

The Extent to which the
Influence of Jeremy Bentham
Prevailed in the Reformation of
Criminal England

by Lucie Hortense Snyder

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The Extent to which the Influence of Jeremy Bentham prevailed
in the Reformation of the Criminal Code of England.

In an article in the Edinburgh Review of 1817, Sir Samuel Romilly, reviewing some of Bentham's works, says:
1 "And he (Bentham) has labored for all nations and all ages yet to come in his greatest works." Further on, he continues: "The beneficial effects which might have been expected from these masterly compositions, have not, it is true, as yet been produced. We are not able to discover the traces of these works in the improved condition of any portion of the human race." Did these masterly works ever produce any benefit? Now, after more than a century, are we able to find any traces of them in the improved conditions of mankind? That conditions have improved is not, of course, questioned, or that they have improved, in many instances, along the lines laid down by Bentham. But is the improvement, in any measure, due to Bentham? It is the purpose of this paper to take up one phase of this interesting question—the reformation or revision of the Criminal Code of England.

I.

The family of Jeremy Bentham had nothing in it, either in descent or habits, that would account for the one remarkable
1 Ed. Rev. vol. 29. "Papers relative to codification and public instruction including correspondence with the Russian Emperor and divers constituted authorities in the U. S. "

member. His great grand father was a pawn-broker and his father and grand father were attorneys. The father was extremely fond of his son and from his earliest years delighted in showing him off. When four years old he set him studying Latin and at five gave him the title "The Philosopher." At six or seven he began to learn French and at a very early age read "Telemachus". Later he said that "Romance may be regarded as the foundation of my whole life character, the starting point from which my career of life commenced."

His school life seems to have been an unpleasant experience; and, although he was educated in the law and was called to the bar at Lincoln's Inn, he cared little for his profession and the little practice that came to him he treated with indifference. But he began early to take an interest in chemistry, and experimented and translated in a small way for several years.

The early trend of his mind may be noted in one of his first articles entitled "Education", where he writes, "Inspire a general habit of applauding or condemning actions according to their general utility." As early as 1776 he was busy on a work which at that time he called "The Critical Elements of Jurisprudence." It was printed in 1780 but was published only in 1789 as "Introduction to the Principles of Morals and Legislation." In 1776 he published a trenchant criticism

of Blackstone which bore the cumbersome title "Fragment on government or a comment on the commentaries; being an examination of what is delivered on the subject of government in general in the introduction to Sir William Blackstone's Commentaries, with a preface in which is given a critique on the work at large." Bentham had attended Blackstone's lectures at Oxford in 1763 and had developed an intense antipathy for him. This work was indeed heretical, but it was so masterful that it was attributed to Lord Mansfield, Lord Camden and Dunning. With the recognition of this work came friends, and a life which had been impossible to him before. Lord Shelburne invited him to Bowood and also to Shelburne House.

Since Bentham never went to Parliament, and, in fact, led as quiet and secluded a life as possible, his influence must have been exerted first, by his friends or those who came in contact with him; and, second, by his writings.

II.

It has been said of him that he spent the first thirty years of his life in forming his opinions and the last fifty in expounding them. He took upon himself the task of forming a basis for every human need and he had every confidence in his own ability and success.

There was nothing in Rousseau's "Declaration of the rights of man" that appealed to Bentham and while both Rousseau and Bentham were probably seeking the same ultimate end, it is not at all likely that Bentham ever considered Rousseau's theory as anything but absurd. It is true that, as with Rousseau, a doctrine of equality occupies an important place in his "Civil Code"; but it is only because it tends to increase the sum of happiness in the world that it is good. Had slavery appealed to him as the ideal state, the state in which the greatest number enjoy the greatest happiness, then slavery would have been good. The sole object of government ought to be the greatest happiness of the greatest number of individuals.

In his opening words to the "Principles of morals and legislation" we find "Nature has placed man under the government of two great sovereign masters, pain and pleasure. It is for them to point out what we ought to do as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think."

"By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish

the happiness of the party whose interest is in question, or to promote or oppose that happiness."

This greatest happiness principle becomes the foundation of his system. It is the guide in all matters of morality and legislation. The civil and penal codes are made in accordance with it. It is the test to which religion has to be subjected. Everything- government, legislature, politics, religion, and morality- have one common object, the attainment of happiness.

According to Bentham, in the sphere of government, those laws, institutions and measures are good and right which promote the happiness of the community or the majority of it, or which produce the greatest sum of happiness to the greatest number, not the greatest happiness to an aristocracy or king.

²"It has been shown that the happiness of the individuals, of whom a community is composed, that is their pleasures and security, is the end and the sole end which the legislator ought to have in view: the sole standard, in conformity to which each individual ought as far as depends upon the legislature to be made to fashion his behavior." "The business of government is to promote the happiness of society."

We can see here, that there is none of Rousseau's "natural rights of man". He argues in favor of such reforms as would

²Principles of morals and legislation.

check the "sinister interests" of ruling classes, aristocracy, priests and all those in authority, he even favors equality of property, on the ground that with the increase of wealth to the rich there is not a corresponding increase of happiness, that the happiness of those who receive a large revenue, such as landlords, is not increased so much as those from whom he gets it is diminished.

According to Bentham, four things are necessary to the happiness of mankind,- subsistence, abundance, equality and, above all, security. The first two will generally take care of themselves and indeed do much better without legislation than with it. Original equality and the restoration of the primitive state is not his argument, but that an equal distribution of wealth would increase the general happiness. Security, is after all, with him, the great thing. The thing in which legislation ought to take a part.

While the subjects treated by Bentham are extremely varied, "Principles of morals and legislation" is the principal one we will consider. This is regarded as his greatest work and as the clearest expression of the principle of utility and his own ideas. It was written while at Bowood and printed in 1780. In it he expresses his ideas of punishment.

³"But all punishment is mischief; all punishment in itself is

³Principles of morals and legislation, p. 70

evil. Upon the principle of utility, if it ought to be at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil." And again⁴ "Now if any mode of punishment is more apt than another to produce any such superfluous and needless pain, it may be styled unfrugal." All through Bentham's writings we find the idea of the reformation of the criminal.⁵ "A seventh property, therefore, to be wished for in a mode of punishment, is that of subserviency to reformation, or reforming tendency: the punishment most subservient to reformation will be the sort of punishment that is best calculated to invalidate the force of that motive."

Bentham also believes that a punishment ought to be popular and that an unpopular punishment defeats the end of justice.⁶ "In other cases, the punishment of death is unpopular; and this unpopularity produces different dispositions, all equally contrary to the ends of justice: a disposition on the part of the individuals injured not to prosecute the offenders, for fear of bringing them to the scaffold; a disposition on the part of the public to favor their escape; a disposition on the part of witnesses to withhold their testimony, or to weaken its effect; a disposition on the part of the judges to allow of a merciful

⁴ Principles of morals and legislation, p. 194.

⁵ Principles of morals and legislation, p. 195.

⁶ Bentham's Works. Principles of Penal Law- vol. 1:449

prevarication in favor of the accused; and all these anti-legal dispositions render the execution of the laws uncertain, without referring to that loss of respect which follows upon its being considered meritorious to prevent their execution."

These are some of the principal ideas of Bentham as to the things which an ideal criminal code should have in it. Most of these things were embodied in the speeches of the men who argued in favor of criminal reform and at first glance one would be led to suppose that they got their ideas from Bentham. But an apparent conclusion is not always a correct one, and after an investigation of the history of the reformation of the criminal code we believe that we can maintain our contention that the reformation was brought about by the deficiency of the code itself to meet the needs of the times and by the persistent insistence of those who were directly affected by it.

The "Greatest Happiness" principle was not original with Bentham. Nor does he claim to have invented it. One day while reading in a circulating library at Harper's Coffee House in Oxford, he came upon Priestly's "Essay on the first principles of government." Here he found the sentence, "The good and happiness of the members of any state, is the great standard by which everything relating to that state must be determined." This essay was written in 1768, which, according to Lecky was one year before English Radicalism

was born.

Yet Priestly was not the first to use this phrase, for Hutcheson has the same idea in his "Inquiry concerning moral good and evil", and in Beccaria's work on "Crimes and punishment", published in 1754, we find the words "la massina felicità nel maggior numero." But Bentham built up a system of his own on this idea, and as Priestly was little read and Beccaria's influence in England was probably very slight, they need not be given any great consideration here.

To Bentham and the Philosophical Radicals has been given the credit for the great revision of the criminal code and it is this influence we propose to investigate. ⁷"I do not know," says Sir Henry Maine, "a single law reform effected since Bentham's day which cannot be traced to his influence." This is a very sweeping statement, and we depend on the history of the friends of Jeremy Bentham to refute it.

One of the most characteristic things in Bentham's life was the part played by Dumont in getting Bentham's works before the public. We cannot help wondering whether or not Bentham would ever have been known to any considerable extent had it not been for Dumont. The two met at Bowood and Dumont offered to edit Bentham's manuscripts and for many years acted as a sort of official interpreter between the great jurist and the world at large. Bentham did not write

⁷ Hazlitt's "Six Radical thinkers. p. 7.
Maine's

one thing at a time, beginning at the first and carrying it on until finished. He wrote down ideas as they came to him, no matter what the subject, and out of this chaos Dumont composed the works. ⁸"Mr. Dumont's office in respect to Jeremy Bentham's fragments, was the same as that of the comparative anatomists in respect to extinct species of animals, who, digging into the earth, and finding a tooth or a claw, a shell or a bone, here and there, clothe it with flesh and a skin, and give in due systematic order, the genera and species that have been extinct some thousands of years."

But even before Dumont and Bentham met, Dumont had begun this work of editing. In 1788 Romilly had sent Dumont some of Bentham's work the manuscripts of which were in French under the title "un ami inconnu". Dumont offered to re-write portions and superintend the publication of the whole, saying the author was worthy of serving the cause of liberty.

Lord Shelburne probably considered Bentham's writings as splendid philosophy but not at all fit for practical legislation. We have no evidence that he ever considered them seriously in his political life. On April 13, 1803, he wrote to Lord Holland: ⁹"You will be pleased to know that Bentham's and Dumont's book is likely to make its way and to lay the foundation of a new science in legislation. It ought to be translated into Spanish." In a reply to Bentham, however, he is not so enthusiastic.

⁸ R. Hildreth in North American Review, v. 51:384

⁹ Fitzmaurice. Life of Lord Shelburne. III:569

10 "I wish well to the new principles and will promote them as far as a free declaration of my own sentiments in public or private will go; but politics have given long since too much way to philosophy, for me to give myself further trouble about them." Plainly, there is no need looking to Lord Shelburne for any practical furtherance of the principles of utility.

As a young man, Bentham was a strong Tory and he long remained so, even after the publication of some of his best and strongest works. It was not until late in life that he really and consciously became a Radical. The French Revolution produced very little effect upon him, and he was never carried away by the prevailing gusts of enthusiasm. Some of the men prominent in French politics did indeed consult with him, and Mirabeau himself is said to have derived the material for some of his speeches from Bentham through Dumont.

Bentham was not the founder of a philosophical school in the sense that he gathered a number of young men about him and taught them with the idea that they were to become the propagandists of his creed. Bentham was a man who saw few people, he lived in seclusion in the "Hermitage", only on rare occasions entertaining some distinguished man and admitting only his most intimate friends. It is said that he carried on a correspondence with Holland House. If this correspondence

¹⁰ Fitzmaurice. Life of Lord Shelburne. III:524

were obtainable it might prove very interesting. As far as Bentham was concerned there never was any oral teaching nor was there any esoteric school.

Bentham's most important disciple was James Mill, who gave the Benthamite ideas their definite shape as far as England was concerned. This friendship began about 1808. Dumont was already known as the promulgator of Benthamism abroad; but Mill soon became the trusted friend who carried on the work in England. According to his son, John Stuart Mill, he was the first Englishman of any great note, who thoroughly understood, and in the main adopted Bentham's general view of ethics, government and law. This, of course, formed a foundation for a natural sympathy between them. From 1811 to 1817 Mill wrote articles for the "Philanthropist", published by Allen, in which he had an opportunity of expounding Bentham's principles of law reform.

The first noteworthy attention that came to the principles of utilitarianism was in 1814 when Macvey Napier invited Mill to contribute an article to the supplement of the Encyclopaedia Britannica; and between 1816 and 1823 he wrote a number of articles which expounded utilitarianism in a most uncompromising fashion. The most remarkable of these articles, that upon government, appeared in 1820 and is, substantially, a terse statement of the radical creed of the time as based upon Benthamite principles. This was reprinted twice.

While Bentham was not the founder of a school in the strictest sense, yet he was, in a way, the leader of a party. Philosophical Radicalism might be described "as the result of the application of the Benthamite method of inquiry to the ultimate principle of government." The fundamental basis of all Bentham's teaching was the principle of utility . The theory of the greatest happiness to the greatest number was not at all new. Sayings to that effect had been made in the speeches of great men from time to time as long as people could remember, but here was a new class of people which was trying to legislate on that principle.

It was not until 1819 or about that time that the Radicals began to be called by the name by which they have ever since been known. In the London Review of 1835 we are told that the Radicals were so called in order to class them "with all that is most despicable in the community, till the name began to acquire respect." We read that to be called a Benthamite was a mark of reproach; that Sir Francis Burdett was "cut" by aristocratic society, and that "only men of the finest nerve dared to appear as a reformer."

Possibly next in importance to Mill among the friends of Bentham was Francis Place. In a letter written by Sir Samuel Romilly to Dumont October 2, 1817, we find

11 "The society we found and left him with were Mill and his family and a Mr. Place.....He is self-educated.....and

11. Memoirs of Sir Samuel Romilly. III:316-317

possesses great influence in Westminster, such an influence as almost to determine the elections for Parliament." By this letter one can judge of the intimacy of Place with Bentham. He was one of those men who are of first rate importance during their life time but whose very name is unfamiliar to the next generation. He was a quiet man; a laborer and the son of a laborer and he early became a confirmed Radical. He became acquainted with Bentham and James Mill in 1808 and while Mill wrote philosophy Place put the same into practical affairs. While he had no special literary ability himself, he reprinted, in cheap editions, the works of Bentham and James Mill. The Westminster Review could at best reach but a few people, the more educated and enlightened, whom the defects of the criminal code did not affect, but these cheap editions put out by Place were much more widely scattered. In 1807 he won his first success in Westminster by securing the election of Sir Francis Burdett, and Westminster under his influence became the hot bed of Radicalism. ¹² "This master tailor and friend of Mill and Bentham was the greatest political wire-puller and election manager of his time. He set the fashion of that systematic organization of votes which both parties have since considered indispensable; and he is, in the main, responsible for what may be called in general terms the introduction of the caucus system into English politics.

12.

It would be perhaps no exaggeration to call him the lineal ancestor of the National Liberal Federation. "This man seems to have been the one true Benthamite who mixed with the world at large."

Another of the men who are usually classed with the Benthamites is David Ricardo. He held a seat in Parliament, representing Portarlington in Ireland. But he was only a mild Radical and the ballot was his hobby.

Along with Ricardo we must class George Grote, who was one of the first of the rich mercantile class to take up Radicalism. But he was never a very active politician and his fame has come down to us on his literary rather than legislative merits. Like Ricardo he spent his energies on the question of the ballot. Cobden says of Grote and his wife, ¹³"She is the greater politician of the two. He is a mild and philosophical man, possessing the highest order of moral and intellectual endowments, but wanting something which for need of a better phrase I shall call devil."

6 Macaulay said in 1830 that the Radical party consisted of "Grote and his wife."

In 1813 Joseph Hume was introduced to Francis Place and Hume soon began a political career under the tutoring of Place. Hume soon became a rather important member of Parliament and was insistent in season and out of season

¹³.

Kent, English Radicals. p. 210.

in his denunciation of the extravagance of the aristocratic rulers. Economy was his war cry and he was never silent upon the subject when he could find an opportunity to speak on it.

Francis Burdett was a man who for a long time enjoyed considerable popularity with the crowd. He entered Parliament from Westminster in 1807 and perhaps his greatest notoriety was obtained when he was committed to the Tower for a breach of parliamentary privilege. His release was made the occasion of a great popular demonstration. Yet even among his own party this man was neither trusted nor extremely popular. Even Place called him a ¹⁴"coward and poltroon" and for years these two leaders of politics in Westminster were not on speaking terms.¹⁵ Cobbett also gave him a stinging attack in his "History of the last hundred days of English freedom." Indeed, there seems to have been little harmony among the Radicals. But Bentham and Burdett seem to have been on rather friendly terms, for Bentham calls him his ¹⁶"much esteemed disciple."

John Stuart Mill grew up under the direct influence of Bentham but he did not enter into active work until 1824 and his influence belongs to a later period than the one which we are considering.

¹⁴ Kent. English Radicals. p. 260

¹⁵ Memoirs of Samuel Romilly v. II: 306-13

¹⁶ , Bowring. Life of Bentham Works. X:491-97

There is one more man to be considered and he was, if not one of the most important, at least one of the most conspicuous figures in Radical journalism,- William Cobbett. He was the son of a farmer and had but little education. The first portion of his literary career was a decidedly stormy one, but in 1802 he established the "Political Register", and continued it until his death, although it was at one time necessary for him to seek refuge in America and continue its publication from there. In 1830 he was elected for Oldham and represented it until his death in 1835.

Some idea of the influence of "Register" may be gathered from the words used by Bentham when he sent Cobbett his "Parliamentary Reform Catechism" and requested him to publish it. ¹⁷"The celebrity of your name compared with the obscurity of my own, has suggested the idea.....", and in this way he hoped to obtain a degree of circulation so much beyond, "what any such name as mine could give to it."

Cobbett had a Radicalism all his own, too. He used it simply as a means to obtain a complete reform of the financial system of the country. The general view of things obtaining among the Philosophical Radicals and their mental attitude were as alien to Cobbett as anything could be. For James and John Stuart Mill and Ricardo he had nothing but contempt.¹⁸

¹⁷ Bowring's Life of Bentham. Works X:458

¹⁸ Kent. English Radicals. p. 290.

There was another periodical which was used largely by the Radicals as a means of expression and that was the "Morning Chronicle". This had been a Tory organ, but under the management of Mr. Black it became rather an important journal for the Utilitarians.

But the most conspicuous purely Radical organ was the "Westminster Review", established in 1824. It was financed by Bentham and its main object was to attack the Whig organ, the Edinburgh Review. James Mill contributed an article in the first number which his son considered "the greatest blow ever struck on the Radical behalf." "The magazine was not as great a success as those connected with it had hoped it might be and John Stuart Mill says "It is worth nothing as a fact in the history of Benthamism, that the periodical organ by which it was best known was from the first extremely unsatisfactory to those whose opinions on any side it was supposed especially to represent." In 1828 it was bought by Perronet Thompson, and something in the sale so angered John Stuart Mill that he declined to contribute any longer, and thus was lost one of its most valuable assets.

III.

This, in brief, is a history of the men who ~~composed~~ the Philosophical Radical party during this early period. We will now examine the Parliamentary history and try to trace the movement for criminal law reform. Let us notice closely

whether these men ever came forward conspicuously as advocates for a change in the criminal law of England.

Long before the birth of the Radical party, long before the establishment of the Westminster Review, we find the beginning of the movement for criminal law reform.

In 1808 Sir Samuel Romilly rose and introduced a bill in regard to private stealing. ¹⁹"No principle could be more clear, than that it is the certainty, much more than the severity of punishments, which render them efficacious. This has been acknowledged ever since the publication of the Marquis Beccaria; and he had heard, he could not himself remember it, that upon the first appearance of the work it had produced a great effect in this country. The impression, however, had hitherto proved unavailing, for it has not in this country, in a single instance, produced any alteration of the criminal law. It is notorious, how few of those who are condemned actually suffer death. The question is, whether the administration of justice should be suffered to continue in such a state, where the execution of the law is not the rule that is observed but the exception to it. Offenders are often acquitted against the clearest evidence: and the severity of those laws, by a necessary consequence, holds out and encouragement to crime."

¹⁹ Parliamentary History. XI:395

While this has rather a sound of Benthamism still since he gives Beccaria as his one authority we have no reason to question him, especially since Romilly and Bentham were very good personal friends.

That Sir Samuel Romilly did read Bentham we are certain. On August 20, 1790, he writes to Madame G---- ²⁰"The first use, Madame, to ^{which I} devote the leisure that the long vacation affords me, is to return you many thanks for the translation of Mr. Bentham's book on Usury, which you did me the favor to send me. I have read it with great pleasure. Again on April 5, 1791, he writes to Dumont. ²¹"Bentham still leads the same kind of a life as usual at Hendon; seeing no body, reading nothing and writing books which nobody reads." In still another dated, Paris, April 7, 1791, from Madame G---- to Romilly we read ²²"Nous avons reçu ces jours derniers encore un paquet de vous, Monsieur, contenant les réflexions de M. Bentham sur notre ordre judiciaire, une esquisse du règne de George III, et une réponse a M. Burke." From these letters it is shown that Romilly was early familiar with Bentham's writings but he does not seem to have any sort of a hero worship for the principal ideas of "Utility".

Bentham, Romilly and Dumont were intimately associated

²⁰ Memoirs of Sir Samuel Romilly. I:403

²¹ Memoirs of Sir Samuel Romilly. I: 417

²² Memoirs of Sir Samuel Romilly. I:417

as early as 1808. There is an entry in Romilly's diary for August 20, 1808,--²³"I passed the vacation almost entirely at Knill. Dumont brought with him several manuscripts of Bentham's which he is translating and arranging. One of these, a treatise on punishment, appears to me to have extraordinary merit, and to be likely to be more popular than most of Bentham's writings, and to produce very good effects. I strongly exhorted Dumont to finish it without delay and to have it published, if possible, in the ensuing winter, and he has promised to do so. Since the work of Beccaria, nothing has appeared on the subject of criminal law, which has made any impression on the public. This will probably make a very deep impression." The work here referred to was published under the title "Théoru des Peines et des Récompenses."

From these letters it is easily seen how familiar Romilly was with all of Bentham's writings, but he does not give the philosopher credit for any special influence upon himself. There is nothing of the attitude of teacher and pupil.

On February 9, 1810, Romilly again arose and presented a bill saying, that what he did was actuated as much by a desire for public good as for that of individuals and he was particularly induced to bring this matter before the House

²³Memoirs of Sir Samuel Romilly. II:252-3

from a conviction in his own mind that the non-execution of the law in the infliction of those punishments he had alluded to, was the cause of crime by holding out the prospect of impunity. ²⁴ "It frequently happened, that parties were deterred from bringing depredators to justice, from the severity of the punishment which would be the result of their conviction, and persons were thereby led to the perpetration of crimes by the impunity which was held out to its delinquents." Let us compare this with the statement of Bentham in "Principles of Morals and Legislation." "It is plain then that in the following cases punishment ought not to be inflicted,-

"1. Where it is groundless; where there is no mischief for it to prevent; the act not being mischievous on the whole.

"2. Where it must be inefficacious; where it can not act so as to prevent the mischief.

"3. Where it is unprofitable, or too expensive; where the mischief it would produce would be greater than it would prevent.

"4. Where it is needless; where the mischief itself may be prevented or cease of itself without it."

Romilly could, of course, have developed his speeches from ideas of this sort, and indeed, it would have been

²⁴Parliamentary History. XV:369

not hardly possible to do any reforming without touching on one or more of these points. But the difference comes in the view point of the two men and Romilly's work bears the stamp of the practical man of affairs.

All through 1810 Romilly stood firmly for reform and the fact that he was not taken very seriously or that he stood almost alone seems to have made no difference to him. ²⁵"He believed there was no country on the face of the earth in which there had been so many different offences, according to law, to be punished with death as in England. The indiscriminate application of the sentence of death to offences exhibiting very different degrees of turpitude had long been the subject of complaint in this country." This is Romilly's business like view of the situation and though at times we see the humanitarian impulse in his efforts yet we look in vain for any utilitarian motive.

On introducing a bill on the frequency of capital punishment, he says, ²⁶"In his opinion nothing could be more erroneous or more mischievous than that certain punishments should be allotted to particular offences and that the law so laid down should not be acted on, and peremptorily enforced. He believed that one out of six or seven who received the sentence suffered the punishment annexed by law to their respective offences."

²⁵ Parliamentary History XV:366-7

²⁶ Parliamentary History XV:367

On May 9, 1810, Romilly states what he considers the object of punishment. ²⁷"In considering punishments as they operate to the prevention of crimes, he thought they might be divided into three classes. The principle of the first was, that the punishment of the individual should operate on society in the way of terror. The second, was to put it out of the power of persons offending to commit crimes in the future. The third principle was the reformation of the offending party."

We must again compare this with the code given by Bentham on the same subject.

²⁸"1. His first, most extensive and most eligible object, is to prevent, in as far as it is possible and worth while, all sorts of offences whatsoever; in other words, to so manage, that no offences whatsoever may be committed.

"2. But if a man must needs commit an offence of some kind or other, the next object is to get him to commit an offence less mischievous rather than one more mischievous; in other words, always to choose the least mischievous of two offences that will either of them suit the purpose.

"3. When a man has resolved a particular offence, the next object is to dispose him to do no more mischief than is necessary

²⁷ Parliamentary History XVI:944

²⁸ Principles of Morals and Legislation: 178

to his purpose: to do as little mischief as is consistent with what he has in view.

"4. The last object is, whatever the object may be, whatever the mischief may be, to prevent it at as cheap a rate as possible."

Could anything be more different than the reasoning of these two men? Even when they reach the same conclusion on any one point, the process is very unlike. Whatever humanitarian feeling Bentham might have had for the individual it is lost in "greatest happiness to the greatest number" principle.

For April 21, 1811, we find in Romilly's diary the entry, -
 29 "I passed the last week, being Easter week, at Mrs. Fisher's at Ealing, with Anne and some of the children, and returned today. I have spent my time principally in answering some cases and in reading as much as is printed of Bentham's and Dumont's work on punishments. (*Théorie des Peines Legales*). It begins by stating what are the qualities to be required in punishments, and then proceeds to analyse all the punishments which are now in use. It is executed admirably and it never was attempted before. Penal legislation hitherto has resembled what the science of physics must have been when physicians did not know the properties and effects of the medicines they administered."

 29. *Memoirs of Sir Samuel Romilly III:385-6*

It is not at all strange that a man like Sir Samuel Romilly should read everything possible on legislation and criminal law, and by the above we see that Bentham's work made a very favorable impression on him. But notice, it is rather the way in which it is executed than any special view that appeals to him.

During 1811, Romilly introduced three bills which were all passed by the House of Commons but rejected by the Lords.

1. Repeal act of King William which rendered it a capital offense to steal property to the amount of five shillings privately in a shop.
2. Repeal act of Queen Anne which pronounced it a capital offense to steal to the value of forty shillings in a dwelling house.
3. Rendering it no longer a capital offense to steal property to the same amount on a navigable river.

Silent during 1812, in 1813 Romilly again takes up his work in Parliament for the repeal of the criminal law. He used the same arguments that he had used before, and concluded by moving ³⁰"That leave be given him to bring in a bill to repeal as much of said act as takes away the benefit of clergy from persons stealing privately in any shop, warehouse or merchandise of the value of five shillings and for more effectually preventing the crime of stealing privately in

³⁰ Parliamentary History XXIV: 567

shops, warehouses, coach houses and stables." In his speech on the subject we see him returning to his idea that to prevent crime punishment should hold out a terror to the members of society. ³¹ "A penal law not ordinarily executed must be deficient in justice or wisdom or both. Laws to be effectual must hold out a terror to the individuals. What terror could a law carry with it, when it was known that it was never put in force but remained a dead letter on the statute books."

In volume seven, Quarterly Review of 1812, Romilly has an article on "Observations on the Criminal Law of England, as it relates to capital punishment and on the mode in which it is administered."³² "By the law as it now stands, the offences which we have already described are punishable with death. From the records of the criminal courts we find that, in a period of seven years from 1802-9 inclusive, out of 508 persons convicted, 67 suffered the sentence of the law. By other tables of information, it appears that, within the same period, there were committed to Newgate for trial, charged with the crime of stealing in dwelling houses, 1013 persons; of shop lifting 859. The number of capital convictions obtained upon these charges is not easy to be determined but of the number so charged only one was executed."

³¹Parliamentary History XXVI: 563-4

³²Quarterly Review, vol. 7:160

Nor in his diary do we find any mention of Bentham's theory of legislation or punishment. ³³"In the House of Commons, I moved for leave to bring in a bill to repeal so much of the act of King William as punishes with death the offense of stealing privately in a shop, warehouse, or stable, goods to the value of five shillings; and also for leave to alter the punishment of high treason; and another bill to take away the corruption of blood as a consequence of attainder of high treason or felony. I omitted the bill formerly brought in to take away capital punishment in cases of stealing in dwelling houses and on board vessels; because those bills had excited more opposition than that relating to shops; and some persons even have said they would have voted for the latter had it not been for the former. The alteration I proposed to make in the punishment of high treason was, to omit the embowelling and quartering."

In 1814 a new man steps into the fight- Sir James Macintosh. On April 25, he introduced a bill against the corruption of blood. ³⁴"It was a law, not to inflict a direct and heavy punishment on the offender and a remote and contingent one on his posterity, but to inflict very certain punishment on the innocent, and either a very slight one or none at all on the guilty." The bill failed and would not be worthy of con-

³³ Memoirs of Sir Samuel Romilly III:79-80

³⁴ Parliamentary History XXVII:531

sideration were it not for the fact that upon the death of Romilly, Sir James Macintosh took up the fight for the revision of the criminal law and became the recognized champion of these measures. For this reason then we will consider Bentham's idea on the same thing as expressed in "Principles of penal law." ³⁵ In by far the greater number of cases in which the offense has been committed, this punishment cannot take place for want of a subject on which to operate. A man who has no wife and children cannot be punished in the person of his wife and children. Now a punishment that is good in only one case of a thousand is good for nothing..... What the delinquent himself suffers is known always by the sentence. It is in many cases visible in the execution. The woman or child who is made to suffer languishes in secret and unavailing misery."

It has been said that the "Dissertation upon ethical philosophy" by Sir James Macintosh is in substance a modification of utilitarianism. Yet if there were ever any friendship between Macintosh and Bentham we have no record of it. It has been impossible to get at any memoirs, letters or diary of Sir James Macintosh but nowhere in secondary references do we find him at all intimate with either Bentham or Mill.

The next event in this history is the "Pillory Abolition Bill" brought up first on Wednesday, July 5, 1815, by the

³⁵Bentham's Works. vol. 1:483

Earl of Landerdale who remarked,³⁶ "No principle in criminal law was better established than this, that the punishment ought to be commensurate to the offense..... Another remarkable feature in this punishment was its gross inequality and uncertainty..... The punishment was not that which was constant to the nature of the offense or to the intention of the court which awarded it, but depended on the humor of the mob."

This man might almost have been quoting Bentham's remarks on the pillory as put forward in the "Principles of Penal Law." ³⁷ "But it not infrequently happens, that persons so exposed are exposed to the outrages of the populace, to which they are thus delivered up without defense, then the punishment changes its nature, its severity depends upon the caprice of a crowd of butchers."

One of the great difficulties in tracing this influence is that so far as we can discover there is no unity of action at any time. One here and another there realizes something is wrong. He does what he can to right things and but a few pay any attention to him. On the outside is a great man expounding theory, but the theorist and the man of action seem in but one case to have come into contact with each other.

³⁶Parliamentary History, 1815

³⁷Bentham's Works, vol. 1:483

On Monday, July 10, 1815, the Earl of Stanhope rose and made motion to the effect that the judges prepare and lay before the House a bill reducing into one act all the laws then in force imposing the penalty of the pillory.³⁸ This motion excited considerable heated debate. Mr. M. A. Taylor said, ³⁹ "The first end of punishment was the reformation of the offender, and where the crime committed was of so deep a dye as not to admit of a hope of amendment, to punish the criminal by death; and at the same time by the severity of the punishment to afford an deter others from the commission of similar offences."

Bentham we know always advocated that punishment ought to serve as an example but Mr. Taylor's close following of Bentham's idea in the next paragraph is remarkable. ⁴⁰ "The punishment he insisted was unequal; to a man in the higher walks of life it was worse than death: it drove him from society, and would not suffer him to return to respectability; while to a more hardened offender, it would not be an object of much terror and it would not affect his family or his prospects in the same degree."

In rule 6 of "Principles of Morals and Legislation", -
 "It is further to be observed that owing to the different manners and degrees in which persons under different circumstances are effected by the existing cause, a punishment

 38 Parliamentary History XXXI:1142
 39 Parliamentary History XXXII:355
 40 Parliamentary History XXX:355

which is the same in name will not always either really produce or even so much as appears to others produce in two different people the same degree of pain." It would seem from the above that at last we had found something of real importance. But unfortunately Mr. Taylor seems to have been a very unimportant man and here we lose trace of him.

On March 15, 1816, Romilly succeeded in having passed a bill to repeal the act of King William which punished the crime of private stealing in shops to the amount of five shillings with death and soon afterward presented a bill taking away the punishment of death for the crime of shop lifting. This bill was rejected on the second reading and on May 29, 1816, Lord Holland entered a protest on the rejection of the shop lifting bill, which was signed by the Duke of Sussex and Gloucester, Lord Landsdowne and himself. It ran 1.) Because the statute proposed to be repealed appears to us unreasonably severe, inasmuch as it punishes with death the offense of stealing property to a very inconsiderable amount, without violence, or any other aggravation. 2.) Because to assign the same punishment for heinous crimes and slight offences tends to confound the notions of right and wrong, to diminish the horror atrocious guilt ought always to inspire, and to weaken the reverence in which it is desirable that the laws of the country should be held. 3.) Because severe laws, are

in our judgment, more likely to produce a deviation from justice than to deter individuals from the commission of crimes; and our apprehension that such may be the effect is confirmed in this instance, by the reflection that the offence in wuestion is become more frequent, and the punishment probably on account of its rigour is seldom or never inflicted.

4.) Because the value of money has decreased since the reign of King William, and the statute is, consequently, become a law of much greater severity than the legislature which passed it ever intended to enact."⁴¹ This protest was not the individual expression of Lord Holland's views. Romilly sent him a protest which he asked him to present and which, though rather differently worded, contained all the same principles.⁴²

The Parliamentary effort goes on in very much the same way through the remainder of Romilly's life. Almost every session he introduces one or more bills and they all suffer the same fate- Failure.

In 1820, Sir James Macintosh took the place left vacant by the death of Romilly and began a movement to have committees appointed to investigate and ascertain whether the severity of capital punishment did not counteract the intended good for which the laws were made.⁴³ In the same year he brought in

 41 Memoirs of Sir Samuel Romilly III:247-8
 42 Memoirs of Sir Samuel Romilly III:248-9
 43 Parliamentary Debates. New Series I:491

six bills repealing the laws which made petty stealing a capital offence. These bills were all rejected, and the next year he brought forward two bills, for mitigating the punishment of privately stealing in dwelling houses and on rivers, with the idea of substituting transportation for life or imprisonment and hard labor for the death penalty. The vote on these bills was, Contents 17, non-Contents 27.⁴⁴

There is a paragraph in Macintosh's speech for June 4, 1822, which might be worth noticing.⁴⁵ "If it was said, that he was now speaking as a philosopher and a theorist he would refer to the opinion of a learned person, Mr. Sergeant Adair, in 1796, then a member of the House and holding the office of recorder of the City of London. That learned person, after an experience of twenty-years, did not hesitate to say that the complexion of our laws was too sanguinary and that it was painful to reflect that the punishment of death was not reserved for the crimes of treason and murder."

It may be that there was no intention, in this, of casting any doubt upon the learning of the philosopher but it is easily seen that Sir James Macintosh knew that the opinion of the recorder would have more weight with the members of Parliament than all the philosophy that he could introduce.

44 Parliamentary Debates. New Series V:1231
45 Parliamentary Debates. New Series VII:799

From this time forward we find a more favorable attitude toward revision. It was his favorite policy to get a committee appointed to investigate a particular phase of the law, well knowing that a committee report had greater chances of success than a private measure.

The failure of even a moderate reform when put forward as a private measure is shown in the bill of Mr. Guy Bennett, to do away with punishment by whipping, which failed by a large majority on April 30, 1823.⁴⁶

On May 21, 1824, Sir James Macintosh presented his most elaborate bill. The first paragraph of his speech contained the essence of his argument.⁴⁷ "For a punishment to be wise, nay even to be just, it must be exemplary. Now, what was requisite to make it exemplary? That it should be of such a nature as to excite fear in the best of the public. But if it excited abhorrence then it was not exemplary but the reverse. The maximum of punishment depended on the sympathy of mankind; since everything that went beyond it reflected discredit on the whole system of law, and tended to paralyze its proper operation." His bill consisted of nine parts.

1. "That it is expedient to take away the punishment of death in cases of larceny from ships, from dwelling houses and on navigable rivers.

46 Parliamentary Debates. New Series VIII:1438
47 Parliamentary Debates. New Series IX:418

2. "That it is expedient to repeal so much of the statute of 9 Geo. 1, commonly called the Black Act, as creates capital felonies, excepting the crime of setting fire to a dwelling house and that of maliciously shooting at an individual.
3. "That it is expedient to repeal so much of 26 Geo. 2, C. 33, commonly called the Marriage Acts, as creates capital felonies.
4. "That it is expedient to repeal so much of the statute of 21 Jas. I, C. 26, relating to fines and recoveries; of 6 Geo. 2, C. 37, relating to cutting down banks of rivers; of 27 Geo. 2, C. 19, relating to Bedford level; of 3 Geo. 3, C. 16, relating to Greenwich Pensioners; of 22 Geo. 3, C. 4, relating to cutting serge; and of 24 Geo. 3, C. 24, relating to convicts returned from transportation as subjects persons convicted in the offence therein specified to the punishment of death.
5. "That it is expedient to take away the punishment of death in cases of horse stealing, sheep stealing and cattle stealing.
6. "That it is expedient to take away the punishment of death in the cases of forgery, and of uttering forged instruments.
7. "That in the cases of all the aforesaid offences, which are not otherwise sufficiently punishable by law, the punishment of transportation for life or years of imprisonment with or without hard labor, shall be substituted for death, in such proportions and with such latitudes of discretion in the judges as the nature and magnitude of the respective offences will require.

8. "That it is expedient to make provision that the judges shall not pronounce sentence of death in those cases where they have no expectation that such sentence will be executed.

9. "That it is fit to take away the forfeiture of goods and chattels in the case of suicide and to put to an end those indignities which are practiced on the remains of the dead in cases of suicide and high treason."

This measure was vigorously opposed by Sir Robert Peel and was lost by a majority of ten votes.

Although Secretary Peel opposed this measure of Macintosh's in 1824, still in March, 1826, he asked leave to bring in a bill for consolidating and amending the laws relative to larceny and such offences of stealing and embezzling, and of receiving stolen property as were recognized in England.⁴⁸

In his speech he quoted extensively from Lord Bacon. "There is an inconvenience of penal laws obsolete and out of use; for that it brings a gangrene, neglect and habit of disobedience upon other wholesome laws that are fit to be continued in practice and execution, so that our laws endure the torment of the Mazarins and the living die in the arms of the dead."⁴⁹

Had Sir Robert Peel had any notion of following Bentham's he would not have forgotten to have mentioned him in this long speech where he was continually quoting from other authorities.

48 Parliamentary History XIV:1214

49 Parliamentary History XIV:1214

By this time, Utility was sufficiently known for any one to have quoted Bentham had he desired to do so.

The results of Sir Robert Peel's efforts for this year were 6 and 7, Geo. 4, C. 28 abolishing questions of privilege and benefit of clergy, C. 29 of the same year consolidating the laws relating to larceny, and C. 30, the laws relating to malicious injury to property. Again, in 1828, was passed 9 Geo. 4, C. 31 which consolidated the laws relating to offences against the person.

When the "death for forgery" bill was lost, Lord Holland entered a protest against the rejection of his motion to recommit the bill and since it is said that Bentham carried on a correspondence with Lord Holland we will consider this rather elaborate protest and see if it savors any of the principle of Utility.

⁵⁰ "Because the bill, as amended in the committee, annexes or continues the punishment of death in many cases of forgery, which crime, however, injurious to society, is an offence of human institution. It can only be described as a spoliation of property, unattended with violence; and the common feeling of mankind, the maxims of religion and philosophy, the authority of eminent men and the practice of most civilized nations as well as our ancient laws, are generally averse to punishing by death any crime in the perpetration of which no violence is used or intended.

2. "Because no proof has been adduced, nor is there any ground for suspecting that the crime of forgery 'has grown to be enormous, frequent and dangerous' which are the circumstances required by Sir Matthew Hale to justify a law giver in annexing 'a punishment, and even death beyond the demerit of the offense itself, if simply considered.

3. "Because, although forgeries may have become less frequent of late years, in consequence of the resumption of cash payments, or from other causes, such recent diminution of that species of guilt cannot be reasonably attributed to the terror of a punishment which has subsisted and been in force for nearly a century, which at present in seven cases out of eight is not inflicted; and which, when sternly and rigorously enforced, failed to produce any ^{such} diminution. We were, therefore, unwilling too hastily to infer the efficacy of severity from any recent or accidental decrease of the offence, and we were confirmed in withholding our assent to such precipitate reasoning by reflecting, that forgeries have often been and still continue to be more frequent in this country than they were before the punishment of death were annexed to that crime.

4. Because, sundry laws inflicting capital punishment on a variety of crimes, have during the last seventy-five years, been abrogated in civilized states and in no one instance does it appear that the removal of the terror of death has

been followed by any increased frequency of crime. The laws have been generally invigorated by such wholesome relaxation, and experience has confirmed the great axioms which speculative philosophers and practical moralists have long since inculcated; namely, that capital punishments seldom hinder the commission of a crime, but often prevent its detection and that the certainty of a sentence comparatively mild, extirpates wickedness more effectually than the dread of a punishment which the common feelings of mankind deem disproportionate to the offence, and therefore scruple to concur with the community in inflicting.

5. "Because, if justice enjoins the necessity of proportioning the punishment to the moral turpitude of an offence, prudence no less requires that the compassion likely to be produced by the punishment should not exceed the indignation generally excited by the perpetration of the crime, and that the punishment should be regulated by the state of public opinion at the time and in the country where such law is enacted or allowed to continue. But in this instance, the frequency of pardons, the numerous petitions of the people and the votes of the Common House of Parliament sufficiently attest that the punishment by death, of forgery, is abhorrent to the spirit of the age, contrary to the judgment of the English public and revolting to the feelings of the community."

Signed: Vassal Holland
Richmond, 3d and 5th reasons.
Durham

Plainly no one would assume that this protest was written under the influence of Bentham.

Beyond this year, in the Parliamentary history of the criminal law, we will not go. The laws relating to forgery were consolidated that year, 1830, under 11 Geo. 4 and 1 Will. 4, C. 66. With the accession of William IV began the undisputed ascendancy of the House of Commons in national affairs. The Tories were still in power but the ministry was becoming unpopular and reformers like Lords Grey, Althorp and Russell were coming forward. With the agitation for reform which resulted in the "Reform Bill of 1832" reform became popular and it would be impossible to separate any one particular kind of reform from the movement which was going on everywhere.

IV.

If the practical reform of the Criminal Code was not due in any great measure to the influence of Bentham, what were the influences that effected it? This is too large a question to enter into in this paper in any detail. In a general way it may be said that the chief influence came from the demand of the lower middle class. And this class wanted the law reformed, not because it was too severe, but because it was ineffective as a means of protection. It may be well to present some of the innumerable petitions, by which Parliament was deluged, for the reform of the Code. For these petitions

suggest the prevailing dissatisfaction with the existing system, and point the way to the discovery of the real influences that effected the abolition of that system.

On February 27, 1811, two petitions were presented by Sir Samuel Romilly. The first one from a number of proprietors of bleach greens in the north of Ireland, praying relief and stating that their property had been exposed to a variety of deprecations, and that the severity of the law making all such deprecations, in every instance a capital offence, they were deprived of the means of effectually preventing them. The second, from certain master calico printers in this country, making similar representations and advising a repeal of the laws, enacting, that such offences should be considered felonies.⁵¹

In 1819 numerous petitions were presented to Parliament. The first was from the Corporation of London. ⁵² "That upwards of 200 crimes very different in their degree of enormity are equally subject to the punishment of death, which is enacted not only for the most atrocious offences, for burglary, for rape, for murder, for treason, but for many offences unattended with any cruelty or violence, for various minor crimes, and even for stealing privately to the amount of five shillings in a shop. That without the interference

51 Parliamentary History XIX: 106

52 Parliamentary History XXXIX: 83

of your honorable House, in adapting the state of the criminal law to the state of moral and religious sentiments of the nation the increase of crime must be progressive because, strong as are the obligations upon all good subjects to assist the administration of justice, they are overpowered by tenderness for life- a tenderness which, originating in the mild precepts of our religion, is advancing and will continue to advance as these doctrines become more deeply inculcated into the mind of the community."

* * * * *

"That many injured persons have refused to prosecute, because they cannot perform a duty which is repugnant to their natures by being instrumental in the infliction of severity contrary to their ideas of adequate retribution. That some jury men submit to fines rather than act as arbiters of life and death in cases where they think the punishment of death ought not to be inflicted. That even this disinclination to enforce the law is not confined to the injured parties and juries but extends to the learned judge. Without doubt, it is a fact, that, petitions are not always greatly concerned with what they are signing but since we are unable to discover the author of the petition we must take it at its apparent value."

There were also at this time petitions from the Quakers,

the Corporations of Norwich and Portsmouth and from numerous grand juries and a large portion of the clergy.⁵³

With the beginning of better things in the criminal law petitions are more numerous than ever. And in 1830 they were received from all sort of sources. Petitions praying for a revision of the criminal law, so as to do away with the punishment of death in cases of forgery and other crimes except murder, and to render punishment more certain, were presented from Newcastle-on-Tyne, by Sir. M. W. Riley; from Carlisle by Colonel Lushington; and from Chelmsford by Mr. Bramston. Similar petitions were presented from Sunderland and Darlington, by Lord W. Powlett; from Lewes by Mr. Kemp.

Sir J. Macintosh presented a petition from 697 of the inhabitants of the city of Edinburgh praying for the abolition of the punishment of death in cases of forgery. The signatures were those of the most distinguished men of Edinburgh-- clergymen of all denominations, leading professors of the University, the chief members of the bar, and 18 bankers.

Mr. F. Buxton had in his possession a petition, signed by 400 individual bankers, belonging to 200 firms, in which on the principle of affording further and more efficacious protection to property they asked for a remission of the penalty of death in cases of forgery.⁵⁴

Lord Holland also presented a petition from the clergy

54 Parliamentary History XXIV: 676
53 Parliamentary History XI:153

church wardens and other inhabitants of Olney, in Buckinghamshire, praying for the abolition of the death penalty in all cases of forgery.⁵⁵

With these two kinds of evidence before us but one conclusion is possible. The members of Parliament were far removed from the criminal law, the evils of it did not reach them in any way and in their slavish worship of the old order they could see nothing wrong in it. But with the business people it was different. Facts and conditions rather than philosophy brought things very close home to them and they desired a reformation because they wished better protection.

V

We have seen that the history of the criminal law is practically the history of the Parliamentary career of Sir Samuel Romilly and Sir James Macintosh. If at any time Romilly was a devotee of Bentham, we have only to consider an article in volume twenty-nine of the Edinburgh Review, 1817, to discover his opinion of the Benthamic style. After giving a very favorable review of "Papers relative to codification, etc.", he continues, "The duty of impartial criticism would be ill discharged, if, after having spoken as we have, in this article of Mr. Bentham's extraordinary merit, we were to say nothing of its defects. What principally

obstructs their circulation, is the style in which they are composed. Unlike most authors, Mr. Bentham's first publications are, in point of writing, the most perfect; and long habit and frequent exercise, instead of improving his language, only seems to have rendered it more perplexed, obscure and uncouth."

Along this same line we will consider an extract from Romilly's dated Jan. 8, 1818-⁵⁶ "While I was on my visit to Bentham last autumn at Ford Abbey, he gave me a little work he had just printed and to which he has affixed one of his queer titles- 'Papers relative to codification and public instruction, including correspondence with the Russian Emperor and divers constituted authorities in the United States.' I amused myself after my return to Tanhurst, with writing a paper on this work, which I have since given to Brougham, to insert in the Edinburgh Review, and it has accordingly appeared in the number which has just been published and which is the review for November last. My principal object in writing it was to draw the attention of the public to those evils which appear to me to be inseparable from an unwritten constitutional law, such as is the common law of England. I have spoken in it of Bentham with all the respect and admiration which I entertain for him, but I have thought myself bound not to disguise his faults. I shall be extremely concerned if

⁵⁶ Memoirs of Sir Samuel Romilly III:324

what I have said should give him any offense."

That a man like Sir Samuel Romilly should refuse to give credit to any one to whom credit was due is not at all likely. That he admired Bentham in many respects is easily seen, but he did not always agree with all Bentham's ideas for in 1818 he persuaded Bentham to suspend the sale of his work "Church of Englandism and its catechism examined."⁵⁷

Even Bentham himself did not consider Romilly as one of his disciples for when Romilly stood for election from Westminster in 1818 Jeremy Bentham took a very decided part against him. He wrote a hand bill, signed by himself, in which he represented Romilly as a most unfit member for Parliament, as being "a lawyer, a Whig and a friend only of moderate reform", and this hand bill was sent to Burdett's committee.⁵⁸

And Romilly remained until the last a Whig and all the social events that would in any way connect him with the political faith of the Radicals he steadily and persistently avoided. He declined the invitation of Cartwright to be steward at a dinner of the friends of reform and he also refused to attend the dinner given to celebrate the release of Sir Francis Burdett from the Tower.

57 Memoirs of Sir Samuel Romilly III:336
58 Memoirs of Sir Samuel Romilly III:365

Bentham was a man who dwelt in realms so far away we may doubt if he ever had a real sentiment. But Romilly was a man of flesh and blood and so devoted to those he loved that he found it impossible to live without them.

In all this history we find no mention of any special activity on the part of the Philosophical Radicals along the line of this reform.

Let us then take a brief review of this history of Bentham's influence on the reformation of the criminal law of England.

First, an interpreter was necessary between Bentham and the general public. ⁵⁹ "Whether it is necessary there should be a middleman between the cultivator and possessor, learned economists have doubted; but neither gods, men nor book sellers can doubt the necessity of a middle man between Bentham and the public." Without any doubt Bentham is long, involved and obscure and he becomes more so with age.

Second. Criminal law reform was begun by Romilly before Bentham had any following and before the birth of the Philosophical Radicals as a party. And it only succeeded when the pressure from the outside became so great that the administration took it up as part of their general reform policy.

Third. The Westminster Review was not an especially successful organ and did not long continue as a purely Radical

Review or as a means of purely utilitarian expression.

Fourth. The Radicals in Parliament did not give any special attention to Criminal law reform but it was championed by the Whigs and the Radicals were more hostile to the Whigs than to the Tories themselves. A few of the Whigs were on friendly terms with Bentham but there is nowhere anything to cause us to believe they advocated reform on account of anything Bentham had written or spoken. Among the Radicals themselves there was no unity of purpose, and as a party Parliamentary reform was their end and aim.

Fifth. Bentham labored to destroy the fetish worship of the constitution, inaugurated by Blackstone. Whigs as well as Radicals admitted the justice of the spirit of his criticisms but as a philosophy Benthamism was unpopular. It was considered heretical. But his real service to reform lay in his very heresy and many who never read or understood his philosophy became more tolerant of reform simply because some one dared to boldly attack the established order.

Finally, we maintain that his writings did not cause the reform in the criminal law.

These things grew out of the greater power of the House of Commons, but Bentham was the first to speak out against the old, and before him no one had dared to attack the constitution, and while his many oddities made him a laughing stock to the

Edinburgh Review, his questioning spirit passed on to the men around him and did much toward the working out of better things.

And for this service let us do him all honor.