Contending Interpretations of Bentham's Utilitarianism*

JAMES E. CRIMMINS *Huron College*
University of Western Ontario

There is a long-standing divergence between scholars of utilitarianism which centres on decidedly different interpretations of the thought of Jeremy Bentham (1748-1832).[1] No doubt the sheer wealth of material that constitutes Bentham's corpus encourages contending views of his thought. However, in large measure these interpretations result from the emphases placed by commentators on different writings and on different elements within his utilitarianism. At the risk of disservice to particular commentators, the dispute over Bentham's thought can be reduced to two schools of analysis—here labelled "authoritarian" and "individualist." Most contemporary commentators can be located within one or other of the two camps. The "authoritarian" school comprises commentators who stress illiberal tendencies in his thought. They tend to describe his general philosophy in terms of a principled or

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1 Though the terms of discussion have altered considerably in the decades since, the debate can be said to have originated in Elie Halévy's magisterial study, *The Growth of Philosophic Radicalism* [*La Formation du radicalisme philosophique*, 1901-4], trans. by M. Morris (1928; Clifton, N.J.: Augustus M. Kelley, 1972), esp. 17-18. Halévy outlined a tension in Bentham's utilitarianism between "the principle of the artificial identification of interests" and "the principle of the natural identity of interests."

James E. Crimmins, Department of Political Science, Huron College, University of Western Ontario, London, Ontario N6G 1H3. E-mail: jcrimmin@julian.uwo.ca

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structured interventionism rooted in the enlightenment project to construct rationally grounded institutions and policies to educate, condition and/or direct humankind to the end of optimizing personal and public well-being. Authoritarian interpreters include Douglas Long, J. R. Dinwiddy, L. J. Hume and Charles Bahmueller, each of whom emphasizes Bentham's legal positivism and associates it with the advocacy of statist or managerial solutions to particular social, economic and political problems.[2] For example, Long's wide-ranging discussion of the relationship between law and liberty in Bentham's theorizing brings to light the latter's early frustration with the concept of liberty. Displaying his general dissatisfaction with the contemporary political vocabulary, Bentham writes:

> Liberty . . . not being more fit than other words in some of the instances in which it has been used, and not so fit in others, the less the use that is made of it the better. I would no more use the word liberty in my conversation when I could get another that would answer the purpose, than I would brandy in my diet, if my physician did not order me: both cloud the understanding and inflame the passions.[3]

In accordance with the demands of utility and insofar as the law is concerned, liberty should be subordinated to the overriding consideration of security, since without the latter the former cannot be enjoyed. But if security is integral to utility maximization, then in Long's account, the creation of stable patterns of behaviour is required and this is achieved through discouraging antisocial activities by the imposition of sanctions and other manipulative devices—a view of law which is necessarily coercive and antithetical to liberty (understood in a strictly negative sense).[4] Bentham's perspective is primarily that of the legislator who devises policies directly aimed at maintaining and enhancing social well-being; individual liberty (without the guiding hand of the

2 Douglas G. Long, *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to His Utilitarianism* (Toronto: University of Toronto Press, 1977); Douglas G. Long, "Bentham on Property," in Thomas M. Flanagan and Anthony Parel, eds., *Theories of Property: Aristotle to the Present* (Waterloo: Wilfrid Laurier University Press, 1979), 221-54; J. R. Dinwiddy, "The Classical Economists and the Utilitarians," in E. K. Bramsted and K. J. Melhuish, eds., *Western Liberalism: A History in Documents from Locke to Croce* (London: Longmans, 1978), 12-25; L. J. Hume, *Bentham and Bureaucracy* (Cambridge: Cambridge University Press, 1981); and Charles F. Bahmueller, *The National Charity Company: Jeremy Bentham's Silent Revolution* (Berkeley: University of California Press, 1981).

3 Bentham MSS, UC 100/170 (ca. 1776), quoted in Long, *Bentham on Liberty*, 173.

4 UC 69/44 (ca.1774), cited in ibid.; see also Dinwiddy, "The Classical Economists," 21.

Abstract. This article illustrates the contours of the continuing debate over Bentham's utilitarianism through an analysis of the secondary literature. It assesses the persuasiveness of the principal contemporary "authoritarian" (despotic, totalitarian, collectivist, behaviouralist, constructivist, panopticist and paternalist) and "individualist" (facilitative and liberal) interpretations of Bentham's thought, indicating where they are consistent with his writings and where they are not. Distinctions and conflicts between contending perspectives are found to be rooted in a reliance on different elements of Bentham's vast corpus and emphasis on different components of his utilitarian theory. An examination of the contending perspectives underscores the tensions in Bentham's thought, including the most characteristic tension between, on the one hand, the axiomatic commitment to the individual and, on the other hand, the greatest happiness principle.

Résumé. Grâce à une analyse des oeuvres des commentateurs, cet article se penche sur les grandes lignes de la controverse qui poursuit au sujet de l'utilitarisme de Bentham. L'article évalue la force persuasive des principales interprétations contemporaines « autoritaires » (despotique, totalitaire, collectiviste, behavioriste, constructiviste, panopticiste, paternaliste) ainsi que les interprétations « individualistes » (facilitative, libérale) de la pensée de Bentham afin d'indiquer dans quelle mesure elles s'accordent avec ce qu'il a écrit. Les résultats de cette comparaison montrent que l'origine de ces distinctions et ces conflits se trouve dans la dépendance de chaque auteur sur des éléments différents du corpus énorme de Bentham et le choix de ne se concentrer que sur certains aspects entre tous ceux qui composent la théorie utilitaire. Cette analyse des perspectives divergentes souligne les tendances qui s'opposent dans la pensée de Bentham. Parmi ces tendances se trouve celle bien connue qui met en opposition d'une part l'engagement axiomatique envers l'individu et, d'autre part, le principe du plus grand bonheur du plus grand nombre.

legislator) is an unreliable agent for the production of happiness. Terms characteristic of this understanding of Bentham vary; in addition to authoritarian,[5] with varying degrees of anachronism and critical intent, his approach has been described as despotic,[6] totalitarian,[7] collectivist,[8]

5 David Paul Crook discerned "authoritarianism" in Bentham's proposals for the "powerful administrative departments" described in the *Constitutional Code*, "anticipating the positive state of the twentieth century" (*American Democracy in English Politics 1815-1850* [Oxford: Clarendon Press, 1965], 19-20); Bhikhu Parekh highlights the authoritarian character of Bentham's theory of law in "Bentham's Theory of Equality," *Political Studies* 18 (1970), 478-95; and John Riddoch Porter refers to the "dogmatically authoritarian" character of Bentham's pauper plan in *Society and Pauperism: English Ideas on Poor Relief, 1795-1834* (Toronto: University of Toronto Press, 1969), 109.

6 Pedro Schwartz, "Jeremy Bentham's Democratic Despotism," in R. D. Collison Black, ed., *Ideas in Economics* (London: Macmillan, 1986), 74-103.

7 Bahmueller, *The National Charity Company*; the totalitarian character of Bentham's "panopticism" has also been suggested by Gertrude Himmelfarb, "The Haunted House of Jeremy Bentham," in *Victorian Minds* (New York: Knopf, 1968), chap. 2; and D. J. Manning, *The Mind of Jeremy Bentham* (London: Longmans, 1968).

8 W. H. Greenleaf, *The British Political Tradition* (3 vols.; London: Methuen, 1983-1987), Vol. 1, 248. Mary Mack describes Bentham's political thought as "equalitarian state socialism," in *Jeremy Bentham: An Odyssey of Ideas, 1748-1792* (London: Heinemann, 1962), 299.

behaviouralist ("a cold-blooded, empirical social engineer"),[9] constructivist,[10] panopticist[11] and paternalist.[12]

Modern individualist interpreters of Bentham explain the meaning and place of "liberty" within his utilitarian theory in a manner quite different;[13] exponents include Fred Rosen, Lea Campos Boralevi, Allison Dube, Paul Kelly and, in certain ways, Gerald Postema.[14] They stress the individualist premises of his thought, pointing out that he intended laws to be modelled to facilitate individuals in the pursuit of happiness in ways they, rather than the legislator, deem appropriate. Thus, starting from Bentham's claim in a letter to a friend that "The definition of Liberty is one of the corner stones of my system: and one that I know not how to do without,"[15] Rosen describes Bentham's

9 Long, *Bentham on Liberty*, 33; see also chap. 13, esp. 216-17.

10 See F. A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (3 vols.; Chicago: University of Chicago Press, 1973-79), Vol. 1, 22, 74, 95; F. A. Hayek, "The Errors of Constructivism," in *New Studies in Philosophy, Politics, Economics and the History of Ideas* (Chicago: University of Chicago Press, 1978), 3-22; and Douglas G. Long, "Science and Secularization in Hume, Smith and Bentham," in James E. Crimmins, ed., *Religion, Secularization and Political Thought: Thomas Hobbes to J. S. Mill* (London: Routledge, 1990), 90-110.

11 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. by A. Sheridan (New York: Pantheon, 1979), chap. 3.

12 James E. Crimmins, "Religion, Utility and Politics: Bentham versus Paley," in Crimmins, ed., *Religion, Secularization and Political Thought*, 145.

13 In many respects, the descriptive terms employed by both schools of interpretation are anachronistic, including the terms "liberal" and "liberalism." The epithet "liberal" was used of a political movement for the first time in 1810 or 1811 when it was adopted by the Spanish party of Liberales—anticlerical members of the Cortes and their supporters who were in favour of liberty of the press (Greenleaf, *The British Political Tradition*, Vol. 2, 20). As Rosen tells us, the term "liberalism" gained ideological purchase in England only in the second quarter of the nineteenth century; see F. Rosen, *Bentham, Byron and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought* (Oxford: Clarendon Press, 1992), 5.

14 F. Rosen, *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code* (Oxford: Clarendon Press, 1983); F. Rosen, "The Origin of Liberal Utilitarianism: Jeremy Bentham and Liberty," in Richard Bellamy, ed., *Victorian Liberalism: Nineteenth-Century Political Thought and Practice* (London: Routledge, 1990), chap. 4; Lea Campos Boralevi, *Bentham and the Oppressed* (Berlin: Walter de Gruyter, 1984); P. J. Kelly, *Utilitarianism and Distributive Justice: Jeremy Bentham and the Civil Law* (Oxford: Clarendon Press, 1990); Allison Dube, *The Theme of Acquisitiveness in Bentham's Political Thought* (New York: Garland, 1991); and Gerald J. Postema, *Bentham and the Common Law Tradition* (1986; corrected ed.; New York: Clarendon Press, 1989).

15 Bentham to John Lind (March 27-28 to April 1, 1776), in *The Correspondence of Jeremy Bentham*, Vol. 1: *1752-1776*, ed. by T. L. S. Sprigge (2 vols.; London: Athlone Press, 1968), 311. The seeming contradiction with the quotation given above (from about the same date) disappears when it is considered that

understanding of individual liberty in both negative and positive terms, arguing that for Bentham (and for Locke) "the end of law" is "to *preserve and enlarge Freedom*."[16] This is the defining object of Bentham's legislative programme for the individualist school, and it is from this standpoint that liberal revisionist accounts are developed, usually through an exposition of his civil law or constitutional writings. From this perspective Bentham's utilitarian legal philosophy—including its interventionist dimensions—only makes sense if it is understood in indirect terms as the means to facilitating individual happiness. The utilitarian legislator is said to value liberty *because* it is essential to each person's happiness, and thus productive of the greatest happiness, and devises laws accordingly. Intervention is required when the preconditions for individual liberty are absent or impaired—most essentially, the security a person needs in order to act and to plan ahead based on a reasonable certainty that expectations will be fulfilled. As Rosen put it (in language similar to, but with a different intent from, Long's), Bentham "conceived of liberty in terms of security and made security the most important constituent of happiness and the main object of civil law."[17] More importantly for Rosen, on the larger canvas of constitutional theory, Bentham "was not concerned directly with maximizing happiness, but indirectly with providing security against misrule and hence freedom for individuals to maximize their own happiness."[18]

Which of these schools of analysis is correct? Or are they both guilty of what Quentin Skinner dubbed "the mythology of coherence," guilty of assuming coherence where it does not exist?[19] This is not an easily answered question. On the one hand, if Bentham was as systematic as he claimed then at least some of his disciples and interpreters of his work must either be mistaken in their understanding of his thought, or deliberately select only those elements which best serve their own rhetorical or ideological purposes.[20] On the other hand, given the vol-

Bentham's focus here is on the "*definition* of liberty," although individualist interpreters do not always appreciate the fact (see Dube, *The Theme of Acquisitiveness*, 311).

16 Rosen, *Bentham, Byron and Greece*, 25-26 (emphasis in original).

17 F. Rosen, "Elie Halévy and Bentham's Authoritarian Liberalism," *Enlightenment and Dissent* 6 (1987), 69.

18 Rosen, "The Origin of Liberal Utilitarianism," 60, 62. See also Rosen, *Bentham, Byron and Greece*, 4, 33-37, and for a discussion of "constitutional liberty" as "security" in Bentham's thought see the introduction more generally and chap. 2 of this work.

19 Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory* 8 (1969), 3-53.

20 Naturally, not all commentators accept that Bentham's thought is as systematic as he supposed. For example, in the context of Bentham's panopticon scheme, Letwin points to the adoption of means which lead to ends contrary to those

ume and range of Bentham's theoretical and practical writings, spanning an active intellectual career of some 60 years, and, despite the exhaustive pains he took to express his ideas clearly, it is entirely conceivable that coherence in the exposition and application of his utilitarian theory is not to be found. If this be true, it may explain why competing interpretations of his thought continue to be delineated and debated.

The Authoritarian View: Panopticism, Indirect Legislation, Political Economy

One issue that crystallizes the interpretive divide is the significance attached to the Benthamic injunction that each person should be left free to formulate and pursue "his" own interests. In this section I consider the authoritarian account by focusing on three areas of Bentham's writings which have an explicit bearing upon this issue: the panopticon papers and pauper proposals, the essay on "indirect legislation" and the tracts on political economy.

In the posthumously published *Deontology* (1834) Bentham put forth the proposition that "every man is a better judge of what is conducive to his own well-being than any other man can be." The point is reiterated a few pages later: "Every person is not only the most proper judge, but the only proper judge of what with reference to himself is pleasure."[21] The two statements are not necessarily reinforcing, since the first strikes a stronger antipaternalist note than the second; the latter avoids entirely the issue of what might be deemed "conducive" (the means) to enhancing well-being (the end). However, given that *Deontology* is a work devoted primarily to private ethics, John Dinwiddy feels justified in arguing that in the public realm Bentham's intentions were far different: if his writings "show a genuine tolerance of the variety of human tastes, and an awareness of the dangers of one man's presuming to decide what is good for another," it is also apparent that "his tolerance applied essentially to men's private as distinct from their social activities."[22] With regard to those aspects of activity which came

desired, see Shirley Robin Letwin, *The Pursuit of Certainty: David Hume, Jeremy Bentham, John Stuart Mill, Beatrice Webb* (Cambridge: Cambridge University Press, 1965), 188; and both W. H. Coates, "Benthamism, Laissez-faire and Collectivism," *Journal of the History of Ideas* 9 (1950), 357-63, and Greenleaf, *The British Political Tradition*, Vol. 1, note the conflicting "libertarian" and "collectivist" tendencies in Bentham's thought.

21 Jeremy Bentham, *Deontology together with a Table of the Springs of Action and the Article on Utilitarianism*, ed. by Amnon Goldworth (Oxford: Clarendon Press, 1983), 131, 150.

22 Dinwiddy, "The Classical Economists," 20; see also J. R. Dinwiddy, "Bentham on Private Ethics and the Principle of Utility," in *Radicalism and Reform in Britain, 1780-1850* (London: Hambledon Press, 1992), 315-38.

within the jurisdiction of the legislator, Bentham was prepared, in the interests of the greatest happiness of the greatest number, "to countenance a large degree of control and manipulation."[23] Toward this end, the utilitarian legislator "might influence, even 'dictate,' the judgements of public opinion by issuing political and moral codes; and . . . by these and other means to strengthen the moral sanction, the pressure exerted by public opinion in favour of behaviour which conformed to the requisite norms."[24] Above all, it was through education, a branch of the art of government, that the legislator could influence and direct people to pursue the greatest happiness, to derive pleasure from benevolence and be diverted from inclinations damaging to themselves and to others. In this respect, Dinwiddy made much of the conditioning process laid down for the young when Bentham adapted the panopticon prison plan for educational purposes, a process involving "relentless supervision and discipline." Anticipating objections on the grounds that his proposals "suppressed the 'liberal spirit and energy of a free citizen' and constructed 'a set of *machines* under the similitude of men,' Bentham could see no force in the objection." In a typical rhetorical flourish he replies, "Call them soldiers, call them monks, call them machines, so they were but happy ones, I should not care."[25]

In the same interpretive vein, Long and Bahmueller both argue that the panopticon-related poor law proposals reveal how little Bentham was prepared to leave to individuals—in at least one class of society—to decide for themselves where their "best" interests lay.[26] The "Pauper Kingdom" is a community in which "distribution"—the object of civil law—means forced redistribution of human productive capital itself, in which government means comprehensive control of every aspect of the lives of the deprived and destitute.[27] To give effect

23 Dinwiddy, "The Classical Economists," 20-21.

24 Ibid., 21. Dinwiddy's references are to Bentham's *Principles of Penal Law* and *The Book of Fallacies*, in *The Works of Jeremy Bentham, Published under the Superintendence of his Executor, John Bowring* (henceforth *Works*) (11 vols.; Edinburgh: William Tait, 1838-43), Vol. 1, 568, and Vol. 2, 424.

25 Dinwiddy, "The Classical Economists," 21, and Jeremy Bentham, *Panopticon: Or, The Inspection House* (1791), in *Works*, Vol. 4, 64 (emphasis in original).

26 On Bentham's panopticon—a penitentiary for "grinding rogues honest and idle men industrious" (*Works*, Vol. 4, 342), see Himmelfarb, "The Haunted House of Jeremy Bentham," chap. 2; L. J. Hume, "Bentham's Panopticon: An Administrative History," in two parts, *Historical Studies* 15 and 16 (1973-74), 703-21 and 36-54; and Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford: Clarendon Press, 1993). For critical accounts of Bentham's poor law proposals see Gertrude Himmelfarb, "Bentham's Utopia: The National Charity Company," *The Journal of British Studies* 10 (1970), 80-125, and Bahmueller, *The National Charity Company*.

27 Long, "Bentham on Property," 244.

to this plan, Bentham envisaged the National Charity Company operating 250 workhouses, equidistantly spaced throughout the country, each to be run as a profit-making enterprise established on the panopticon principles of contract management, the duty and interest-junction principle, self-sufficiency and inspection (it was in the manuscripts on poor law reform that Bentham elevated to a central principle of political practice the maxim that "the more strictly we are watched, the better we behave").[28] Utilitarianism for the poor and idle (a considerable number in the England of Bentham's day) was not, therefore, about providing institutions and a legal framework *within* which individuals can satisfy desires as they judge best. The desires of this section of the population were to be institutionally manufactured, controlled and directed; here the legislator and the contracted manager-entrepreneur are deemed the best judges of individual interests. In this way utility and its subordinate ends—subsistence, abundance, equality and security—determine that different sections of society receive different treatment from the legislator. Persons of property may be given security and liberty to augment their opulence, but under the regime of the panopticon the poor are maintained in a state of economic dependence and subjection. Liberty is exchanged for subsistence.

Clearly, the authoritarian view of Bentham's intentions in the panopticon and poor law proposals raises serious questions about the integrity of the injunction that, beyond the maintenance of the distribution of securities (constraints on other-regarding actions) by government, individuals should be taken to be the best judge of their own interest and the legislator ought not to interfere. Did Bentham consistently adhere to this position? Did he always assume the individual to be "a better judge," the "only proper judge" of his or her interests? The resistance of this issue to resolution is indicative of the problematic nature of trying to arrive at a simple categorization of Bentham, and invites the notion that substantial interventionist policies were clearly within the orbit of the Benthamic legislator.

In response, commentators who emphasize the individualist premises of Bentham's utilitarianism point out that the best-judge injunction is not restricted by him to matters of private morality, but also appears in the foundational text of his moral and legal theory, *An Introduction to the Principles of Morals and Legislation* (1789; henceforth *An Introduction*), and is reiterated in his survey of the field of economic theory and practice, the *Institute of Political Economy* (1801-1804), both of which have a strong "public" dimension.[29] However, their

28 UC 152b/332-333 (1797), quoted in Long, "Bentham on Property," 244; see also Bahmueller, *The National Charity Company*.

29 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. by J. H. Burns and H. L. A. Hart (1789; London: Athlone Press, 1970), 290,

attempt to justify the panopticon proposals in terms of the enhancement of the liberty of the inmates hardly does justice to the breadth and scale of Bentham's actual plans,[30] governing literally everything from the specifications of the management contract and the minutiae of the architecture of the buildings (including subsidiary panopticons and the metasylum), the rigorous work regime imposed on the inmates, their diet and other health considerations, the kind of machinery (invented by brother Samuel) that could be employed to enhance productivity in the workshops and in the harvesting of crops, right down to the identification tattoos and other schemes designed to keep newly released ex-convicts honest.[31]

Allison Dube has attempted a comprehensive account of Bentham's utilitarianism, including the various panopticon-related schemes, based on a "reconstruction of what he must have thought."[32] Several crucial axioms are involved in Dube's account: that liberty (viewed in terms of the security of expectations) is the "cornerstone" of Bentham's system, that there is no incompatibility between liberty so defined and utility, and that consistency demands "that maximum power and opportunity must be given to all individuals to define and pursue their goals."[33] The contentious nature of these axioms in the context of Bentham's thought is readily apparent when we consider that the notion of guaranteeing liberty to "all individuals" in the manner proposed ("maximum power and opportunity") places an extraordinary burden on the legislator. For Dube the task of the Benthamic legislator is to remove obstacles to "the individual's secure pursuit of his expectations."[34] Unfortunately, the evidence for this stripped-down

and Jeremy Bentham, *Method and Leading Features of an Institute of Political Economy*, in *Jeremy Bentham's Economic Writings: Critical Edition Based on His Printed Works and Unprinted Manuscripts*, ed. by W. Stark (3 vols.; London: Allen and Unwin, 1952-1954), Vol. 3, 333. See Allison Dube, "Hayek on Bentham," *Utilitas* 2 (1990), 12, and Dube, *The Theme of Acquisitiveness*, 345.

30 Jacobs concedes that the panopticon and poor law proposals are an aberration from the general "liberal" character of Bentham's thought, and suggests that they can be defended, at least in part, in terms of liberal principles. Unfortunately, he contents himself with rehearsing a list of specific liberal proposals in Bentham's writings, from which he uncritically concludes that "Bentham is most of the time in the liberal camp"; Bentham supported some state interventions in the economy, as did Adam Smith, "but these are qualifications of liberal economics, not a rejection of it" (Struan Jacobs, *Science and British Liberalism: Locke, Bentham, Mill and Popper* [Aldershot: Avebury, 1991], 90, 100, but see chap. 6 for the complete account).

31 See Semple, *Bentham's Prison*.

32 Dube, *The Theme of Acquisitiveness*, 121.

33 Ibid., 311, 120.

34 Ibid., 311, 146. Dube associates Bentham and Hayek more directly in the individualist camp of the liberal tradition when he states that for both "freedom in the economic sphere is inseparable from political freedom" (ibid., 250). For the full discussion see chaps. 5-7.

libertarian view is not persuasive. According to Dube, both "internal restraints" (underdeveloped motivational powers of expectation) and "external constraints" (limiting the opportunity for motion) can be remedied via the panopticon.[35] But granting that the panopticon is "a school of motion,"[36] who is it that decides on the desired response and what methods are to be used to facilitate the desirable outcome? Dube's error is to conflate well-intentioned interference, on the one hand, with liberty, on the other. Indeed, when Dube himself states that in the panopticon the individual was "in a situation where he was (blatantly) taken advantage of,"[37] we are entitled to enquire what else this could mean other than that individuals were coerced or stimulated to do something different (albeit for their own good) from that they would otherwise have chosen to do.[38]

It should also be said that if we project—and Dube intends that we should—this liberal understanding of the nature of Bentham's panopticism onto the general character of his theory of legislation, the purported function of legislation takes on a meaning foreign to the common understanding of Bentham's view of the nature of law (commands of the sovereign, supported by sanctions, antithetical to individual liberty). On Dube's (and Rosen's) account,[39] one of the functions of law is individual liberation and hence moral development, a view most often associated with the later anti-utilitarian idealists Green, Bradley and Bosanquet. But this understanding does not sit well with *An Introduction*, in which Bentham states the individualist premises of his system but also specifies that "the art of legislation . . . teaches how a multitude of men, composing a community, may be disposed to pursue that course which upon the whole is the most conducive to the happiness of the whole community, *by means of motives to be applied by the legislator*."[40] The later *Institute of Political Economy* is even more strident on this point: "That the uncoerced and unenlightened propensities and powers of individuals are not adequate to the end without the control and guidance of the legislator is a matter of fact of which the evidence of history, the nature of man, and the existence of political

35 Ibid., 315.
36 Ibid., 316.
37 Ibid., 333.
38 Other difficulties attend Dube's "reconstruction," not the least of which is the suggestion that those who do not recognize that their individual interests are enhanced by pursuing the greatest happiness are in error in calculating their individual interest (ibid., 197), even though he uncritically quotes Bentham to the effect that the individual alone is in a position to estimate what is and what is not in his own interest (ibid., 213).
39 See Rosen, *Bentham, Byron and Greece*, 25-26.
40 Bentham, *An Introduction*, 293 (emphasis added).

society are so many proofs."[41] At the very least this would seem to indicate a tension between the effort to create the conditions in which individual rational judgment is given full scope, and the emphasis on expanding the role of the legislator in changing the social environment within which individuals function.[42] Acknowledging that these are the tasks of the legislator signifies the vast potential for legislation to shape the circumstances in which individuals make their choices.

Janet Semple sought to come to terms with this dichotomy in her study of the panopticon. She discerned a substantial difference between Bentham's model of the "rational utilitarian man" and his understanding of the criminal mind and other antisocial behaviour; the first underpins his theory of democracy, the second leads him to "the ideology of the penitentiary."[43] Semple observes that "the inmate of the panopticon is deprived of choice, indeed in the pauper panopticons brought up in the [*sic*] ignorance of the outside world, deliberately deprived of the knowledge that would enable him to make a rational choice in accord with his own interest."[44] Moreover, if Bentham had "security" in mind in detailing the regimen of panopticon life and the procedures governing the discharge of convicts, it was securing the public from delinquent behaviour via "the creation of a web of regulation to ensnare the ex-convict and his family in a world of servitude; where, although their subsistence would have been guaranteed, almost all liberty of choice would have been lost."[45]

At the same time, Semple is at pains to debunk Foucault's enormously influential reading of Bentham's utopian "laboratory of power," which he depicts as the forerunner of the contemporary sinister surveillance society.[46] Reasonably enough, Semple prefers to contextualize the humanitarian elements of Bentham's recommendations, treating the panopticon both as an event in penal and political history and as an intriguing feature of Bentham's general philosophy.[47] In contrast with the cesspits of the existing gaols and hulks and the horrific and irresponsible experiment with the penal colony at Botany Bay, Bentham's prisoners were to be kept clean and their labour was to be productive, profitable and serve to develop skills that might be useful to them upon release. But Semple is not content to let the matter rest there. "If a component of justice is security of expectations," she argues, then within this definition Bentham committed no injustice, but

41 Bentham, *Jeremy Bentham's Economic Writings*, Vol. 3, 311.
42 See Postema, *Bentham and the Common Law Tradition*, 167.
43 Semple, *Bentham's Prison*, 152.
44 Ibid., 153.
45 Ibid., 175.
46 Foucault, *Discipline and Punish*, 204.
47 Janet Semple, "Foucault and Bentham: A Defence of Panopticism," *Utilitas* 4 (1992), 105-20.

rather could be said to have proposed schemes designed to satisfy the (admittedly low) expectations of discharged prisoners and others "caught up in the brutal and capricious web of the eighteenth-century system which created the framework of expectation for those on the margins of society."[48]

Did Bentham intend the panopticon writings to be read this way? In part, yes, but not to the extent of obscuring the main thrust of his penal thought. As Semple's own study shows, he clearly accepted one of the cardinal tenets of contemporary theories of punishment: that being deprived of choice is a defensible part of the prisoner's lot. Moreover, considerations of utility demanded that the industry of the inmate be maximized by the entrepreneur-governor of the panopticon, whose interest it was to make a profit from his control over those in his charge, a situation in which the liberty of the one is sacrificed to the liberty of the other.[49] Notwithstanding Bentham's genuine concerns for the future livelihood of released prisoners, it is not convincing to suggest that concern for their liberty (the security of their expectations) was fundamental to the panopticon project. The panopticon is thoroughly consistent with the utilitarian objective of maximizing utilities; it is not compatible with the attempt to reconcile efficacious punishment with the objective of maximizing of freedom.[50]

Bentham's theory of "indirect" legislation is especially significant in this context.[51] As we know, Bentham conceived the panopticon as an educational as well as a penal institution, designed not merely to restrain but to transform the inmates; in this respect it was a "new mode of obtaining power of mind over mind."[52] Ultimately, the goal was the eradication of criminal urges, such that prevention of crime replaced punishment.[53] Here we see the core element of what Bentham

48 Ibid., 315.

49 For example, ibid., 157.

50 Perhaps David Lieberman strikes the appropriate discordant note when he observes that Bentham's panopticon "was a society in which his basic legislative strategy was inoperable" (David Lieberman, "From Bentham to Benthamism," *The Historical Journal* 28 [1985], 214).

51 Bentham's essays "On the Influence of Time and Place in Matters of Legislation" and "Of Indirect Legislation" have been edited by C. Bahmueller and H. Weiting, Jr., for *The Collected Works of Jeremy Bentham* (Oxford, forthcoming). There is an incomplete essay on the subject "Of Indirect Means of Preventing Crimes" included as part 3 of Bentham's *Principles of Penal Law*, in *Works*, Vol. 1, 533-80. For a discussion see Long, *Bentham on Liberty*, 136ff; pp. 142-45 focus on indirect checks on the unwarranted interference by government in the lives of law-abiding citizens, such as freedom of the press and freedom of association.

52 Bentham, *Panopticon*, in *Works*, Vol. 4, 39.

53 See the mss. quotation to this effect in Charles Warren Everett, *The Education of Jeremy Bentham* (New York: Columbia University Press, 1931), 190-91.

termed "indirect" or 'transcendental" legislation. Direct legislation, involving the penalties for actions deemed unacceptable, was to be supplemented by a more subtle and complex form of indirect legislation, designed not only to tell individuals what they should not do, but also to provide them with motives (pleasures and pains in prospect) sufficient to divert their desires into channels deemed appropriate by the utilitarian legislator. Such laws, he explained, would infuse themselves, so to speak, into the minds of the people: "they would form part of the logic of the people; they would extend their influence over their moral nature: the code of public opinion would be formed by analogy upon the code of laws, and all obedience to the laws would come to be hardly distinguishable from the feeling of liberty."[54] It is in this way that Bentham perceives rationally constituted utilitarian government educating its citizens to make more effective choices, or at least directing them into more appropriate paths to achieve their goals. In other words, conditions were to be fashioned in which individuals could maximize happiness more effectively than if left to their own unaided devices, thereby maximizing the general happiness of the community.

The essay "Of Indirect Means of Preventing Crimes," based on manuscripts written in the 1780s,[55] should be read in conjunction with Bentham's penal writings of the same period. It is replete with examples of how individuals might be turned, often unwittingly, into agents of the public interest. Bentham laid down 12 "indirect" legislative directives, the general intent of which was to thwart the will to commit crimes. The list includes:

> To divert the course of dangerous desires, and direct the inclination towards those amusements which are most conformed [*sic*] to the public interest. . . .
>
> To augment the responsibility of individuals, in proportion as they are more exposed to temptation.
>
> To diminish their sensibility with regard to temptation.
>
> To strengthen the impression of punishments upon the imagination.[56]

Paternalist language permeates these recommendations: direction, conformity, augmentation of responsibility, diminishing of sensibility, strengthening impressions. Needless to say, public security may be invoked to justify them. But after devoting short chapters to ways in which they might be best instituted, Bentham moved on to suggest other indirect avenues of maximizing the public interest, including the cultivation of benevolence and honour, the utilization of the otherwise anti-utilitarian motive of religion in the public interest, the uses which

54 Bentham, "An Essay on the Promulgation of Laws," in *Works*, Vol. 1, 161.
55 Bentham, "Of Indirect Means of Preventing Crimes," 533-80.
56 Ibid., 539.

may be made of instruction and education and the value to government of encouraging anonymous informers.[57] Once again, it seems, not everyone is allowed to define what is or is not in their own interest. Those who fall into this bracket—whether they be delinquent, juvenile or indigent—have no choice; their liberty is limited so that their happiness, and more especially the happiness of others, is enhanced. In terms of social justice, the legislator may be warranted in remedying the "internal" restraints on the "individual's capacity for motion,"[58] when, for instance, the sanctions of religion impose ascetic modes of behaviour, but it cannot be said (even in the name of securing expectations) that individuals are free in this process.

One element of Bentham's substantial corpus which has conventionally posed a problem for the authoritarian school (and, conversely, bolstered the position taken by his individualist disciples and interpreters) is his series of tracts on political economy. In the lengthy introductions to each of the three volumes of the modern edition of *Jeremy Bentham's Economic Writings*, Werner Stark elaborates a view of Bentham as a classical "economic liberal" and, with few exceptions, this interpretation seems to be borne out by the essays found in these volumes.[59] In the *Defence of Usury* (1787), Bentham argued against Adam Smith that rates of interest should not be regulated by government and, in the *Manual of Political Economy* (1793-1795) (his first attempt at a sustained treatment of economics) a chapter is devoted to reasons which make it unwise for government to interfere with economic life (especially trade). Here Bentham explicitly follows Smith in stating that "with respect to commerce, each individual is a better judge of his own interests than government can be for him."[60] A few years later, in the *Institute of Political Economy* (1801-1804), designed to fulfill the goal of the *Manual*, he advanced the view that "security" is the legislator's primary objective in the field of economic activity. The role of government should be restricted to offering rewards for inventions and advertising them, and to removing archaic legal obstacles in the way of enterprise; subsidies to encourage industry are opposed because they presuppose taxes, which are in themselves a "vice" to be avoided wherever possible. Finally, in *Observations on the Restrictive and Prohibitory Commercial System* (1821), Bentham argued against import duties designed to protect domestic industries.[61] In these tracts Stark

57 Ibid., 561-70, 573-74.

58 Dube puts this construction upon Bentham's intentions in the context of the panopticon proposals (*The Theme of Acquisitiveness*, 315).

59 Bentham, *Jeremy Bentham's Economic Writings*.

60 Jeremy Bentham, *Manual of Political Economy*, in *Works*, Vol. 3, 49 (not in the version in Bentham, *Jeremy Bentham's Economic Writings*, Vol. 1, 219-73).

61 Bentham, *Defence of Usury, Manual of Political Economy, Method and Leading Features of an Institute of Political Economy* and *Observations on the*

detects "a consistent liberal theory," and describes Bentham as "a confirmed votary of *laissez-faire*."[62]

The ostensible fly in the economic liberal ointment is *Defence of a Maximum* (1801),[63] where Bentham states (in a passage frequently quoted by those who stress the interventionist dimension) that it was not on principle that he opposed government interference in the normal workings of economic life:

> I have not, I never had, nor ever shall have, any horror, sentimental or anarchical, of the hand of government. I leave it to Adam Smith, and the champions of the rights of man (for confusion of ideas will jumble together the best and the worst citizens upon the best ground) to talk of invasions of natural liberty, and to give as a special argument against this or that law, an argument the effect of which would be to put a negative upon all laws. The interference of government, as often as in my humble view of the matter any the smallest ballance [?] on the side of advantage is the result, is an event I witness with altogether as much satisfaction as I should its forebearance [*sic*], and with much more than I should its negligence.[64]

Having said this, and without retracting the case he had previously made against state regulation set out in *Defence of Usury*,[65] Bentham argued that a government-maintained maximum price for corn is still justifiable. On the surface, this would appear to be a measure at variance with the supposedly liberal rectitude of his other contributions to the field of economics.

To understand *Defence of a Maximum* correctly it is necessary that the context and details of Bentham's approach be subjected to a closer examination than is sometimes conducted.[66] Prompted by the wartime dearth of provisions which had developed in England since mid-1799,[67] Bentham's objective in this tract was to ensure subsistence for the many and security to all, including corn growers and dealers who, so long as the price was set at an appropriate level, would not find

Restrictive and Prohibitory Commercial System, all in Bentham, *Jeremy Bentham's Economic Writings*, Vol. 1, 121-207, 219-73, and Vol. 3, 303-80, 381-417.

62 Ibid., editor's introduction, Vol. 1, 49, and Vol. 2, 8.

63 Ibid., Vol. 3, 247-302.

64 Ibid., 257-58.

65 Ibid., 258-59.

66 At least one economist has argued that in *Defence of a Maximum* Bentham returned to a version of mercantilism (T. W. Hutchison, "Bentham as an Economist," *Journal of Economics* 66 [1956], 288-306). For Stark's discussion of this essay see editor's introduction in Bentham, *Jeremy Bentham's Economic Writings*, Vol. 3, 30-37.

67 Ibid., 30.

their reasonable expectations thwarted.[68] Only those who would otherwise seek to gain a special advantage to the cost of the many—a situation entirely due to the scarcity of staples and the exigencies of wartime—would find their, presumably unreasonable, expectations frustrated. Bentham's position required that the price for corn be set slightly higher than the present highest asking price, thereby maintaining the expectations of corn growers and dealers while limiting the potential for runaway prices to put foodstuffs beyond the reach of the general public. The maximum price served as a public statement that in times of dearth, exploitation of the market was unacceptable if it undermined public confidence in the ability of the market mechanism to satisfy demand. In short, the unreasonable expectations of the few are sacrificed in the interest of general security, a position entirely consistent with the contemporaneous *Institute of Political Economy*.[69]

While this explication of Bentham's economic writings undoubtedly gives greater credence to the best-judge injunction, it is not necessarily at odds with the paternalist element recounted earlier; that utility dictated that different sections of society receive different treatment at the hands of the utilitarian legislator. Nevertheless, within this account of Bentham's economic liberalism we see the main thrust of a decidedly different perspective, an interpretation in which the objective of securing expectations redefines what Bentham meant by liberty. This is the key plank in the revisionist liberal view of his utilitarianism.

The Individualist View: The Subordinate Ends and Subsidiary Principles of Utility

From the perspective of both interpretive schools, government was to play a positive and not merely a passive or defensive role for Bentham in constructing a suitable environment for the pursuit of happiness. However, for authoritarians the calculation of public felicity leads to extensive legislative intervention of both direct and indirect kinds. It is usual for individualist interpreters of Bentham to counter that intervention of a minimal kind is justified in terms of individual liberty, meaning the securing of those expectations fundamental to a person's pur-

68 Parekh misses the point entirely when he writes: "The general import of his laissez-faire economic theory is that as long as no one in the community starves, *it does not matter to Bentham who owns how much*" ("Bentham's Theory of Equality," 492).

69 Editor's introduction in Bentham, *Jeremy Bentham's Economic Writings*, Vol. 3, 33. This understanding of *Defence of a Maximum* is reiterated by P. J. Kelly, "Utilitarianism and Distributive Justice: The Civil Law and the Foundations of Bentham's Economic Thought," *Utilitas* 1 (1989), 81 note.

suit and enjoyment of pleasure, but that there is no incompatibility between liberty (thus understood) and utility in Bentham's system.[70]

Paul Kelly has provided us with the best sustained construction of this revisionist position, including a restatement of Bentham's economic thought in liberal terms. He avoids describing him simplistically as an apostle of laissez-faire, but maintains that "there is still sufficient reason for describing Bentham's economic thought as liberal."[71] The paradox is explained by the insistence that he be considered a "neutralist liberal."[72] What is meant by this is that Bentham intended that the legislator should provide the conditions for the realization of individual conceptions of well-being, while refraining from making distinctions concerning the quality of various individuals' interests; he is neutral or impartial in relation to these interests. On this view, the principle of utility does not determine the pursuit of particular ends but, rather, provides the framework within which the maximum social well-being will be pursued through the free action of individual agents. This neutrality "encapsulates the spirit of liberalism" for Kelly,[73] but does not rule out intervention in the economy, even to the extent of supporting a mixed economy, so long as the individual's freedom to choose is maintained within reasonable limits set by the rule of law, including the maintenance of the economic order itself.

Drawing primarily on Bentham's civil law writings, including a valuable collection of unpublished manuscripts written sometime between the mid-1770s and mid-1780s,[74] Kelly develops this view into a meticulously argued account of Bentham's utilitarianism from the individualist perspective. He argues that the civil law writings show Bentham constructing a utilitarian theory of justice upon the twin foundations of (what he later called in writings of the 1820s) the "security-providing principle" and "the disappointment-preventing principle,"[75]

70 For example, Rosen, *Jeremy Bentham and Representative Democracy*, 55-75; Rosen, *Bentham, Byron and Greece*, 4; and Kelly, *Utilitarianism and Distributive Justice*, 71-103.

71 Ibid., 136; see also Kelly, "Utilitarianism and Distributive Justice."

72 Kelly, *Utilitarianism and Distributive Justice*, 106.

73 Ibid., 136.

74 UC 100/96-186. Other important manuscripts identified by Kelly, although written far later (in the 1820s), are UC 61/9-10, 19-21, 26-66, 83-97 and BL Add. MS 33550/48-144 (*Utilitarianism and Distributive Justice*, 73, note 8). The civil law manuscripts are also discussed by Long, *Bentham on Liberty*, chap. 10, where some of the same points are made about the relationship between the principle of utility and its subordinate principles as one finds in Kelly.

75 The "disappointment-preventing principle" first appeared in "A Commentary on Mr. Humphrey's Real Property Code" (1826), in *Works*, Vol. 5, 387-416, and later in the *Constitutional Code*, the "Article on Utilitarianism" (a revised version appears in *Deontology*), manuscripts incorporated into "Pannomial Fragments," in *Works*, Vol. 3, 211-30, and the *Equity Dispatch Court Proposal*

by means of which the legislator was to bring about the overall end of maximum social well-being. The use of these two principles enabled Bentham to reconcile the reformist implications of his utilitarianism with an indirect utilitarian strategy founded on the primacy of securing expectations.[76] It is in the early civil law writings, therefore, and not the conventionally touted *An Introduction*, says Kelly, that we are to look for "the true character" of Bentham's utilitarian moral theory.[77] Only then is it apparent that Bentham's utilitarianism "embodied a theory of distributive justice [that] enabled him to take seriously liberal values such as liberty, equality, and independence," and this provides good reason for "a revisionist interpretation of Bentham's moral theory."[78]

As with other recent liberal interpreters (notably Campos Boralevi, Postema and Dube), Kelly challenges Long's emphasis on the "illiberal" notions of control and constraint: "The whole of Long's argument is based on this view of Bentham's legislative project as an attempt to mould the individual personality by means of law."[79] Kelly's alternative approach to the relationship between law and liberty follows Postema's explication of Bentham's legal theory as "facilitative," the notion of law as setting the conditions within which individuals can exercise their own judgment and pursue their own self-defined interests.[80] The maximization of well-being is achieved by extending to each agent as wide a sphere of personal inviolability as possible; this necessitates a secure framework within which agents can form and pursue their interests relatively free from the interference of others. It is in this manner that Bentham solves the distributive problem, that is by offering "a utilitarian principle of right which determines a realm of security in which an agent is able to exercise the widest possible freedom that is compatible with the same security for others."[81] This is the

(1830), in ibid., 297-317. In the latter, Bentham refers to "the *Disappointment preventive*, or say *Non-disappointment principle*" which, he says, "next to the *Greatest Happiness* principle . . . is the immediate lineal descendent of that same parent principle" (ibid., 312, quoted by Dube, *The Theme of Acquisitiveness*, 146). Kelly's references for the "security-providing principle" are UC 61/47 (1828) and BL Add. MS 33550/55 (*Utilitarianism and Distributive Justice*, 174-75, 138, note 5).

76 Kelly, *Utilitarianism and Distributive Justice*, 171; see also Rosen, *Jeremy Bentham and Representative Democracy*, 15. Postema discusses the disappointment-preventing principle in the context of Bentham's mature theory of adjudication (*Bentham and the Common Law Tradition*, 413-21).

77 Kelly, *Utilitarianism and Distributive Justice*, 39.

78 Ibid., 7.

79 Ibid., 96.

80 See Postema, *Bentham and the Common Law Tradition*, 147-90.

81 Kelly, *Utilitarianism and Distributive Justice*, 93.

"ideal" objective of Bentham's theory of justice. Kelly quotes Bentham from the *Principles of the Civil Code* to this effect:

> The Legislator is not the master of the dispositions of the human heart: he is only their interpreter and their servant. The goodness of his laws depends upon their conformity to the general *expectation*. It is highly necessary, therefore for him rightly to understand the direction of this expectation, for the purpose of acting in concert with it.[82]

Beyond this, insofar as social well-being depends on the provision of subsistence, Kelly argues that this too is best secured through the provision of security of expectation "because this enables each individual to secure his own subsistence through productive labour." In the case of those who ("as a result of structural disadvantages") are unable to so provide for themselves "the legislator must guarantee the provision of the means of subsistence," since only on the basis of continued existence can interest formation and realization take place.[83] Though Bentham never expressed himself in these terms, Kelly has in mind here the beneficiaries of Bentham's pauper proposals, arguing that this enables us to see how Bentham could consistently adopt positions that are described as "collectivist" while maintaining "a substantial commitment to economic liberty."[84]

Kelly's liberal version of Bentham echoes those of David Crossley, Lea Campos Boralevi and others, who argue that implicit in his utilitarianism is a theory of entitlements which he could—if not for his abject horror at the progress of the French Revolution and the Terror which he saw as following from the language of the Declaration of Rights—have described in terms of rights rather than strictly in terms of security.[85] As we have seen, Kelly interprets "security" as entailing a "principle of right"; Crossley insists that Bentham's utilitarianism implies an "immunity-right" to having one's interests ignored;[86] and Campos Boralevi similarly argues that implicit in Bentham's argument is an unconscious dependence on nonconventional rights. The security lacked by the oppressed (women, religious and sexual nonconformists, the indigent, native peoples, slaves and animals), writes Campos Boralevi, "can almost always be translated into concepts belonging to natural rights theory, and sometimes can be explained properly only in

82 Jeremy Bentham, *Principles of the Civil Code*, in *Works*, Vol. 1, 322, quoted by Kelly, *Utilitarianism and Distributive Justice*, 95 (emphasis in original).
83 Ibid. 8.
84 Ibid., 10.
85 Ibid., 56.
86 David J. Crossley, "Utilitarianism, Rights and Equality," *Utilitas* 2 (1990), 53.

those terms, that is, in terms of liberty—positive and negative—and of moral rights."[87]

We might question the ease with which these commentators bypass the apparent logic of Bentham's dismissal of all intuitive and natural law theories of morality stated long before the French Revolution.[88] Even so, despite his well-documented distaste for the language of natural rights, in a certain sense there does appear to be something in his theory anterior to the felicific calculus that ensures that each person's interests are taken into account. Just as the "public" is constituted of individuals, so the happiness of each individual is the appropriate focus for the utilitarian legislator. As Bentham put it in an unpublished passage of his civil law writings, "one individual is as large a portion of the public as another individual: and the happiness of the one as much a portion of the happiness of the public as the happiness of the other."[89] In the literature on utilitarianism this is usually rendered in the form "each person is to count for one and nobody for more than one," and the substance of the dictum can be illustrated by Bentham's advice to legislators to take the negative effects of their policies on the happiness of individuals into account just as much as the positive effects.[90] According to Crossley, "the moral right Bentham's dictum expresses" is the person's right to have their interests taken seriously at all times.[91] On this view, the notion that utilitarianism is a theory defined strictly in terms of maximizing the good must be inadequate.

There are several problems that attend this view of Bentham's utilitarianism. First, even if we acknowledge that for Bentham there is no a priori reason why one person's pleasures should be deemed more valuable than any one else's and, therefore, *all* interests of *all* individuals should be considered (but not necessarily served) in calculating the

87 Campos Boralevi, *Bentham and the Oppressed*, 186.

88 Bentham printed most of *An Introduction* in 1780, but did not publish it until 1789; chapter 2 contains Bentham's dismissal of principles contrary to that of utility. Even earlier, in the "Preparatory Principles" manuscripts of the mid-1770s, Bentham had developed a sophisticated analysis of the "fictions" that bedeviled legal, political and philosophical understanding, and both *A Fragment on Government* (1776) and its parent text, the posthumously published *A Comment on the Commentaries*, illustrate this aversion. For a discussion see James E. Crimmins, *Secular Utilitarianism: Social Science and the Critique of Religion in the Thought of Jeremy Bentham* (Oxford: Clarendon Press, 1990), 40-52.

89 UC 100/179 (ca. 1776), quoted in Kelly, *Utilitarianism and Distributive Justice*, 179.

90 In Kelly's account this is what Bentham intended to achieve by what he came to call the "disappointment-preventing principle," but it might be queried how the utilitarian legislator could do otherwise than count costs as well as benefits when calculating general utility.

91 Crossley, "Utilitarianism, Rights and Equality," 53.

general interest, have we really said very much beyond, that is, stipulating that utility calculations must be comprehensive and carefully conducted? For a utilitarian to insist on an a priori commitment to entitlements and rights presumes either that each person is fully conscious of their own interests and fully informed of the means to maximize them, or utility maximization requires that individuals should be left free to pursue their own interests (so long as the basic freedoms of others are guaranteed) whether the individual really understands them or not. It is difficult to see the first proposition as having anything more than a tenuous hold in the experience of most societies and I cannot find Bentham giving expression to it at any point. The second proposition is clearly at odds with the aggregation goal of Bentham's theory, according to which entitlements and rights are determined by the principle of utility and not vice versa. Rights do not function as constraints on utility save where utility itself dictates that this should be the case (a circuitous way of stating the obvious).

Second, the critical dictum upon which so much rests when speaking of an immunity right or a prior entitlement—that each person is to count for one and nobody for more than one—is not Bentham's but rather a particular feature of the utility principle as J. S. Mill understood Bentham to mean it.[92] William Thomas reminds us that it was largely through Mill's sympathetic criticism that Victorian moralists became acquainted with Bentham's brand of utilitarianism (the impenetrable style of the latter having prevented his doctrines from being popularized by his own hand).[93] Since then, the dictum has assumed a central but undeserved role in our understanding of Bentham's thought, and is frequently employed to stress Bentham's liberal egalitarianism.[94] An extreme example of this can be seen in R. M. Hare's subversive analysis of the "utilitarian" character of Kant's moral thought. Hare argues that at the level of private ethics utilitarian calculations implicitly acknowledge that different and distinct persons are involved in most situations about which individuals have to make moral judgments. This means that consistent utilitarians would have to treat the

92 See J. S. Mill, *Utilitarianism*, in J. M. Robson, ed., *Essays on Ethics, Religion and Society*, Vol. 10 of *The Collected Works of John Stuart Mill* (Toronto: University of Toronto Press, 1969), 257. Mill may have imbibed the premise from his father, who frequently referred to it (see *James Mill: Political Writings*, ed. by Terence Ball [Cambridge: Cambridge University Press, 1992], editor's introduction, xxii).

93 William Thomas, *Mill*, in Q. Skinner, et al., eds., *Great Political Thinkers* (Oxford: Oxford University Press, 1992), 257.

94 For example, James Griffin, *Well-Being: Its Meaning, Measurement, and Importance* (Oxford: Oxford University Press, 1986), 168, 371 note. Among those who have dealt extensively with Bentham's moral theory, Baumgardt is one of the few to avoid reference to the dictum (David Baumgardt, *Bentham and the Ethics of Today* [New York: Princeton University Press, 1952]).

interests of different people affected by their actions as of equal importance and this, according to Hare, is to obey Bentham's injunction that "everybody is to count for one, nobody for more than one," to deny the force of Rawls's claim that in counting *only* interests and aggregating *across* persons to arrive at the appropriate policy the utilitarian fails to "take seriously" the distinction between persons,[95] and to assert the possibility that the perceived gap between Kant and utilitarianism is not as great as modern self-styled Kantians argue.[96] However, the problem with this reasoning is that it makes utilitarianism primarily a theory of equal consideration and, as Kymlicka rightly observes, this effectively relegates the aim of maximizing utility to the status of "a by-product, not the ultimate ground of the theory."[97] While this might seem to fulfill the interpretive goal of Bentham's liberal commentators, it raises concerns about the nature of the relationship between the principle of utility and liberty within his general utilitarian schema.

For example, Kelly's position requires that we understand Bentham's security principle as functioning much like the liberal conception of the rule of law, as an indispensable well-defined set of minimum guarantees. Dube as well as Kelly gives more than a hint that this is really the core of their understanding of Bentham's utilitarianism. But for this to work Kelly would have to insist, as I believe he is inclined to say, that a proper understanding of Bentham's utilitarian account of well-being incorporates *of necessity* a conception of individual liberty. What this means, in effect, is that when Bentham states that individuals are the best judge of their interests he thinks this is so not only because that person has more information than others, but because it is important that people choose for themselves what they want, that is, that the subjective component of well-being is an indispensable element of Bentham's theory.[98] In this view, an implicit

95 John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 27.

96 For the complete argument see R. M. Hare, "Could Kant Have Been a Utilitarian?" *Utilitas* 5 (1993), 1-16, esp. 4-5. Hare ignores the fact that Bentham's utilitarianism was developed primarily in the form of legal theory and as a guide for the legislative pursuit of general utility. Ideally, the moral reasoning of private individuals should coincide with the prescriptions of utility. Bentham's theory of human nature, however, was that of a psychological egoist; thus his utilitarianism required the active participation of the legislator in the production of general well-being. To what degree and at what cost is the central issue.

97 Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Clarendon Press, 1990), 34.

98 That individual autonomy is an essential component of human existence with a value of its own is central to Griffin's broadly conceived utilitarian account of "well-being" (Griffin, *Well-Being*, 67-68, 131, 144-45).

respect for individual autonomy provides a built-in check on paternalism, the legislator remains neutral between all other values and conceptions of the good life. While this would appear to put Kelly's interpretation on stronger ground, it raises the question of what to do in those cases where the exercise of individual liberty runs counter to considerations of utility. If we are unable to credit this dichotomy of principles at the heart of Bentham's utilitarian theory, then we may find all the more reason to say that Bentham had an objectivist conception of well-being within which the autonomy of persons is grounded in prior utility calculations. That is, as a matter of experience it has been shown that on balance and in many areas of social life individual liberty *is* generally the better means to maximize utilities, but that it remains within the mandate of the utilitarian legislator to determine authoritatively when and to what extent individual liberty is acceptable according to the felicific calculus. Hence David Lyons (in a review of Kelly's book) asks: Is it possible that, when Bentham refers to

> "the security-providing principle," he is in fact referring, not to a distinct principle, ... but only to the claim that certain values [security, subsistence, equality and abundance] must be provided by legal institutions because they are overwhelmingly important to the promotion of human well-being?[99]

In other words, a measure of security is required for well-being. So be it (this is also true of the other subordinate ends of utility—subsistence, equality and abundance), but how much well-being, and for whom, has to be decided in terms of the utility principle itself. Here the legislator may not be merely facilitating individual activity, but rather may be engaged in a complex utilitarian calculation. Lyons' point is that there is no requirement that security (or liberty) be granted a privileged status in the calculation, if what is meant by this is that utility is subordinate to other values in the calculation. No more than this is required, for instance, to account adequately for Bentham's reliance on relatively unconstrained individual economic activity as the norm for maximizing individual and general utilities. Save where deviant or delinquent behaviour or times of exigency dictate differently, experience suggests that a relatively unrestrained market place can generally be relied upon to maximize utilities.

As with the security-providing principle, so it is with the disappointment-preventing principle. According to Bentham, existing rights and sinecures are sources of utility to their holders, even though they provide conditions in which "sinister" interests flourish contrary to the public good. In order to advance reform in this area, the interests of

99 David Lyons, "Bentham, Utilitarianism, and Distribution," *Utilitas* 4 (1992), 325.

place-holders should be respected and their losses compensated for in a manner sufficient to outweigh the disappointment arising from the violation of those expectations derived from the sinecures and offices they occupy.[100] But the decision as to whether to abolish a position and to what degree compensation is owed depends upon a prior calculation by the legislator as to what is in the best interests of the community. How is this possible if, as Kelly says, the primary object of the legislator is to develop rules within which individuals decide for themselves what is in their own interest?

Finally, Kelly's analysis of Bentham's approach harbours an unresolved contradiction between the reformist ideal of general security based on a theory of entitlements, and a seemingly unshakeable commitment to the established pattern of expectations (especially the maintenance of an economic order in which individuals are "free" to negotiate and contract their services, to supply and consume goods virtually as they see fit).[101] According to Kelly, expectations are either to be safeguarded or adequately compensated when unavoidably thwarted by government reform. However, it is not easy to see what determines when one or the other—the ideal or the status quo—should take precedence at any given juncture, *unless* the outcome is to be determined by utility. And, if the latter is the case, then the principles of security-providing and disappointment-preventing can only function in the capacity of secondary rules governing policy formation, the resort to which is dependent on prior calculations of utility. Such a conclusion finds support in the pages of *An Introduction*: when Bentham discussed the promotion of interests he did not restrict the possibilities for legislative intervention; the limits are defined by the possibility of maximizing social good, not by the other principles that Kelly relies upon to explain the operative conditions of Bentham's utility principle. Naturally, this is to reinstate *An Introduction* as the principal defining text of Bentham's utilitarianism (rather than the civil law writings or *Constitutional Code* preferred by his liberal interpreters). But it is perhaps needless to add that it was in this work that Bentham first suggested how the felicific calculus could provide the utilitarian legislator with the essential scientific platform for policies of utility maximization.

100 Kelly cites UC 100/186 (ca. 1776), *Utilitarianism and Distributive Justice*, 188, but acknowledges that most of the discussion of this principle occurs in the context of Bentham's later writings on constitutional reform.

101 At one point Kelly suggests that the earlier civil law mss. (UC 100/96-186) reveal that Bentham was not as committed to the absolute protection of any given distribution of property as some passages from the *Principles of the Civil Code* might suggest (see, for example, *Works*, Vol. 1, 311, cited by Kelly, *Utilitarianism and Distributive Justice*, 180).

Conclusion: Utilitarianism and Liberal Democracy

It is reasonable to conclude that despite the individualist premises of Bentham's general legal theory, a managerial theory of government was an important element of his utilitarianism. While advocates of the individualist view tend to explain this interventionism in terms of the subordinate ends and subsidiary principles of his basic utilitarian theory, it is far from clear that it was in fact shaped by such considerations. Acknowledging that Bentham frequently grounded his policy prescriptions in a direct calculation of the public interest does not mean that he was unmindful of the consequences for individuals within the communities in question—whether it be a prison, poor house, school or a broader social grouping—and, with certain exceptions, he expressed implicit faith in the unfettered operations of the market to supply economic needs and to enhance prosperity. If I am right about this, then it seems prudent not to force the issue. It is simply the case that tensions exist within Bentham's work, not the least of which attends the relationship between the principle of utility and its subordinate ends and subsidiary principles, and this encourages contending interpretations. Indeed, a telling point of contrast is the very different sources from which the interpretations discussed here are constructed. For example, while Long makes extensive use of Bentham's early metaphysical writings in which he sought to clarify the fundamental principles of his legal theory, Kelly takes the civil law writings to be definitive; and if Dinwiddy focuses on Bentham's division between private and public ethics to highlight his distinctive approach in these areas, Rosen interprets Bentham through the prism of the *Constitutional Code*. However, taking his writings as a whole (and leaving anachronistic language aside) it is difficult to argue away the aggregate utilitarian emphasis of Bentham's theory. To understate this is to distort his understanding of the practical functioning of the utility principle as a guide to personal action and public policy. Simply put, we can say that Bentham took the constitutive elements of his utilitarianism seriously (including security and expectation utilities), but the aggregate goal of maximizing utility remained the determining factor in policy formation.

In granting this it would be precipitous to concede too much to the compatibility of Bentham's arguments, and Skinner's caution about "the mythology of coherence" should be kept in mind. Bentham frequently showed himself willing to intervene in the affairs of large numbers of the state's citizens, but we also find in his writings plentiful expressions of liberal and democratic sentiments.[102] Individuals could

102 For example, *Plan of Parliamentary Reform* (1818), *Radical Reform Bill* (1819) and *Radicalism Not Dangerous* (written 1819-20), in *Works*, Vol. 3, 433-622; see also note 101 above.

be economically autonomous because this essentially meant the freedom to prosper for the educated and propertied. Conversely, he recommended very different treatment for paupers, criminals and social deviants. In this regard, and despite the obviously progressive and humane features of his reformist programme, Bentham was still a creature of his historical context, as much reflecting the contradictions of the nascent liberalism of his time as he was intent on shaping and directing the path of reform. When, in the 1810s and 1820s, Whig and other reformers argued for a general social and political liberalization (religious toleration, the humanization of the criminal code, the freedom of association and expression and the relaxation of the punitive laws against the press) and agitated for the democratization of political institutions, not a few betrayed their fears of the demos by stopping short of full and equal suffrage. Utilitarians were no exception: literacy qualifications (Bentham), property restrictions (James Mill) and other such schemes, were so many ways by which to eradicate or to temper the unpredictability of a mass electorate. J. S. Mill's later preference for plural voting grew out of his concerns for the individual in an unrestrained and ill-educated democratic polity; his fear of "the tyranny of the majority" went beyond the voting muscle of the mob to focus on the relentless insinuated demand that opinions across social questions conform to the orthodox view. Bentham's ambivalence was never illustrated or expressed in quite so subtle a fashion. In still unpublished writings of 1788-1790 he worked out in specific detail and employing classical utilitarian arguments the case for democratic institutions, including votes for women on a universal and equal basis to men.[103] When the French Terror pushed Pitt into unleashing a terror of his own in England, Bentham prudently suppressed the work to devote his attention to other reformist projects, and it was to be another 25 years before he became fully convinced that the democratization of English institutions *necessarily* had to precede reforms in other areas. Even then, however, we find him following this with a decade or more of voluminous writings on constitutional matters, in which the complex administrative machinery of the reformed state was constructed so as to harmonize with a range of strategies designed to provide both securities against the misrule of governors *and* a properly informed, educated and supervised electorate.

Ultimately, try as he might, Bentham could not devise the means to ensure that democracy and utility would walk hand in hand. As modern liberal democracies have discovered, liberal principles frequently

103 Unpublished papers, dated 1788-90; UC 170/87-121, 126/8-16, 126/1-7 and 127/6-19, respectively. For a discussion see James E. Crimmins, "Bentham's Political Radicalism Reexamined," *Journal of the History of Ideas* 55 (1994), 259-81.

facilitate the organization of partial interests more effectively than they facilitate the pursuit of individual interests.[104] And where "sinister" interests cannot be kept off the legislative agenda they pose a challenge both to general utility and to liberty. Nineteenth-century liberals wrestled with the conundrum: how far could democratization go without trampling underfoot the liberty of the middle classes? The uncertainty of the response is amply illustrated in Bentham, and it should not surprise us that disciples could draw strikingly different messages from his writings. Dicey was one of the few nineteenth-century liberals who understood that both "individualist" and "collectivist" conclusions could be derived from Bentham's utilitarianism, but the purpose of his analysis was ideological not theoretical. He bemoaned certain aspects of the dramatic increase in government interference in nineteenth-century England but, on the whole, thought intervention to be justifiably aimed at creating and securing those conditions necessary for economic liberalism to thrive. Where it was not acceptable, Dicey could accuse utilitarians of inadvertently forging the weapons of socialist collectivism, but claimed this was a distortion of Bentham and not truly characteristic of his philosophy.[105] I trust I have said enough to question the accuracy of this assessment and to show what is at stake in the continuing debate over Bentham's bones and over his place within the liberal tradition.

104 A point well made by M. H. James, "Public Interest and Majority Rule in Bentham's Democratic Theory," *Political Theory* 9 (1981), 56-61.

105 A. V. Dicey, *Lectures on the Relationship Between Law and Public Opinion in England During the Nineteenth Century* (1905; 2nd ed.; London: Macmillan, 1914), 128-29, 131, 310.