in shaping one's party feeling. An increasingly vibrant and polarised print culture from the late 1790s sped up this trend. The *Anti-Jacobin* (1797), *Antijacobin Review and Magazine* (1798), *Edinburgh Review* (1802), *Examiner* (1808), *The Quarterly Review* (1809), and *Westminster Review* (1824) displayed the ideological conflicts that defined the boundaries of political identity. On the other hand, those public demonstrations of party feeling agitated newcomers and forced them to take sides. In the late 1820s, the Catholic Emancipation and parliamentary reform movements mobilised levels of popular participation arguably unprecedented since the English Civil War.<sup>16</sup> However, individual actors lacked the experience to cope with the new political realities, especially in bridging the gap between popular political language and parliamentary conventions. The democratic leader O'Connell felt powerless after he had experienced a year's parliamentary politics.<sup>17</sup>

In this transitional period, law reform was in Bentham's networks a political question of multiple layers. Bentham produced and sustained innovative legal ideas in private letters, nudging his contacts to convey them in wider spheres such as parliament and public meetings. Romilly conveyed Bentham's messages to government lawyers, Whig leaders, and the *Edinburgh Review*. Peel rejected Bentham's plans for codification, reduction of judicial salaries, and the democratisation of jury selection. But this did not discourage Bentham from contacting him again when, in 1831, Peel announced his intention to reform the judicial fee system. O'Connell mobilised the Catholic

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<sup>15</sup> Boyd Hilton, *England 1783-1846*, 37.

<sup>16</sup> K. Theodore Hoppen, "Riding a Tiger: Daniel O'Connell, Reform, and Popular Politics in Ireland, 1800-1847" 121-143. Nancy D. LoPatin, *Political Unions, Popular Politics and the Great Reform Act of 1832* (Palgrave Macmillan, 1999)

<sup>17</sup> O'Connell to Bentham, 22 Feb. 1831, *O'Connell Corr.*, vol.8, 229-30.

Association to collect signatures for Bentham's codification petition, and presented it in the House of Commons in February 1830.

Although at the official level Bentham's ideas received little appreciation, his correspondence with the abovementioned reformers shows that at the private level, he approached political elites, informing them about, or even educating them on, the Enlightenment ideals. The three men's attitudes towards codification reflect the fragmented ideology of reform. Romilly's review of Bentham's *Papers relative to Codification, and Public Instruction, including Correspondences with the Russian Emperor, and divers Constitutional Authorities in the American United States* (1817), in the 1817 issue of the *Edinburgh Review*, encouraged English lawyers to learn from Bentham to clarify the language of the common law. However, Romilly also expressed the concern that Bentham's plan might be too radical for England. Peel insisted that statute consolidation would be sufficient to clarify the law and make judicial administration more efficient, and that there was no need to codify the common law. Both Romilly's and Peel's apologetic attitudes towards the common law were criticised by Bentham as defending the legal profession at the expense of the people. In his letters to Peel, Bentham threatened to expose and attack Peel's illiberal attitude by arguing that he was in sinister alliance with the judiciary.<sup>18</sup> Whereas O'Connell most passionately supported the idea of codification, promising much in his letters, in the real world of politics, after his petitioning in early 1830, O'Connell was quickly distracted by other reformist agendas which were more directly linked to Irish interests.

The choice of the three individuals (Romilly, Peel, O'Connell) is intended to reveal the cosmopolitan and universal nature of Bentham's political engagement. The three men represented the three dominant reformist strands (Whig, Tory, Radical) of late Hanoverian Britain. Romilly helped to connect Bentham with the reform-minded Whigs before and in the early stage of the French Revolution. When the Whigs were struggling to find a popular agenda in the general elections in the late 1810s and the most time of the 1820s, Bentham approached Peel, and nurtured a hope that Peel's managerial character and reputation might enable him to appreciate the charm of utilitarianism and transform it into actual laws.

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<sup>18</sup> Bentham to Peel, 22 Apr. 1829, UC xi. 334-6.

Such a high hope was quickly diminished by Peel's disapproving attitude and attack on Bentham as a pro-French subversive idealist. Bentham's immediate reaction was an anonymous revenge in a popular newspaper denouncing that Peel had been misled by Tory judges. Meanwhile, from February 1828, Bentham's law-reform networking put more weight on radical reformers. With O'Connell, although Bentham mentioned broader socio-political reform topics such as parliamentary reform, the aged activist prioritised law reform. Meanwhile, during this communication, Bentham learnt to refine his grand ideas into more practical schemes. He designed the Equity Dispatch Court petition in the hope that a more popular and practical topic might ease O'Connell's pressure of propagating radical law reform alone in the House of Commons. The language of the Equity Dispatch Court petition in the form of addressing directly to the underprivileged suitors, and a restrained ambition (at least in public) to only tackle the problems of the Court of Chancery, indicate Bentham's compromise and strategy.

Bentham thought that the Equity Dispatch Court would serve as a grip to trigger large-scale reforms once the suitors and most lawyers were benefited and motivated. The Equity Dispatch Court marked a shift of Bentham's strategy after he had realised that most potential allies were unable to fully appreciate his grand projects. This realisation came with a willingness to compromise in the context that law reform had become increasingly popular in the 1820s. Bentham was concerned that with more government commissions having formed and controlled the pace and direction of law reform, there would be less chance for his utilitarian agenda. He determined to rescue law reform from the legal profession and maintain the vitality of the Enlightenment in the domain of public debate. This thesis argues that the way Bentham drew on networks opened his mind and brought realpolitik to his philosophical ideas. His experimental mindset always helped to calm down his immediate frustration and quick anger. Utilitarianism is his dominant character, and this character guaranteed that he was easily to be inspired by the outside events which fitted his criteria of being useful. He was far from an isolated writer. Instead, his observant eye always welcomed innovative and popularised technology and administration such as printing and political associations. Inspired by O'Connell's Catholic Association, he endeavoured to set up the Law Reform Association and marketed it as a loyalist product responding to the King's Speech on the State Opening of Parliament. He also passionately looked for ways to support the young reformers around *The Jurist* even if their ideas were relatively small-scale and politically moderate.

## **2. Leadership in Democratisation**

The Law Reform Association shows the extent of Bentham's networks in his last years (1827-1832). The Association mobilised about 40 persons of diverse backgrounds, covering commerce, law, military, and the press. 14 were MPs. The Association aimed to practically apply Bentham's democracy. It invited all members of society to contribute to the democratisation of law. Popular support was directly called upon: "If you yourself know not of any such remedy, —why not call for it at the hands of all other persons, who feel disposed, and at the same time regard themselves as qualified, to point out, and wanting nothing but power, for making application of it?"<sup>19</sup> Bentham insisted that law should not be viewed as an exclusive domain of knowledge, but as shared knowledge to be freely circulated and updated through popular participation. To some extent, his democratic logic echoed the idealised tradition of common law courts whose "elements of popular participation...were celebrated as the surviving guarantees of English freedom".<sup>20</sup> But Bentham viewed the common law as fraudulent.

Bentham also developed the idea of excluding working lawyers from joining the Association, and expressed it in a letter to MP John Smith on 21 April 1830. By then, Bentham had contacted several working lawyers including O'Connell, Charles Sinclair Cullen, John Tyrrell, and Henry Bickersteth. What made him decide not to recruit more working lawyers? The reasons given in the letter, "for their own sakes...for that of the public", suggest that Bentham anticipated the unpopularity of this Association among lawyers.<sup>21</sup> On 9 December 1829, Bickersteth turned down Bentham's invitation for a meeting with the Master of the Rolls, and Bentham's invitation had expressed a desire to recruit Bickersteth: "I hope to see you take in a new measure of agitation for law reform, the success of which Tyrrell tells me will in no small degree depend upon your taking part in it."<sup>22</sup> This episode might have discouraged Bentham.

Bentham also thought that fewer working lawyers in the Association would be better for the public. Bentham believed that the working lawyers were deeply trapped in the patronage system, and thus unsuitable for democratic causes. Bentham's reform aimed at transforming the common law into

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<sup>19</sup> "Law Reform Association Proposal," 6.

<sup>20</sup> David Lemmings, *Law and Government in England during the Long Eighteenth Century, From Consent to Command*, 2.

<sup>21</sup> Bentham to John Smith, 21 Apr. 1830, British Library Add. MS 33,546, fo. 410-11.

<sup>22</sup> Bentham to Bickersteth, 7 Dec. 1829, in T.D. Hardy, ed., *Memoirs of the Right Honourable Henry Lord Langdale*, vol. 1, 383-4.

codes so that all administration would be under public scrutiny, and all officials would be paid by state salaries, rather than private fees. The logic behind such reform viewed the law as a public rather than a commercial service. According to this logic, the leadership of democracy must not be controlled by a particular social group, and in the case of law reform, lawyers were unqualified to take the lead. This democratic logic was radically different from the prevailing practice in official law reforms. In 1828, two parliamentary commissions of law reform were appointed, one for the land laws, and the other for the common law courts. All commissioners were successful practitioners. Bentham had long feared that such arrangements could only make things worse, as in his warning to Peel in 1826, that lawyers could manipulate legislation to exploit the people more. Therefore, he hoped to correct this tendency by appealing to the public directly, expecting to enlighten and mobilise public opinion to check the power of the commissions.

In his search for patrons, go-betweens, and disciples who could be his ideal democratic leaders, Bentham relied on private means of communication and exclusive dinner meetings and letters, and he sustained the tradition of the Republic of Letters. He believed that a more egalitarian society was in construction, and placed himself in the role of facilitating this process. He was always searching for potential candidates and educating them to become his ideal leaders. He was not an isolated and passive writer who waited to be recognised. Instead, he took the initiative. These years witnessed a change in focus of his networking, after the cooling down of his friendship with Lord Lansdowne in the 1790s. He became less interested in aristocratic patrons and more interested in meritocratic go-betweens who were skilful in both the politics of patronage and the politics of public opinion. The tendency of this change, while he did not give up soliciting aristocrats, was in the direction of democracy.

However, in his actual networking, he mainly associated with the new middling classes, parliamentarians, and enlightened aristocrats. His shy personality also restricted him from participating in popular politics, although he would temporarily be encouraged by some radical friends such as Francis Place to support, mainly financially, radical activists. Bentham was also happy to see his name printed in the newspapers as a patron who had donated £5 to the Catholic Association in 1824. The donation had been attached to his public letter to the Catholic Association, urging its members to unite with liberal Protestants to pursue the only practical solution for

liberating the British Catholics: “Parliamentary Reform, in the radical and sole efficient mode”.<sup>23</sup>

These fluctuating expressions could provide reasons for his opponents to attack him, especially at a time when the word “democracy” was viewed as a “bugbear”.<sup>24</sup>

The first four chapters of this thesis showed that his schemes were largely abortive. He realised that his democratic ideals of law could only expect limited support from the Whigs and Daniel O’Connell, and refutation from Robert Peel. For a short time, Bentham was unhelpful to them because he was too idealistic. However, the fifth chapter presented another story. *The Jurist*, organized by a younger generation of lawyers and philosophers, admitted that Bentham provided a vision inspiring them to embrace a democratic ideology. Moreover, Bentham’s utilitarian reasoning was persuasive and rigorous, providing its writers with the analytical tools to criticise established institutions. For example, *The Book of Fallacies* taught them how to understand anti-reform arguments and identify their weaknesses. Also, his classification of radical, moderate, insincere, and anti-reformers could serve as a strategy to force public figures or official commissioners to clarify their position, diminishing the chances of pretension and deception. During these years, although Bentham’s name was marginalised in parliamentary debates, his private networking allowed the continuous communication of his ideas. With the enlargement of his networks, and especially with the inclusion of the younger generation of reformers, Bentham became an ideological icon in the 1820s.

### **3. Enlightenment sociability and the nature of Bentham’s “influence”**

Bentham’s radical ideas were not fully accepted by most his interlocutors, but his intellectual reputation as an iconic representative of Enlightenment was increasing. This division of his contemporaries’ attitude towards him during his lifetime is significant. Fred Rosen in his study of a different subject (the impact of Bentham’s constitutional thoughts in the years of Greek independence struggles) noticed the same division, and he explains it mainly through the perspective of Bentham’s interlocutors, emphasising that those lesser philosophical-orientated actors’ interest in Bentham was driven by worldly interests, and wanted to use Bentham’s

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<sup>23</sup> The donation was attached with his public letter appealing the Catholic Association to unite with the liberal Protestants to pursue the only “practicable means—Parliamentary Reform, in the radical and sole efficient mode”. Bentham to the Catholic Association, 9 Dec. 1824, *Correspondence*, vol. 12, 73.

<sup>24</sup> Joanna Innes, Mark Philp, and Robert Saunders, “The Rise of Democratic Discourse in the Reform Era: Britain in the 1830s and 1840s,” in *Re-Imagining Democracy in the Age of Revolutions: America, France, Britain, Ireland 1750-1850*, ed. Joanna Innes and Mark Philp (Oxford University Press, 2015), 114.

reputation to add legitimacy to their own projects. Rosen’s explanation is especially relevant to the O’Connell chapter where the Irish leader demonstrated a clear pattern of shifting his priorities through circumstances and judgements, and this pattern determined his relationship with Bentham. Other major figures in this thesis took a similar pattern, and read Bentham through their own more ideological angles. The awareness of this division between philosophy and ideology when measuring the nature and extent of Bentham’s influence is Rosen’s contribution, and according to his own interpretation, this perspective is aimed to remedy the simplistic manner of employing the concept of “influence” in intellectual history, reflective in “the debates over Bentham’s influence on the Philosophic Radicals and on the Victorian revolution in government. Either one reads of the all-pervasive influence of Bentham or that he had little or no influence at all”.<sup>25</sup>

This thesis aspires to enrich Rosen’s method by placing the networks with which Bentham interacted in the recent historiography of “Enlightenment sociability”.<sup>26</sup> Bentham’s long life ensured that his own networks intersected with pre-existing networks within which other people moved. Before he moved in Lord Lansdowne’s circle where many Whigs shared optimistic and cosmopolitan ideas, Bentham had either corresponded with, or aspired to contact with leading Continental thinkers such as Voltaire. As Emmanuelle de Champs ably demonstrated, young Bentham was eagerly connecting himself with the prominent men of letters, and articulated his language of Enlightenment (utilitarianism) through comparisons in private networking.<sup>27</sup> This thesis continues to stress this associational dimension in which Bentham’s energy used networks to turn ideas into legislation rather than simply contributing philosophical ideas to a discourse of ideas. Although he failed in the dimension of institutional change, Bentham’s networking practice managed to sustain some Enlightenment social values—of cosmopolitanism and universality—in an age of revolution and

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<sup>25</sup> Fred Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought*, 14.

<sup>26</sup> Richard Bourke, “Edmund Burke and Enlightenment Sociability: Justice, Honour and the Principles of Government,” *History of Political Thought* 21, (2000), 632-656. Brian Cowan, “English Coffeehouses and French Salons: Rethinking Habermas, Gender and Sociability in Early Modern French and British Historiography,” in *Making space public in early modern Europe: performance, geography, privacy*, ed. Angela Vanhaelen and Joseph Ward (Routledge, 2013), 41-53. Eva Piirimäe & Alexander Schmidt, “Introduction: Between Morality and Anthropology—Sociability in Enlightenment Thought,” *History of European Ideas* 41, (2015), 571-588. Hans W. Blom, “Sociability and Hugo Grotius,” *History of European Ideas* 41, (2015), 589-604. Avi Lifschitz, “Genesis for Historians: Thomas Abbt on Biblical and Conjectural Accounts of Human Nature,” *History of European Ideas* 41, (2015), 605-618. Alexander Schmidt, “Unsociable Sociability and the Crisis of Natural Law: Michael Hissmann (1752-1784) on the State of Nature,” *History of European Ideas* 41, (2015), 619-639. Eva Piirimäe, “Philosophy, Sociability and Modern Patriotism: Young Herder between Rousseau and Abbt,” *History of European Ideas* 41, (2015), 640-661. Iain McDaniel, “Unsocial Sociability in the Scottish Enlightenment: Ferguson and Kames on War, Sociability and the Foundations of Patriotism,” *History of European Ideas* 41 (2015), 662-682. Michael Sonenscher, “Sociability, Perfectibility and the Intellectual Legacy of Jean-Jacques Rousseau,” *History of European Ideas* 41, (2015), 683-698. Valerie Capdeville and Alain Kerherve, ed., *British Sociability in the Long Eighteenth Century: Challenging the Anglo-French Connection* (Boydell Press, 2019). Sebastian Domsch and Mascha Hansen, ed., *British Sociability in the European Enlightenment: Cultural Practices and Personal Encounters* (Palgrave Macmillan, 2021).

<sup>27</sup> Emmanuelle de Champs, *Enlightenment and Utility: Bentham in French, Bentham in France*, 19-54.

world crisis, and helped to connect Britain and Europe with younger generation of reformers around *The Jurist*.

Enlightenment sociability is a definition that also follows from a close reading of Bentham's correspondence, and an analysis of his reactions when interlocutors gave promises, hopes, warnings, and rejections. From those letters, the most striking feature is Bentham's persistent optimism in marketing his ideas.<sup>28</sup> Although his immediate action after rejection was often combative, fomenting bitter resentment and seeking revenge, mostly he managed to calm himself down, and decided not to let his division with those potential utilitarian reformers be publicised and become irremediable, and instead, he looked for any positive sign to nudge them again. Therefore, not only through his publications, but also through his networks, "[t]he hopes of the Enlightenment for a rational basis for social organization, which seemed to have been dashed by the excesses of the French Revolution and the conservative reaction that followed, were kept alive".<sup>29</sup>

Bentham chose friends carefully, and applied utilitarianism in selecting friends with a hope of educating them to be the same radical and utilitarian as himself. This combination of philosophy and sociability suggests that Bentham was rooted in the "polite" world of the middle of the eighteenth century in a way that influenced his reform practice. He aspired to emulate his hero Voltaire to champion "a culture of preferment and ambition contributing to the advancement of politeness".<sup>30</sup> He envisioned a utilitarian society where reason would protect and encourage man's benevolent drives, and dissuade man's selfish and dangerous qualities. He was determined to sustain the optimistic sentiment that had been shared by nearly every Enlightenment mind in the middle of the eighteenth century, that human collaboration can create a perpetually peaceful and progressive society. He was encouraged by his friends, especially Dumont, that his philosophy was the right method.<sup>31</sup> Accordingly, he expected his correspondents such as Romilly, Peel, and O'Connell to be more serious than they actually were, and he was surprised by and frustrated at the extent to which his social status affected the reception of his ideas. The ability of Bentham's networks to achieve their goals was diminished by this: Bentham expected others to fully grasp the practicality of his

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<sup>28</sup> This personal trait enabled Bentham to acquire the reputation as a pre-eminent representative of the Enlightenment, and Benthamism "being the force against which the new 'philosophy of Restoration and Reaction has had to struggle continually with varying success'". Philip Schofield, "Jeremy Bentham," in *The Oxford Handbook of Legal History*, ed. Markus D. Dubber and Christopher Tomlins (Oxford University Press, 2018), 381.

<sup>29</sup> Ibid.

<sup>30</sup> Richard Bourke, "Edmund Burke and Enlightenment Sociability: Justice, Honour and the Principles of Government," 636.

<sup>31</sup> Richard Whatmore, "Etienne Dumont, the British Constitution, and the French Revolution," *The Historical Journal* 50, (2007), 23-47.

philosophy and not be distracted and misled by conservative notions and popular prejudices. His efforts were frustrated by the fact that others did not behave in this way.

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