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JEREMY BENTHAM'S CODIFICATION PROPOSALS AND SOME REMARKS ON THEIR PLACE IN HISTORY

For the sake of those interested in the codification of Anglo-American law, this comment attempts at the outset to present a concise summary of Bentham's ideas as to the form codified law should take and how his codes would eliminate some defects of the common law. Following that is a commentary on the historic significance of Bentham's work.

I

Introduction

Bentham was twenty-eight years old and had just published his first work—a condemnation of Blackstone—when the Revolutionary War broke out in the United States. His life spanned a period of struggle and rebellion in America, France and England. His chief reaction to the revolutionary times was to engage in assiduous planning for the reconstruction of the legal system. Anglo-American law has gradually assimilated many of Bentham's ideas and suggestions, and the contemporary common law attorney may find it difficult to look back upon his writings without wondering why he discussed at such length matters that appear elementary axioms of sound jurisprudence. Bentham's work seems overburdened with the minutiae of arguments against imagined adversaries.

In contrast to the previous discussion, it must be noted that some of Bentham's most fundamental aims have not been achieved in the nearly two centuries that have passed since their proposal. It was Bentham's foremost wish, and most avidly pursued objective, to institute a completely codified system in both England and the United States. It was his intent to make law so understandably clear that every man would know it, would regulate his conduct by reference to it, and would be able to represent himself in court without the aid of counsel. Bentham hoped to eliminate judge-made common law so that law would emanate wholly from the legislators. These aims have not prospered in Anglo-American law, notwithstanding the painstaking work of Bentham and subsequent proponents of codification.

Universal Applicability of the Codes

With only minor adaptations for variances in climate, geography, beliefs and customs, Bentham believed that his plans for a codified

legal system would be suitable for any country in the world.[1] In 1782 Bentham offered to codify the laws of India;[2] by 1822 he had issued a standing offer to codify for any nation in need of a law-maker.[3] Never having set foot in the United States, he wrote to President Madison in 1811 offering his services for the codification of American law.[4] Shortly thereafter, he conveyed a similar letter to the governor of Pennsylvania, and in 1815 sent a letter to the governor of each state offering to codify its law. Nothing came of these efforts, but Bentham did have strong influence on Edward Livingston, who met with some success in codifying the law of Louisiana.[5]

Completeness of the Codes

Several codes existed in Europe before Bentham began writing on the subject. Although lauding the benefits the Danish, Swedish, Prussian and Sardinian codes had conferred on the people of those nations, Bentham considered these earlier codes to be incomplete. The legal system he envisioned would only be fully realized when all law was codified. Thus, he wrote:

> The collection of laws made upon this plan would be vast, but this is no reason for omitting anything. . . . Besides, what part ought to be excluded? To what obligation ought the citizens to be subjected without their knowledge?
>
> Whatever is not in the code of laws ought not to be law. Nothing ought to be referred either to custom, or to foreign law, or to pretended natural law, or to pretended law of nations. . . .[6]

The concluding sentences of this passage reveal that it was fear of the unknowability of the law that motivated Bentham to insist upon the completeness of the codes. He specifically identified common law methodology as the means by which the legal profession maintained a sinister monopoly over the knowledge of the law. Bentham described this process in the following manner:

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1. 13 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 76-77 (1952).
2. Vesey-FitzGerald, *Bentham and the Indian Codes,* in JEREMY BENTHAM AND THE LAW 222 (G. Keeton ed. 1948).
3. 1 L. STEPHENS, THE ENGLISH UTILITARIANS 223 (1900).
4. 4 J. BOWRING, THE WORKS OF JEREMY BENTHAM 453 (1962) [hereinafter cited as WORKS].
5. Everett, *Bentham in the United States of America,* in JEREMY BENTHAM AND THE LAW 193 (G. Keeton & G. Schwarzenberger eds. 1948). *See generally* Franklin, *Concerning the Historic Importance of Edward Livingston,* 11 TUL. L. REV. 163 (1936).
6. 3 WORKS 205.

> To warrant the individual decree which he is about to pronounce, the judge comes out with some general proposition, saying, in words or in effect, *thus saith* THE LAW. On the occasion of the issuing of this sham law, the pretext always is, that it is but a copy of a proposition, equally general, delivered on some former occasion by some other judge or train of successive judges.[7]

In such pronouncements, Bentham added, "[t]here may be or may not be a grain of truth."[8] Hence, insofar as it was unwritten, Bentham regarded the "law" as mere conjecture—a matter of the uncorroborated opinion of the judge. Partial legislation or codification, Bentham recognized, would not correct the problem so long as the judges retained the power to interpret, and thereby corrupt, via common law method:

> [W]hat alleviation soever the burthen of the law has ever received, or can be made to receive . . . by successive patches of *statute* law, applied to the immense and continually growing body of *unwritten*, alias *common* law, is confined to the *matter*, leaving the *form* of it as immeasurable, as incomprehensible, and consequently, as adverse to *certainty* and *cognoscibility* as ever. . . . So long as there remains any the smallest scrap of *unwritten law* unextirpated, it suffices to taint with its own corruption,—whatsoever portion of *statute* law has ever been, or can ever be, applied to it.[9]

Notwithstanding the acknowledged vastness of the undertaking, it can hardly be said that codification failed in Bentham's time for lack of requisite legal materials. In pursuit of completeness, Bentham had worked out, by 1811, quite comprehensive preparations for a penal code, a plan of judicial procedure, a plan of judicial establishment, a code on evidence and a constitutional code.[10] He was to continue preparing for codification for the more than twenty years between 1811 and his death. The collection of his papers held by the University College in London fills 173 portfolios of about 600 pages each.[11] His dedication to this task is testimony to the fact that by 1800 sufficient materials were available for a scientific treatment of law. Furthermore, it should be noted that the French Civil Code appeared in 1803.

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7. *Id.* at 223.
8. *Id.*
9. 4 WORKS 460.
10. *Id.* at 465.
11. Everett, *Preface* to J. BENTHAM, THE LIMITS OF JURISPRUDENCE DEFINED v (1945).

Content

The numerous drafts Bentham drew for his codes contained changes in what he called the "matter" of the law, as well as in its form. His plans for the laws of evidence and pleading, for example, entirely revised and streamlined the existing rules on the subjects. Similarly, in the area of contracts he would have stripped away the prevailing chaos and rebuilt the law according to a few easily understood principles:

> Every obligation ought to be founded either on a precedent service rendered by the person obligated; upon a superior need on the part of him in whose favor the obligation is imposed; or upon a mutual agreement which derives all its force from utility.[12]

Thus, the codes proposed by Bentham differ from our recent "Restatements" not only in that they were to be the whole of the law rather than simply another authority, but also because their content was more than a distillation of prevailing statutes and court decisions.

Form and Cognoscibility

Bentham worked to make his codified law understandable and enlightening. He reasoned that if the law were to guide the citizens' conduct it must be present in their minds. Informing the citizens of the law, or as Bentham put it, making the laws "cognoscible," would be impossible unless both of two related goals were attained. First, the law must be clear and simple enough for the "plain" man to be capable of grasping it. Second, the law must be "promulgated" or made accessible to the citizen. The first necessity concerns the internal structure of the law, while the second involves bringing the body of the law into juxtaposition with the populace. The two goals are interdependent. The law cannot be brought to the citizen if it is not in written form or if it is too voluminous to be read or distributed. Bentham realized that unless the law were made both internally logical and externally discoverable, it could not possibly serve as a guide to human conduct. The existing law illustrated for Bentham the gravity of the defect of the incognoscibility of law.

> Scarce any man has the means of knowing a twentieth part of the laws he is bound by. Both sorts of law are kept most happily and carefully from the knowledge of the people: statute law by its shape

12. J. BENTHAM, THE THEORY OF LEGISLATION 90 (C. Ogden ed. 1931).

> and bulk; common law by its very essence. It is the judges . . . that make the common law. Do you know how they make it? Just as a man makes law for his dog. When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way the judges make law for you and me.[13]

Bentham's most important contributions resulted from his pursuit of internal consistency and simplicity in law, rather than from any deep understanding of the social realities reflected in the legal processes. He sought cognoscibility primarily through extensive analysis: every word had to be made comprehensible to the plain man; technical terms had to be carefully defined and then used consistently; interrelations of terms had to be expounded; obscurities, ambiguities, and phrases in foreign languages could not be tolerated. As for legal fictions, Bentham regarded them simply as lies.[14]

Bentham consciously identified internal linguistic rigidity with social stability, thereby anticipating modern views of the importance of cultural and linguistic struggle:

> Proportioned to the uncertainty attaching to the import of the words employed upon legal subjects, will be the uncertainty of possession and expectation in regard to *property* in every shape, and also the deficiency of political *security* against evil in every shape: proportioned, therefore, to the *fixity* given to the import of those same words, will be the degree of security for good in every shape. . . . Until, therefore, the nomenclature and language of law shall be improved, the great end of good government cannot be fully attained.[15]

During his most mature years, Bentham wrote extensively on such stylistic and grammatical problems as redundancy, longwindedness, unsteadiness of expression, complexity, entanglement, and their respective stylistic remedies.[16] The emphasis on such analysis has continued, via John Austin, in Anglo-American law and philosophy.[17]

Another point of form by which Bentham sought to facilitate education or "promulgation" of the law was to divide the codified law into various sub-codes "with which some *one* class or denomination of persons only have concern." There could be, for example, particular sub-

13. 5 WORKS 235.
14. C. OGDEN, BENTHAM'S THEORY OF FICTIONS xviii (1932).
15. 3 WORKS 270-71.
16. 3 WORKS 231-83.
17. *See, e.g.*, J. AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED (1832).

codes for husband and wife, master and servant, etc.[18] To aid further in their comprehension, the sub-codes were to be broken into sections of moderate size, "of a length suited to the conceptive and retentive powers of the description of persons for whose eye it is destined," and the sections were to be given names and numbers for easy reference.[19]

Bentham considered government by an inaccessible or "unpromulgated" law to be tyranny.[20] If Bentham had prevailed, the codified law would have become the most important and widely read of books. He harbored certain schemes by which this might come about, such as distributing simplified code books to particular classes of persons, reading the general code in churches, and teaching the codes in schools.[21] Bentham also suggested that the appropriate laws be posted prominently in the public market places, and that the laws concerning particular kinds of commercial transactions be printed in the margins of the paper forms used in the respective transactions. In general, Bentham placed great faith in education to produce a virtuous, law-abiding citizen who would minimize social conflict and suffering.

Legal Method

If the law could attain the degree of publicity and popularity Bentham believed possible, then it was conceivable that every man could represent himself in court. Where is the need for the legal specialist if the law is readily accessible to, and understood by, every citizen? In addition, the population would benefit by ridding itself of that self-serving class who so perverted truth and justice:

> So far as concerns love of truth and justice, the greatest but at the same time the most hopeless improvement would be, the raising of the mind of the thorough-paced English lawyer, on a bench or under a bench, to a level with that of an average man . . . whose mind had not, for professional views and purposes, been poisoned with the study of the law . . . .[22]

Bentham believed that judges also had a vested interest in the prevailing injustice which they perpetuated through the arbitrariness of common law method.[23]

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18. 4 WORKS 454.
19. 3 WORKS 250.
20. 6 WORKS 519.
21. 5 WORKS 236.
22. 7 WORKS 188.
23. 2 WORKS 11.

As a solution, Bentham proposed that power be taken from the hands of the judges and lawyers and transferred to the legislators. Limiting all law to the code would reduce the need for judicial lawmaking and for reliance on specialized practitioners. Further, Bentham emphasized that in judging whether a given case falls within the law, the *text* of the law should be the sole authority or standard. If ambiguity exists in the text, the legislature itself should resolve it. Enactments must no longer be entirely abandoned to the "interpretation" of the judges:

> Whatsoever the legislator had in view and intended to express, but failed to express, either through haste or inaccuracy of language, so much it belongs to the judges in the way of interpretation to supply.
>
> When, however, a passage appears to be obscure, let it be cleared up rather by alteration than by comment. Retrench, add, substitute as much as you will—but never explain: by the latter, certainty will generally,—perspicuity and brevity will always, suffer.[24]

Even the fact that a particular case had not been foreseen by the legislators would not be sufficient reason for a judge to intervene and make the law.

> If a new case occur, not provided for by the code, the judge may point it out, and indicate the remedy: but no decision of any judge, much less the opinion of any individual, should be allowed to be cited as law, until such decision or opinion have been embodied by the legislator in the code.[25]

Would not the number of cases unforeseen by the legislator be so numerous as to make such a system unworkable? Is not there always a need for "interstitial" lawmaking, as Cardozo phrased it?[26] In the face of such queries Bentham maintained that although not every particular case can be foreseen, every *species* of case is foreseeable.[27] At times he seemed to believe that the categories for the legal codes could be worked out once and for all with no need for development. In this respect, his thinking paralleled the mechanist outlook according to which all future events are in principle deducible from the present position and velocity of atoms. Bentham neglected the dialectical movement which necessitates change in both the form and the content of

24. 3 WORKS 210.
25. *Id.*
26. B. CARDOZO, THE NATURE OF THE JUDICAL PROCESS 113-14 (1960).
27. 3 WORKS 205.

the legal superstructure.[28] Nevertheless, his proposals on legal method are noteworthy as an early attempt to overcome the virtual despotism exercised by Anglo-American judges through common law method. Bentham saw that, ironically, the common law judges' ameliorations in the *content* of English law can come about only by means of unjust acts of "arbitrary power," since common law by its very *form* is ex post facto law.[29] In insisting that the text of the code be the basis for all decisions, Bentham showed the way to eliminating these defects of the case-law method.

II

Bentham's Social Outlook

In his critique of English law, Bentham became the first Anglo-American to discuss law as method and form, as distinguished from pure content. His attention to analysis, consistency, and other logical features of law did not totally preclude him from viewing the law as a concrete administrative process carried on in the affairs of real men. He saw that if the organization of the legal process was such that the judges or lawyers had arbitrary power over the outcomes of the cases, the law would be unjust no matter how irreproachable its principles might have been when considered in the abstract. Previous thinkers tended to see law only as a set of rules or pronouncements or formulations—that is, as content—and largely ignored questions as to how the rules functioned in actual administration.

Despite these steps towards greater realism, Bentham in fact corrupted materialistic legal theory in the form it had taken under Holbach, Helvétius, Beccaria, and others of the French Enlightenment.[30] Among these theorists, natural law was consistently viewed as possessing

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28. F. ENGELS, ANTI-DUHRING 37 (1947).

29. 4 WORKS 460.

30. Bentham borrowed from Beccaria the utility principle and the idea that all human action springs from the expectations of, or reactions to, pleasures and pains. Beccaria, *Of Crimes and Punishments,* in THE COLUMN OF INFAMY 6 (1964). *See also* 11 W. HOLDSWORTH, *supra* note 1, at 575-77.

Both Beccaria and Helvétius believed that social conflict resulting from pursuits of self-interest could be resolved through legislation. *Id.* at 41, 42, 46.

Holbach believed that through comprehending the objective laws of nature, including human nature, man could achieve social happiness. P. HOLBACH, NATURE AND HER LAWS: AS APPLICABLE TO THE HAPPINESS OF MAN LIVING IN SOCIETY (J. Watson transl. 1834). Bentham's philosophy subjectivised the thought of these men and retreated from their insistence that science could treat—and cure—all social ills.

an objective, material existence. In the attempt to obviate the need for God in the explanation of natural phenomena, these writers introduced mechanistic causation. Thus, active human perception and understanding were conceived as a reasoning faculty passively informed by the natural world.[31] Bentham seized upon this weakness to erect himself as the champion of active, empirical legal science. He advanced the famous utility principle—the balancing of pleasure against pain—as the standard by which to evaluate "scientifically" the propriety of legal and moral actions.[32]

Whereas Enlightenment materialism could foresee the eventual solution of all social problems through science, Bentham believed the immiserization of the masses inevitable and permanent.[33] Hence, Bentham could not envision the withering away of the state as could his contemporary, Robert Owen.[34] Bentham stayed clear of the Jacobinism and incipient socialism which had received intellectual inspiration from French sources and had become popular in England after 1800.

According to Bentham, the law must remain, albeit in a radically improved form. One need not look far in his work to discover that the law's permanence is necessitated by the desired permanence of private property. Bentham says at one point:

> It is surprising that so judicious a writer as Beccaria should have inserted, in a work of the soundest philosophy, a doubt subversive of the social order. The right of property, says he, is a terrible right and may perhaps not be necessary. Upon this right tyrannical and sanguinary laws have been founded. It has been most frightfully abused; but the right itself presents only ideas of pleasures, of abundance, and of security.[35]

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31. K. Marx, *Theses on Feuerbach*, in THE GERMAN IDEOLOGY 121-23 (C. Arthur ed. 1970). Thesis I is of special pertinence.

32. On the fraudulent nature of this posturing, see text at note 43 *infra*.

33. Perfect happiness belongs to the imaginary regions of philosophy, and must be classed with the universal elixir and the philosopher's stone . . . . [T]here will always be opposition of interests, and, consequently, rivalries and hatred . . . . Painful labour, daily subjection, a condition nearly allied to indigence will always be the lot of numbers . . . . [R]eciprocal security can only be established by the forcible renunciation by each one, of every thing that would wound the legitimate rights of others. If we suppose, therefore, the most reasonable of laws, constraint will be their basis . . . .

1 WORKS 194.

34. *See, e.g.*, W. SARGANT, ROBERT OWEN, AND HIS SOCIAL PHILOSOPHY (1860).

35. 1 WORKS 309.

Security, a virtue Bentham held practically synonymous with private property, was of such supreme importance to him that he believed even equality must submit to it in case of conflict. He justified this ordering of priorities with an early form of "trickle-down" theory.[36]

All this does not mean that Bentham was among the most reactionary forces of English society. He appreciated the gains that had been made in the English, American and French revolutions, and his codification proposals were aimed at the worst corruption of the aristocracy and established bankers.

Popular Attitudes Towards the Legal System

As an erudite spokesman of the middle class, Bentham was able to achieve a certain degree of influence through his writings, even though Parliament was generally unreceptive to his ideas. The sentiments of the majority of English society, towards the legal system, however, have left their mark on history only by means of the direct action people took on particular issues.[37] Many members of this sub-political majority were actually living outside the law, or in a fringe area. Colloquial terms of the period convey some idea of conditions. Besides the common thieves and prostitutes there were "receivers of stolen

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36.

> When the question is to correct a kind of civil inequality, such as slavery, it is necessary to pay the same attention to the rights of property; to submit it to a slow operation, and to advance toward the subordinate object without sacrificing the principal object. Men who are rendered free by these gradations, will be much more capable of being so than if you had taught them to tread justice under foot for the sake of introducing a new social order.
>
> It is worthy of remark that in a nation prosperous in its agriculture, its manufactures, and its commerce, there is a continual progress towards equality . . . .
>
> Thus we may conclude that Security, while preserving its place as the supreme principle, leads indirectly to Equality; while equality, if taken as the basis of social arrangement, will destroy both itself and security at the same time.

J. BENTHAM, THE THEORY OF LEGISLATION 122-23 (C. Ogden transl. 1914).

37. The 18th and 19th century are punctuated by riot occasioned by bread prices, turnpikes and tolls, excise, 'rescue', strikes, new machinery, enclosures, press-gangs and a score of other grievances. Direct action on particular grievances merges on the one hand into the great political risings of the 'mob'—the Wilkes agitation of the 1760s and 1770s, the Gordon Riots (1780), the mobbing of the king in the London streets (1795 and 1820), the Bristol Riots (1831), and the Birmingham Bull Ring Riots (1839). On the other hand it merges with organized forms of sustained illegal action of quasi-insurrection—Luddism (1811-13), the East-Anglican Riots (1816), and the "Last Labourer's Revolt" (1830), the Rebecca Riots (1839 and 1842) and the Plug Riots (1842).

E. THOMPSON, THE MAKING OF THE ENGLISH WORKING CLASS 62 (1963). *See also* 13 HOLDSWORTH, *supra* note 1, at 201.

property, coiners, gamblers, lottery agents, cheating shopkeepers, riverside scroungers, . . . Mudlarks, Scufflehunters, Bludgeon Men, Morocco Men, Flash Coachmen, Grubbers, Bear Baiters, and Strolling Minstrels."[38]

Since the most trivial offenses were often punishable by hanging, it is easy to imagine that among those oppressed "[t]he law was hated [and] . . . despised."[39] But extreme animosity towards the law was not limited to the criminals and quasi-criminals during this era:

> Highwaymen and pirates belonged to popular ballads, part heroic myth, part admonition to the young. But other crimes were actively condoned by whole communities—coining, poaching, the evasion of taxes . . . or excise or the press-gang. . . .
>
> This distinction between the legal code and the unwritten code is a commonplace at any time. But rarely have the two codes been more sharply distinguished from each other than in the second half of the 18th century.[40]

Although he may have been unwilling to admit it, Bentham's reformist legal views undoubtedly drew support from the activity of the working class. His attacks on the judges and the legal profession grew stronger as working class agitation mounted in the latter part of his career. Had Parliament not granted broad legal and political reforms in 1832, the year of Bentham's death, it is highly probable that civil war would have broken out.[41]

Bentham's Legal Philosophy

Bentham criticized the natural law theory of his contemporaries for its tendency to offer deeply felt beliefs where proofs were required. He thought that he had found a much more objective or scientific ground for legal decisions in pleasures, pains and happiness:

> What happiness is everyone knows, because what pleasure is everyman knows, and what pain is everyman knows. But what [natural] justice is, this on every occasion is the subject matter of dispute.[42]

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38. E. THOMPSON, *supra* note 37, at 55.

39. *Id.* at 61.

40. *Id.* at 59-60.

41. 13 W. HOLDSWORTH, *supra* note 1, at 242; E. THOMPSON, *supra* note 37, at 808-32.

42. P. King, Utilitarian Jurisprudence in America 25-26, (unpublished thesis in University of Illinois Library).

Nevertheless, while Bentham's legislator is apparently committed to a wholly factual, empirical task in adding pleasures and pains and calculating happiness, the firm, factual data turn to quicksand or entirely vanish on closer exmaination. How can qualitatively different pleasures be weighed against one another? How can one man's pleasure be weighed against another's pain? How could one person even determine another's degree of happiness, pleasure or pain since, according to Bentham, pleasures and pains might well be totally subjective, private events inaccessible to other persons?

In spite of an attempt to avoid deciding whether there is any ultimate difference between what is mental and what is material, Bentham asserted that *in practice* a distinction must be made between the mental and the material.[43] In practice, then, the legislator may find that people's pleasures and pains are mental, subjective, and private and therefore unavailable to him. As a result, the legislator may have resort only to his own estimate of what is the public's pleasure. For example, does it really maximize the pleasure of the whole public to favor security (i.e., private property) over equality, or is this merely the conjecture of the legislator? It is clear that Bentham's legislator was not necessarily the objective, scientific decisionmaker for whom Bentham seemed to be calling, and hence that Bentham's legal philosophy did not in fact differ much from the natural law he condemned.

CONCLUSION

Bentham was of middle class orgins, and he believed that the prosperity and growth of the middle class should be encouraged. His relation to Enlightenment materialism and to the socialist thought of his era is best explained as a part of the unusually reactionary role played by the English middle class in the early nineteenth century:

> The example of the French Revolution had initiated three simultaneous processes: a panic-struck counter-revolutionary response on the

43. Those who maintain that the mind and body are one substance, may here object, that upon that supposition the distinction between frame of mind and frame of body is but nominal, and that accordingly there is no such thing as a frame of mind as distinct from the frame of body. But granting, for argument's sake, the antecedent, we may dispute the consequence. For if the mind be but a part of the body, it is at any rate of a nature very different from the other parts of the body.

J. BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 176 n.2 (W. Harrison ed. 1948). Thus, in rejecting the mechanistic materialism of the Enlightenment, Bentham apparently retreats to a Cartesian dualism.

> part of the landed and commercial aristocracy; a withdrawal on the part of the industrial bourgeoisie . . . and a rapid radicalisation of the popular reform movement. . . . The twenty-five years after 1795 may be seen as the years of the "long counter-revolution"; and in consequence the Radical movement remained largely working-class in character, with an advanced democratic "populism" as its theory. But the triumph of such a movement was scarcely to be welcomed by the mill-owners, iron-masters, and manufacturers. Hence the peculiarly repressive and anti-egalitarian ideology of the English middle classes (Godwin giving way to Bentham, Bentham giving way to Malthus, M'Culloch, and Dr. Ure . . .).[44]

His middle class position explains Bentham's excoriating the judges for their flaunting of arbitrary power while believing that the reign of the legislator would be totally objective even though guided only by his princple of utility.

Bentham clearly gave less support to working class activism than he received from it. His most unguarded and vituperative attacks on the legal profession came in his later years when the working class had become most insistent and had finally moved England out of the long period of reactionism following the French Revolution. Only in these years did he dare to advocate liberalization of voting requirements.[45]

Despite his conservatism and firmly bourgeois position, Bentham's codification proposals were regularly shunned in England and the United States as too radical. After his death, the rising industrial bourgeoisie began to draw upon some of his more palatable ideas. Later, Rudolf von Ihering, and then Roscoe Pound, reworked Bentham's subjectivistic interest theory into more sophisticated forms, which eventually found their way into recent Supreme Court decisions.[46]

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44. E. THOMPSON, *supra* note 37, at 807-08.

45. J. STOCKS, JEREMY BENTHAM (1933). This book neatly delineates Bentham's shift to a more liberal position in his later years.

46. R. IHERING, LAW AS A MEANS TO AN END (S. Husik transl. 1913); 3 R. POUND, JURISPRUDENCE (1959). The latter is devoted to Pound's theory of interest. A crude version of Pound's interest theory has been used in many recent Supreme Court decisions. *E.g.*, Bibb v. Navaho Freight Lines, Inc., 359 U.S. 520, 524 (1959); Southern Pac. Co. v. Arizona, 325 U.S. 761, 775-76 (1945).