Bentham, Modernity and the Nineteenth Century Revolution in Government

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1. Introduction

Albert Venn Dicey has described the mid-nineteenth century, especially the years from 1830 to 1865 or 1870(1), as “the period of Benthamism or Individualism.”(2) Citing the judgment of Bentham’s contemporaries as to his genius and influence,(3) Dicey did not hesitate to declare that “Bentham was primarily neither a utilitarian moralist nor a philanthropist: he was a legal philosopher and a reformer of the law. … These labours[to remodel the law of England in accordance with utilitarian principles] were crowned by extraordinary success, though the success was most manifest after the end of Bentham’s life.”(4) This kind of assessment of Bentham, and definition of what is called the nineteenth century revolution(5) in government came under fierce fire from some professional

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(1) In this account, the first period of the nineteenth century up to 1825 or 1830 was the era of Old Toryism, legislative quiescence dominated by Sir William Blackstone; and the third period from 1865 or 1870 was the era of collectivism. A. V. Dicey, Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century(London, 1924), passim. (Hereafter quoted as Dicey, Law and Public Opinion). H. Parris pointed out that this periodization had a serious defect in its objectivity and credibility. See H. Parris, “The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised”, 3 Historical Journal (1960), pp. 23-26.


(3) He cited Brougham’s Speeches, ii. pp. 287, 288. “The age of law reform and the age of Jeremy Bentham are one and the same. He is the father of the most important of all the branches of reform, the leading and ruling department of human improvement.” A. V. Dicey, Law and Public Opinion, pp. 126-127.

(4) Ibid., p. 127(Emphasis added).

(5) The term “revolution” appears to have caused some negative reactions. In this context, it should be noted that the term has been and will be used in its broad meaning so that there may be no problem in replacing it with a more moderate word like “reform”. See S. Conway, “Bentham and the Nineteenth-Century Revolution in Government”, R. Bellamy ed., Victorian Liberalism—Nineteenth Century Political Thoughts and Practice(London, 1990), ch. 5, pp. 71-72. For a nervous reaction to
historians between the late 1950s and early 1970s\(^6\), even though it is not difficult to find moderate advocates for traditional views against this trend.\(^7\)

The immediate question was whether there was in this period a revolution in the sense of a fundamental challenge to the established constitutional and governmental arrangements. Some commentators argue that there was no sudden spurt of growth in public expenditure, no rapid expansion of the function of the state. Some historians have shown their sympathy to the conservative view in which the lack of radical discontinuities in modern British history and the relative unimportance of industrialisation in transforming Britain in the nineteenth century were to be emphasised. But there can be little doubt that significant qualitative reforms were accomplished about 1830. In the wake of political reforms, government gradually took greater initiative in legislation and the apparatus of the state started to be transformed from an arbitrary, inefficient, irrational, premodern form of rule to a law-based, efficient, rational, modern one. Yet it is important not to exaggerate this trend. A unitary interpretation of society or state should be avoided.\(^8\)

Still, "the main debate has not been about the validity of the concept of a revolution in government, but about its causes."\(^9\) The Namierian end of ideology mood of the 1950s produced a school of historians who denied the influence of Benthamism in mid-nineteenth century governmental reform.\(^10\) An approach which emphasised the independent momentum of established bureaucracies appeared to be prevalent.\(^11\) Also, some economic

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the abuse of the word "revolution" presented by a self-defined professional historian, see J. C. D. Clark, *Rebellion or Revolution: State and Society in England in the Seventeenth and Eighteenth Centuries* (Cambridge, 1986), passim, in particular, p. 4.


(7) E. g. J. Hart, "Nineteenth-Century Social Reform: A Tory Interpretation of History", 31 *Past and Present*(1965). In this context, an attitude deserving our attention is H. Parris's. While he criticized Dicey's view about Benthamism, his ultimate diagnosis of the mid-nineteenth century governmental reform was not dissimilar to Dicey's. "Namely, that the nineteenth-century revolution in government, though not attributable to Benthamism as sole cause, cannot be understood without allotting a major part to the operation of that doctrine." See H. Parris, op. cit., p. 37.

(8) For the cautious evaluation of the unitary histories of society in which change tends to be equated with progress, without attending to the way that change was resisted and negotiated, see D. Sugarman, "Writing 'Law and Society' Histories", 55 *Modern Law Review*(1992), pp. 302–304.

(9) S. Conway, op. cit., p. 72.

(10) According to E. T. Stokes, this school was supported by the currents of logical positivism and Oakeshottian pragmatism. See E. T. Stokes, "Bureaucracy and Ideology: Britain and India in the Nineteenth Century", 30 *Transactions of the Royal Historical Society* (1980), p. 132.

(11) O. MacDonald, op. cit.
historians suggested that socio-economic changes played a more important role in this period than ideology.

However, can we accept without any objection these approaches to "revolution in government" in this period?

Starting from this fundamental question, this short essay aims to look at the nature of Bentham's ideas and its impact in terms of modernity as a kind of ideal type. Discussions are focused on two points: Could an ideology have had a vital role in the great tide of reform? If so, how and why did it work?

Such questions are discussed in four sections. The first section traces the process of academic battles over Bentham's role, as well as some preliminary criticisms against Bentham's influence on reform and the Benthamite reformers. The second section shows some reasons for adopting the paradigm of modernization as part of the grounds for assessing the significance of the influence of Bentham's thought. The first part of the third section seeks to examine some properties of the modern state as a means of devising an alternative interpretative framework which makes historical facts coherent and meaningful. The ensuing part attempts to describe the modern characteristics of Bentham's ideas in his various and massive enterprises for reform. The final section suggests some limitations of the approach which is taken in this piece and the need for further research.

II. The Academic Debates

Let us start with some criticisms relating to the role of Bentham's ideas in this period. For these would be the hurdles to overcome if we wish to suggest that Bentham's thought had any influence.

MacDonagh's organic theorem needs to be considered first. The core of MacDonagh's model in respect of the nineteenth century revolution in government is self-explanatory: "The great body of such changes were natural answers to concrete day-to-day problems, pressed eventually to the surface by the sheer exigencies of the case."(12) He expressed a desire that his work would stimulate "further understanding of the independent historical process in operation."(13) According to his account,

(12) O. MacDonagh, op. cit., p. 65.
(13) O. MacDonagh, ibid., p. 67.
Without the slightest spur from doctrinaires or any other a priori influence, experience and the brute facts of the situation forced those who were concerned ... towards centralization, autonomy, and the delegation of legislation, towards demands for discretionary powers ... in a word towards the sort of state we recognize as modern.\(^{(14)}\)

In this way MacDonagh came to postulate the emergence of an autonomous bureaucratic mentality with which he simply replaces Dicey's assumption that Benthamism played a key role in governmental reform in this period. As E. T. Stokes has said, "the shift away from Dicey did not mean that the element of ideation has been done away with."\(^{(15)}\) Yet it is unclear, if the so-called "official mind" was generated in the process of modernization, why the influence of doctrinaires should automatically lose its place in that domain. That is, is there no occasion to resort to the remote and uncertain influence of ideas? Is there no possibility that Bentham's thought, seen as a dominant ideology oriented towards the emergence of modern state, could have played a significant role in the growth of government? We are not ready to agree with MacDonagh's negative answer. There is no virgin birth in the governmental revolution of the nineteenth century.

On the other hand, one may have a suspicion that most of Bentham's plans were not new devices. For example, even before Bentham suggested some reform plans such as central inspection, the need for central inspection was prevalent; indeed, most of the reform acts can not be regarded as the result of Benthamites' efforts but as a product of others besides the Benthamites. For instance, Roberts has suggested that, although it would be seductively attractive and illuminating to intellectual historians and political philosophers, the attempt to link Bentham's ideas and the mid-Victorian administrative state might be dangerous.\(^{(16)}\) A polemical interpretation of this kind based on narrative history has already been successfully challenged by J. Hart. Here we just want to repeat her conclusion relating to the issue of the central inspection: "On the central inspection issue generally, admittedly other factors such as the example of foreign practice may have been of some importance, but the Benthamites were the only consistent and systematic advocates of inspection in some form or other."\(^{(17)}\) Although Bentham might have adopted what his


\(^{(16)}\) See D. Roberts, op. cit., passim.

\(^{(17)}\) J. Hart, op. cit., p. 44.
contemporaries were saying, his reasoning was not a simple reproduction of it but its creative development.

There has been another approach skeptical of the originality of Bentham, arguing that his ideas had only limited significance in Victorian administrative reform. This approach has emphasized the originality of some of the Benthamites rather than that of Bentham himself. It is assumed that Bentham's thought played only a limited role in the particular reforms of the period. Hence reforms such as the New Poor Law, the new police, the reform of the criminal law and the courts were simply the results of practical efforts of energetic Benthamites who had a splendid ability to read the trend of real politics. For example, the New Poor Law Bill which Bentham himself opposed to should be attributed to E. Chadwick. But even if we accept Chadwick's excellent political ability, one should not forget that he was ex-private secretary of Bentham. Was Chadwick totally uninfluenced by Bentham's efficiency-oriented philosophy? The answer is in the negative. It is not the practical result—whether some specific policy is a perfect copy of somebody's ideas or not—but the direct or indirect influence of a philosopher's ideas that we should consider.

No stronger arguments, however, can be found than these of the economic reductionists. As we will see, centralisation of governmental apparatus was a key issue of governmental reform in this period. And this was a main product of the energetic efforts of the Benthamite reformers. Yet there has been a plausible assertion that the strongest pressures bearing down on central government were the double crisis of finance and public order. According to this account, there is no room for dominant philosophical radicals working as a group to intervene on the historical stage. But we are not prepared to endorse this argument. Although we can not deny that underlying causes such as changes in the socio-economic infrastructure were effectual causes of what actually took place, this is not to say that the role of ideology should be discounted. The attempt to reduce the whole arena of governmental reforms to the quantitative growth of government, and to the economic and social situation, is too narrow a perspective to comprehend the complexities of historical change. In fact, the Victorian governmental reform was a reform of a qualitative kind rather than of a quantitative one.

(18) E. T. Stokes, op. cit., p. 139-140.
(19) See S. Conway, op. cit., pp. 79-82.
(20) E. T. Stokes, ibid., p. 141.
Yet as a consequence of the heated debates\(^{(21)}\) over the characteristics of and the driving forces behind the revolutionary governmental changes in the mid-nineteenth century, in the course of which the significance of the Benthamites was a core issue, a more moderate and revised view appears to have become generally accepted.\(^{(22)}\) S. E. Finer expounded, in a persuasive way, the role of the Benthamites from 1820 to 1850, by analysing the process through which Benthamism succeeded in exerting a profound effect on a wide range of matters: he suggested a threefold process of irradiation, suscitation and permeation, which went on together in a continuous cycle.\(^{(23)}\) Irradiation was the process by which what Finer called "First-Degree" Benthamites attracted into their salons, their committees and their associations the potential "Second-Degree" Benthamites and thereby turned into "common-sense Benthamites". Suscitation was the process of arranging public inquiries or the press or both together in such a way as to create a favourable public opinion amid influential groups in the country. Permeation was the process of fortifying and reproducing further irradiation and suscitation by securing official employment.\(^{(24)}\) But Finer did not forget to place some reservations on his view of the extent of Bentham's influence on the nineteenth century governmental revolution. He said,

I am not claiming that administrative and social reform in the early nineteenth century is due exclusively or even mainly to Benthamite suscitation and permeation ... Second, I am not claiming that all zalous and tidy administrators were Benthamites. ... Third, I am not claiming that Benthamite reforms ever operated in exact accordance with the plans of their progenitors... Fourth, I do not assert that Benthamite reform was more than a part of the social, economic and administrative reconstruction that then went on.\(^{(25)}\)

Stephen Conway, one of the recent scholars interested in Bentham, argues that "the time is ripe for a fresh statement of the claims that can be made on his[ Bentham's] behalf",\(^{(26)}\) especially now that several volumes in the new Collected Works edition may help


\(^{(24)}\) See S. Finer, op cit., p. 13.

\(^{(25)}\) S. F. Finer, ibid., p. 31.

\(^{(26)}\) S. Conway, op cit., p. 72.
change our understanding. According to his preliminary account, however, he seems to put himself at no great distance from Finer's line of thought.

The primary aim of this essay is to argue the case for considering the ideas of Jeremy Bentham as an important influence. This, it must be stressed, is not to say that Benthamism alone provides a sufficient explanation. Ideally, Bentham's contribution needs to be placed in context by presenting it alongside the many other factors involved. (27)

It is not difficult to realise that this sort of attitude towards the significance of Bentham's influence on the nineteenth century revolution in government is a reaction against a portrayal of Bentham which belittles his influence, and which can be summarised in a very simple proposition: "Had Bentham never lived, most of the reforms popularly ascribed to his influence would probably have come about." (28) In short, since J. Hart eloquently and successfully (29) rebutted a sort of teleological interpretation of Victorian administrative history, there has been a generally accepted consensus about the role of Benthamism in the mid-nineteenth revolution in government: "the process of reform is never a one-way influence of ideology, or of the empirical "pressure of facts" upon ideology, but a continuous interaction between the two, in which both are continually modified." (30) It is also worth listening that "to accentuate one aspect of that society at the expense of another in terms of influence of effect is bound to produce an unbalanced result." (31)

(27) S. Conway, ibid., p. 72.
(29) Viz., a viewpoint represented by O. MacDonagh and D. Roberts. The main part of her argument against schematic interpretations of the nineteenth century reforms was not based on Bentham or Benthamite philosophy, but on her opponents' historical methodology and perceptions, in particular their indifference to "what Dicey called 'opinion'-consciously formulated and coherently worked-out beliefs and programmes." This is not surprising because the main controversy over Benthamite influence in the period was conducted within the discipline of history. See J. Hart, op. cit., On the other hand, Professor Hume successfully attempted to analyze the historical significance of Bentham's ideas during the age of reform in the light of the development of modern ideology. See L. J. Hume, "Bentham and Revolution in Government", op. cit.; Idem, Bentham and Bureaucracy (Cambridge, 1981), ch. 8.
(30) See H. Perkin, "Individualism Versus Collectivism in Nineteenth Century Britain: A False Antithesis", 17 Journal of British Studies (1977), p. 108. (Emphasis added). Ironically, even MacDonagh partly confessed that the ideas of Bentham or Benthamites had played a limited but conceivable role as an igniter of reform. "No doubt such a process is always both initiated by external forces and continuously affected by them. But it is a grave error to treat it altogether as their creature." (Emphasis added). See O. MacDonagh, op. cit., pp. 53-54.
One balanced commentator expressed this view in the following way:

However, while this is a useful correction to the Benthamites-under-every-bed interpretation, there can be little doubt that through avowed followers of his such as Edwin Chadwick and Thomas Southwood Smith, who were prominently involved in factory legislation, poor law policy, and public health, Bentham had more influence than any other social theorist on the growth of governmental responsibility in the middle decades of the century.\(^{(32)}\)

The argument of this essay generally follows such a line. However, this essay will take a slightly different focus which has been neglected in the previous writings. Apart from Finer’s threefold transmission paradigm, most academic commentators have paid little attention to the fact that a handful of Benthamites enthusiastically carried out the plans of their progenitors and succeeded in making large-scale changes, certainly no less, probably more, than other political groups. Instead, they concentrated on more narrow questions: in what areas did Bentham’s views prevail? and to what extent did they do so? If not, most Victorian historians just suggested a false antithesis of laissez-faireism and collectivism.

Professor Finer ascribed the ignorance of this fundamental question to the muddled thinking of Dicey. His own explanation of the question was very elaborate and based on very neutral and objective perspectives. But he appears to fail to escape from his opponent’s traps because of his compromising attitude. Such a practical approach cannot offer any analysis how and why Bentham’s ideas were seen and felt by the public. Why did things happen as they did? Stating these questions, this essay aims to put forward some refinements, partly in continuation of Finer’s line of thought and partly in criticism of it.\(^{(33)}\)

### III. Why Modernity?

In this essay, as a starting point, we will revive Dicey’s interpretation of Benthamism, which was unfairly discarded some decades ago during the academic battles. "The general answer, then, to the question why Benthamism obtained ready acceptance is that it gave to reformers and indeed to educated Englishmen the guidance of which they were in

\(^{(32)}\) J. Dinwiddy, \textit{op. cit.}, p. 118.

\(^{(33)}\) If our understanding is not wrong, Stephen Conway followed the same line. See, S. Conway, \textit{op. cit.}, pp. 82–84.
need: it fell in with the spirit of the time.”(34) We also accept the useful concept of “the common-sense Benthamites.” This, it must be stressed, is not to say that we will straightforwardly follow Dicey’s conception of Benthamism, which appears to equate it with individualism, liberalism, or laissez-faire in a sense opposite to collectivism or state interventionism. There is no doubt that Dicey’s Whiggish interpretation of Benthamism as a kind of laissez-faire philosophy is misconceived.(35) Instead, what we are trying to take from Dicey’s position is its instinctive insistence that there was a “spirit of the time” in the middle decades of the nineteenth century. The mental and social structure of this period is an important backdrop against which to observe nineteenth-century English society and Bentham’s influence upon it. Professor Finer’s theory of the three-tier diffusion of Benthamism would be more easily understandable if the “spirit of the age” theory, reflecting the mental and social structure of nineteenth-century English society, were adopted as a background. One may say that Bentham’s Utilitarianism offered the rising urban middle class a new vision, though imperfect and to some extent crude, in which to incorporate their demands for reform. In addition, facing difficulties in social control caused by the social and economic changes, the governing landed aristocracy in a gradual way realised the utility of Bentham’s blueprint for reform.(36) Finer’s interpretation, which was


(35) Dicey did not directly insist that laissez-faire was the basic principle of Benthamism, but he implicitly argued that “this dogma of laissez-faire is not from a logical point of view an essential article of the utilitarian creed. ... But, though laissez-faire is not an essential part of utilitarianism it was practically the most vital part of Bentham’s legislative doctrine ...” See Dicey, Law and Public Opinion, p. 146, 147. Professor J. Dinwiddy regarded this insistence as involving “some rather far-fetched” claims about Bentham’s influence in the period. See J. Dinwiddy, op. cit., p. 117. But it must be noted that Dicey juxtaposed the growth of collectivism and the predominant period of Benthamite liberalism. That such a vague position not only suggests that his judgment of Benthamism was imperfect but also that he instinctively realised that the spirit of the time, in reality, could be understood as a coincidence of liberalism and collectivism. Thanks to his political orientation he wished to stress only an individualistic ideal rather than a collectivistic one in Benthamism. See Dicey, Law and Public Opinion, pp. 211–258. This possibility offers us an important clue in rethinking the usefulness of Dicey’s idea.

(36) A revisionist account by a professional historian in nineteenth century social history seems to accept the same assumption. “To cope with these problems (rapid social changes and the fear of revolution), the governing class had to take up, however reluctantly, the types of solution proposed by Jeremy Bentham and his disciples; these involved moving towards a more bureaucratic and professional structure for the new urban industrial society.” (Emphasis added). See D. Philips, “‘A Just Measure of Crime, Authority, Hunters and Blue Locusts’: The ‘Revisionist’ Social History of Crime and the Law in Britain 1780–1850”, in S. Cohen & A. Scull(ed.), Social Control and the State(London, 1985), ch. 3, p. 65.
hesitant to give a more dominant position to Bentham's ideas, appears to be too fragile to cope with the most powerful attack on ideological influence put forward by E. T. Stokes: "Although subsequently in the Constitutional Code Bentham had provided—without explanation—for an Indigence Relief Minister with a separate department, centralization was in any event no Benthamite monopoly."(37) In Stokes' logic, without Benthamism there must have been reform in government simply because of the problems of tax and finance. And as we have seen, its weakness can be also found in the issue of the originality of such talented Benthamites as S. Romilly, S. Smith, E. Chadwick. In terms of centralisation, in some social spheres like factory regulation, poor relief, competitive examination and preventative police, the consistency of the Benthamites' ideas with Bentham's original plans has been questioned. Among the Benthamites, there were some conflicts. In fact, there is little doubt that Bentham himself, besides the Benthamites, was the product of many influences prevalent in his day. Such individualistic inclination and the complexity of their philosophical backgrounds can be regarded as part of the reason why there were some conflicts even among the Benthamites and between them and Bentham. Yet it is important not to exaggerate the diversity of the Benthamites.(38) Such doubts have in common the attitude that they deny Dicey's conception of the spirit of the time. Yet if we wish to recognise the role played by political opinion in British history, we must accept the existence of the spirit of the age. More strictly speaking, there is no other coherent interpretation. If we accept the conception of the common-sense Benthamites and modernization as its background, we can see Victorian governmental reforms as part of interrelated progress. It is not the confrontation between laissez-faire and collectivism,(39) nor the Zeitgeist of hypocritical "humanitarianism",(40) but the emergence of the modern state(41) and the changes in the mental structure of English society that should be taken as the main interpretative framework for explaining how far the ideas of Jeremy Bentham affected the revolution in nineteenth century government.

Why should we take the emergence of the modern state as an explanatory device in this context? Three immediate reasons can be suggested. Firstly, it is wide enough to incorpo-

(37) E. T. Stokes, op. cit., p. 139 (Emphasis added).
(38) See S. Conway, op. cit., p. 79.
(40) For the attack on this interpretation, see J. Hart, op. cit., pp. 50-55.
(41) Cf. D. Philips, op. cit., pp. 65-68. He regarded the slightly narrower notion of bureaucratization and the new individualism of early industrial capitalism as the ethos of this period.
rate two extreme viewpoints: one that stresses the importance of Benthamite ideology, and the other of the anti-Benthamite materialistic school. As we already accepted, both ideological and materialistic elements affected Victorian administrative reforms. The modernization framework is the most appropriate interpretative paradigm to accommodate both approaches. This tool is so useful as to couple a social history which gives more place to agency and a political history which pays more attention to structures.\(^{(42)}\)

Secondly, it is quite helpful to reinterpret Bentham's ideas with regard to his image as a censor. The fact that Bentham defined himself as a censor, not an expositor, is an indirect but important clue for perceiving the modernity of Bentham's ideas, as we shall see in the next section. This character may play a role in explaining his reforming image—not as an imitator who just depicts what is, but as a teacher who instructs what ought to be in the reforms in the period.\(^{(43)}\)

The third reason is closely related to the second one; the conception of the modern state or modernity is an adequate tool to look at Victorian governmental reforms as a whole. It helps us to understand that administrative changes in this period were not the only changes in the period, and therefore that they should be examined in comparison with changes in other fields\(^{(44)}\); that the influence of Bentham's ideas was not and must not be restricted to a particular time.\(^{(45)}\)

The next part of this essay will seek to show that Benthamite ideology, in a sense, can be in harmony even with Tories as much as Philosophical Radicals or Whigs — in particular, to show that the core of Bentham's thought, as the spirit of the nineteenth century,

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\(^{(42)}\) For an attempt to seek a holistic perspective in history by coupling social history and political history, see J. Innes, "Jonathan Clark, Social History and England's 'Ancien Regime'.", 115 Past and Present(1987), passim., especially p. 176.

\(^{(43)}\) For the detailed explanation on this term, see J. Bentham, A Fragment on Government, Cambridge Texts in the History of Political Thought (Cambridge, 1990), pp. 7, 8, 15.

\(^{(44)}\) In fact, the origin of the reform in government of the middle quarters of the nineteenth century can even be traced back to the late eighteenth century. For instance, the efforts of some reformers who were influenced by Bentham's ideas on law reform before 1832, such as Romilly and Brougham, even though they had little success in their own time, paved the way for later reforms. See W. S. Holdsworth, A History of English Law, Vol. XII (London, 1952), pp. 259-308; L. Radzinowicz, A History of English Criminal Law and Its Administration from 1750, Vol. I (London, 1948), pp. 497–607.

\(^{(45)}\) In this respect, whether Bentham intended it or not, his influence can be felt even at the present time. For example, since 1870 his influence has significantly contributed to "the trend towards democratic despotism and socialist policies", such as the Fabian socialists and New Liberals of the 1890s. See J. Dinwiddy, op. cit., op. 118–119.
corresponds to the modernization of British society.

IV. Benthamism and Modernity

Paradoxically, it was MacDonagh who denigrated the role of Benthamism in Victorian governmental reform, who attempted to contrast the modern characteristics of the “new world of government” with Bentham’s enterprises. As we have seen, MacDonagh denied the impact of ideology on the emergence of the modern state in the middle quarters of nineteenth century, while presenting some properties, such as centralization, autonomy, the delegation of legislative power and the demand for discretionary power, as a kind of token of modern government. In particular, he focused on Bentham's distrust of the functionaries employed in the Executive (including the Judiciary). He assumed that Bentham continuously showed his hostility to delegated legislation and administrative discretion (especially quasi-judicial discretion). He, furthermore, exaggerated this hostility and tried to attribute it to Bentham's anti-modern characteristics. Still, as Professor Hume properly pointed out, his preoccupation was groundless and he distorted Bentham's original scheme in the Constitutional Code. Bentham’s constitutional theory is in harmony with the ideal type of “rational bureaucracy”. Professor Hume said,

To provide for change, unforeseen problems, improvement, was one of Bentham's major concerns, and he expected officials to contribute substantially to executing and even devision the necessary programmes. In the last resort, what was reserved to the legislature was legal authority; and the purpose of the scheme was not to deprive officials of all initiative or discretion but to ensure that all they did was legally authorized. Yet it is perhaps true to say that Bentham had a somewhat limited view of administrative activity and that although he devoted great attention to problems of organization, his account of administrative tasks was largely formal. The reason for this was simply that, consistently with his general views, he treated law as the characteristic activity of government, and treated administration as a subordinate kind of, or part of the process of, legal regulation.

(46) Bentham’s well-known dislike of the judiciary was rooted in the corrupted, reactionary attitude of the judges as well as the absurd state of the common law, i.e. judge-made law. For his outraged attack on the corruption of the judges, see P. Schofield (ed.), Official Aptitude Maximized Expenses Minimized, The Collected Works of Jeremy Bentham, Oxford, 1993, pp. 222-289, 307-341.
(48) ibid., p. 365 (Author’s emphasis).
Bentham attempted to demonstrate that the legislature ought to be omnicompetent and that other office-holders should undertake their duty with regard to the law. This is totally consistent with the demand of formal rationality in Weber’s sense of rationality. Moreover, it should be noted that Bentham’s enterprise to give the authority of omnicompetence to the legislature does not force him to strip the functionaries of all opportunities for initiative or discretion. Bentham accepted that it was impossible for administrative functionaries to escape from choices between different lines of action where there was no specific guidance from the legislature. Bentham recognized that “the existence of functions mutually competitive or say antagonistic … as to which, on this or that occasion, option may require to be made, by the appropriate functionary as to which of them exercise shall … be given to.”

Yet it should be borne in mind that when we discuss the modern character of Benthamism, it is more important to see Bentham’s ideas as a whole in a broader context rather than making false charges against them from a narrower point of view. The character of modernity is recognizable in his broad scheme of government and philosophical perspectives. Bentham’s ideas brought together in a particular way the two great themes of modern political thought – individualism and the modern sovereign state.

Let us begin with Bentham’s ideas on the modern sovereign state. It is conventional to conceive the monopolisation of the means of legitimate coercion by the state as a fundamental feature of the modern state. In Max Weber’s ideal types, the modern society is characterised as a type of society in which rational authority is a type of authority legally formed and procedurally regulated, as opposed to conceptions of authority based on the charismatic qualities of a leader or the traditional sanctity of the office. It is a society in which so-called “formal rationality”, which can be differentiated from “substantial rationality”, becomes the dominant feature. Its implication is that the departure from arbitrary, capricious government is the essential part of modernization.


(52) In this respect, the conceptions of discretion and delegation, which can be suggested as important characteristics of the ‘new world of government’, should be differentiated from capricious, arbitrary enforcement of governmental power. In Weberian modern society, it is formal rationality in
thought, modernization was part of a wider “rationalization” process.

The revolution in government, the emergence of new social institutions such as police and prison, political legislation such as the Great Reform Act of 1832, the Poor Law of 1834, semiwelfare legislations and the acceleration of economic development or industrialization, urbanization, expansion of territory through colonization of uncivilized countries, can be considered as part of the modernization of British Society. As mentioned above, the mental and social structure of nineteenth-century English society saw the interests of the rising urban middle class, as well as those of the large landed aristocracy, converging into a single point, i.e. Bentham’s Utilitarianism. Bentham sought a neatly organised pyramid of power in which law—in the sense of the reflection of the public will—was the principal instrument for regulating the administrative department. It was by law that the arrangements were prescribed, authority was conferred, and the limits of authority were defined. In addition, in Bentham’s enterprise, all structured organizations obey certain rational criteria of appointment, promotion and hierarchy. The officials enacting and executing laws depend for their appointment upon the provisions of the constitutional law, while their motives and abilities, what Bentham called their aptitude, were

the composition of government, in particular the legislature which enacts the law according to the sovereign’s will that offers the action of government a legitimacy. Crude versions of this simply point to the legitimizing force inherent in majority decisions of democratically elected representatives. Thus discretion of functionaries and delegation of legislation, if these follow legal procedure, would obtain legitimacy.


(55) One of the limitations of this essay is that the definition of modernization is not fully based on the historical facts, that is to say, it is based on an assumption stemming from Weber’s ideal-types model. However, it is noticeable that some analytical order – the interpretative framework which makes historical facts coherent and meaningful – needs to be imposed on chaos in order to illustrate historical events. As a matter of fact, some historians have accepted the trend of modernization as a background to the various changes in the early nineteenth century. See D. Philips, op. cit.. For the view that the theory of modernization has been coloured by the subjectiveness of its expositors, see D. Cannadine. “The Present and the Past in the English Industrial Revolution 1880–1980”, 103 Past and Present(1984), pp. 131–172; D. Tipps, “Modernization Theory and the Comparative Study of Societies: A Critical Perspective”, 15 Comparative Studies in Society & History(1973), pp. 199–226.
the criteria of appointment. Rational government was to be constructed on the basis of the complementary means of the maximisation of appropriate aptitude and the minimisation of expense.

Bentham's suggestion of three aptitudes — moral, intellectual and active — required in officials is reminiscent of the attitude of professional, neutral and public interest-oriented bureaucrats in Weber's modern state. Weber's ideal type of a modern bureaucrats was not greatly dissimilar to Bentham's. Bentham's functionaries were appointed through public examination. Public examination played a role in testing whether the applicant for a particular office possessed the knowledge and judgement appropriate to the adequate performance of its functions. If a candidate achieved a sufficient standard, his name was inserted on the appropriate "locable list". The functionaries were to be appointed from those on the "locable list" who succeeded in the bids for the pay: such was the pecuniary competition system, or the economical auction. This apparatus for appointment of the functionaries can be compared to the attributes of Weber's professional bureaucrats. Bentham also suggested that the active aptitude of government officials was to be secured by such means as an attendance rule.

In sum, in Bentham's world, these general principles for good government could be secured by a framework of representative democracy. Bentham's stubborn enthusiasm for democratic Britain itself reflected part of his modernity. In the modern state in which formal legality is the only foundation of the legitimacy of the force of the state, represen-

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(57) According to Bendix, Weber believed that

the bureaucratic official’s position is characterized by the following attributes: (1) He is personally free and appointed to his position on the basis of contract. (2) He exercises the authority delegated to him in accordance with impersonal rules, and his loyalty is enlisted on behalf of the faithful execution of his official duties. (3) His appointment and job placement are dependent upon his technical qualifications. (4) His administrative work is his full-time occupation. (5) His work is rewarded by a regular salary and by prospects of regular advancement in a lifetime career.


tative democracy was to be the only constitutional arrangement. In fact, Bentham heavily attacked the status quo, i.e. “cold, selfish, priest-ridden, lawyer-ridden, lord-ridden, squire-ridden England.” His political thought, based on the greatest happiness principle, provided the rising middle class with the means to fight for a more rational, modern constitutional arrangement. The oppression committed by monarchical and aristocratic government should be replaced with the modern constitutional arrangement securing legal protection to the vast majority of the people. Central to his Constitutional Code was his continuing concern about what his radical contemporaries have called “Old Corruption”. Old Corruption, in the sense of “the widespread use of pensions, sinecures, and gratuitous emoluments granted to persons whom the British government wished to bribe, reward or buy”, was the basis of the pre-modern, irrational ancien régime. Until the early nineteenth century the fundamental nexus between the aristocratic government and the older middle classes including such professionals as lawyers, judges and clerics, formed the main feature of English society. The misrule of government which preoccupied Bentham was believed to stem from the continuing pursuit of “sinister interests” by this ruling class. His hopes of reforming this irrational self-interested regime were crystallized in his beliefs that the general happiness should be the object of public policy; that legislation and the legislature were central to the work of government, and that uniformity, clarity, order and consistency were essential in both law and administration.

Another aspect of “rational bureaucracy” relies on the strict responsibility of bureaucratic organs. In the hierarchy of government in which “the declared and sole declared end and purpose is the giving execution and effect to the will formed and declared by the members of the legislative”, officials are not to be free from the chain of responsibility and liability to punishment. In this scheme the legislature itself can not be an exception. The legislature was subject to the moral and political sanction, applied by what Bentham called the “Public Opinion Tribunal”, which he envisaged “as a kind of informal judicial body operating mainly through the press and public gatherings, and punishing transac-

(62) For the historical significance of Old Corruption, see generally Rubinstei'n's article, “The End of ‘Old Corruption' in Britain 1780-1860”, op. cit., pp. 55-86.
tions by inflicting losses of popularity." (64) Bentham was so adamant that this public judiciary should work effectively, and so in the Constitutional Code arranged the machinery of publicity to be compulsory in all areas of governmental proceedings. In other words, this shows his preference for more or less immediate control, rather than artificial checks such as a written constitution or a Bill of Rights, or American-style judicial review. (65) "The panoptic qualities of the Constitutional Code were designed to allow the subject many to observe the ruling few... Publicity, he believed, was the only safeguard against tyranny." (66) His writings on the Panopticon and Pauper Management show his practical, and to some extent, extreme scheme of publicity or openness in terms of governmental organization and management. This has caused a plausible misunderstanding of what Bentham really intended to accomplish through the Panopticon and the National Charity Company; for example, Foucault has denigrated him as the representative theorist of modern totalitarianism.

On the other hand, his scheme of central inspection, recommended in many different parts of Bentham's work—a central office of general inspection, a river police on the Thames, the Panopticon (67) — has appeared to contribute not only to his unfashionable reputation but also to his rational, enlightened and progressive fame. Together with this move towards central inspection went an attempt to adopt a universal and centralised system for the registration of births, marriages, and deaths. (68) In fact, such moves towards centralization are the evidence showing the features of rational modern bureaucracy in Bentham's ideas. This trend was substantially realized by measures enacted in the mid-nineteenth century. Some of them include key legislation such as the Anatomy Act of 1832, the Factory Act of 1833, the Poor Law Amendment Act of 1834, the Mines Act of 1842, the Public Health Acts of 1848. In this context, some historians deliberately labelled Benthamism as a kind of collectivism which paved the way for the modern welfare state. (69)

Still, it would be wrong to assume that Bentham, as a philosopher of modernity, aban-

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(64) J. Dinwiddy, op. cit., p. 83.
(67) See S. Conway, op. cit., p. 76.
doned the moral claims of individuals or a conception of psychological autonomy. Such characteristics were vital to his analysis of human nature. He strongly believed in selfinterested nature of human beings, and he always emphasized that any measure designed to maximize efficiency in government had to take this into account, namely through joining interest and duty, thus producing the maximum benefit to the public at the least expense. Reliance on self-regarding interests in human motivation tended to reinforce the new individualistic ethos of early industrial capitalism. This ethos was phenomenalised in the emergence of the new middle class and the industrialisation of the landed aristocracy.\textsuperscript{(70)}

The individualistic ethos of the modern state has a corollary in the efficiency of government. Perkin has illustrated this aspect of the “revolution in government”, encouraged by industrialism and urbanization under the umbrella of what he called the consecutive battles between “the entrepreneurial ideal” and “the professional ideal.”\textsuperscript{(71)} As Perkin put it, “in the Benthamites, the two ideas seemed to be indistinguishable”.\textsuperscript{(72)}

However, there is no better evidence which shows Bentham’s understanding of genuine and efficient humanity than the duty-and-interest-juncture principle. This principle seeks to create an artificial harmony between the interests of the individual and the general welfare by the use of sanctions, and so maximize the general happiness. Bentham put it as follows:

\begin{quote}
    every system of management which has disinterestedness pretended or real for its foundation is rotten at the root, susceptible of a momentary prosperity at the outset but sure to perish in the long run. That principle of action is most to be depended upon whose influence is most powerful, most constant, most uniform, most lasting and most general among mankind. Personal interest is that principle and a system of economy built on any other foundation is built upon a quicksand.\textsuperscript{(73)}
\end{quote}

One practical result of this principle is the private nature of the poorhouse, in the sense that it is owned and managed by a private governor. In Bentham’s scheme, self-interest, in the concrete form of profit, was accomplished by giving the officials of the house a “pecuniary and never-ceasing interest” in the lives of their charges. He stressed that the

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    \item H. Perkin, \textit{ibid.}, pp. 319-320.
\end{itemize}
management of the state, as well as of the so-called industry house could be efficient if it relied on the duty-and-interest-junction principle. For example, the pecuniary competition system was adopted as part of the mechanism for the appointment of officials. This economic auction was the means of achieving the minimization of the expense of government.

The "less eligibility" principle also showed his individualistic ethic. His poor law scheme was not to promote the welfare of the lower orders, but the general welfare based on the efficient government. Bentham came to believe that the causes of poverty lay in the moral weakness of the poor rather than in the defectiveness of the social environment. Therefore he suggested that indoor relief for the poor, i.e. living standard in the poor house, should be less attractive than independent labour. In addition, Bentham opposed the new Poor Law Bill because it retained outdoor relief, which had a tendency, he believed, to exacerbate the moral weakness of the poor. Moreover, in his National Charity Company, one of principles of guidance for the management was the "self-liberation principle": "No relief but upon the terms of coming into the house ... and working out the expense."

Bentham's scepticism towards religion also reflects his modernity. Secularization is one of the aspects of Weberian modernity or rationalization. Bentham's attack on religion was justified on various grounds, ranged from philosophical ones based on the principle of utility and the theory of fallacies, to practical ones focused on the corrupt relationship between the established church and the political elite. His principle of utility assumed that the most important mechanism whereby happiness in the aggregate could be maximized was the basic drive of each individual to maximize his own happiness. Bentham thought that "Christian morality", on the contrary, "put too much stress on altruism, and the precepts of Jesus, if taken literally, would be "destructive of society"; for if each person ceased to give priority to providing for his own wants and safety, the human race would simply be unable to survive."

(74) Before the late nineteenth century when a new trend to attribute the causes of poverty and crime to social environment rather than to individual moral weakness of the poor or the criminals themselves emerged, individualism or humanitarianism had been prevalent amongst dominant social thinkers. See generally D. Garland, Punishment and Welfare: A History of Penal Strategies (Aldershot, 1985); D. Fraser, The Evolution of the British Welfare State (London, 1984).


(76) Ibid., p. 94.

(77) J. Dinwiddy, op. cit., pp. 28-29.
decades of his life was to unmask the forms of exploitation which were being concealed by "artifice" and "delusion". Religion was one of them. "The Church" as an impressive abstraction was a trick, i.e. a practice which instilled automatic respect for certain categories of people in authority, irrespective of their behaviour.\(^\text{(78)}\) No better evidence showing his antagonism against religion, however, can be found than in his consecutive challenges against Anglican piety. In this period, the established church was at the centre of power. Bentham stridently attacked the alliance between Church and ruling aristocracy (and the high court judges as part of it) which was a foundation of the absurd, irrational, and inefficient status quo, including the unreformed House of Commons, which Rubinstein called "the most important premodern and non-rational survival."\(^\text{(79)}\) It was natural that Lord Eldon, a champion of "Old Corruption" and one of the stubborn advocates for intolerance and aristocratic constitutional arrangements, became one of Bentham's main targets.\(^\text{(80)}\) Since Lord Eldon was identified so closely with the Establishment and the common law of the land,\(^\text{(81)}\) confrontation between Bentham and Eldon as representatives respectively of secularisation and anti-secularisation, modernity and premodernity as its corollary, seemed to be inevitable.

Bentham's and his followers' tendency towards modernity can also be inferred from the fact that they used statistics which, as H. Perkin put it, "is to industrialism what written language was to early civilization."\(^\text{(82)}\) For example, during his campaign to reform the criminal law by abolishing capital punishment, Sir Samuel Romilly reviewed the available statistics to show past and current trends, e.g. the number of convicts and those executed, and the change in the relationship between those numbers.\(^\text{(83)}\) In fact, Bentham's thought, based on the greatest happiness principle, was characterized by a desire for clarity and

\(^{(78)}\) J. Dinwiddy, ibid., p. 88.

\(^{(79)}\) W. Rubinstein, op. cit., p. 77.


\(^{(81)}\) The following observations of his demonstrate his stubborn anti-reform attitude. "The Establishment is formed, not for the purpose of making the Church political, but for the purpose of making the State religious . . ."; "The common law of the country provided a sufficient remedy for this evil [bribery and corruption in the electoral borough]", respectively quoted in J. C. D. Clark, English Society 1688–1832, op. cit., p. 351 and p. 360.


demystification. Another related point is Bentham's strong emphasis on calculation. As we have shown, his stubborn belief in self-regarding interest in human motivation was based on confidence in the possibility and truthfulness of counting-up and estimating men's motives. What Bentham called “calculus” marked “the crucial transition from hedonistic philosophy to modern social science.”

To summarize, there is no doubt that “Bentham foresaw and recommended many of the elements that made up the nineteenth-century revolution in government” as part of a broad process of modernization.

V. Conclusion

We have sought to examine schematically why Bentham’s ideas should be taken to be the spirit of the nineteenth century by comparing his ideology to some tokens which can be called primary characteristics of the modern state. This work is limited in that it does not deal with the particular causes of reforms in nineteenth-century English society, the concrete influence of Bentham’s ideas. As Stephen Conway properly pointed out, “to anticipate changes is one thing; to inspire them, quite another.”

However, it does show why Bentham’s ideas might have been attractive. If, as Finer and Conway have tried to demonstrate, the process through which the ideology of a great thinker with remarkable foresight has been diffused can be successfully illustrated; and if it is possible to combine this with a general account of the modern characteristics in Bentham’s thought as a background of the diffusion of his ideas, this characterization of Benthamism as the spirit of the age is not without plausibility.

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(86) J. Dinwiddy, op. cit., p. 53.
(87) S. Conway, op. cit., p. 77.
(88) Here Finer’s three tier theorem is worth noting. S. Conway was referring to this approach for the reappraisal of the influence of Bentham’s ideas in the governmental revolution in this period. See, S. Finer, op. cit., passim; S. Conway, op. cit., pp. 82–84.
(89) Conway’s observation deserves more attention: “Despite the similarities, we cannot assume a relationship between Bentham’s recommendations and the legislative enactments that took place after his death. There were ... many alternative sources of inspiration. If a connection is to be established between the principles and proposals to be found in Bentham’s voluminous writings and the governmental developments of the mid-nineteenth century, it has to be shown that, in all probability, Bentham’s thought influenced at least some of the participants in the revolution in government.” (Emphasis added). S. Conway, ibid.