

WRITINGS ON  
POLITICAL ECONOMY  
VOLUME III  
PREVENTIVE POLICE

JEREMY BENTHAM

edited by

MICHAEL QUINN

The Bentham Project 2018

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### *The Collected Works of Jeremy Bentham*

The new critical edition of the works and correspondence of Jeremy Bentham (1748–1832) is being prepared and published under the supervision of the Bentham Committee of University College London. Eight volumes of the new *Collected Works*, five of correspondence, and three of writings on jurisprudence, appeared between 1968 and 1981, published by Athlone Press. Further volumes in the series since then are published by Oxford University Press. In spite of his importance as a jurist, philosopher, and social scientist, and leader of the utilitarian reformers, the only previous edition of his works was a poorly edited and incomplete one brought out within a decade or so of his death. The overall plan and principles of this edition are set out in the General Preface to *The Correspondence of Jeremy Bentham*, vol. 1 (Athlone Press), which was the first volume of the *Collected Works* to be published.

## CONTENTS

EDITORIAL INTRODUCTION	vi
A NOTE ON THE PRESENTATION OF THE TEXT	ix
SYMBOLS AND ABBREVIATIONS	xi
PART I. WRITINGS ON MARINE POLICE	
A Bill To explain and amend an Act intituled An Act to prevent the committing of Thefts and Frauds by Persons navigating Bum-boats and other Boats, upon the River of Thames	2
Contents of a Bill to be intituled An Act to explain and to amend an Act passed in [the] 2 <sup>d</sup> Year of the Reign of his present Majesty intituled an Act to prevent the committing of Thefts and Frauds by persons Navigating Bum-Boats and other Boats upon the River of Thames	15
Short Heads of a Bill for the more Effectual prevention of depredations on the River Thames	24
Summary View of a Bill for the more effectual prevention of Depredations on the Thames	30
Elucidations relative to the Thames Police Bill	
<i>General Elucidations</i>	39
<i>Particular Elucidations</i>	41
Mode of disposing of Old Stores	44

## PART II. WRITINGS ON THE POLICE BILL

*Heads of the Draught of a Bill to be intituled A Bill for the granting to his Majesty certain duties on Licences, for the establishment of a Board of Police Revenue, for the suppression of divers Offices, and for the more effectual prevention of Larcenies and other Offences, by the regulation of divers trades and occupations, and the establishment of a system of prompt and all-comprehensive Correspondence for Police purposes*

<i>I. Classes Licenced</i>	54
<i>II. Board</i>	64
<i>III. Licencing</i>	65
<i>IV. Regulations</i>	68
<i>V. Procedure &amp;c.</i>	73
<i>VI. Miscellanea</i>	78

### Elucidations relative to the Police Revenue Bill

<i>I. General or Preliminary Observations</i>	87
---	----

Introductory Observations relative to the Board-of-Police Bill	124
--	-----

Appendix to 'Introductory Observations relative to the Board-of-Police Bill'. COIN POLICE	141
---	-----

A Bill for the establishment of a Board of Police, and for the suppression of divers Offices:—or else, A Bill for the establishment of a Board of Police, for the suppression of

divers Offices, and for the more effectual prevention of predatory and other offences, by the licencing and regulation of divers trades and occupations

<i>General Preamble</i>	149
Part I. <i>Licentiandi</i>	150
Part II. <i>Board</i>	160
Part III. <i>Licencing</i>	167
Part IV. <i>Regulations</i>	174
Part V. <i>Penalties and Procedure</i>	183
Part VI. <i>Gazette and Calendar</i>	194

APPENDIX to 'A Bill for the establishment of a Board of Police, and for the suppression of divers Offices'. TABLE OF PRECEDENTS (TO ACCOMPANY PART II. BOARD) SHEWING THE PROVISION MADE BY STATUTE LAW RESPECTING THE CONSTITUTION OF THE SEVERAL BOARDS OF REVENUE

See the  
companion  
PDF file

Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations

Part I. <i>Licence-Duties</i>	217
Part II. <i>Board</i>	238
Part III. <i>Licencing</i>	261
Part IV. <i>Regulations</i>	276
Part V. <i>Procedure</i>	292
Part VI. <i>Gazette and Calendar</i>	319

APPENDIX to 'Notes to the Police Bill'. ANONYMOUS INFORMATION	364
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## EDITORIAL INTRODUCTION

The preventive police writings are unusual in Bentham's corpus in that he was, in a sense, writing to order. Central elements of the proposals advanced in the present volume, for reform both in the policing of the River Thames and by the establishment of a Board of Police in London to administer a licensing system for dealers in second-hand goods respectively, had been contained in Patrick Colquhoun's *Treatise on the Police of the Metropolis*.<sup>1</sup> Bentham met Colquhoun in December 1796, and the latter became an enthusiastic supporter of Bentham's panopticon prison scheme. In January 1798 Colquhoun began his campaign to recruit government support for the establishment of a Board of Police in London, a campaign which gathered momentum when both Colquhoun and Bentham gave evidence to the Select Committee on Finance, whose 28<sup>th</sup> report, 'Police, including Convict Establishments', the first proofs of which were printed in July 1798, endorsed both Colquhoun's plan for the reform of police and Bentham's panopticon. In the spring of 1798 Colquhoun sought Bentham's assistance as a parliamentary draftsman, and over the next fourteen months Bentham drafted two Bills—a Thames Police Bill and a generic Police Bill—together with a series of précis of, and explanatory and justificatory comments on, the Bills, in addition to the further related discussions reproduced below.

The present volume is divided into two parts, reflecting the two Bills which Bentham drafted. Part I. Writings on Marine Police contains the following three sets of material: Bentham's first draft of the 'Thames Police Bill' and a partial 'Contents' thereof, both drafted in the early summer of 1798; two précis of his revised version of the Bill and an incomplete set of 'Elucidations' of its provisions, probably drafted in the spring of 1799; and a discussion of the best means of disposing of unserviceable naval stores, which is of uncertain date and lacks any direct connection with the 'Thames Police Bill', but is of intrinsic interest and has a strong thematic connection with Marine Police.

Part II. Writings on the Police Bill, contains five works written in connection with what Bentham referred to indiscriminately as 'Police Bill' and 'Police Revenue Bill'. The first, and also the earliest drafted, is a précis of the Bill, probably dating from late 1798; the

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<sup>1</sup> *A Treatise on the Police of the Metropolis, Explaining the various Crimes and Misdemeanours which at present are felt as a Pressure upon the Community; and Suggesting Remedies for their Prevention*, (first published in 1796) 4th edn., London, 1797. Unless otherwise indicated, references to the work are to this edition.

second, on which Bentham was working in the spring of 1799, is a set ‘Elucidations’ of the Bill, for which Bentham used the short title ‘Preliminary Observations’; the third, and latest drafted, is a set of ‘Introductory Observations’, which is followed by an Appendix containing an partial discussion of coin police which was at one time envisaged as part of this work; the fourth is the text of the Police Bill, as revised and completed by early 1799, which is followed in an Appendix by a ‘Table of Precedents’; the fifth is a set of ‘Notes to the Police Bill’, which is followed in an Appendix by a discussion of anonymous information drafted for ‘Notes to the Police Bill’, but in the event omitted from it.

Bentham’s drafting of the two Bills and their rationales proceeded in parallel, and as late as the autumn of 1799 Colquhoun was confident that both Bills would shortly become law. In the event, only one of the two Bills, the Thames Police Bill, was enacted, albeit in a modified form, as the Thames Police Act of 1800 (39 & 40 Geo. III, c. 87). Fearing that his open association with either Bill would scupper its chances of acceptance, Bentham insisted that Colquhoun kept his contribution secret. Bentham himself published none of the works contained in the present volume, though a single one of them was published, ostensibly as Colquhoun’s work, in 1799 and again in 1800.<sup>2</sup> After Bentham’s death, the same work was reproduced in the edition of Bentham’s works overseen by John Bowring.<sup>3</sup>

The Bentham Committee wishes to thank the Leverhulme Trust whose grant made possible the preparation of this third volume of Bentham’s writings on political economy. The Bentham Committee is grateful to University College London and to the British Academy for their continuing support. I would like to thank University College London Library for permission to reproduce transcripts of manuscripts in their possession.

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<sup>2</sup> ‘Summary View of a Bill for the more effectual prevention of Depredations on the Thames’ first appeared as ‘Appendix Number I’ in P. Colquhoun, *General View of the Depredations committed on West-India and other property in the port of London, the partial remedies which have been successfully applied in suppressing these evils, and the measures proposed for rendering them permanent and effectual*, London, 1799, pp. 37–45. The ‘Advertisement’ following the title page is dated 10 October 1799. The work appeared again as ‘Appendix VIII’ in Colquhoun, *A Treatise on the Commerce and Police of the River Thames: containing an historical view of the trade of the Port of London; And suggesting Means for preventing the Depredations thereon, by a Legislative System of River Police*, London, 1800, pp. 670–6. The ‘Preface’ is dated 10 May 1800: see *ibid.*, p. viii.

<sup>3</sup> John Bowring (1792–1872), merchant, radical MP, and diplomat. See ‘Memoirs of Bentham, including autobiographical conversations and correspondence’, Bowring, x. 1–606, xi. 1–95, at x. 330–3.

I would like to acknowledge a deep debt of gratitude to colleagues at the Bentham Project for providing assistance in multifarious other ways, not least by co-creating a supportive and co-operative environment in which to work. The bulk of the research for the annotation for this volume was undertaken by Dr Oliver Harris, who also assisted by undertaking initial transcription and checking transcripts. Dr Chris Riley has been an unfailing, and unfailingly patient, source of technological deliverance, and saved me from many errors by carefully reading through the text and notes, checking the latter for accuracy, and preparing the text and the Table for online publication. Dr Louise Seaward lent her expertise in tracking down sources for Bentham's allusions. Dr Tim Causer also provided expert advice on annotation and lent his technical expertise to preparing the Table for online publication. The General Editor of the *Collected Works of Jeremy Bentham*, Director of the Bentham Project, and Principal Investigator on the Leverhulme Grant, Professor Philip Schofield, has scrupulously reviewed the form and content of the volume.

I gratefully acknowledge the help received in the elucidation of references in the text, and other assistance, from Mr Henry Mares and Dr Ian Williams. Finally, this is the first volume in the edition to the publication of which the contribution of the volunteers of 'Transcribe Bentham', the award-winning crowdsourcing initiative launched by the Bentham Project in 2010, and funded by the AHRC, the Mellon Foundation, the European Research Council, and UCL, have been integral. Without the input of the volunteers listed below, the appearance of the volume would have been significantly delayed, and I would like to record my sincere thanks to Jan Copes; S.D. Croft; Kris Grint; Mary Foutz; Gill Hague; Peter Hollis; Rex Levang; Robert Magin; Chris Riley; Lea Stern; J.K. Thompson.

The text presented below is a preliminary version, in that the authoritative version, including a full Editorial Introduction, name and subject indices, and a completed set of cross-references, will be published by the Clarendon Press. All cross-references to the 'Editorial Introduction' in the text below read 'p. 000', since they refer to the full version of that Introduction rather than to this very brief succedaneum.

Michael Quinn  
Bentham Project  
UCL  
August 2018

## A NOTE ON THE PRESENTATION OF THE TEXT

The manuscripts contain many deletions, additions, and emendations which represent Bentham's later corrections to the text. Original readings have not usually been indicated. Where there is no text corresponding to some part of a marginal contents sheet, the appropriate marginal content is reproduced in an editorial footnote. Square brackets in the text are reserved for editorially inserted words, while Bentham's original is, where appropriate, given in an editorial footnote. Bentham's square brackets are replaced by braces. Round brackets are those supplied by Bentham. Vertical strokes indicate a gap or blank space in the manuscript. Bentham's own footnotes are indicated by superscript letters, with a new sequence for each discrete work and each appendix. Editorial footnotes are indicated by superscript numerals, with a single sequence for the entire volume.

In 'A Bill to explain and amend an Act intituled An Act to prevent the committing of Thefts and Frauds by persons navigating Bum-boats and other Boats, upon the River of Thames', 'Heds of .^. a Bill for the granting to his Majesty certain duties on Licences', and 'A Bill for the establishment of a Board of Police', Bentham's marginal summaries are reproduced in the margin of the main text. In 'Heds of .^. a Bill for the granting to his Majesty certain duties on Licences' and 'Notes to the Police Bill', the titles of the Parts of the Bill are reproduced in the text from the corresponding marginal subheadings. In 'A Bill for the establishment of a Board of Police', the titles of the Parts of the Bill are presented as marginal headings of larger size than standard. In both 'A Bill for the establishment of a Board of Police' and 'Heds of .^. a Bill for the granting to his Majesty certain duties on Licences', Bentham gave many sections in Parts II–VI of the Bill two identifying numbers, the first referring to its position in the sequence of sections in the Bill as a whole, and the second to its place in the sequence of sections in the Part in which it appears. Inconsistencies, omissions, and inaccuracies in his numeration have been silently corrected. To aid navigation, the section numbers in both works are presented in bold. In relation to Bentham's draft of 'A Bill for the establishment of a Board of Police' and 'Notes to the Police Bill', which contain 113 reciprocal references between Bill and Notes, Bentham usually provided two identifying numbers for each successive note, the first referring to the consecutive numeration of the notes as a whole, and the second to a discrete numeration for each section of the Bill. Inconsistencies and inaccuracies in his numeration have been silently corrected.

In relation to the title of ‘Introductory Observations relative to the Board-of-Police Bill’ Bentham noted: ‘Such Observations as have a particular application to particular clauses are given in the form of *Notes* to the several Sections, and occupy a separate Paper, to which references are all along made in the margin of the Bill, from the passages to which they respectively relate.’<sup>4</sup> In the present volume, this method is departed from, both because the margins of the text of ‘A Bill for the establishment of a Board of Police’ are occupied by the corresponding marginal contents, and because the marginal method does not allow very precise positioning of the note-markers. Instead, the numbers of the note markers and the braces surrounding them are presented in bold type in the body of the text of ‘A Bill for the establishment of a Board of Police’, which facilitates the placement of them where Bentham actually placed almost all of them in his draft, that is immediately after the passage to which they relate. In ‘Notes to the Police Bill’, Bentham usually underlined the passages from the Bill to which the notes respectively referred, but frequently omitted so to do. In the present volume all such passages are presented in italics. In the same work, after reproducing the passage from the Bill to which a particular note related, Bentham usually began the text of the note on a new line, but frequently omitted so to do. In the present volume the text of each note begins on a new line. Finally, as a further aid to navigation, in ‘Notes to the Police Bill’, each note is separated from its predecessor by a space, and the note numbers in braces and the cited passages are presented in text of larger size than the body of the text.

The identifiers of the original manuscripts on which the text is based appear on the left-hand side of the text, except where a folio begins in mid-sentence, when they appear in the body of the text. The numerals [150\_118], for instance, refer to box cl, folio 118, in the Bentham Papers, UCL Library Special Collections.

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<sup>4</sup> UC cl. 642, reproduced at p. 124 n. below.

## SYMBOLS AND ABBREVIATIONS

### Symbols

^^^	Space left in manuscript.
[to]	Word(s) editorially supplied.
[?]	Reading doubtful.
[.^^.?]	Word(s) proved illegible.
<^^.>	Torn manuscript.

### Abbreviations

Apart from the standard abbreviations the following should be noted:

Bowring	<i>The Works of Jeremy Bentham</i> , published under the superintendence of .^^. John Bowring, 11 vols., Edinburgh, 1843.
UC	Bentham Papers in the Library of University College London. Roman numerals refer to boxes in which the papers are placed, Arabic to the leaves within each box.
CW	The authoritative edition of <i>The Collected Works of Jeremy Bentham</i> .
MS alt.	Alternative manuscript reading, usually interlinear or marginal.
MS del.	Word(s) deleted in manuscript.
MS orig.	Original manuscript reading.

PART I.

WRITINGS ON MARINE POLICE

[150\_079]

## A Bill

To explain and amend an Act intituled An Act to prevent the committing of Thefts and Frauds by persons navigating Bum-boats and other Boats, upon the River of Thames

Preamble.  
Dishonest practices  
carried on  
notwithstanding the  
existing Laws.

Whereas notwithstanding the good and wholesome laws enacted for the prevention of depredations upon the River Thames, and in particular notwithstanding the Statute made and past in the second year of his Majesty's reign intituled An Act to prevent the committing of Thefts and Frauds by persons navigating Bumboats and other Boats upon the River of Thames,<sup>5</sup> such practices do, for want of divers provisions hereinafter following, still prevail in a very high and mischievous degree, to the great loss of the Owners and Freighters of Vessels, as well as to the diminution and injury of his Majesty's Revenue;

And whereas amongst other devices employ'd by persons committing such depredations in or by means of such Boats as aforesaid, it is a common practice to stow sugars or other such articles as they can make prey of in large quantities on or about their persons (a device practiced with the greater security and audacity in as much as such articles have no distinctive mark by which they can be identified), and with that intent to come provided with large and loose habiliments specially adapted to that purpose,<sup>6</sup> and moreover, if at any time they apprehend themselves in imminent danger of detection, to throw overboard such their prey for the purpose of preventing any person from being able

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<sup>5</sup> The Bumboat Act or the Thefts upon the Thames Act (2 Geo. III, c. 28) received the royal assent on 2 June 1762. The Act was intended to discourage the theft of tackle and cargo from ships on the Thames, and required all 'bumboats' (light vessels used to carry goods between ship and shore) to be registered with the Trinity House Corporation (§ 2); permitted the stopping and searching of suspect boats and the seizure of items suspected stolen (§§ 1, 5–6); and made provision for the conviction and punishment of thieves and persons suspected of having been involved in thefts (§§ 10–13, 17). The Trinity House Corporation, established in 1513, was responsible for various aspects of maritime navigation, safety, and welfare around the coasts of England and Wales, including the licensing and regulation of Thames pilots.

<sup>6</sup> See [Patrick Colquhoun], *A Treatise on the Police of the Metropolis, Explaining the various Crimes and Misdemeanours which at present are felt as a Pressure upon the Community; and Suggesting Remedies for their Prevention*, 4th edn., London, 1797 (first published at London in 1796), p. 57: 'By the contrivance of a thin sack suspended by strings from the shoulders, and placed under the waistcoat, a surprising quantity of sugar is carried away; exhibiting to the superficial observer only the appearance of a natural protuberance of the belly.—Others who are not provided with such sacks, fill their hats, pockets and even their breeches with large quantities of raw sugars'. See also *ibid.*, p. 63: 'for besides the bag already described, they are generally furnished with two pair of trousers, and with frocks made in a particular manner, with large pockets, for the greater convenience of concealing and conveying plunder'. Patrick Colquhoun (1745–1820), Lord Provost of Glasgow 1782–4, stipendiary magistrate at Worship Street, Shoreditch 1792–7 and at Queen's Square,

to give sufficient evidence concerning the same;<sup>7</sup>

[150\_080]

And whereas it is also a practice among evil-disposed persons, being owners of Boats, to let the same to hire, for the express purpose of their being employ'd in such depredations as aforesaid, and, upon such occasions, in contemplation and consideration of the risks to which such practices stand already exposed under the laws in being, to require and take from the hirers of such boats an extraordinary price, and frequently, for the greater security of such their boats against such risk, to stipulate for and procure an agreement that in case of need all such goods as might endanger the seizure and forfeiture of such boat shall be thrown overboard;

And whereas for the still more effectually eluding and defeating the said existing laws it is moreover a practice among the Receivers of goods obtained by such depredations (the penalties provided by the said Act of his Majesty being no other than pecuniary, and those light and inconsiderable)<sup>8</sup> to combine together and make a common purse out of which, in the event of the conviction of any such contributor, the penalty and costs of such conviction are defray'd, and the offender thereby compleatly indemnified and saved harmless;<sup>9</sup>

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Westminster 1797–1818, was the instigator of Bentham's police writings in 1798–9: see the Editorial Introduction, pp. 000–000 above.

<sup>7</sup> See *ibid.*, pp. 58–9: 'Besides these associates in villainy, scullers and other boats are .^.^ constantly hovering about and under the discharging ships .^.^ into which handkerchiefs of sugar and coffee, bladders of rum, kegs of tamarinds .^.^ and in short every portable article that can be safely plundered, are passed through the scuttles and port holes of the ships, and immediately concealed by the pretended watermen, who, if pursued by the Trinity or other Officers, generally sink the goods to avoid the penalties of the law.'

<sup>8</sup> Bentham presumably had in mind §§ 7 and 10 of the Bumboat Act, which prescribed that persons found in possession of items suspected stolen, and unable to account for them, were to be judged guilty of a misdemeanour, and liable to pay a fine of 40s. for a first offence, or 80s. for a second or subsequent offence. His assertion that receivers of stolen goods were liable to only pecuniary penalties under the Act appears to be a slip, since the Bumboat Act (§ 12) prescribed that persons who knowingly bought or sold goods stolen from a ship should 'be transported for fourteen Years to any of his Majesty's Colonies or Plantations in *America*'.

<sup>9</sup> See Colquhoun, *Treatise on the Police of the Metropolis*, p. 64: 'There exists at present a Club of working Lumpers, where above sixty of these aquatic plunderers meet regularly, and subscribe a certain sum for establishing a general fund; out of which the penalty of 40s. adjudged under the Bum-boat Act, to be paid by

And whereas Offenders, though detected, frequently escape, by reason that the persons by whom they might have been apprehended on the water can not, for want of legal powers, pursue and apprehend them on shore, and *vice versâ*, or because some Officer by whom an offender has been detected in one district, can not, for want of like powers, pursue and apprehend him in another;

§ 1. Enactment.  
Power to his Majesty  
to nominate  
Magistrates for  
swearing in Thames  
Police Constables—  
whose authority  
shall extend over  
London and the four  
adjacent Counties.

[150\_081] For remedy thereof, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same;<sup>10</sup>

That so soon as under and by virtue of the Act of the 32<sup>d</sup> year of his Majesty's Reign intituled an Act |^^^|,<sup>11</sup> it shall have pleased his Majesty to institute a Police Office in some convenient place in the vicinity of the said River, to be appointed by his Majesty for that purpose, and to nominate and appoint to sit and act at such Police Office two or more Justices of the Peace, commissioned by his Majesty and acting or duly authorized to act each of them for the four several Counties of Middlesex, Surrey, Kent and Essex, as also

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every person convicted of conveying goods pilfered from vessels, is regularly discharged; and the delinquents, instead of going to jail, are by this means enabled to return to their former criminal pursuits.'

<sup>10</sup> The opening of the following paragraph ('That .^.^ and thereupon') is omitted In the fair copy of this text at Chadwick Papers, UCL Special Collections, 1. 1. fo. 22. For further details see the Editorial Introduction, p. 000 n. above.

<sup>11</sup> The Justice of Peace, the Metropolis Act of 1792 (32 Geo. III, c. 53), formally entitled 'An Act for the more effectual Administration of the Office of a Justice of the Peace in such Parts of the Counties of *Middlesex* and *Surrey* as lie in and near the Metropolis, and for the more effectual Prevention of Felonies', endeavoured to strengthen and professionalize the administration of justice in London by establishing seven public offices in the metropolitan parts of Middlesex and Surrey, each with three salaried Justices of the Peace, who were required to attend and keep the office open on a regular basis and were empowered to employ up to six constables at each office to assist in the apprehension of offenders. The seven offices were established at Queens Square, St Margaret's, Westminster; Great Marlborough Street, Westminster; Hatton Garden, Holborn; Worship Street, Finsbury Square; Lambeth Street, Whitechapel; High Street, Shadwell; and Union Street, Southwark (Colquhoun, *Treatise on the Police of the Metropolis*, 333 n.). Colquhoun had been appointed one of the magistrates at Worship Street under this Act.

Bentham's appeal to the authority of the Justice of the Peace, the Metropolis Act for the establishment of a Marine Police Office appears strained, in that no provision was made in the Act for adding to the seven new offices it established, although it did provide (§ 11) that the Crown might alter the location or hours of the offices, and 'make all such other Regulations to be observed in conducting the same,' as should be thought proper.

for the City and Liberty of Westminster and for the Liberty of the Tower of London, then and thereupon it shall be lawful for his Majesty to authorize and appoint the Lord Mayor of the City of London for the time being, together with any two other persons being Justices of the Peace and commissioned by his Majesty to act each of them for the four several Counties of Middlesex, Surrey, Kent and Essex, as also for the City and Liberty of Westminster and for the Liberty of the Tower of London, which said three Magistrates, or any two of them, sitting from time to time at the Mansion House of the City of London, or such other convenient place in or out of the said City as the said Lord Mayor shall think proper to appoint, [150\_082] shall swear in, and at their discretion discharge, any such number of discreet and able bodied persons (so as the number thereof shall never exceed an hundred in the whole) as to them the said Magistrates shall seem meet, to act as Constables, for the preservation of peace and good order in, upon, and in the vicinity of the said River, and especially for the detection of felonies and misdemeanours, the apprehension of offenders and the preservation of the several Vessels, with their materials, furniture, stores and cargoes, while stationed for the purpose of loading or unloading or otherwise in and upon the said River, which said persons, being with their own free consent sworn in as aforesaid, shall be stiled and intituled *Thames Police Constables*, and shall each of them have and possess, as well in, upon and within the banks<sup>12</sup> of such part of the River above London Bridge as runs between the City of London and County of Middlesex on the one side and the County of Surrey on the other, and below London Bridge such part of the said River as runs between the said Bridge and the Lower Hope Point, as within every Parish, Township, Constablewick or Place in the said City of London, as also in each one of the said four adjacent Counties, the City and Liberty of Westminster and the Liberty of the Tower of London respectively, the same power and authority as either at Common Law or under and by virtue of any Statute or Statutes now in force, or which hereafter shall be in force, appertains or shall appertain to<sup>13</sup> any Constable within his Constablewick;<sup>14</sup> and

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<sup>12</sup> In the margin, Bentham has noted at this point: ‘No part of the River running between any two of the four Counties ought to be exempt, any more than the land.—Does not the authority of a Constable extend over the River [below] [MS ‘above’] a Bridge?’

<sup>13</sup> The words ‘or under .^.^ to’ have been marked by Bentham for deletion.

<sup>14</sup> In the margin, Bentham has noted at this point: ‘Would not the Common Law power be sufficient? A number of irrelevant powers may have been given by Statutes.’ A constable, or petty constable, was traditionally a parish or civic officer appointed to act as keeper of the peace. He had ‘great original and inherent authority with regard to arrests’, including the power of arrest without warrant for a breach of the

every such Thames Police Constable shall, previously to his entrance into such his office, take an Oath according to the form exhibited in Schedule A annexed to this Act,<sup>15</sup> which said Oath any one of such three or two Magistrates so sitting as aforesaid is hereby empowered to administer.

§ 2. Power of Search, Seizure and Arrest in case of goods suspected to have been unlawfully taken from on board ship.—Penalties and Forfeitures in case of conviction.

[150\_083] And be it further enacted by the authority aforesaid, that if any person, being on board of any Ship or Vessel stationed within the limits aforesaid, or on board of any Boat stationed or hovering in the neighbourhood of such ship or vessel, or any where on either shore of such part of the said River as runs within the limits aforesaid, shall have in or about his or her cloathing, or otherwise in his or her possession, any such part or parts of the materials, furniture, stores, or cargo of any ship or vessel as by the appearance thereof, or by the secret or other manner in which the same are packed, stowed or disposed of, shall appear to any such Constable as aforesaid to have been stolen or otherwise unlawfully obtained, it shall be lawful for every such Constable, and for every other person acting by command, in presence or in aid and assistance of such Constable, to stop, detain and examine every such person as aforesaid, and every other person who shall appear to be assisting in the keeping or conveyance of such suspected article or articles as aforesaid, as also all such articles so suspected as aforesaid as such person or persons shall appear to have in his, her or their custody or possession; and if, upon such examination, such suspicion shall be confirmed, then to convey every such suspected person, together with every such suspected article as can be convey'd at the same time, before the said Justices, depositing the remainder thereof, if any, in some place or places of safety, untill the orders of such Justice or Justices can be taken relative [150\_084] thereto: as also if such suspected person or persons, article or articles, or any of them, at the time of their being so seized shall chance to be on board of any Boat, then also to seize and detain such Boat, together with the tackle and other contents thereof, and the same to deposit as aforesaid: and if, upon examination before any such Justice or Justices, it shall not be made appear, either by production of the party or parties from whom such suspected article or articles was or were

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peace and for a felony upon probable suspicion, the power with a warrant to break open doors, and even the power 'to kill the felon if he cannot otherwise be taken': see William Blackstone, *Commentaries on the Laws of England*, 4 vols., Oxford, 1765–9, i. 344, iv. 289. Statutory extensions to constables' powers had tended to be narrow and specific, including, for example the power given by the Bumboat Act, § 6, to seize goods suspected of having been stolen from ships on the Thames.

<sup>15</sup> No Schedules drafted for the Bill have been identified.

lawfully bought or received, or otherwise to the satisfaction of such Justice or Justices, how such suspected person or persons came by the same, then and in such case every such suspected person may and shall be adjudged guilty of a Misdemeanour,<sup>16</sup> and shall suffer as herein after mentioned; and every such Boat so employ'd, with her Tackle, Apparel, Furniture, and Loading (*such part of such loading excepted, if any, of which the true owner shall at any time have been found*),<sup>17</sup> shall upon such conviction<sup>18</sup> be forfeited and disposed of in such manner as is directed in and by the said Act of the second year of his Majesty's reign.<sup>19</sup>

§ 3. So in case of throwing things overboard to prevent discovery.

[150\_085] And be it further enacted that if, within the limits aforesaid, for the purpose of preventing the seizure or discovery of any materials, furniture, stores or

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<sup>16</sup> The words 'be .^.^ Misdemeanour' have been marked by Bentham for deletion, but their retention is necessary to the sense.

<sup>17</sup> In the margin, Bentham has noted at this point: 'This exception is not in the Bumboat Act. 2 G. 3. c. 28. § 5.' Under the Bumboat Act (§ 5) officials of the Trinity House Corporation were empowered to 'stop, search, and detain, in some Place of Safety, any Boat, which there shall be reason to suspect has any .^.^ part of the Cargo or Lading, stolen or unlawfully procured from or out of any Ship or Vessel in the said River'. If the persons on the boat could not satisfy a Justice of the Peace that they had come by the goods on their boat by lawful means, they were to be 'deemed and adjudged guilty of a Misdemeanour; and such Boat, with her Tackle, Apparel, Furniture and Loading, shall, upon such Conviction, be forfeited and disposed of as is herein after directed'.

<sup>18</sup> In the margin, Bentham has noted at this point: 'Should it be added, "after hearing what, if any thing, the owner of such boat can say to the contrary"?'—in which case, instead of *shall*, it should be *may*.'

<sup>19</sup> The Bumboat Act (§ 15) prescribed that navigating either an unregistered boat, a registered boat not displaying its registration number, or a boat displaying false registration details, rendered the owner liable to a fine of 40s., and if the fine remained unpaid twenty-four hours after conviction, the authorities were empowered to recover the penalty by the sale of the boat. The Act further prescribed (§ 17), 'That where any Person or Persons shall be convicted of any Offence against this Act, by which is incurred the forfeiture of any Boat .^.^ concerning which, after such Conviction, no Provision is hereby made, it shall and may be lawful to and for such .^.^ Justices of the Peace before whom such Conviction shall be had, .^.^ and they are hereby respectively authorised and required, to cause such Boat, with her Tackle and Appurtenances, to be totally burnt and destroyed, within six Days next after such Conviction'. The Act (§ 8) further prescribed that forfeited goods were 'to be deposited in the Custody of the Churchwardens or Overseers of the Poor of the Place', and, after 'Advertisement in some publick News Paper', either returned to the rightful owners or, if unclaimed at the end of thirty days, sold, and the money remaining after deduction for expense of storage divided equally between the person giving information of, or apprehending, the wrongdoer and 'the Poor of the Parish'.

merchandizes, or any other article or articles unlawfully obtained from any Ship or Vessel, any such, or any other article or articles, be thrown or wilfully let fall, into the River, or in any other manner secretly or purposely conveyed away from any Ship or Vessel, Boat, Wharf or other Landing place, every person party or privy to such throwing, letting fall or conveying away, or to any previous instruction or premeditated design so to throw, let fall or convey away, any such article with any such purpose as aforesaid, shall be deemed and adjudged guilty of a misdemeanour: and shall suffer as hereinafter mentioned: and if, within the limits aforesaid,<sup>20</sup> any article or articles which, by their bulk and appearance, appear capable of being of any value shall be observed to be thrown from any Boat, or from any Ship or Vessel, otherwise than by order or with the privity of the person commanding and having charge of such Ship or Vessel, or from any Wharf or Landing place as aforesaid, it shall be lawful to and for any such Thames Police Constable as aforesaid, with such assistance, if necessary, as he can procure, to seize and apprehend any or every person being at such time in such Boat, and any or every other person who, by reason of his or her vicinity to the spot from whence such article or articles shall appear to have been thrown, let fall or convey'd away from such Ship or Vessel, Wharf or Landing place, shall be suspected by such Constable of being privy or accessory thereto, and forthwith to convey or cause to be convey'd every such suspected person before some Justice or Justices, as aforesaid; and if, upon examination, it [150\_086] shall not be made appear to the satisfaction of any such Justice or Justices, as aforesaid, that such throwing, letting fall or conveyance proceeded from mere accident, or from some lawful cause, and not from any such evasive and fraudulent purpose as aforesaid, it shall be lawful to and for such Justice or Justices to convict any or every such person so suspected of a misdemeanour: and every such person so convicted shall suffer as herein after-mentioned.<sup>21</sup>

§ 4. Power of search, seizure and arrest at night and with force in respect of suspected goods.

[150\_087] And be it further enacted, that if by information given on oath it shall appear to any such Justice that there is reasonable cause for suspecting that any materials, furniture, stores, merchandizes or any other article or articles (suspected to have been stolen or unlawfully obtained from or out of any Ship or Vessel in the said River within the limits aforesaid, or from any other place to which the same have been removed, mediately

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<sup>20</sup> i.e. between London Bridge and Lower Hope point: see p. 6 above.

<sup>21</sup> Bentham has noted in relation to the following paragraph: 'Taken with alterations from the Bumboat Act.' The paragraph reproduces the substance of § 7 of the Bumboat Act.

or immediately, from any such ship or vessel, the same not having been as yet entered at the Custom House or deposited on account of the Importer thereof in any Warehouse) are concealed or otherwise lodged in any Dwelling House, Warehouse, Outhouse, Yard, Garden or any other place, it shall be lawful to and for such Justice, by special warrant under his hand and seal directed to any one such Thames Police Constable as aforesaid, to cause every such place to be searched at any time, whether by day or night, and such Justice (if it should appear to him requisite and necessary) may moreover empower such Constable, with any such assistance as to such Justice may appear, or by such Constable be found, necessary, having previously shewn or declared his authority, to use force, if necessary, for the effecting of such entry, whether by breaking open Doors or otherwise; and if, upon search thereupon made, any such suspected article or articles should accordingly be found, then and in such case to dispose thereof in some place of safety in manner as above mentioned, and also to apprehend the person or persons in whose House or other place the same shall be found, as also any such other person in such House or elsewhere as shall appear to have been privy to the depositing of such articles, or any of them, in such house, knowing or having cause to suspect the same to have been stolen or unlawfully obtained, and to bring every such person so apprehended, together with all such articles so suspected as can conveniently be convey'd, before such Justice, [150\_088] or any other Justice or Justices of the Peace for the same County, City, Division, Liberty or Place, and if such person or persons respectively shall not immediately, or within some reasonable time, by producing the party or parties from whom such article or articles so suspected as aforesaid was or were bought or otherwise lawfully received, or otherwise give an account to the satisfaction of such Justice or Justices how such articles came to be deposited in such place as aforesaid, or make it appear to the satisfaction of such Justices that they knew not that the same were, or by what means they were, so deposited, then and in such case the person or persons in whose House or Place the said suspected article or articles was or were found, as aforesaid, together with every or any such person so appearing to be privy, as aforesaid, to the depositing thereof, shall be deemed and adjudged guilty of a misdemeanour, and shall suffer as herein after mentioned.<sup>22</sup>

And for the better securing the evidence of any such person or persons by whose testimony, in the judgment of such Justice or Justices, the truth of the case may more

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<sup>22</sup> In the margin Bentham, has noted at this point: 'Separate clause applying to all the offences[?].'

effectually be made appear, it shall be lawful to and for such Justice or Justices, if he or they see occasion, to committ every or any such person to any prison within the jurisdiction of such Justice or Justices for some reasonable time, or untill such person or persons shall either have been fully and sufficiently examined touching the premises[?], or until they shall respectively have found sufficient security, to the satisfaction of such Justice or Justices, for the undergoing or compleating such examination as aforesaid.

§ 5. Penal not to seize suspected goods (and persons) when such goods are offered to sale or pawn.

[150\_089] And be it further enacted, that every person to or with whom any materials, furniture, stores, merchandize or any other article or articles belonging to any ship or vessel should be brought or offered to be sold, pawned or deposited shall, and he or she is hereby impowered and required (he or she having reasonable cause, as aforesaid, to suspect that such article or articles have been stolen or unlawfully obtained from and out of any ship or vessel stationed in the said River, within the limits aforesaid, or from any other place to which the same have been removed, mediately or immediately, from any such Ship or Vessel) to apprehend, secure and convey or cause to be convey'd before any Justice or Justices of the Peace for the County, City, Division, Liberty or Place where the same shall have been so brought or offered, the person or persons so bringing or offering the same, or else to deliver him, her or them into the custody of any such Thames Police Constable as aforesaid, by whom in such case such suspected person or persons shall thereupon be carried before any such Justice or Justices, and in the mean time to secure such materials, furniture, stores, merchandizes or other article or articles; and such person or persons so apprehended shall be dealt with, and such article or articles so secured shall be deposited and disposed of, in the same manner as if such suspected person or persons had been apprehended, and such article or articles respectively secured, by any such Constable, as [150\_090] aforesaid; and if any person to whom any such article or articles as aforesaid shall have been brought or offered as aforesaid (he or she having reasonable cause for suspicion, as aforesaid) shall wilfully forbear or neglect to apprehend, secure or deliver over any such person or persons, or any such article or articles as aforesaid, to any such Justice or any such Constable as aforesaid, every such person so forbearing or neglecting shall be deemed and adjudged guilty of a misdemeanour: and shall suffer as herein after mentioned.

§ 6. Punishment for offences against this or the former Act.

[150\_091] And be it further enacted, that in every such case so declared to be a misdemeanour as aforesaid, every person so adjudged to have been guilty of such

misdemeanour may and shall forfeit and pay any sum not exceeding {£10},<sup>23</sup> and may moreover, at the discretion of the Justices before whom he or she shall have been convicted, be imprisoned, with or without the obligation of Hard Labour, in any House of Correction or other prison within the jurisdiction of such Justices, for any time not exceeding three Calendar months: and for every offence committed after conviction of any offence against this present Act, or any similar offence against the said Act of the second year of his Majesty's Reign,<sup>24</sup> any sum not exceeding £20, and may moreover, at like discretion, be imprisoned as aforesaid for any time not exceeding six months: and so on *toties quoties*, for every fresh Offence committed after repeated convictions for former offences: the greatest punishment which can be inflicted for each offence committed after preceding convictions being double to the greatest punishment which was or could have been inflicted on the conviction last preceding such offence; and moreover, if any such offender be a Member of the Waterman's Company of the City of London,<sup>25</sup> he shall be adjudged and declared to have forfeited his freedom of the said Company, and to be incapable of exercising the craft and occupation of a Waterman any where upon the said river.<sup>26</sup>

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<sup>23</sup> In the margin, Bentham has added and then cancelled, 'to be levied by distress'.

<sup>24</sup> i.e. the Bumboat Act of 1762.

<sup>25</sup> London Watermen, operators of passenger-carrying boats, had in 1510 been granted exclusive rights to carry paying passengers on the tidal part of the River Thames by Henry VIII (1491–1547), King of England from 1509 and King of Ireland from 1541. The Company of Watermen had its origin in the Thames Watermen Act of 1555 (2 & 3 Ph. & Mar., c. 16, § 3), which prescribed that 'eight Persons of the most wise, discreet and best Sort of Watermen' should be annually 'appointed, chosen and elected by the Mayor and the Court of Aldermen of the City of London' as 'Overseers and Rulers of all the Wherrimen and Watermen' on the Thames between Gravesend and Windsor. In 1585 the Company was granted a coat of Arms by Elizabeth I (1533–1603), Queen of England and Ireland from 1558. The Thames Watermen Act of 1700 (11 Will. III, c. 21), amalgamated the Company with the Lightermen (operators of goods-carrying boats), who had previously been members of the Company of Woodmongers, in the Company of Watermen and Lightermen.

<sup>26</sup> In the margin, Bentham has noted at this point: 'Settle the phraseology here by the proper documents', and 'Add, or a Ticket Porter.'

The 'proper documents' capable of supplying appropriate 'phraseology' might have included the Navy Act of 1706 (4 & 5 Ann., c. 6, § 20), under which any waterman, bargeman, lighterman or wherryman convicted of failing to answer a summons to serve in the Royal Navy was to 'suffer Imprisonment during the Space of One Month, and be disabled from rowing or working upon the said River of Thames, and of enjoying any the Advantages or Priviledges of the said [Watermen's] Company for the Space of Two Years'; and an Act of Common Council of the City of London, dated 6 October 1646, under which a porter offending against certain regulations might 'stand Suspended .^.^ and .^.^ not to exercise the Feat of a Porter, whilst

§ 7. Thieves &c.  
convicting Receivers  
of such goods shall  
be pardoned and  
discharged.

[150\_092] And be it further enacted, that every or any person who, having been concerned in unlawfully procuring any such materials, furniture, stores, merchandizes or other article or articles, as aforesaid, from any Ship or Vessel within the limits aforesaid, or from any other place to which the same have been removed mediately or immediately from any such ship or vessel as aforesaid, or in such throwing, letting fall or conveying away as aforesaid from any Ship, Boat, Wharf or other Landing-place, any such article or articles as aforesaid, and being out of prison, or though in prison being under fifteen years of age, shall make discovery of any person to whom he or she or any other person shall have offered any such article or articles to pawn or sell without having been so apprehended and dealt with as aforesaid, whereby any such person by whom such party ought to have been apprehended was suffered to go free contrary to this act, shall from the time of such conviction be free and discharged from all penalties for every such his or her offence; and in case any order shall have been made by any Justice or Justices of the Peace declaring such offender to have been convicted, it shall be lawful to such Justice or Justices at any time to stay the execution of such order, or so much thereof as shall remain unexecuted, untill the event of such discovery shall have been ascertained; and every person who, having been guilty of felony in respect of the stealing or unlawfully procuring any materials, furniture, stores, merchandizes or other article or articles from any Ship or Vessel, and being out of prison, or under fifteen years of age, shall make discovery of any person by whom any such article or articles shall have been feloniously received, whereby such Receiver shall be convicted of felony, shall upon such conviction be entitled to his Majesty's most gracious pardon for all such felonies by him or her so committed as aforesaid.<sup>27</sup>

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his said Suspension continueth', and, if the offences continued, be deprived 'of his and their Place and Office, and .^.^ afterwards be held and accounted as a Person unfit to be employed in the said Feat of a Porter' (see *Acts of Common-Council, concerning the Tackle-house and Ticket Porters, and Publick Beams*, London, 1712, p. 13).

A ticket-porter was a member of the body of porters and messengers licensed by the Corporation of London, identified by a metal badge ('ticket') bearing his name and number: ticket-porters held a monopoly on specified carrying duties in the City of London, including the loading and unloading of ships and work in the public markets.

<sup>27</sup> The Bumboat Act (§ 14) had prescribed the provision of a pardon for offenders against the Act who 'shall afterwards discover two or more Persons who shall have bought or received any stolen or unlawfully

§ 8. In case of evidence of a felony, parties to be bound to prosecute.

[150\_093] Provided always, and be it further enacted, that if on any information given of any misdemeanour committed against this Act or against the said Act of the second year of his Majesty's reign,<sup>28</sup> and on examination taken thereupon it shall appear to the Justice or Justices taking the same that a felony has been committed, and that evidence sufficient to ground a conviction for such felony is likely to be produced, it shall be lawful to and for such Justice or Justices, and they are hereby respectively directed and required, to bind all such persons respectively as shall appear to be proper parties to prosecute for such felony, or to give evidence touching the same, any thing in this present Act or in the said Act of the second year of his Majesty's reign to the contrary notwithstanding.

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procured Goods .^.^ so as two or more of the Persons discovered shall be convicted of such Buying or Receiving'.

<sup>28</sup> i.e. the Bumboat Act of 1762.

[150\_112]

## Contents of a Bill to be intitled

An Act to explain and to amend an Act, passed in [the]  
2<sup>d</sup> Year of the Reign of his present Majesty, intitled an  
Act to prevent the committing of Thefts and Frauds by  
persons Navigating Bum-Boats and other Boats upon  
the River of Thames

Observations.	Heads.
	<p>The Persons who are authorized by 2<sup>d</sup> Geo. 3<sup>d</sup>. C. 28<sup>29</sup> to stop and search Boats suspected to have on Board Goods &amp;c. Stolen or unlawfully procured from Vessels, and Police Officers shall and may apprehend the following Persons<sup>30</sup>—</p> <p>1<sup>st</sup>. Persons conveying or assisting in the conveyance of such Goods in such Boats—</p>
<p>2<sup>nd</sup>. This will include the owner or his Servant or Apprentice, as the case may be, and is intended to prevent them from permitting the Boats to be used for the criminal purposes.</p>	<p>2<sup>nd</sup>. The persons having the care and charge of such Boats, if suspected of knowing of and assisting to the conveyance of such Goods in such Boats.</p>
<p>3<sup>d</sup>. We understand this to be a common practice to elude the Vigilance of the officers.<sup>31</sup></p>	<p>3<sup>d</sup>. Persons throwing or causing to be thrown or assisting to throw any goods of whatever kind out of such Boats to prevent detection.</p>
<p>4<sup>th</sup>. This will also include the Owner's Servant or Apprentice, as the case may be; and is intended to induce them to prevent others from eluding the vigilance of the Officers.</p>	<p>4<sup>th</sup>. Persons having the care and charge of such Boats, if suspected to have known of and assented to the throwing of any thing overboard to prevent detection.</p> <p>And in all such cases may stop and detain such Boat.</p>

<sup>29</sup> i.e. the Bumboat Act of 1762: see p. 3 & n. above.

<sup>30</sup> For the powers and penalties contained in this and the following seven paragraphs see Bentham's first draft of the Thames Police Bill (i.e. 'A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames') § 2, pp. 7–8 above.

<sup>31</sup> See pp. 3–4 above.

	<p>The first and second Class to be deemed Guilty of a misdemeanour, unless they produce the party from whom the Goods were bought, or prove the Buying, or give a satisfactory account how the Goods came on Board the Boat, and the Boat forfeited upon the conviction of any one.</p>
<p>We doubt whether the Persons authorized by the former Act to search Boats and apprehend Persons in them could apprehend Persons in carrying suspected Goods on shore. It seems, therefore, proper to give them that power, as they are likely to be more vigilant and active than Constables and other Officers: and at particular Seasons might be set to Watch at Places where Stolen Goods are usually Brought to Shore.</p>	<p>The third and fourth Class to be deemed Guilty of a Misdemeanour unless they give a satisfactory account to one Justice of the Goods thrown overboard, and why they were thrown overboard. And upon conviction the Boats to be forfeited. The power given by the former Act to Constables and others to apprehend Persons and seize Goods, to be given also to the Persons also authorized to search Boats by the former Act.<sup>32</sup></p>
	<p>The<sup>33</sup> having in possession Sugar and other Articles in the State it is imported loose or unpack'd or pack'd in an unusual manner, to</p>

<sup>32</sup> See p. 8 n. above.

<sup>33</sup> For the powers and penalties contained in this paragraph see 'A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames', §§ 2 and 4, pp. 7–8 and 9–11 above, respectively.

<p>The principle of this clause is authorized by the Lottery Act.<sup>34</sup> and is absolutely necessary to counteract the manoeuvres of the notorious Receivers.</p>	<p>be sufficient Ground for suspicion that it was Stolen or unlawfully obtained; if a Satisfactory Account is not given. On information against reputed Receivers, that any such merchandizes &amp;c. are suspected to be concealed in their dwelling houses or premises, a Justice may by Special Warrant authorize any Person, by Day or Night, (but if by Night in the presence of a Peace Officer) to break open and search the same, and to seize such merchandize, and apprehend the Persons in whose Dwelling House or Premises they are found; and convey them before two Justices, if the Persons do not give a satisfactory account how they came by such merchandizes &amp;c. or produce the Parties from whom they receiv'd the same, to be deemed guilty of a misdemeanour.</p>
	<p>Goods seized under this Act to be dealt with as Goods seized under the former Act.<sup>35</sup></p>
<p>This provision is taken from 29 Geo. 2<sup>d</sup>.</p>	<p>Persons<sup>36</sup> to whom suspected Goods are</p>

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<sup>34</sup> The Lottery Act of 1793 (33 Geo. III, c. 62, § 37) prescribed that, ‘upon Complaint or Information made upon Oath, before any Justice or Justices of the Peace, .^.^ of any Offence against the said Act of the twenty-seventh Year .^.^ of his present Majesty [i.e. the Lottery Act of 1787] in any House or Place .^.^, it shall and may be lawful to and for the said Justice or Justices .^.^ to authorize and empower any Person or Persons employed by the said Commissioners of the Stamp Duties, .^.^ by Day or by Night, (but if in the Night-time, then in the Presence of a Constable or other lawful Officer of the Peace .^.^ to break open the Doors, or any Part of such House or Place, and to seize and apprehend all such Offenders’. For the Lottery Act of 1787 (27 Geo. III, c. 1) see p. 20 n. below.

<sup>35</sup> See p. 8 n. above.

<sup>36</sup> For the provision contained in this paragraph see ‘A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames’, § 5, p. 11 above.

<p>C. 30, which was passed to prevent stealing Lead, Copper, &amp;c.,<sup>37</sup> and it is presumed, tho' a Strong measure, yet that its application to the protection of the property of the Merchants, and consequent increase of the Revenue, attended with the suppression of a System so disgraceful to the <i>port</i> and the Police, will not be objected to by the house.<sup>38</sup></p>	<p>offered to pawn or Sale, to be deemed Guilty of a misdemeanour, if they do not apprehend the Person offering such goods, having it in their Power so to do. The evidence of Persons concerned in Stealing or unlawfully procuring such Goods to be sufficient if corroborated with other circumstances.</p>
<p>Experience has proved the inadequacy of the existing Laws, and that the present System of commuting the punishment by the payment of a small fine is radically bad, and does not diminish this extensive evil: it being a subject of public notoriety, that the fine</p>	<p>The Punishment for the first offence to be imprisonment, not to exceed 6, nor less than 3 Months: for the second offence imprisonment, not to exceed 12, nor less than 6 Months.<sup>39</sup> The pecuniary penalties of 40<sup>s</sup> for the 1<sup>st</sup> Offence, and £4 for the second and every subsequent offence, imposed by the Bumboat Act<sup>40</sup> (except for the misdemeanours in the 15<sup>th</sup> section)<sup>41</sup> repealed and, upon first conviction for misdemeanours against this Act or the former Act, the offender to be either publicly whipped or sent to the house</p>

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<sup>37</sup> See the Stealing of Lead etc. Act of 1756 (29 Geo. II, c. 30, § 5): ‘and if it shall appear upon the Oath of any Person, notwithstanding such Person or Persons was or were concerned in the stealing the same, if corroborated with other credible Circumstances, to the Satisfaction of two or more Justices of the Peace .^.^ that there was reasonable Cause to suspect that such Lead, Iron, Copper, Brass, Bell-metal or Solder was stolen or unlawfully come by, and that the Person to whom such Lead .^.^ was so brought or offered, did not (having it in his, her, or their Power so to do) apprehend, secure, and carry before a Justice of the Peace .^.^ the Person or Persons who so brought and offered the same, that then the Person or Persons to whom such Lead .^.^ was so brought and offered, shall be deemed and adjudged guilty of a Misdemeanour’.

<sup>38</sup> i.e. the House of Commons.

[See p. 20 for nn. 39–41]

<p>is instantly paid out of a fund subscribed by the opulent receivers.<sup>42</sup></p> <p>The principle of this Clause is authorized by the Vagrant Act and Lottery Acts jointly.<sup>43</sup> and, as Mr Colquhoun has remarked,<sup>44</sup> is preferable to punishing offenders as Rogues and Vagabonds, as by this mode</p>	<p>of correction, for any time not exceeding 6 Months, nor less than 3 Months: for the second offence to be publicly whipped and also sent to the House of Correction for any time not exceeding 12 Months, nor less than 6 Months: and for every subsequent offence to be publicly whipt and also sent to the House of correction for any time not exceeding 2 Years, nor less than 1 Year.</p>
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<sup>39</sup> The provision contained in this paragraph differs from that contained in ‘A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames’, § 6, pp. 11–12 above. For further details see the Editorial Introduction, p. 000 above.

<sup>40</sup> See p. 4 & n. above.

<sup>41</sup> See p. 8 n. above.

<sup>42</sup> The provision contained in this paragraph differs from that contained in ‘A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames’, § 6, pp. 11–12 above. For further details see the Editorial Introduction, p. 000 above.

<sup>43</sup> According to the Vagrant Act of 1744 (17 Geo. II, c. 5, § 7), the punishment for ‘Rogues or Vagabonds’ was to be publicly whipped, or confined in an house of correction for any period up to the next General or Quarter Sessions, after which they might be sent back to their place of settlement, while the magistrates at those sessions were empowered to commit them to hard labour in a house of correction for any further period not exceeding six months (§ 9). The Lotteries Act of 1787 (27 Geo. III, c. 1, § 3), prescribed that all persons who should sell Lottery tickets without a licence, or shares in them for any less time than the duration of the lottery, or sell insurances on tickets, ‘shall be deemed Rogues and Vagabonds, within the true Intent and Meaning’ of the Vagrant Act, ‘and shall be punishable as Rogues and Vagabonds accordingly’.

<sup>44</sup> Colquhoun does not appear to have expressed exactly this opinion in print, although Bentham perhaps had in mind *Treatise on the Police of the Metropolis*, pp. 284–91, where Colquhoun first divides offences into three classes according to their respective punishments; second, includes ‘Rogues and Vagabonds’ under the third class, namely ‘Offences denominated Misdemeanours, punishable by Fine, Imprisonment, Whipping, and the Pillory’; and third (pp. 290–1), notes that, ‘The offences specified in the third class, as also petty larceny, and every species of misdemeanour and vagrancy, are generally tried, (with some few exceptions) by the Justices in their General and Quarter Sessions .^.^ . The Magistrates in Petty Sessions, and in several instances a *single Magistrate*, have also the power of convicting, in a summary way, for a variety of small misdemeanours, and acts of vagrancy, and of punishing the delinquents with fine and imprisonment.’

all litigation at Sessions will be avoided.	
It is submitted for consideration whether, as there is always a great difficulty in proving a prior conviction of any person, therefore perhaps it may on that account be proper to apply this punishment to the <i>first</i> conviction.	Upon a Second Conviction for any Misdemeanour against this Act or the former Act, the party to be deprived of and rendered incapable of being admitted to the priviledges of a free Waterman.
This provision, as far as it respects persons guilty of Felony, is taken from the aforesaid act of 29 <sup>th</sup> Geo. 2. C. 30: <sup>45</sup> and it seems reasonable to extend it to persons Guilty of Misdemeanours.	Any persons guilty of felony in Stealing Goods from Vessels, or in receiving such Goods, or Guilty of any Misdemeanour against this Act or the former Act, who, being out of Prison, shall discover and convict one or more persons for receiving Stolen property, to be pardoned of all such felonies and not punish'd for the misdemeanours. <sup>46</sup>
This provision is also taken from the aforesaid Act of 29. Geo 2. C. 30.	Any Person concerned in Stealing or unlawfully procuring Goods, who, being out of Prison, shall discover any person or Persons to whom they have offered to sell or pawn such Goods, so as such Person shall be convicted of the Misdemeanour of not apprehending, shall not be liable to be prosecuted for Stealing or unlawfully procuring the Goods offered.
	With the following Clauses—

<sup>45</sup> The Stealing of Lead etc. Act of 1789, § 8, limited pardon to those who, having feloniously stolen metal, ‘afterwards discover two or more Persons who shall buy or receive any stolen Lead .^.^ so as two or more Persons discovered shall be convicted of such buying and receiving’.

<sup>46</sup> For the provisions contained in this and the following paragraph see ‘A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames’, § 7, p. 13 above.

	<p>Convictions to be certified to the next Quarter Sessions and filed there—</p> <p>Form of Conviction—</p> <p>No <i>Certiorari</i>—<sup>47</sup></p>
<p>Altho' this clause is founded on very fair and equitable principles, we doubt whether it will not open a Door to fraud and render the persons having charge of Boats very negligent of them; as they can but rarely be taken for criminal purposes, without gross neglect or connivance of the owner.</p>	<p>If owners of Boats prove within  ^^^  days after conviction of offenders that their Boats were taken without the knowledge, connivance or default of themselves, their Apprentices and Servants, the Boats to be restored, if the Magistrate thinks proper, upon payment of the costs of keeping them, to be settled by one of the Justices before whom the conviction was had.<sup>48</sup></p>
	<p>If it shall appear to the Justice that the Offence committed by Offenders is a felony, he shall bind the Parties to prosecute and give evidence for Felony<sup>49</sup>—</p> <p>Power of Apprehending<sup>50</sup>—</p> <p>Obstruction of this Act punishable with Transportation—</p> <p>Admissibility of Witnesses—</p>

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<sup>47</sup> A writ of *certiorari* (i.e. to be certified or informed) was an order issued by a superior court to call up the record of a case in an inferior court for review, usually following an appeal from one of the parties.

<sup>48</sup> This provision does not appear in 'A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames'.

<sup>49</sup> For the provision contained in this paragraph see 'A Bill to explain and amend .^.^ An Act to prevent the committing of Thefts and Frauds .^.^ upon the River of Thames', § 8, p. 14 above.

<sup>50</sup> This and the following nine paragraphs consist only of headings.

	Administration of Oaths— Protection to Magistrates— Tender of Amends— Limitation of Actions— General Issue— Treble Costs— Public Act.
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[149\_146]

## Short Heads of a Bill

For the more Effectual prevention of depredations on  
the River Thames

§ 1<sup>st</sup>.<sup>51</sup> General preamble—power to His Majesty to Establish a police office at or near Wapping new Stairs under the name of the Thames Police Office—Three Justices to sit Constantly under the name of Special Justices.

§ 2<sup>d</sup>. Provisions of the police Act (32 Geo. 3, Cap. 53)<sup>52</sup> extended to this Police Office.

§ 3. Power to Special Justices to appoint, suspend and dismiss Office, Ship and Boat Constables.

§ 4. Power to Special Justices to appoint, suspend and dismiss Police Surveyors with the power of Constables—Power to the Lord Mayor of London and Aldermen and Trinity house to dismiss such Constables and Surveyors.

§ 5. Expences—what to be defrayed out of *the Office Fund* and what out of a Guard Fund to be formed by Tonnage duties levied on 28 Classes of Traders.<sup>53</sup>

§ 6. Commissioners for Assessing the said duties and for other Functions, one to be chosen by and out of each Class.

§ 7. Meetings General and Special of the Commissioners—adjournments—Quorum Sufficient—Casting Vote, &c.

§ 8. Commissioners to fill up their own Number.

§ 9. Commissioners may vary the Rate preserving the proportions and never raising more than £14,464. 16. 4, adding deficiencies and deducting surplusses of former years.

§ 10. The Table of rates may be departed from to avoid Fractions—for less than a ton nothing to be paid.

§ 11. One Sixth of said duties to be paid by Ship owners and  $\frac{5}{6}$  by Shippers and

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<sup>51</sup> The bifolium on which this text appears is endorsed: ‘1799—*Breviat* of a Bill—For the more effectual Prevention of Depredations on the River Thames.’ For further details see the Editorial Introduction, p. 000 above.

<sup>52</sup> See p. 5 n. above.

<sup>53</sup> For the distinction between the ‘Office Fund’ and the ‘Guard Fund’ see ‘Summary View of a Bill for the more effectual prevention of Depredations on the Thames’, p. 33 below.

Consignees.

§ 12. Commissioners may appoint Collectors, Treasurers, Cashiers and Auditors—Auditors may Examine upon Oath.

§ 13. Special Justices may Call meetings of the Commissioners to obtain imprests for the Cashier.

§ 14. No Ship to enter or clear without such Collector's Certificate for the paym<sup>t</sup> of said duties.<sup>54</sup>

§ 15. Master Lumpers to be licenced by the Commissioners or Special Justices.

§ 16. Working Lumpers to be registered in the Lumpers' list book.

§ 17. Commissioners may regulate dresses &c. of Lumpers and others employed in loading or unloading Ships—also the dresses of Surveyors and Constables—Penalty on others Assuming dresses so appropriated.

§ 18. Lumpers quitting work may be dealt with as under 6 Geo. 3. Cap: 25.<sup>55</sup>

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<sup>54</sup> In the corresponding marginal contents sheet at UC clvii. 22, headed 'Marine Police Bill Supplement—Contents', Bentham added: 'Certificate of payment to be given by the Collector—or in his default by the Justices.'

<sup>55</sup> Under the Regulation of Apprentices Act of 1766 (6 Geo. III, c. 25, § 4) a contracted labourer found to have broken his contract was liable to be committed to the local House of Correction for a period of between one and three months. In a related fragment at UC cl. 105, headed 'Marine Police Bill. Additions', Bentham noted: 'And "whereas it frequently happens that" Working Lumpers after having contracted for the being employ'd in the loading or discharge of a Ship or Vessel do nevertheless leave such their respective employments "before the terms of their contracts are fulfilled", to the great disappointment and loss not only of the Master or Principal Lumpers with whom such Working Lumpers have respectively contracted, but also of the Owners and Freighters of such Ships and vessels; For remedy thereof be it further enacted and declared that every such Working Lumper so offending "or being guilty of any other misdemeanour" may and shall be dealt with in the same manner as any labourer or other person leaving his service before the terms of his contract are fulfilled may be dealt with, under and by virtue of an Act of the sixth year of the reign of his present Majesty, intituled *An Act for better regulating Apprentices and persons working under Contract.*'

Bentham's first two quotations are taken from the preamble and § 4 respectively of the Regulation of Apprentices Act of 1766, while the third quotation is an emended version of the phrase 'or hath been guilty of any Misdemeanour', which appears in § 4 of the Act.

§ 19. Commissioners may make regulations for the Government of Lumpers.

§ 20. Lumping Contracts particularized under heads to be registered in the Lumping Contract book kept at the Office, Penalty for false declaration therein.

§ 21. Ship Masters to give in to the Special Justices the names and abodes of Lumpers, Coopers, Watermen and Lightermen employed by them—penalty for neglect.

§ 22. Ship Masters to keep Fast'ned up all Avenues to the Hold but one, and that too when goods are not discharging.

§ 23. Special Justices may, at the Instance of the Owners of the Ship or Owner or Consignees of Goods, Station Ship Constables on board on Certain terms.

§ 24. Power to Thames Police Surveyors to visit Ships.

§ 25. Ship Masters and Master Lumpers to Search working Lumpers—Offenders to be deliver'd to a Constable—Penalty on Master Lumpers for Neglect, besides being Answerable for Specific loss.

§ 26. Misdemeanor to carry or Suffer to be carried Coals from Ships (otherwise than in the way of trade)—Offender may be apprehended—Coals Seized, how to be disposed of.

§ 27. Commissioners may appoint Tickets without which a lighter navigated at night may be Seized and the Crew apprehended and Convicted of a misdemeanour—Penalty for forging &c. such Tickets.

§ 28. Penalty for Injuring packages and letting out their Contents.

§ 29. Commissioners may appoint *Wharf Inspectors* with the power of Constables.

§ 30. Comm<sup>rs</sup>, at the Instance of Owners and Consignees of goods, may appoint Warehouse Inspectors to prevent Waste and depredation in sampling goods &c.

§ 31. Commissioners, at the Instance of Owners and Consignees of Goods, may

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In a draft note to this section at UC cl. 110, Bentham commented: ‘*Or being guilty of any other Misdemeanour*’. Any body may observe how loose this is: no provision thus loose would have been

appoint Ship Inspectors to prevent Waste &c. by Spillings, drain<sup>gs</sup> &c.

§ 32. Penalty for having Concealed Instruments for drawing Off Liquors.

§ 33. Powers of Search, Seizure and Arrest, on view in respect of Goods  
Clandestinely taken from Ships, Boats, landing places and Warehouses—The Offence a  
misdemeanor—Goods Seized, how to be disposed of—Boats so Employed may be restored  
to the Owners.

§ 34. Misdemeanor to throw goods overboard to prevent discovery—Crew may be  
apprehended.

§ 35. Powers of Search &c. on Warrant at a Supposed Receiver's who, not proving  
how he came by the Articles, may be Convicted of a misdemeanor.

§ 36. Penalty for fabricating false Bills of Parcels to Cover Suspected Goods.

§ 37. Act 2 Geo: 3. Cap. 28. §§ 5, 6 and 7 Amended<sup>56</sup>—Power to trace Suspected  
Goods through any number of Hands—Possession of such goods may be a misdemeanor  
although a prior possessor be produced.

§ 38. Misdemeanor not to Stop Suspected Goods with the Offenders.

§ 39. Thieves &c. convicting Receivers of Felonies or misdemeanors shall be  
pardoned or discharged.

§ 40. Penalties for Offences, herein made misdemeanors—Application thereof.

§ 41. Proceedings before Special or other Justices—Form of Conviction as by 2 Geo.  
3. Cap: 28—no *Certiorari*<sup>57</sup> or appeal.

§ 42. Persons in General bound to Assist Constables or Surveyors with or with<sup>t</sup>  
Command.

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presented in the present Draught: but for conformity's sake, and as the precedent exists, it may be as well to  
take the benefit of it.'

<sup>56</sup> See pp. 7–11 and 16–18 above.

<sup>57</sup> For writs of *certiorari* see p. 22 n. above.

§ 43. Boats Forfeited under 2 Geo<sup>e</sup> [3.]<sup>58</sup> Cap: 28 may, instead of being destroyed, be sold or restored; the owner losing a part of the value.<sup>59</sup>

§ 44. Penalty for Endeavouring to obstruct the Execution of this Act by a Suppression of Evidence or otherwise, with or without Force.

§ 45. Penalty for destroying or damaging Office Boats.

§ 46. Offences made misdemeanors under the Act 2 Geo. 3. Cap. 28 may be punished either under that or this present Act.

§ 47. Offences made Transportable for 14 years by the Act 2 G. 3. Cap. 28 hereby declared Felony.

§ 48. No person to be charged for as a Ship Watchman without being a Ship Constable—any fit Watchman recommended by a Ship's Husband shall be appointed a Ship Constable.

§ 49. Commissioners may make regulations touching the Shipping, unload<sup>g</sup>, landing, Warehousing and Sampling of Goods.

§ 50. Power to his Majesty in Council, at the Instance of the lord Mayor and Aldermen, Treasury Board, or Board of Customs, to Annul regulations made by the Commissioners.

§ 51. Commissioners may Suspend a Commissioner for manifest unfitness—on the representation of a Majority, King in Council may dismiss him.

§ 52. Saving Clause in Favor of the Rights and privileges of the City of London.

General Concluding Clauses:

Limitation of Actions.

General Issue.

Public Act.

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<sup>58</sup> MS '1'.

<sup>59</sup> See p. 22 above.

[150\_118]

Summary View

of a Bill

For the more effectual prevention of Depredations

on the Thames

The Bumboat Act was passed in 1762 (2. G. 3. c. 28).<sup>60</sup> Nothing was done under it for about 14 years.<sup>61</sup> The present temporary Marine Police Office had no other special ground for its proceedings than that Act, which, though conducive to its objects as far as it goes, has been shewn by a twelvemonth's experience to be far indeed from adequate.<sup>62</sup> What the Bumboat Act contributes is confined to penalties and legal powers.—The *Police* Office furnishes Civil guards, properly equipped and armed, for the execution of these powers. The expence of these guards, being defray'd exclusively by a single branch of the trade, (viz: the West India) out of 28 and more that may be distinguished, the immediate effects of the protection afforded by them have of course been confined to that single branch of trade.<sup>63</sup>

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<sup>60</sup> For the Bumboat Act see p. 3 n. above.

<sup>61</sup> Bentham's source for this assertion was presumably Colquhoun, although he made it in print only a year after Bentham's composition of this work, in *A Treatise on the Commerce and Police of the River Thames: containing an historical view of the trade of the Port of London; And suggesting Means for preventing the Depredations thereon, by a Legislative System of River Police*, London, 1800, p. 43: 'Yet, perhaps from the circumstance of its being a *local Statute*, fourteen years actually elapsed after its passing, before any one of its provisions was carried into effect.'

<sup>62</sup> The Marine Police Institution was established on an experimental basis in July 1798, on the initiative of, and largely financed by, the Committee of the West India Merchants and Planters (a lobby group, formed in 1775, for British-based merchants and plantation owners with interests in the Caribbean), with some additional funding from the Exchequer. The principal task of the Institution, essentially a private security force, was to protect ships carrying cargoes from the West Indies against theft. Patrick Colquhoun was appointed superintending magistrate and John Harriott (1745–1817), who had independently pressed for the establishment of a river police service, resident magistrate. The Depredations on the Thames Act (39 & 40 Geo. III, c. 87), which received the Royal Assent on 28 July 1800, regularized the Institution as a public body and extended its remit to cover all shipping on the Thames.

<sup>63</sup> In 1800, Colquhoun published figures for the trade of the Port of London in the year ending 5 January 1798 under 24 heads, largely geographical, of which trade with the West Indies accounted for a little over one sixth of the total value of goods imported and exported in *A Treatise on the Police of the Metropolis; containing a detail of the Various Crimes and Misdemeanors By which Public and Private Property and Security are, at present, injured and endangered and suggesting remedies for their prevention*, 6th edn., London, 1800, facing p. 214.

In a cancelled fragment for § 5 of the full text of his revised Bill at UC cl. 315<sup>v</sup>–16<sup>v</sup>, Bentham listed the following twenty-four classes of traders intended to be subjected to a tonnage duty: '1. Persons exporting goods to or importing goods from any port within the limits marked out by the Charter of the United Company of Merchants trading to the East Indies. 2. Exporters of Goods to and Importers of Goods from any port within the limits marked out by the Charter of the Company of Merchants trading to Africa, commonly

[150\_120]

To substitute to this scanty and occasional detachment a more permanent as well as stronger force, commensurate in point of numbers as well as funds to the extent of the demand, as furnished by the whole trade (not to speak of his Majesty's floating property), is [one]<sup>64</sup> main object of the Bill. From what *has been* done by the one under numerous disadvantages, what *would be* done by the other may be inferred.

In proportion as this sketch is summary, the wording could not but be loose. But in the Bill itself, nothing can exceed, in point of anxiety, the care that has been taken for the security of innocence, and for divesting power of the faculty of abuse.

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called the *African Company*. 3. Exporters of goods to and Importers of goods from any port within the limits marked out by the Charter of the Fellowship of English Merchants for the discovery of new Trades, company commonly called the *Russia Company*. 4. Exporters of goods to and Importers of goods from any port within the limits of the Charter marked out by the charter of the Governor and Company of Merchants of England trading to the Levant Seas, commonly called the *Turkey Company*. 5. Exporters of goods to and Importers of goods from any port within the limits marked out by the Charter of the Hudson's Bay Company. 6 Persons trading to or with any port of the Continent of North America within his Majesty's dominion, except the ports contained within the limits marked out by the Charter of the Hudson's Bay Company. 7. Exporters of goods to and Importers of goods from any port in the West Indies. 8 Persons trading to or with any port within the dominion of the United States of America. 9. Persons trading to or with any port in Spain. 10. Persons trading to or with any port in Portugal. 11. Persons trading to or with any Port in France. 12. Persons trading to or with any port in the country now or lately known by the name of Austrian Flanders. 13. Persons trading to or with any port in Europe within the dominion now or lately known by the name of the dominion of the United States of the Seven Provinces. 14. Persons trading to/with any port in the country now or lately known by the name of Poland. 15. Persons trading with any port situate within the dominions of the King of Prussia and not being in Poland. 16. Persons trading with any port in Europe situate within the dominions of the King of Sweden. 17. Persons trading to with any port in Europe situate within the dominions of the King of Denmark and Norway. 18. Persons trading to with any port situate within the land in Germany and not being within any of the dominions above mentioned. 19. Persons trading to with any port in Italy. 20. Persons trading to with any port in his Majesty's Islands of Guernsey, Jersey, Sark and or Alderney. 21. Persons trading to with any port in his Majesty's Kingdom of Ireland. 22. Persons importing Coals into the port of London from any other Port in this his Majesty's Kingdom of Great Britain. 23. Persons trading in Goods (other than Coals) with any other Port in that part of Great Britain called England. 24. Persons trading in Goods (other than Coals) with any port in that part of Great Britain called Scotland.'

<sup>64</sup> MS 'the other'. In the following cancelled draft of the passage at UC cl. 118–19, Bentham had referred to two main objects of the Bill, but assumed that each would be listed after the other: 'To give to this scanty and occasional Guard permanency and number adequate to the demand of the whole trade, is another main object of this Bill.—to give the requisite extension to the above penalties and powers, is *the other*.'

If explanations of the grounds of the Bill in point of reason and experience be desired, they may be found in a degree of detail rather beyond what is most customary, in the preambles by which several of the Sections are introduced.

[150\_121]

I. General Preamble.—Power to his Majesty to establish a Police Office at or near Wapping New Stairs, under the name of the *Thames Police Office*. Three Justices (two of them to sit constantly), under the name of *Special Justices*. (§ 1.) Provisions of the Existing Police Act (32 G. 3. c. 53)<sup>65</sup> .^.^.^.^ extended, as far as applicable, to this Office. (§ 2.)

II. Power to Special Justices to appoint, suspend and dismiss divers sets of Constables—viz: 1. Office Constables for Land Service (as in the existing Police Offices). (§ 3.): 2. Boat Constables for patrolling the River in Boats: and 3. Ship Constables to be attached to Ships during the unloading &c., on application by persons interested. 4. Surveyors, with the powers of Constables, for inspecting and directing the other Constables. Power to Lord Mayor and Aldermen, as also to the Trinity House,<sup>66</sup> to dismiss any of these Constables. (§§ 3 and 4.)

III. For defraying all such expences of the Establishment as are over and above the expences of the other Police Offices (the fund for that purpose being distinguished by the name of *the Office Fund*), a peculiar Fund, under the name of the *Thames Police Guard Fund*, to be raised by a set of Tonnage Duties imposed on the several classes of persons benefitted, in specified proportions adjusted to the degrees of benefit. (§§ 5, 9, 10, 11.) Payment secured, by refusal of Clearance till a proper certificate of payment is produced. (§ 14.) Sum raised not to exceed £10,000 a year, but to be reducible to any amount. (§ 9.) For this and other purposes, a set of Commissioners (*Thames Police Fund* [150\_122] *Commissioners*) to be chosen, one out of each of about 28 Classes of persons contributing to the Fund. (§§ 5, 6.)—Organization of the body of Commissioners—Provisions for insuring the attendance of different numbers competent to different purposes—Meetings General and Special—Adjournments—Quorums sufficient—Chairmen—Casting Votes. (§ 7.)<sup>67</sup> Vacant seats to be filled up by themselves out of the class in which the vacancy

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<sup>65</sup> See p. 5 n. above.

<sup>66</sup> See p. 3 n. above.

<sup>67</sup> The following related passage, headed ‘Marine Police Bill. Notes. II. Commissioners’, is at UC cl. 108: ‘The object of the Notices is of course to prevent the packing of meetings by surprize: but if a majority

takes place. (§ 8.)—For necessary supplies, meetings may be called by the Special Justices. (§ 13.) Powers for appointing Subordinates—viz: Collector, Treasurer, Cashier, and Auditors—Auditors out of their own number and unpaid. Powers to Auditors for examining upon Oath. (§ 12.)—For manifest unfitness, a Commissioner may be suspended by his brethren, and on their representation dismissed by King in Council. (§ 51.)

[150\_123]

IV. Provisions for securing the good behaviour of *Working Lumpers* (Labourers employ'd in the loading and unloading of ships) and their Masters. *Master Lumpers* not to act without a license granted by the above Commissioners or the Special Justices. License discretionary, as in case of Alehouses.<sup>68</sup> (§ 15.)—Working Lumpers, not [to work] without being registered. (§ 16.) Working Lumpers quitting work punishable as other Labourers under 6 G. 3. c. 25.<sup>69</sup> (§ 18.) Power to Commissioners to make regulations for the government of Lumpers. (§ 19.) Lumping Contracts, as particularized under heads, to be registered at the Office for the purpose of ascertaining the conditions of the engagement—and thereby preventing disputes and rendering the parties responsible and forthcoming. (§ 20.)—Special Justices to be furnished with the names and abodes of the Lumpers employ'd on board each Ship—as also of the Coopers, Watermen and Lightermen. (§ 21.)

V. Powers to Commissioners for making certain regulations relative to *apparel*—by

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concurr, the use of notice is superseded, since the concurrence of a majority is every thing that can be desired or aimed at by the utmost length of notice: and a surprize operating only to the exclusion of a minority would not be productive of any inconvenience.

‘As for the most part the business to be done seems likely to be regarded as matter of course, and to be little exposed to difference of opinion or interest, it is for this reason that so small a *quorum* is made sufficient, that the time of a greater number may not be unnecessarily consumed.

‘Provision is made for the case where no Chairman is appointed, because otherwise the party who meant that nothing should be done at the meeting would forbear to join in the choice of a Chairman, and thus prevent the existence of a casting vote.’

<sup>68</sup> The licensing of alehouses by Justices of the Peace had been established by the Alehouses Act of 1552 (5 & 6 Edw. VI, c. 25), and had most recently been restated and amended by the Licensing of Alehouses Act of 1792 (32 Geo. III, c. 59). In 1757 the Court of King’s Bench had confirmed that Justices of the Peace had ‘*discretionary jurisdiction*’ in granting such licences: see *R. v. Young and Pitts* (1757), in James Burrow, *Reports of Cases argued and adjudged In the Court of King’s Bench, during the time of Lord Mansfield’s presiding in that court, from Michaelmas Term 30 Geo. II. 1756, to Easter Term 12 Geo. III. 1772*, 4th edn., 5 vols., London, 1790, i. 556–64, at 560. [See p. 35 for n. 69]

prohibiting habiliments contrived (as at present) for secreting plunder<sup>70</sup>—and for establishing distinctions, visible at a distance, between persons having business on the spot and persons not having business, and between persons in authority and persons not in authority. (§ 17.)

VI. Provisions specially applied to Ships.—Ship Constables to be stationed by the Special Justices on certain terms, at the instance of Owners or Consignees. (§ 23.) No person to be charged for as a Watchman who has not been sworn in as a Ship Constable.—Any fit person recommended by the Ship’s Husband shall be made a Ship Constable. (§ 48.) Powers to the above Surveyors for visiting Ships, *directing* the Ship Constables, and *inspecting* the conduct of Lumpers, Coopers, &c. (§ 24.)—Ship-master to keep fastened up all the avenues to the Hold but one, and that too when goods are not discharging. (§ 22.)—Powers to the Ship-Master and Master [150\_124] Lumpers for searching Working Lumpers.—Master Lumpers bound so to do under a penalty, besides responsibility for specific loss. (§ 25).<sup>71</sup> Powers to Commissioners, at the instance of Owners and Consignees, to appoint Ship Inspectors for saving spillings, drainings, &c., and thereby preventing wilful waste. (§ 31.) General power to Commissioners to make regulations relative to the shipping, unloading, warehousing and sampling goods for the prevention of waste, accident and depredation. Power to King in Council, at the instance of the Lord Mayor and Aldermen, the Treasury Board or the Board of Customs [to Annul regulations made by the Commissioners].<sup>72</sup> (§ 49.)

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<sup>69</sup> See p. 26 n. above.

<sup>70</sup> See p. 3 & n. above.

<sup>71</sup> The following related note, headed ‘Marine Police Bill. Notes’, is at UC cl. 109: ‘The power of making search without the obligation would not be sufficient: because if the power were not coupled with obligation, a man might incur odium by exercising it: whereas no odium attaches upon the exercise of any power when a man has necessity to plead in excuse for exercising it.’

<sup>72</sup> Bentham failed to specify the proposed power, but the omission is supplied from the equivalent section (§ 50) of ‘Short Heads of a Bill for the more effectual prevention of depredations on the River Thames’, p. 29 above. Both versions of ‘Summary View of a Bill for the more effectual prevention of Depredations on the Thames’ published in 1799–1800 insert ‘to annul such regulations’: see respectively *A General View of the Depredations committed on West-India and other property in the Port of London; the partial Remedies which have been successfully applied in suppressing these evils, and the measures proposed for rendering them permanent and effectual*, London, 1799, ‘Appendix Number I’, pp. 37–45, at 42, and *Treatise on the Commerce and Police of the River Thames*, ‘Appendix VIII’, pp. 670–6, at 674.

VII. Provisions specially applied to Wharfs and Warehouses in respect of landing, removing, sampling, &c.—Powers to the Commissioners for appointing *Wharf-Inspectors* with the powers of Constables—also (at the instance of Owners and Consignees) *Warehouse Inspectors*. (§ 30.) Slight penalty inflictible by summary procedure for injuring packages and letting out their contents for the purpose of profiting by the waste. (§ 28.)

VIII. Provisions authorizing slight penalties inflictible by summary procedure on circumstantial evidence aided by the examination of the delinquent (as under the Bumboat Act and Stolen Metal Acts),<sup>73</sup> where on regular proof it would be felony, and for attaching [punishment] upon the practice of depredation in such stages of its progress as are *previous* or *subsequent* to the felonious act.—Misdemeanour to have concealed instruments for drawing-off liquors. (§ 32.)—Misdemeanour to throw goods overboard to prevent discovery.—Where it is from a Boat, powers for apprehending the Crew. (§ 34.)

IX. Powers of search, seizure and arrest exerciseable *on view*, on suspicion of petty thefts committed on Ships, Lighters, Boats, &c., Landing-places, and Warehouses.—The offence punishable as a Misdemeanour with a slight penalty, as above. (§ 33.)

X. Powers of search &c. on oath of suspicion, at a supposed Receiver's.—The offence, in default of regular proof, punishable as a Misdemeanour.—The Bumboat Act amended in this behalf. (§§ 33–43.)—Powers for tracing suspected goods through any number of hands (another amendment of the Bumboat Act). (§ 37.) Penalty for fabricating false Bills of Parcels to cover suspected goods. (§ 36.)—Receivers not authorized merely, [149\_266] but *bound* (under a slight penalty) to stop persons bringing (Ship) goods to them under *suspicious* circumstances. (§ 38.) To render the criminal intercourse dangerous on both sides, indemnity to Thieves convicting Receivers of felony or misdemeanour, as the case may be. (§ 39.)

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<sup>73</sup> Under the Bumboat Act, whereas accessories to the theft of cargo or tackle from ships, and the buyers or receivers of such stolen items, were to be deemed guilty of felony, and punished by up to fourteen years' transportation, persons 'reasonably suspected' of such thefts, or found in possession of suspected stolen items for which they were unable to account, were to be deemed guilty of a misdemeanour, and punished by fines of 40s. for a first offence and 80s. for a second or subsequent offence. A similar distinction was drawn under the Stealing of Lead etc. Act of 1756 (29 Geo. II, c. 30) between the proven theft of metal, a felony subject to fourteen years' transportation, and the possession of metal suspected to have been stolen, a misdemeanour subject to a fine of 40s. for a first offence, rising to 120s. for a third or subsequent offence.

XI. Provision for preventing the carrying off of entire Lighters with their Cargoes: (a frequent offence). Commissioners may appoint Tickets, the want whereof shall be a ground of suspicion warranting Constables to search &c. a Lighter navigated at suspicious hours. (§ 27.)

XII. Special provision in regard to Coals. Misdemeanour to carry off Coals from Ships &c. otherwise than in the course of trade—or to suffer them to be carried off.<sup>74</sup> Powers of Arrest &c. (§ 26.)

XIII. Provisions for preventing obstruction and ensuring assistance to the execution of the law in this behalf. Penalty for suppression of evidence or other obstruction. Severer penalty, if with force. (§ 44.)—Penalty for destroying or injuring Office Boats. (§ 45.) Persons in general bound to assist Constables not only on command, but, in case of need, without command. (§ 42.)

XIV. Penalties, and application thereof (§ 40.) Procedure summary. No Appeal nor *Certiorari*.<sup>75</sup> (§ 41.)

XV. Further amendments of the Bumboat Act.—Offences against *that Act* punishable either as such, or as against *this Act*. (§ 46.)—Boats which, under that Act, are to be destroyed,<sup>76</sup> may either be destroy'd, or sold, or restored, on terms. (§ 43.)—Misdemeanours, which, under that Act, are Offences transportable for 14 Years, deemed felonies; that the procedure may be prompt, as in felonies, instead of dilatory, as in misdemeanours. (§ 46.)

XVI. Formal Clauses.—London Privileges saved.—Limitation of Actions.—General Issue.—Treble Costs.—This a Public Act. (§§ 52, 53.)—Duration limited to three Years.

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<sup>74</sup> Bentham has marked the following sentence, which appears at this point, for deletion: 'This to prevent Coal-heavers from being paid in Coals at the expence of the duty.'

<sup>75</sup> For writs of *certiorari* see p. 22 n. above.

<sup>76</sup> See p. 8 n. above.

[150\_094]

**Elucidations**  
**relative to the Thames Police Bill**

## *General Elucidations*<sup>77</sup>

The present [Bill] embraces two distinct objects, detection and prevention, and for the accomplishment of them organizes two connected but equally distinguishable establishments: viz: an additional Police Office upon the plan of the existing Judiciary Offices so called,<sup>78</sup> but confined in its exertions to offences of the predatory class, and among them to such of which the navigable part of the River Thames and the Banks adjacent are the scene, and a body of appropriate Guards of different classes and descriptions, whose exertions shall be directed to the prevention of such enormities.

[150\_095]

In both branches it has experience for its root. It establishes no prohibition but for the purpose of putting a stop to some practice known already by judicial experience to be frequent and habitual, and either [affording]<sup>79</sup> a particular means of committing depredation, or a particular indication [of] its having been committed, and which, without such prohibition, can not be put a stop to. It creates no power but what is necessary to the giving effect either to some such proposed prohibition, or to some already established prohibition, by collecting the necessary evidence of the act committed in breach of it, or by securing the person by whom it has been broken, for the purpose of obliging him to submit to the determination of the law. It subjects no place to visitation, in which, for want of such visitation, depredations to an enormous amount are not habitually and notoriously committed; depredations which, [unless] such visitation shall take place, must evidently continue to be committed, in spite of every thing that can be done towards the prevention of them by prohibitions, and penalties, and powers, so long as there is a want of persons pre-disposed and prepared to execute them.

So far as concerns the regulations it seeks to establish, the experience it rests upon is that of the existing evil; so far as concerns the institution, or rather the extension and fixation of the official establishment, the experience it rests upon is that of the successful

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<sup>77</sup> The text of 'Elucidations relative to the Thames Police Bill' is not continuous, and a short rule indicates the break in the sequence. For further details see the Editorial Introduction, p. 000 above.

<sup>78</sup> See p. 5 & n. above.

<sup>79</sup> MS 'affords'.

remedy.<sup>80</sup>

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[150\_096]

It is a bad mode of payment—a bad species of perquisite—which the person to whom it is allowed, has it in his power to encrease, without risk, at the expence of the fund: [bad], if by his own exertions, and still worse, if by his negligence. It is the most mischievous and ruinous species of peculation where, to produce a small profit to himself, the peculator finds it necessary to produce loss and damage not only to an equal, but to a greater, amount to the fund. His conduct in this case is like [that of] the man of extreme selfishness, who, as depicted by L<sup>d</sup> Bacon, sets another's house on fire, for the roasting of his own eggs.<sup>81</sup>

In every different spot over which it passes, the property passing to and from the Thames is subject to diminution, partly from natural and inevitable waste, but in an incomparably larger proportion to artificial diminution and decrease. In comparison of the latter branch, the quantity of the former is so very small, that were this all, and could it be kept separate from the other, it might, without any loss or inconvenience worth regarding, be abandoned to any such persons to whom their situation gave the requisite facility, and their industry an adequate motive, to collect it. [150\_097] Good economy would, even upon this supposition, prescribe the making such a disposition of the supposed waste: since the greater the advantages they could be made to derive from this supposed unavoidable source of expence, the less the allowance which it would be necessary to make them in other ways.

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<sup>80</sup> For the Marine Police Office see p. 31 n. above.

<sup>81</sup> Sir Francis Bacon (1561–1626), first Baron Verulam and first Viscount Saint Alban, statesman and philosopher, Lord Chancellor 1618–21, had noted in ‘Of Wisdom for a Mans selfe’ (first published in 1612), ‘And certainly, it is the Nature of Extreme *Selfe-Lovers*; As they will set an House on Fire, and it were but to roast their Egges’: see *The Essayes or Counsels, Civill and Morall*, ed. M. Kiernan, Oxford, 2000 (*Oxford Francis Bacon*, Vol. XV), XXIII, p. 74.

In the margin, Bentham has noted at this point: ‘The loss to the individuals may be no object to him, but for the sake of the Public it should not be permitted to him to keep up a nursery of immorality, though at his own expence.’

Unfortunately, the supposition here made for the sake of illustration is the very opposite to the truth: insomuch that it would be more for the advantage of the mass of property concerned, that whatever waste and refuse naturally takes place should perish altogether, than that it should rest in the hands into which, with or without permission, it at present finds its way.<sup>82</sup>

[150\_098]

In a case like this, even destruction would be better economy than donation or allowance: it would be better economy to destroy the spillings altogether than to give them to, or suffer them to be taken by, any of the individuals who are occupied in or in the neighbourhood of the spot in which they take place. But there is a course still more favourable to economy than destruction, and that is to secure and appropriate such spillings to the use of the general fund out of which they arise, and to take the requisite measures for the collecting them for that purpose. If the quantity thus collected should not prove so much as to defray the necessary expence of the salaries paid for the collection, the economy would not be the worse on that account: since the same persons who were employ'd in collecting the amount of the natural waste, would be employ'd at the same time in the prevention of the factitious waste, and a small portion of the time allotted to both functions would be sufficient for the first,<sup>83</sup> since the less the amount collected, the less would have taken place.

[150\_099]

### *Particular Elucidations*

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<sup>82</sup> In the margin, Bentham has noted at this point: 'Mate's claim to sweepings.' In January 1767 a meeting of London-based West India merchants had attempted unsuccessfully to put a halt to the 'pretended perquisite of Sweepings', observing that 'it has been occasionally pretended, that the Mates of West-India Ships, discharged in the Port of London, are entitled to the Sweepings of the Hold; and, under that pretence, great quantities of Sugar and other Goods have been clandestinely sold, to the great prejudice of the Owners and Freighters of such Ships, and of the fair Trader': see Colquhoun, *A Treatise on the Commerce and Police of the River Thames*, pp. 100–1.

<sup>83</sup> Bentham has added the remainder of this sentence in pencil in the margin, and added the following notes: 'The large[?] Proprietors profit still more by what is not made [i.e. by avoiding spillings] than by what is collected after[?] it has been made.

'It costs as little[?] to collect as to destroy it.'

## § 1. *Special Justices*

§ 1. The distinction here established between Magistrates at large, and the three Magistrates specially attached to the Office,<sup>84</sup> presented itself as an indispensable one. In this as in all the other Police Offices, there would be no inconvenience, but on the contrary a very great advantage, in keeping the Door open for all such Magistrates as might be inclined to give the public the benefit of their attendance in the execution of the judiciary part of the business: but as to what concerns the organization and direction of the Civil force proposed to be raised and kept on foot to do the duty of a Guard, it seemed necessary to confine the exercise of that branch of the business to a small and select number of Magistrates, who might be depended upon for keeping the whole chain of it constantly in view, and on whom the credit, in case of good management and success, and the discredit, in case of mismanagement and failure, might be seen to attach: so that on every occasion, praise and blame, reward and punishment, might find a known and determinate object to fix upon. [150\_100] Otherwise, what is every body's business being nobody's business,<sup>85</sup> the neglect or mismanagement of it would be nobody's disgrace, and neglect or mismanagement is the only result that would be reasonably to be expected. On these considerations it seemed necessary that the management should be reposed either in the hands of a single person (which on other accounts would be unadvisable and impracticable), or in those of a small and select body of determinate persons who would devote their whole time to the business: but being vested in such hands, the management would have been exposed to perpetual disturbance had it [been] liable to be broke in upon and altered backwards and forwards by the casual and momentary interference of this or that Magistrate, knowing nothing of what had passed before, and caring nothing (comparatively speaking) of what might be about to follow.

[150\_101]

On the other hand, though for the above reasons it seemed necessary that the promiscuous influx of Magistrates should be excluded from this branch of the business, it

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<sup>84</sup> See p. 5 & n. above.

<sup>85</sup> This proverbial saying had been employed as a title by Daniel Defoe in the pseudonymous *Every-Body's Business is No-Body's Business; or Private Abuses, Publick Grievances: Exemplified In the Pride, Insolence, and Exorbitant Wages of our Women-Servants, Footmen &c.*, London, 1725, while the sentiment is found in Aristotle, *Politics*, II. 1261<sup>b</sup> 10–11: 'Property that is common to the greatest number of owners receives the least attention'.

seemed at least equally necessary that the hands employ'd in the management of it should be invested with the powers of Magistracy: since on no other terms could they be put in possession of the powers requisite for the maintenance of efficient discipline in the corps of subordinates.

[150\_102]

The provisions of the existing Police Act, 32 G. 3. ch. 53,<sup>86</sup> in serving as a precedent and a model for the provisions of the present Bill, afforded the means of establishing them in the way of reference, and applying them, in as far as they should seem applicable, to the present purpose, in the compass of a few words.

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<sup>86</sup> See p. 5 n. above.

[149\_036]

## Mode of disposing of Old Stores

The mode in which stores deemed unserviceable are disposed of at present appears, as far as my information is correct, to be open to the following objections—

1. The persons by whom the lots are made out, are persons who have nothing to gain by their being sold to advantage, and who, if they yield to the temptations with which they are surrounded, have a great deal to gain by their being sold to disadvantage.

2. They are persons in inferior situations, whose lawful emoluments, being small, expose them to be acted upon with the greater effect by the temptation held out to them to add to those emoluments by unlawful means.<sup>87</sup>

3. Hence it happens, that, partly to save trouble, partly to afford opportunities to dealers to buy good bargains, the lots are made up in such manner as not to be suited to the demand of any person who would purchase them for his own use: whereby it happens that there are few or no purchasers but those who buy to sell again.

Thus it happens that the middle-man's or dealer's profit is so much lost to Government. This loss, were the profit no more than fair mercantile profit, would still, of course, be very considerable. But by reason of the notoriety of the dishonest practices, which, under favour of the above-mentioned facilities have become so prevalent, and the consequent disrepute which attaches upon this branch of trade, men of character are repelled from it: hence the profit made by the dealer is—not the profit of a fair trade, but what must always be a much higher rate—the profit of a dishonest and disreputable trade.

[149\_037]

Under these circumstances, it is easy to see the advantage that may be reaped by a dealer of the dishonest class, by a connection, direct or indirect, with an Officer of the dishonest class, concerned in the making up of the lots, or having access to know the manner in which they are made up by others. If it be an Officer on whom the making up the lots depends, he makes up particular lots for his associate, and gives him information accordingly: if he has no share in the making of them up, he can at any rate examine them as they are made up by others, and point out the best: in either case he may find means (for means have been found) to add to the articles which have [been] designed to enter into the

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<sup>87</sup> In the margin, Bentham has noted in relation to this objection: '*Quære.*'

composition of this or that lot, others which never were designed for it by any body to whom the business had been intrusted: in other words, he may steal articles to put into it. Of this species of theft, examples have actually presented themselves. New Rope not designed to be sold has been clandestinely introduced into a lot made up of old Cable.<sup>88</sup>

This source of waste and speculation must, it is evident, become still more fertile, if, by the operation of the sinister interest thus created, means can be found of condemning as unserviceable stores that in reality are fit for service. In point of fact, I have often heard it observed (but it rests with those to whom this paper is submitted to say with what degree of justice) that whatever the cause, stores are actually transferred with too great facility and in too great abundance from the serviceable class to the unserviceable.<sup>89</sup> [149\_038] It would be strange indeed if it were otherwise, since there are such powerful causes that by their operation tend to promote the abuse, and none of the same texture and equal strength that operate in restraint of it.

Upon a simple statement of the matter, and untill the circumstances above noted were taken into consideration, it would seem that the mode pursued is the very mode, of all others, [which is]<sup>90</sup> the best adapted to the disposing of the articles to the greatest advantage: the goods being sold by auction, and the auction a public one, they are sold to the best bidder, and consequently for the highest price. But the advantage, when examined into a little more narrowly, will be found to be delusive. For—

1. In the first place, the consumer, as we have seen, is excluded—hence the fair dealer’s profit is lost to government—say 12 per Cent.

2. In the next place, the honest dealers are excluded—this confines the competition to the dishonest class of dealers, and consequently increases the rate of profit to the rate

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<sup>88</sup> See P. Colquhoun, *A General View of the causes and existence of Frauds, Embezzlements, Peculation and Plunder, of His Majesty’s stores in the Dock Yards, and other public repositories, and in the naval department in general; with remedies humbly suggested for the purpose of preventing these evils and abuses*, London, 1799, p. 26 n.: ‘An instance of this kind occurred about two years ago in one of the principal yards, where a large quantity of new and valuable Cordage was found concealed, within the coils of a large unserviceable Cable; which composed one of the lots in the Catalogue of the Sale.—And thus a connection was discovered between the Criminal Purchaser and the Labourers employed in making up the Lots.’

<sup>89</sup> In the margin, Bentham has noted at this point: ‘The regulations favour this.’

<sup>90</sup> MS ‘in which’.

customary among dishonest dealers—say to 40 or 50 per Cent. Not that this is all neat profit, since out of it must be paid the bribe to the dishonest officer, his confederate.

3. When the competitors, or apparent competitors, are thus reduced in number, and that number composed exclusively of the dishonest class, the competition, it is easy to see, may easily and frequently be no more than nominal: all agree together, and each has his lots at his own price.<sup>91</sup>

[149\_039]

Another disadvantage attending the existing mode is the protection it affords to stolen goods against those measures which, under a different mode, might be employ'd with great advantage. As the dealer is the purchaser, and the only purchaser, an exemption must be granted to him from the penalties which otherwise might be made to attach upon every person in whose possession goods were found, which, by bearing the King's mark,<sup>92</sup> were ascertained to have been at any time in the possession of the King's Officers. Authority,<sup>93</sup> whatever be the official name of it, is given to the dealer to keep in his possession such goods as he has purchased, although they bear the King's mark, and, under favour of this authority, goods which were not purchased, even in the mode thus open to speculation, but received, and received knowingly, from the thief, are laid in and disposed of to an indefinite amount.

Thus it is that the present mode leaves the door open—indeed wide open—to

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<sup>91</sup> In the margin, Bentham has noted at this point: 'Pawnbroker's Sales another example.' The Pawnbrokers Act of 1787 (27 Geo. III, c. 37, § 12) had prescribed that pawned goods were to be 'deemed forfeited' to the pawnbroker if not redeemed within one year, whereupon they were to be sold 'by public auction, but not otherwise', while 'the Person employed to sell such Goods .^.^ shall .^.^ cause the same to be exposed to publick View, and Catalogues thereof to be published, and an Advertisement giving Notice of such Sale, and containing the Name .^.^ of the Pawnbroker .^.^ to be inserted on two several Days in some publick Newspaper'. For Colquhoun's condemnation of cheating pawnbrokers and fraudulent auctions see *Treatise on the Police of the Metropolis*, pp. 144 and 146 respectively.

<sup>92</sup> A 'broad arrow', a stylized representation of an arrowhead, was widely used to mark the property and stores of the Board of Ordnance, in particular equipment and munitions supplied to the Royal Navy.

<sup>93</sup> In the margin, Bentham has noted at this point: 'Certificate.' Colquhoun proposed in *General View of the causes and existence of Frauds*, p. 27, 'That the said stores shall not on any pretence be sold to dealers, but only to the *actual Consumers*, or Rope Spinners to convert into smaller cordage; *nor shall any certificate be granted to purchasers on any pretence whatsoever.*'

Peculation—and, as if that were not enough, by the assistance of this peculation, holds open another door to Theft.

[149\_040]

Contemplating the magnitude of the loss which (if my information be correct) has attached itself, and inseparably, as it should seem, to the existing mode, it has occurred to me that another mode equally simple, but as opposite as can be, might perhaps be worth the trying. A general intimation of it may be comprized in a very few words—it consists in the selling the articles in question—not by auction, but by hand: and in lots—not large, as at present, suited to the dealer only, but in small lots, with the price marked on each, suited to the consumer. In this way—

1. The loss corresponding to the dishonest part of the dealer's profit might be saved.
2. The cover which at present [is] afforded to theft might be effectually removed.
3. And a check given to the too prevalent practice abovementioned of premature and ill-grounded *degradation*.

In the existing mode, the competition is apparent only, and not real: in the proposed mode, there would be a real competition without the appearance of it.

In the existing mode, the public officer has no personal interest acting upon him in the same direction with his duty, while in the opposite direction he is acted upon by an undeniable interest, and that, as experience has shewn, but too strong an one.

[149\_041]

In the commercial concerns of individuals, the business of *factorage* is carried on upon such terms, as by universal experience are found to be in a very tolerable degree adequate to their intended purpose. There seems to be no peremptory objection against the making the experiment at least, of the disposing of the cast-off government stores upon the same principle, and upon the same or nearly the same terms.

In the case of the private Factor, the allowed and avowed emolument or recompence, is given to him in such a manner as to give him an evident and proportionable interest in the disposing of the property to the best advantage possible—in the establishing in the

strongest manner the connection between interest and duty. By dishonest means, it is certainly possible, and what sometimes happens [is], that a man may seek, and on this or that particular occasion promote, his own interest, meaning his pecuniary interest, in opposition to his duty and to the prejudice of his employer. He may embezzle the article out-right: and thus make Cent per Cent: or he may sell it for no more than half what it is worth, to some dishonest purchaser, sharing the advantage with such purchaser, and thus make 25 per Cent instead of 5. But to prevent him from this there are restraints, which happily are in general found effectual: and when they prove otherwise, it is not in virtue of the arrangement or mode of payment, which forms the essence of the contract between him and his employer, but in spite of it: if he were employ'd on other terms—if he were paid nothing for his service, or if his pay did not rise in proportion to the price produced by it—things would not be better, but still worse.

[149\_042]

To this plan there is one objection, and that an obvious one, viz: that it goes to the making *places*: since if government has its factors, these, as well as the factors of individuals, must be paid.—But when places are made, where is the harm of it?—In the expence of the emoluments attached to those places: but if the expence be overpaid by the neat profits, and be no more than a deduction out of those profits, the objection must surely, in point of reason, fall to the ground. The objection, such as it is, is merely a nominal one. In point of fact, the present system swarms with places, for the profit made by the dishonest dealer may to this purpose be considered as a place. For one placeman who, upon the proposed plan, might at least be honest, (and who would be selected by competent authority under the notion of his being such) you have a dozen, perhaps, who are confederates of thieves. In the one case, so many places as you have, so many rewards, if not always for probity, at any rate for supposed probity: in the other case, so many rewards for notorious depravity, and so many examples contributing to spread the contagion of improbity far and wide.

The horror of place-making, if not tempered by sound discretion, and guided by enlarged views capable of taking in and weighing advantages and disadvantages on both sides, is at least as apt to be prejudicial as salutary to the public service. It owes, perhaps, as much of its foundation to jealousy and envy (at least to the jealousy and envy of those censors by the fear of whose reproaches it is [149\_043] generated or inflamed) as to pure

and real public spirit: what is really so much gain to the public (for what is the public made of but individuals?—and what individual is more a member of the public than the placeman is?) is set down to the account of loss: nor would it probably be found an uncommon incident in state economy (for such is human nature) for the public to be refused a profit or a saving of 50 per Cent, lest some individual should get 10 of it.

[149\_044]

Thus much being premised with regard to the general principle, here follow a few details respecting the plan that may be pursued in applying the principle to practice.

*Plan for the sale of such of his Majesty's Stores as are deemed unfit  
for his Majesty's use*

1. The stores to be distinguished into four great classes—

i. Victualling Stores.

ii. Metallic Stores.

iii. Timber and Wood stores.

iv. Miscellaneous Stores, including Canvas and other woven articles, Cordage, and all other articles not comprized under any of the three former heads.

2. That for London there be appointed a local or particular Agent or selling Factor for each of the above classes of stores. Total: 4 Town-Agents.

3. That Country or Out-Port local or particular Agents be appointed in and for each of the seven mercantile Out-Ports following, viz: i. Bristol. ii. Liverpool. iii. Whitehaven. iv. Yarmouth. v. Hull. vi. Greenock. vii. North Shields.<sup>94</sup>

4. That all such stores be, according to their respective natures, distributed into single articles or small lots, adapted to the demand and convenience of the consumer: and that the local Agent be allowed {say 10 per Cent} for the management, in full satisfaction for

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<sup>94</sup> In the margin, Bentham has noted in at this point: 'These to be where there are repositories for King's stores.'

Warheouse Rent, Clerks, Labourers, Fire-Insurance, Plunderage, Freight and Commission, and for warranting the solvency of the purchasers:<sup>95</sup>—in the mercantile phrase.

[149\_045]

5. That there be one General or Superintending Agent resident in London—whose business it shall be to take directions from the existing Boards (Admiralty, Navy and Victualling, and Ordnance?) and to give directions to the several local Agents at the Out-Ports:—and that his Commission be, say, ½ per Cent.

6. That demands for such stores be sent from time to time by the several local Agents to the General Agent: and that, subject to the directions of his Superiors, it shall rest with him to determine in what degree such demands shall respectively be supplied.

7. Remittances of proceeds of Sale from the local Agents to be made to the Agent General {monthly}—Accounts of Sales from d<sup>o</sup> to d<sup>o</sup> {quarterly}—Payments into the Navy Pay Office by the Agent General {monthly}—Agent General’s annual account to be annually laid before the several Boards above mentioned {Abstract thereof to the Treasury and to Parliament}.<sup>96</sup>

Besides the check afforded by this publication upon the proceedings of all the Agents, local and General, the comparison between the economy of the several local agents compared one with another will be a source of useful emulation.<sup>97</sup>

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<sup>95</sup> In the margin, Bentham has noted in at this point: ‘The goods to be sold for ready money.’

<sup>96</sup> In the margin, Bentham has noted at this point: ‘According to La[...] the Sales have never run[?] by 20 or 30 per Cent to the Value.’

<sup>97</sup> In the margin, Bentham has noted at this point: ‘8. The same Officer who puts[?] the Value now[?] to continue to put[?] the Value.’

PART II.

WRITINGS ON THE POLICE BILL

[150\_131]

*Heads of the Draught of a Bill to be intituled*

**A Bill**

For the granting to his Majesty certain duties on Licences, for the establishment of a Board of Police Revenue, for the suppression of divers Offices, and for the more effectual prevention of Larcenies and other Offences, by the regulation of divers trades and occupations, and the establishment of a system of prompt and all-comprehensive Correspondence for Police purposes

General Preamble at length.

Whereas,<sup>a</sup> by the natural facilities, administered by divers trades and occupations, to the receipt and advantageous disposal of goods, stolen or otherwise unlawfully obtained, great and manifest encouragement is afforded, to Larceny and other species of depredation, to the reproach and injury of the fair trader, as well as the insecurity of property in general, which encouragement might be done away, and such unlawful dealings in a great degree repressed, and his Majesty's Revenue at the same time augmented, were the exercise of the said trades and occupations subjected, by means of Licence-Duties, to appropriate regulation and controul; And whereas great difficulties are daily experienced, in investigating and pursuing the traces of delinquency, for want of an all-pervading system of National Police, having its chief seat or central point in the Metropolis, and from thence maintaining a close and connected chain of Correspondence, by receiving information from, and communicating the same with [150\_132] regularity and promptitude to, all parts of this United Kingdom, by a permanent authority, which, in consideration of the continually-accumulating fund of information and experience so collected and preserved, might moreover stand charged in an especial manner with the business of devising, suggesting, and reporting to his Majesty in Parliament such measures as shall appear in any degree conducive to the more effectual prevention of offences and the furtherance of the ends of penal Justice;<sup>98</sup>

<sup>a</sup> It is the request of the Draughtsman that final condemnation may not be passed in relation to any point till the Paper of *Particular Observations*<sup>99</sup> has been consulted in relation to that point: nothing of his own having been inserted without Precedent or special Reason, or both, assigned therein.

[150\_133]

## I. *Classes Licenced*

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<sup>98</sup> For the preamble to the full text of the Bill, where Bentham added an alternative to this clause, see p. 149 below.

<sup>99</sup> i.e. 'Notes to the Police Bill: Containing Reasons, Precedents, and other Elucidations', pp. 212–363 below.

§ 1. Classes of persons to be licenced—Licence duties—Inscriptions—and Recognizances.

§ 1. Eighteen Classes, as undermentioned, to take out annual licences, the times and places undermentioned, and keep constantly exhibited, over their doors &c. each an inscription, as undermentioned, constituting the name by which each class may be legally denoted, paying the duties undermentioned, differing in amount in manner undermentioned according as the place of trade &c., in respect of which each person is licenced, is situated within the London Police District hereinafter described,<sup>100</sup> or in the Country District, i:e: in any other part of *England*, and binding themselves to lawful demeanour &c. by Recognizances, as undermentioned,<sup>101</sup> with the penal sums undermentioned and one *Surety* for the same sum, or two *Sureties*, each for the half of it, being Housholders, paying taxes and of good fame.

Description at length	Name as per Inscription	Licence	Duty
		London £ s. d.	Country <sup>102</sup> £ s. d.
1. Every person seeking his or her living by purchasing (whether for Sale or by Commission) any Second-hand Houshold Goods or any other kind of Second-hand Goods other than such as are hereinafter enumerated, and made subject to particular Licence-Duties.	1. Licenced Purchaser of Second-hand Houshold and other Goods, for Sale.		
2. Every person seeking &c. by purchasing &c. by wholesale, (viz: to the amount of 28lb weight, in the whole, of any one person, or	2. Licenced Wholesale Purchaser of Rags and unserviceable Cordage for sale to Paper-makers.	5: 0: 0	2: 10: 0

<sup>100</sup> See p. 64 below.

<sup>101</sup> See p. 66 below.

<sup>102</sup> Bentham's draft Table included an additional column headed 'Sum in the Recognizance', which has been omitted since it contains no entries.

<p>number of persons in partnership, at any one time) and for the purpose of being sold for making into Paper, any refuse or second-hand materials, commonly used for the making of any kind of paper, and in particular any kind of cloth or piece-goods in the state of rags, whether the same be of Flax, Hemp, Cotton, Wooll, Silk, or any mixture of the said materials, or any kind of decay'd or unserviceable Cordage known by the name of <i>Handstuff</i>, or any of the aforesaid materials, whether spun or not.</p>			
<p>[150_134] 3. Every person seeking &amp;c. by purchasing &amp;c. <i>ut suprà</i>,<sup>103</sup> but never otherwise than in retail, viz: <i>not</i> to the amount of &amp;c. {<i>ut suprà</i>}.</p>	<p>3. Licenced Retail Purchaser of Rags and unserviceable Cordage for sale to Paper makers.</p>	<p>1: 0: 0</p>	<p>0: 10: 0</p>
<p>4. [Every person seeking &amp;c. by purchasing &amp;c.] Second-hand Apparel, (except Shoes) or any second-hand furniture or other articles composed and made up in the whole or</p>	<p>4. Licenced Purchaser of Second-hand Apparel, made-up Piece-Goods, and Remnants, for sale.</p>	<p>2: 0: 0</p>	<p>1: 0: 0</p>

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<sup>103</sup> i.e. 'as above'.

principally of Piece-Goods (other than such as have been employ'd as Naval Stores) or any unmade-up shreds or remnants of Piece-Goods.			
5. Every person, who, for the purpose of seeking his or her living by purchasing (whether for sale or by commission) any Second-hand Apparel {&c. <i>ut suprà</i> }, shall go about from House to House as a Pedlar (whether he or she have or have not any fixt shop or place of trade).	5. Licenced Itinerant Purchaser of Second-hand Apparel, made-up Piece-Goods, and Remnants for sale. . . . (Inscription for the Badge, Licenced Old-Cloaths-man {or Woman}).	1: 0: 0	0:10: 0
6. Every person seeking &c. by purchasing &c. any Second-hand Sail-cloth, Sacking, Bunting, Junk, Cordage, Rope-Yarn, or any other article which, being manufactured in the way of spinning or weaving, hath been employ'd, or is of any sort commonly employ'd, as Naval Stores.	6. Licenced Purchaser of Second-hand Naval Stores for Sale. . . .	5: 0: 0	2: 10: 0
[150_135] 7. Every person seeking &c. by purchasing &c. any second-hand articles or masses consisting wholly or principally of Gold, Silver, Copper, Tin, Lead, Iron,	7. Licenced Wholesale Purchaser of Second-hand Metals for Sale. . . .	5: 0: 0	2: 10: 0

<p>Steel, Zinc, Bismuth, Brass, Bell-metal, Pot-Metal, Tutenag,<sup>104</sup> or any other kind of metal or semi-metal, pure, plated or in mixture, <i>by wholesale</i>: viz: to the amount of {^^^}weight in Gold, or {^^^} weight in Silver, or {^^^} in any other such metallic substance, of any one person &amp;c. at any one time.</p>			
<p>8. Every person seeking &amp;c. {<i>ut suprà</i>} by purchasing &amp;c., but never otherwise than <i>in retail</i>: viz: not to the amount of &amp;c. {<i>ut suprà</i>}.</p>	<p>8. Licenced Retail Purchaser of Second-hand Metals for Sale. .</p>	<p>2: 0: 0</p>	<p>1: 0: 0</p>
<p>9. Every Goldsmith, Silversmith, Copper-Smith, Plumber, Black-Smith, White-Smith, Brazier, Pewterer, Tinman, Founder, Pewter-and-Lead Toy-maker, Watchmaker, and every other worker in any kind of metallic or semi-metallic substance, purchasing any Gold &amp;c. {<i>ut suprà</i>} for the purpose of working up the same (with or without</p>	<p>9. Licenced Purchaser of Second-hand Metals of persons in general for working up. . .</p>	<p>2: 0: 0</p>	<p>1: 0: 0</p>

<sup>104</sup> Tutenag was a whitish alloy of copper, zinc, and nickel, originally supposed to have been imported from China.

<p>melting) in the course of his or her trade, from any other person than a person licenced as a Wholesale or Retail Purchaser of Second-hand Metals for sale.</p>			
<p>[150_136] 10. Every person seeking &amp;c., by purchasing &amp;c., any Timber, Wood-work, Marble, Stone, Slate, Tiles, Bricks, or other materials that have been employ'd in building.</p>	<p>10. Licenced Purchaser of Second-hand Building-Materials for sale.</p>		
<p>11. Every person keeping any Cart, Waggon, or other Carriage drawn by any Beast of Draught, and seeking his or her living by employing the same in the carriage of any of the articles in respect whereof any person is hereby required to take out a licence as a Purchaser of Second-hand Houshold or other goods for sale &amp;c. &amp;c. {<i>ut suprâ</i>, repeating the preceding Classes by their Inscription names.}</p>	<p>11. Licenced Draught-Cart-Keeper for Second-hand Goods purchased for Sale. . . . .</p>	<p>Per Cart  ^^^ </p>	
<p>12. Every person keeping any Cart commonly called a Hand Cart, or Truck Cart, or any other Cart or Carriage</p>	<p>12. Licenced Hand-Cart-Keeper for second-hand Goods purchased for Sale.</p>	<p>Per Cart  ^^^ </p>	

<p>with more wheels than one, drawn by human strength alone, and seeking his or her living by employing the same in the carriage of any of the articles, in respect whereof any person is hereby required to take out a licence &amp;c. <i>ut supra</i>.</p>			
<p>13. Every person who, whether licenced or not as a Pawnbroker, shall seek his or her living by selling, whether on his or her own account or by commission, at any less price than 10<sup>s</sup>, and any otherwise than by public Auction, any unredeemed pledge.</p>	<p>13. Licenced Seller of Forfeited Pledges.</p>	<p>1: 0: 0</p>	<p>0: 10: 0</p>
<p>[150_137] 14. Every person seeking his or her living by bringing for the purpose of sale, in any Boat or other such Vessel, to any Ship or other such Vessel, then being in any Port or Navigable River, or to any Boat or other such Vessel belonging to any such Ship or Vessel, any Garden-stuff, Spirituous or other liquors, Tobacco, Apparel or other articles</p>	<p>14. Licenced Water-Hawker and Bum-boat Keeper. . . . .</p>	<p> ^^  and per Boat  ^^ </p>	

<p>called <i>Slops</i>,<sup>105</sup> or any other articles for the purpose of selling the same to the Crew of any such Ship or Vessel, or any Passengers therein.</p>			
<p>15. Every person seeking &amp;c. by purchasing &amp;c. from any Ship or other such Vessel, then being in any Port or Navigable River (of any person other than the Master or other Commander or Super-cargo of such Ship or Vessel for the time being) any of the stock, stores, cargo or materials in, of, or then or lately belonging to, such Ship or Vessel (whether such purchase be for money or in the way of <i>barter</i>) and whether such articles so purchased be received by such Purchaser, on board of such Ship or Vessel, or elsewhere.</p>	<p>15. Licenced Purchaser of Ship's Stock for sale.</p>		
<p>[150_138] 16. Every person seeking his or her living, by contracting with the Owner of the Cargo, or any part of</p>	<p>16. Licenced Master-Lumper or Licenced Principal Lumper.</p>		

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<sup>105</sup> Samuel Johnson, *A Dictionary of the English Language: in which The Words are deduced from their Originals, and Illustrated in their Different Significations by Examples from the best Writers*, 2 vols., London, 1755, ii. gives the following definition for 'Slop': 'Trowsers; open breeches'.

<p>the Cargo, of any Ship or Vessel, or with any Agent of such Owner, for the loading or unloading of such Cargo, or any part thereof, such person employing others as Labourers with or under him or herself in the execution of such business.</p>			
<p>17. Every person seeking his or her living, by helping to load or unload the Cargo of any Ship or other such Vessel, by contract or otherwise, being paid for him or herself only, and not being in any other respect in the service of the Master of such Vessel, or of any Owner of the Cargo or any part of the Cargo thereof.</p>	<p>17. Licenced Working Lumper.</p>		
<p>18. Every person seeking his or her living by slaughtering any Cattle (viz: animals of the Horse, Ass, Mule, Bull, Sheep, Hog or Goat species) otherwise than for Butcher's meat, or animals of the Dog species, or by receiving the dead bodies of such Cattle or Dogs, or any parts thereof, and flaying, boiling, or</p>	<p>18. Licenced Slaughterer, Flayer, and Boiler.</p>		

otherwise preparing or employing the same, to serve as food for animals, or for other uses.			
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§ 2. Classes exempted.

[150\_139] § 2. Provisoes exempting *Booksellers, Auctioneers, and Pawnbrokers* (not being *Forfeited-Pledge-Sellers*); also *Forfeited-Pledge-Sellers*, in respect of any of the foregoing licences bearing upon particular classes of Second-hand Goods.<sup>106</sup>

§ 3. Common Cart-Keepers exempted.

§ 3. Proviso exempting Cart-Keepers employ'd for Second-hand Goods *ut supra* convey'd by the owner for his own use &c.

§ 4. Wholesale Licences include Retail.

§ 4. Wholesale Purchaser not to pay for a Retail Licence—nor a Master Lumper for a Working Lumper's licence.—Proviso against splitting wholesale purchases to avoid the Wholesale duty.

§ 5. Licences at under-rates to persons having several Licences.

§ 5. Persons licenced in respect of certain of the above classes of goods to have licences in respect of certain others, at an under-rate of duty. Purchaser of household and other Goods for sale intituled to Licences at under-rates for purchasing Rags &c. (wholesale and retail)—Naval Stores—and Metals:—Purchaser of Apparel &c., to Licences for purchasing Rags &c. (wholesale and retail) and Naval Stores: Purchaser of Metals of persons in general for working up, to Licences for purchasing Metals (wholesale and retail) for Sale.—Water-Hawker to have a licence as a Purchaser of Ship's stock, at an under-rate. N.B. All this about *cumulation* of licences, is proposed for the consideration of the Author of the System,<sup>107</sup> and the sums left in blank.—Care to be taken to ring the changes compleatly.

§ 6. One Place, what. Partners—Servants.

§ 6. Each licence good but for *one* place of trade. *Two* such places within {100 Yards} of one another to be reckoned as *one*.—If part in London, part in the Country District, to pay the London Duty.—Partners to pay Duty but as one: but each to enter into a separate

<sup>106</sup> In a related marginal contents sheet at UC clvii. 9 (8 October 1798), headed 'Police Bill Contents II', Bentham added then cancelled the following additional classes exempted: '5. Medical men and Chemists. 6. Experimental Makers of fire-arms and other Weapons. 7. Fire-arm-makers in respect of Bayonets. 8. Artillery-Founders in respect of Metal-founder's Licence.'

<sup>107</sup> i.e. Colquhoun.

Recognizance.—Servant acting habitually as such, and not by special Commission, need not be licenced, but only the Master.

§ 7. Council may lower the Duties and raise them up again.

[150\_140] § 7. Power to King in Council to lower the duties and raise them again, and so *toties quoties*:<sup>108</sup> so it be not above the marks here specified in each instance—and so as no distinction be made in the rate of duty as between individual and individual:—nor as between place and place, except that between *Town* and *Country*. {N.B. This power lest the rate should in any instance prove too heavy—but *quaere* of this Section? and whether to be inserted in the Bill, or moved afterwards?}

[150\_141]

## II. Board

§ 8 (§ 1). Board of Police Revenue— Appointment— Functions— Emoluments— Local authority— Police Fund— London and Country Police Districts.

§ 8 (§ 1).<sup>109</sup> For collecting the above duties and for other functions undermentioned *Commissioners of Police* or *Police Revenue* to be appointed under the Great Seal. King from time to time to appoint the *quorum* number for all purposes or for such and such purposes, with days and hours of attendance, and Salaries for themselves and subordinates.—Produce of the Duties to form a *Police Fund*. Surplus, after defraying charges as undermentioned, to be carried to the Consolidated Fund. *London Police District* to include the Liberties of London and Westminster, the Borough of Southwark with Pancras and Marybone Parishes:—*Country Police District*, the rest of England. Licences to be granted in the London District by the Board, sitting in some convenient part of that District; in the Country, by Justices at the Ale house-licencing meetings:<sup>110</sup>—if the place be part in the London, part in the Country, District, then by the Board.—Discretion as to the granting of *these* licences, the same as in the Case of Alehouses.<sup>111</sup>

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<sup>108</sup> i.e. ‘as often as the occasion demands’.

<sup>109</sup> i.e. § 8 of the Bill and § 1 of Part II of the Bill. Bentham provided two numbers for each section contained in Parts II–VI of ‘Heads of .^.^ a Bill for the granting to his Majesty certain duties on Licences’, the first forming part of the consecutive numeration of the sections of the Bill as a whole, and the second part of a discrete numeration of the sections in each Part thereof. Inconsistencies, omissions, and inaccuracies in the numeration have been silently corrected. For further details see the Editorial Introduction, p. 000 above.

<sup>110</sup> The Alehouses Act of 1753 (26 Geo. II, c. 31, § 4) had provided for licences for inns and alehouses to be granted by the local Justices of the Peace at an annual meeting held each September.

<sup>111</sup> See p. 34 n. above.

§ 9 (§ 2).  
Superiors and  
Subordinates.

§ 9 (§ 2). Board to take Orders, in money-matters from the Treasury—in other matters from the Secretary of State’s Office. Power to the Board (subject to the Orders of the Treasury) to appoint and suspend or remove its Subordinates.

§ 10 (§ 3).  
Electioneering  
prohibited.

§ 10 (§ 3). No Member or Subordinate of the Board to interfere in Parliamentary Elections—under £100 penalty, as by 10 A. c. 19, § [182].<sup>112</sup>

[150\_142]

### III. *Licencing*

§ 11 (§ 1).  
First annual  
time for  
granting the  
licences by the  
Board.

§ 11 (§ 1). First sittings of the Board for granting the London licences, the 1<sup>st</sup> of Sept<sup>r</sup> next, and so on till the business is gone through. The Licences to be in force for a Year, commencing the 29<sup>th</sup> of Sept<sup>r</sup>. Licences to be signed by a majority of the *quorum* of the Board.—Licence Duties to be paid to the Board or their Receiver.

§ 12 (§ 2).—in  
the Country by  
the Justices.

§ 12 (§ 2). First meetings of Justices for granting the Country Licences, the 1<sup>st</sup> of Sept<sup>r</sup> &c. as above. Licences to be in force for a Year, commencing the 29<sup>th</sup> of Sept<sup>r</sup> as above. Licence Duties to be paid, before the signing of the Licence, to the local Officer of the Board (the Surveyor), who shall give his receipt, and if the Licence be refused, return the money.

§ 13 (§ 3).  
Council may  
appoint an  
earlier first  
time.

§ 13 (§ 3). Power to King in Council to appoint an earlier first licencing time than as above. Licences granted at such extraordinary time, to expire at the above ordinary time: and the duties to be proportional to the time the licences will have to run.

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<sup>112</sup> MS ‘186’ appears to be a slip. The Customs and Excise Act of 1711 (10 Ann, c. 19, § 182) prescribed that ‘no Commissioner, Officer, or other Person concerned or employed in the charging, collecting, receiving, or managing any of the Duties granted by this Act, shall .^.^ endeavour to persuade any Elector to give, or dissuade any Elector from giving his Vote for the Choice of any Person to be Knight of the Shire, Commissioner, Citizen, Burgess, or Baron for any County, City, Borough, or Cinque Port; and every Officer or other Person offending therein, shall forfeit the Sum of one hundred Pounds’.

§ 14 (§ 4).  
Notice to be given by a Candidate for a licence.— Powers for examining into his fitness.

§ 14 (§ 4). Notice to be given by a person intending to apply for a license, if the Shop &c. be in London, to the Board; if in the Country, to the Justices and the Surveyor.— Notices to contain the names and abodes of the Surety or Sureties who are to join in the Recognizance.—Form of the notice as per Schedule {A}<sup>113</sup> or any other Form from time to time appointed by the Board.—Interval of Notice, in London 20 days; in the Country 30 days.—Notice to be accompanied with a Certificate of character the same as in case of Alehouses.<sup>114</sup>—Power to the Board in London, as well as to the Justices in the Country, to examine the Candidate and others as to his fitness to be entrusted with a licence.

§ 15 (§ 5).  
Recognizance— conditioned for the observance of regulations— registration thereof—and registration fee.

[150\_143a] § 15 (§ 5). Recognizance to be *conditioned* for the observance of regulations made by Parliament in relation to the class—and ‘*for the using and maintenance of such good order and rule*’ in the exercise of the occupation as by the said Commissioners in ‘their discretion *shall be thought necessary and convenient*’ (as by the first Alehouse Licencing Act {5 & 6 Ed. 6, c. 25. § 1}).<sup>115</sup> Form of Recognizance as per Schedule {B}<sup>116</sup> or such other as shall from time to time be appointed by the Board. In the Country, duplication of each Recognizance, one to be kept by the Justices, the other to be delivered to the local Surveyor of the Board. Justice’s Clerks fee for registering, 1<sup>s</sup> for each Recognizance so kept.

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<sup>113</sup> In a brouillon headed ‘Police Bill. Places of Notes and Schedules’ at UC clvii. 8, Bentham listed ten proposed schedules for the Bill, of which two are given the identifying letter C, as follows: ‘A. Places in London Police District. B. Places in Dock Yard Districts. C. Surveyor’s Oath. C. Form of Conviction. D. Certificate of reasonable cause of prosecution for perjury. E. Heads for the Calendar of Delinquency. F1. Forms of Returns of proceedings from Criminal Courts. F2. Forms of Returns of Recognizances. F3. Returns from Justices of Proceedings out of Sessions where they have power of conviction. F4. D<sup>o</sup> in cases where they have not power of conviction.’ No drafts of such schedules have been located.

<sup>114</sup> According to the Alehouses Act of 1753 (26 Geo. II, c. 31, § 2), ‘no Licence .^.^ shall be granted to any Person not licensed the Year preceding, unless such Person produce .^.^ a Certificate under the Hands of the Parson, Vicar or Curate, and the major Part of the Churchwardens and Overseers, or else of three or four reputable and substantial Householders and Inhabitants of the Parish or Place where such Alehouse is to be, setting forth such Person is of good Fame and of sober Life and Conversation’.

<sup>115</sup> i.e. the Alehouses Act of 1552, which limited licences to those who submitted to a recognizance undertaking for the ‘using and Maintenance of good Order and Rule’, for the making of which they were to be charged 1s.

<sup>116</sup> No Schedules drafted for the Police Bill have been located. For Bentham’s proposed Schedules to the Bill see n. 113 above.

§ 16 (§ 6). Special Meetings for Bye-Licences.

**§ 16 (§ 6).** Special periodical days of meeting for *Bye-licences*, appointable by the General Licencing Meetings of Justices at the request of the Commissioners. Numbers of such Special meetings in the Year, in Middlesex and Surrey the same as in the case of Alehouses:<sup>117</sup> elsewhere, to be fixed by joint agreement between the Board and the Justices as above.—Bye-licences to terminate the same day in the Year as the Annual Licences.—Quantum of Duty upon each Bye-licence to be in proportion to the time it will have to run.—Licences not to be *renewed* at these Special Meetings for Bye-licences.

§ 17 (§ 7). Renewal of Licences.

[150\_143b] **§ 17 (§ 7).** Renewal of Licences—Fresh Licence and Recognizance every year at the General annual licencing time. Powers for dispensing with the personal attendance of Parties and Sureties, and for making the same instruments serve from Year to Year—the business being transacted through the medium of the Post (*sicut infra*)<sup>118</sup> or otherwise.

§ 18 (§ 8). Continuance of the business in case of Death, Bankruptcy, &c.

**§ 18 (§ 8).** On the death of a party licenced, Power to 2 Justices to allow the occupation to be exercised by a Representative of the deceased, till the next licencing day.—No person liable to the penalties for any act done in the *bonâ fide* exercise of the occupation for the benefit of the estate of the deceased for 30 days after the decease.—Nor for the disposal of the Stock or continuance of the trade in case of possession taken on Bankruptcy, Execution, Distress, &c. A person already licenced for one House &c., not to pay any thing for the remainder of the year on removal to an already licenced House &c. in another place, except, in case of a migration from the Country to the London District, the difference between the Country and the London Duty.

§ 19 (§ 9). Signature of licence adjournable, for the purpose of enquiry.

[105\_144] **§ 19 (§ 9).** In the Country, Powers for adjourning the signature of the licence, beyond the limited time, if necessary for the purpose of investigating character or behaviour of the Candidate. Power to the Candidate in such case, if already licenced, to continue in the occupation, till it has been signified to him that his Licence is refused.—Examination, of a Witness resident out of the Jurisdiction of the licencing Justices, may be taken at their request by any Justice within whose Jurisdiction his residence is, the correspondence being carried on post-free through the medium of the Board (*sicut*

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<sup>117</sup> The Licensing of Alehouses Act of 1792 (32 Geo. III, c. 59, § 2) authorized the Justices for Middlesex and Surrey to appoint from six to eight additional days per year for special licensing meetings in those counties.

<sup>118</sup> i.e. ‘as below’.

*infra*).<sup>119</sup>

§ 20 (§ 10). Paper for the Instruments &c.—Stamps employable.

§ 20 (§ 10). Paper for such Blank Instruments and Forms, used by the Justices, as shall not be furnished by the parties, to be furnished to them by the Board, with power to charge it to the parties at the trade price.—Stamps to be employ'd by the Board or not, at their discretion.

[150\_145]

#### IV. Regulations

§ 21 (§ 1). Convicts not to be licenced.

§ 21 (§ 1). No licence to be granted to, or continue valid in the case of, a person convicted of Perjury, Forgery, Smuggling, or any Offence against property of the rank of Felony: pardon, not to restore the capacity in this behalf, unless the conviction be recited with a clause importing that such restoration is specially intended.

§ 22 (§ 2). Old Cloaths man not to purchase Metals.

§ 22 (§ 2). An Itinerant Purchaser of Second-hand Apparel &c. not to be licenced in any of the Classes composed of the Purchasers of Metals: on purchasing Metals, except as attached (in the form of buttons, or embroidery, &c.) to Cloaths &c., he is to forfeit his own licence, besides forfeiting as for dealing without licence.

§ 23 (§ 3). Hours for purchasing.—Children not to be dealt with.

§ 23 (§ 3). Purchasers licenced under this act not to exercise their occupations except between {^^^} and {^^^} o'clock in summer and between {^^^} and {^^^} in winter, or within such other [Hours]<sup>120</sup> as shall from time to time have been limited by the Board: nor [to purchase] of any child under {12} year old, unless known to them, nor then unless its name and abode be entered on the Books to be kept (*sicut infra*).

§ 24 (§ 4). Licence Inscriptions to be settled by the Board.

[150\_146] § 24 (§ 4). Power to the Board to prescribe the words, form, dimensions, place and mode of exhibition for the *inscriptions*—and to indicate patterns, or employ persons to paint the inscriptions on the spot, or to employ printed papers to be kept pasted up with distinctive *numbers* thereon, and to cause duplicates or multiplicates to be kept exhibited, according to the number of entrances into the House &c., and the nature of the trade:—not charging more than 1<sup>s</sup> per set for the first time, and 6<sup>d</sup> for a renewal in case of defacement &c. Each House to be entered in the register according to the number on the

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<sup>119</sup> See pp. 82–3 below.

<sup>120</sup> MS 'Houses'.

Inscription. Where the House has no number on the door, Power to the Board to cause a number to be put upon it, as also upon the other unnumbered Houses in the same Street &c.

§ 25 (§ 5). Board may prescribe Forms of Book-keeping to Licenced persons.

[150\_147] § 25 (§ 5). *That illicit dealings may be the more effectually exposed to detection, and the fair trader distinguished and protected,* Power to the Board to prescribe Forms of Book-keeping to the several Classes licenced, or to provide blank Books with the proper Heads, according to the nature of each trade, charging no more than the *trade price*. Penalty for omitting to make entry under any such head: {^^^}. For knowingly making any false entry, a heavier penalty, and forfeiture of licence.

Example of a set of Heads for such a Book.

1. Date of each purchase.
2. Vendor's name and apparent age—above or under 21 and 12.
3. Vendor, whether known or not.
4. Vendor, if unknown, whether accompanied by any and what person known.
5. Vendor's abode or alledged abode—and whether Housekeeper, Lodger, Housekeeper's or Lodger's Inmate.
6. Specific name and quantity of each article offered for sale—quantity purchased—price agreed on.
7. Manner of the Vendor's coming by the article.
8. Distinctive marks of the article, in case of Cattle and other articles susceptible of considerable value and describable distinctive marks.

N.B. Several of the above heads admitt of *ramifications*, which will require Instructions from the Board to accompany the Books.

§ 26 (§ 6). Vendor, giving no account of himself or a false one, shall be carried before a Justice.

[150\_148] § 26 (6). Answers furnished by an Offerer to Sale to such questions as relate to him, to be attested in the Book by his signature or mark.—In case of his refusal in regard to any point to give such account as any head in the Book requires, or to attest it, or on suspicion of wilful and material falshood, Power to the Licenced Purchaser to detain the

articles offered and the Offerer, and take them forthwith (with or without the intervention of a Constable) to a Justice to be examined.—Penalty in case of such wilful and material falshood, any sum not exceeding {^^^}: with power to the Justice, on communication with the Board, to cause him to be registered, or registered and advertised, as a person of evil fame or a reputed Thief or Criminal Receiver. Penalty, on a Purchaser, who, knowing, or having reasonable cause to believe, any account so given to be wilfully and materially false, shall purposely or through culpable negligence omitt so to apprehend him, any sum not exceeding {^^^}, with power to declare the licence forfeited.

§ 27 (§ 7). Board may make regulations for keeping *in statu quo* articles offered to sale—impounding part of the purchase-money and advertising for owners.

[150\_149] § 27 (7). Power to the Board (particularly in the case of Horses and other Cattle, Plate, Watches, Jewels, and other articles susceptible of distinctive marks and of considerable value) to make Regulations declaring for what length of time any of the articles in question shall, before they are further disposed of by the Purchaser, remain in deposit in his hands, and what alterations may or may not be made in their appearance in the meantime—and in what manner they shall then be kept—and whether, and how, notice shall be given of such deposit to the local Surveyor of the Board—and whether any and what part of the purchase-money shall be withheld during that time—and to declare in what circumstances, if any, and on what conditions, articles usually bearing distinctive marks may, if offered for sale without such marks, or with a counterfeit appearance of such marks, be or not be purchased, and thereupon may or may not be detained, and with the offerer to sale, convey'd for examination before a Justice as aforesaid—and whether any and what Notice shall be given by Newspaper advertisement or otherwise of the circumstances accompanying any such offer to sale—regard being had to the nature of each article, and the course of the trade—and care being taken not to hamper the fair trader too much, in endeavouring thus to clog the operations of the malefactor.<sup>121</sup>

§ 28 (§ 8). Council, when certain marks on ingots &c. are universal, may make it penal to possess an ingot without such mark.

[150\_150] § 28 (§ 8). Power to King in Council to appoint, for pigs, ingots, bars or other masses of unfashioned metal, as they come out of the hands of the Founder &c., distinctive marks to be made by such Founder &c.—expressive of his name and abode—preserving the already customary marks, as far as they answer the purpose: and, on the importation of such masses, to cause them to be marked (*gratis*) by the Custom House Officers: and in regard to such masses already existing, whether imported or cast &c. at home, to cause them to be marked (*gratis*) by the Officers of the Customs, Excise or Police

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<sup>121</sup> Bentham has noted above the following paragraph: 'N.B. Quere the practicability of the following clause'.

Revenue: and, when such marking shall have become universal, to prohibit the possessing any such masses, or the remnants of any such masses, unprovided with such marks.— Penalties not exceeding {^^^}, with forfeiture of the unmarked mass—recoverable as the penalties and forfeitures for offences against this Act.

§ 29 (§ 9). Run-Pewter to be assay'd and booked before purchase.

§ 29 (§ 9). Where Pewter, in the state of *run-metal*, is offered to sale, to the amount of {^^^}, the Purchaser shall, before he agrees about a price, and in the Vendor's presence, assay the pewter, and enter the result on his Book under the name of Lay-metal, Trifle, or Hard-Metal, according as it proves.

§ 30 (§ 10). Board may appoint distinctive dresses for Water Hawkers, Purchasers of Ships' Stock and Lumpers.

[150\_151] § 30 (10). *That the classes of men occupying themselves as Hawkers or Unloaders about ships may be the more readily distinguishable, and their conduct the more easily inspected and observed,* Power to the Board to appoint, by patterns, distinctive dresses for Lumpers, Water-Hawkers and Purchasers of Ships' Stock respectively.—Dress to extend to such articles as are not thrown off in working.—Colour, conspicuous, for instance broad stripes.—Form, such as shall be least adapted to concealed stowage.<sup>122</sup> Penalty on persons at large adopting any such Dress, the same as on the non-adoption of it by those bound to adopt it.—The distinction of a Water-Hawker may be a Badge, but sufficiently distinguishable from a Waterman's Badge.<sup>123</sup>

§ 31 (§ 11). Board may limit hours for Water Hawkers, Purchasers of Ships' Stock and Lumpers.

§ 31 (11). Power to the Board to appoint *hours* out of which Water-Hawkers, Purchasers of Ships' Stock and Working Lumpers respectively shall not be on board— regard being had to the time of the Year and the nature of the trade.

§ 32 (§ 12). Board may regulate Slaughterers &c., as to Time and Publicity of receiving, and Slaughtering &c.

[150\_152] § 32 (12). Power to the Board to make regulations concerning Slaughterers &c., to the end that, before the distinctive marks on any Horse &c. are obliterated, the right owner, and on his behalf the Surveyor or local Officer of the Board, may, in case of its having been stolen &c., have opportunity to discover it: in particular to determine whether notice shall be given, and to whom, and with what interval, previous to slaughtering or flaying—and whether any and what Visits shall thereupon be made by the Surveyor—and whether the Horse &c. shall be kept alive, and how long, before

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<sup>122</sup> See p. 3 & n. above.

<sup>123</sup> For the Company of Watermen and Lightermen see p. 12 n. above. The badge worn by licensed members of the Company took the form of a large metal disc, bearing the Company coat of arms and the individual's licence number, sewn to the upper left coat-sleeve.

slaughtering—and at whose expence—for the purpose of being so visited.<sup>124</sup>—This, not unless Surveyors are numerous enough and equally enough distributed to admitt of such a restriction—and whether the Horse &c., if dead, shall be flay'd before such visit—and whether the Skin shall be kept and where (so as to be most exposed to general view) and for any and what length of time *unaltered*.—{For facilitating visitation, the regulations may confine the act of slaughtering to half an hour in the day or some such short period<sup>125</sup>—and limit the hours for receiving the animals or their carcasses—and may describe and appoint particular conspicuous situations in the Yard &c. in which the animals shall be kept, while waiting to be slaughtered, and others in which the skins of such as are dead shall be display'd in the view of Passengers—} and for what fees and under what other conditions persons shall be admitted to view the animals, and skins, and to consult the Register Books<sup>126</sup>—{and to prescribe and furnish the Blank Form of a Calendar or Register, which shall be printed on one side only, and be kept constantly exhibited in some conspicuous part or parts of the premises (for instance under the Licence-Inscription), to be renewed periodically (say monthly or weekly), and on which, immediately on the receipt of any such animal, an entry shall be made thereof, descriptive of the animal, under heads to be provided for that purpose, in addition to the general list of Book-keeping heads above prescribed, and which, by other heads, shall shew whether the animal or any part of it remains in a condition to be recognized, or how it has been disposed of in such manner as to be no longer recognizable—} [150\_153] and to direct in what manner duplicates of such Registers shall be, periodically or otherwise, furnished to the Surveyor.

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<sup>124</sup> The Knackers Act of 1786 (26 Geo. III, c. 71) prohibited (§ 1) any person from operating a slaughterhouse for horses 'or other Cattle, which shall not be killed for Butchers Meat' without first acquiring a licence at General Quarter Sessions, and prescribed (§ 3) that six hours' notice of any intended slaughter should be given to an Inspector appointed by the local parish vestry, which inspector was to visit (§ 5) and 'take Account and description' of the animals to be slaughtered.

<sup>125</sup> The Knackers Act of 1786 (§ 3) limited the hours of slaughtering to between 8am and 4pm from October to March inclusive, and between 6am and 8pm from April to September inclusive.

<sup>126</sup> The Knackers Act of 1786 (§ 2) prescribed that Copies of Slaughterers' Licences should be 'entered in a Book to be kept for that Purpose by the Clerk of the Peace of the County', and that the book should be open to inspection by anyone on payment of a fee of 6d. The Act (§ 5) had farther prescribed that 'every Person' should be permitted to consult the Inspector's books, containing descriptions of the animals slaughtered, on payment of a fee of 6d.

N.B. The above are what seemed capable of being adopted among the safeguards provided by the existing inadequate and little-executed Act {26 G. 3. c. 71}<sup>127</sup> with additional ones distinguished by being inserted in brackets:<sup>128</sup> but the whole referred to the discretion of the Board, for the purpose of being amended from time to time by the light of experience.

## V. Procedure &c.

§ 33 (§ 1). Penalty for dealing without licence {^^^}, with forfeiture of the stock.

§ 33 (§ 1). Penalty for purchasing without licence, pecuniary forfeiture, not exceeding {^^^}, on conviction before one Justice, together with the whole stock so purchased.—  
Penalty for employing Draught or Hand-Carts as above,<sup>129</sup> without licence, pecuniary forfeiture as above, with forfeiture of the Cart, together with the loading, if loaded with Goods in respect of which a licence ought to have been, but had not been, taken out.

§ 34 (§ 2). Forfeiture shall comprise the whole stock without separate proof.

§ 34 (§ 2). Where a person is convicted of having purchased for sale such and such particular articles without being licenced so to do, the whole stock of articles in his possession in respect of which a license ought to have been taken out, and which appear to have been purchased by him for sale, may be included in the forfeiture, without other proof of purchase applying to any of the articles in particular. Whether such or such an article has been purchased for sale, or purchased for home-use, or reduced to the state it is in, by home-use, is a matter to be judged of from the quantity and other circumstances, such as that of the Offender having sold articles of a similar nature. So in case of a conviction of having purchased without license Second-hand Metals of an unlicensed person, in which case such articles alone as shall have been proved to have been purchased of persons licenced to purchase the same shall be exempted from the forfeiture.

§ 35 (§ 3). Powers of search and seizure for goods dealt in without licence.

[150\_154] § 35 (§ 3). Power to a Constable &c. to make search at any seasonable time in the day or before {9} in the evening, in any House &c., for goods suspected to have been purchased for sale, or for working up, without licence, on warrant granted by a Justice, on reasonable cause of suspicion proved upon oath: and to seize all such goods found therein, or in the act of being removed to or from the place, and to secure them, until conveyed before a Justice, for condemnation, or, if in too great quantity for such

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<sup>127</sup> i.e. the Knackers Act of 1786.

<sup>128</sup> Bentham's square brackets have been rendered as braces.

<sup>129</sup> See pp. 59–60 above.

conveyance, disposed of, as below.<sup>130</sup>

§ 36 (§ 4).—for goods stolen &c.

§ 36 (§ 4). Power to a Constable &c. to make search in any house &c. for stolen goods on warrant granted as above, and by night as well as by day, if specially authorized by the warrant, and with like special authority, if needful, to enter by force: and upon finding any such goods to seize them, and secure them, until convey'd before a Justice, or disposed of as below,<sup>131</sup> together with all such persons in whose possession they are found, or who, knowing them to have been stolen or otherwise feloniously or fraudulently obtained, shall appear to have been privy to their being so concealed or lodged.

§ 37 (§ 5). Power to Surveyors to Inspect Stock and Books.

§ 37 (§ 5). Power to Surveyors &c. for entering the Shops &c. of licenced persons, (and in case of an Old Cloaths-man causing the pack to be opened) at all seasonable times, and viewing the Stock in trade, avoiding as much as possible to give disturbance, and to inspect, and take copies from, the Books required to be kept, as above.<sup>132</sup>

§ 38 (§ 6). Goods forfeited to be sold by Auction—application of the produce.

[150\_155] § 38 (§ 6). Goods forfeited under this Act to be sold by Auction, by persons named by the Board: the neat produce to be paid to the local Officer of the Board, and to be applied one moiety in augmentation of the Police Fund, the other distributed among the persons who have contributed to the conviction, in such proportions as shall have been determined in London by the Board, in the Country by the Convicting Magistrate, according to such regulations, if any, as shall have been made in that behalf by the Board: the evidence of the Informer or any other person not to be deemed incompetent, by reason of any right or expectation on his part of sharing in such reward.

§ 39 (§ 7). Police Warehouses to be provided for goods seized—or the premises may be used till the stock is sold and cleared off.

§ 39 (§ 7). Whereas in case of seizure made of an entire stock in trade, or of goods in large quantities, on the ground of their having been stolen or dealt in without licence, it might, under the laws in being, be impossible to find room sufficient for their reception, untill sold as above or otherwise disposed of in course of law, Power to the Board in London, and in the Country to the Quarter Sessions in concert with the Board, to provide (by hire) *Police Warehouses*, at the expence of the *Police Fund*: and to appoint the local Officer of the Board or some other fit person or persons to be Warehouse-Keeper or Keepers: in the London District, one or more, in and for each of the existing Police

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<sup>130</sup> See §§ 38–9 below.

<sup>131</sup> See §§ 38–9 below.

<sup>132</sup> See pp. 69 above.

Districts,<sup>133</sup> or in such other number and situations as the Board shall judge convenient; to which Warehouses all goods may be [150\_156] brought, that have been seized, either under this Act, or under any other Laws in being authorizing goods to be seized on suspicion of being unlawfully obtained: or as requiring to be secured for the purpose of being produced in evidence: and such goods, when brought to the Warehouse-Keeper, shall, as soon as may be, be inventoried by him in presence of the bringer, or, till there be time for making and completing the inventory, deposited in some separate room, closet or package, under their joint seals: with power to the Board to make other regulations, for the preserving such goods from damage, the ownership of them from being rendered uncertain by mixture with other goods, and the appearance of them from change in case of their being wanted to produce in evidence. Power to any Constable &c., whether acting by his own authority or by warrant, to convey any goods seized by him as aforesaid to the nearest or other most conveniently circumstanced Police Warehouse, unless specially forbidden so to do. In default of such Police Warehouses, power to the local Officer of the Board, to keep possession of such part of the premises where goods are seized under this Act, as shall be necessary for the keeping of them, till they have been sold by Auction as aforesaid, and cleared off. Rent and taxes for the time, to be paid where due, out of the produce of such sale: as also such allowance, if any, to the occupier of the House &c. for his loss of the part so occupied, as the Board may think fit.

§ 40 (§ 8).  
Penalty for  
falsehood and  
forgery touching  
Licences.

[150\_157] § 40 (§ 8). In case of a man's assuming a false name, or suppressing any part of his true name, on application made by him for a licence or in the Notice given previous to such application, as above, or in his Licence Inscription, as above, or knowingly and wittingly uttering any other falsehood in such Notice, Penalty, forfeiture to any amount not exceeding {^^}.—Like penalty for a person, licenced or unlicenced, putting up any License inscription belonging to any occupation in respect of which he is not licenced.—Penalty for being concerned in making a counterfeit licence or certificate of character, as above, or any fraudulent alteration in a genuine one, or uttering and exhibiting as granted to a man's self a license granted to another, or an expired one as if in force, for the first Offence, forfeiture to any sum not exceeding {^^}, recoverable before a Justice; for a second offence, felony.

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<sup>133</sup> i.e. the seven districts established by the Justice of Peace, the Metropolis Act of 1792 (32 Geo. III, c. 53), for which see p. 5 n. above, in addition to the earlier police office established at Bow Street, Covent Garden.

§ 41 (§ 9). Penalties for obstructing the execution of this Act, by withholding evidence or otherwise, with and without falshood.

§ 41 (§ 9). If without reasonable excuse a man refuses or wilfully omitts to appear upon a summons or warrant to appear and give evidence on an information or other proceeding grounded on this Act, or to answer to any lawful question, or is concerned in inducing or endeavouring to induce any person to make default on being so summoned or convened, or to keep out of the way to avoid it, or in obstructing in any particular, or, without force or violence, endeavouring to obstruct, the due execution of this Act, penalty to any amount not exceeding {^^^}, together with any other sum not exceeding the amount or value of the greatest pecuniary penalty or specific forfeiture [150\_158] which, in case of an information, the party informed against could on conviction have incurred: if by force or violence, penalty as above, recoverable before a Justice, or on indictment, transportation for any term not exceeding 7 years. Power, in the latter case, to any person to apprehend the offender and convey him either immediately before a Justice, or to a Constable &c., who thereupon shall convey him before a Justice.—On reasonable cause shewn for apprehending that such or such a person would, if summoned to give evidence, make default, Power to a Justice to convene him by warrant in the first instance, and to committ him untill there has been time for his being sufficiently examined, or untill he has found sufficient security for undergoing such sufficient examination.

§ 42 (§ 10). Proceedings before one Justice—Form of Conviction—Mode of levying Penalties—Power of mitigation.

§ 42 (§ 10). Proceedings under this Act on information given of offences, and on other matters where it is not otherwise appointed, shall be carried on before any one Justice.—Form of Conviction, as per Schedule {C}.<sup>134</sup>—Application of forfeitures as above in the case of goods seized and sold by Auction.<sup>135</sup>—Mode of levying the penalty, Distress and Sale—and on default of sufficient Distress, Imprisonment for a term proportioned to the deficiency.—In case of delinquency through blameless mistake or accident, power of acquittal; in case of delinquency through negligence or culpable inattention, but without any intention or consciousness of offending, power of unlimited mitigation.

§ 43 (§ 11). Board to have judicial cognizance, as the Excise.

[150\_159] § 43 (§ 11). Proceedings, hereby directed to be carried on before one Justice or any two or more Justices, shall, in case of offences committed or other matters arising within the London Police District, be carried on before the Board, who within the said District shall exercise judicial authority in the same manner as the Commissioners of

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<sup>134</sup> For Bentham's proposed Schedules to the Bill see p. 66 n. above.

<sup>135</sup> See p. 74 above.

Excise within the London District of the Excise.<sup>136</sup>

§ 44 (§ 12).  
Penalty of the  
Recognizance  
recoverable, as the  
other penalties.

§ 44 (§ 12). Penalty arising from the forfeiture<sup>137</sup> of the Recognizance recoverable against the Surety or Sureties as well as against the principal, in the same manner as the other penalties abovementioned.—Power to mitigate the penalty on a Surety, in case of his assisting, by giving information or otherwise, in the bringing the Principal to justice.—For offences committed in breach of regulations made by the Commissioners, the penalty levied may be, and may in such regulations be declared to be, any sum not exceeding the penal sum mentioned in the Recognizance.

§ 45 (§ 13).  
Promulgation [of]  
the Law and  
Regulation of the  
form of the  
recognizance.

§ 45 (§ 13). That no one may offend through ignorance or pretence of ignorance, a Copy or Copies of the Licence or the Recognizance to be furnished (at Booksellers' trade price) to every licenced person and his Sureties; containing, on the same paper, and the same side thereof, an Abstract of all Parliamentary and other regulations relative to his trade: such Abstract presenting to each class so much of the law as concerns that class, unincumbered with what concerns other classes and not that: such Abstracts to be kept constantly fixed up behind the principal Shop Door, in such manner as to be in view of the Licenced Purchaser and the Vendor at the same time: and, if the Board thinks fit, under every or any of the copies of the Licence Inscription, and in any other conspicuous situation or situations.—Power and direction to the Board to take any other measures they judge fit, for conveying to the minds of the parties adequate information respecting the laws and rules by which their conduct is to be governed.

§ 46 (§ 14). Appeal  
to Sessions.

[150\_160] § 46 (§ 14). Appeal from a single Justice or Petty Sessions to the Quarter Sessions; procedure thereon summary: Costs to be thereon awarded, at discretion; both those of the original proceeding, and those of the Appeal: determination, final;—no

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<sup>136</sup> The Excise Act of 1660 (12 Car. II, c. 23, § 31) and the Statute of Tenures of 1660 (12 Car. II, c. 24, § 45) had both prescribed, in relation to offences committed against them, that 'all Forfeitures and Offences made and committed within the immediate Limits of the Chief Office in *London*, shall be heard, adjudged, and determined by the said Chief Commissioners and Governors of the Excise'. The judicial competence of the Commissioners of Excise extended over an area comprising the Cities of London and Westminster, the Borough of Southwark and its suburbs, and parishes within the Bills of Mortality (i.e. the immediate suburbs of the City of London). The Gin Act of 1751 (24 Geo. II, c. 40, § 27) extended the area by bringing the parish of St Marylebone in Middlesex under 'the immediate Care, Inspection, and Management of the said Head Office of Excise'. Elsewhere, judicial authority remained with local Justices.

<sup>137</sup> Bentham has cancelled the words 'arising from the forfeiture'.

*Certiorari*<sup>138</sup> in any stage. Notice of appeal to be given at the time of conviction, or within {^^^} days afterwards, unless grounded on matter of fact not brought to light till afterwards—stay of execution, in case of sufficient security, to the satisfaction of the Justice or Justices, for prosecuting the appeal and conforming to the judgment pronounced or Order made thereon.

§ 47 (§ 15).  
Board may order  
prosecutions for  
Perjury.

§ 47 (§ 15). Power to the Board, to order Prosecutions for Perjury committed in proceedings before the Board; and, on a certificate from the Justice, in proceedings before a Justice under this Act: the taxes and fees remitted by 23 G. 2. c. 11. § 3 in case of prosecutions for Perjury ordered under that Act,<sup>139</sup> to be remitted in this case; all other expences to be defray'd out of the Police Fund.

§ 48 (§ 16).  
Protection against  
vexatious suits.

§ 48 (§ 16). Protection given to Officers of Excise and their assistants against vexatious suits by 23 G. 3. c. 70,<sup>140</sup> and by 24 G. 3. c. 47 extended to Officers of the Customs and their Assistants,<sup>141</sup> extended by this Act to Officers of the Board of Police Revenue and their assistants.

[150\_161]

## VI. *Miscellanea*

§ 49 (§ 1). Board  
may publish a  
*Police Gazette* free  
of stamps and  
postage—Penalty  
of false and  
malicious  
information,  
especially if  
anonymous.

§ 49 (§ 1). *Whereas it would contribute, in an especial manner, to the bringing of Offenders to justice, if a channel of appropriate intelligence were established, in and by means whereof, information of prædatory and other offences, might immediately, and without expence, be received from persons aggrieved and others, and convey'd in the same manner to all such persons, throughout the United Kingdom, to whom, by means of their respective Offices, professions, trades, occupations or otherwise, opportunity might occur of contributing to the discovery, apprehension or conviction of the Offender, Power to the*

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<sup>138</sup> For writs of *certiorari* see p. 22 n. above.

<sup>139</sup> The Prosecutions for Perjury Act of 1750 (23 Geo. II, c. 11), which sought to facilitate the prosecution of witnesses who perjured themselves in court by simplifying the process of indictment, prescribed (§ 3) that such prosecutions were to be ‘carried on without Payment of any Tax or Duty, and without Payment of any Fees in Court, or to any Officer of the Court, who might otherwise claim or demand the same’.

<sup>140</sup> The Excise Act of 1783 (23 Geo. III, c. 70, § 30) required one month’s notice to be given of any legal action to be brought against an excise officer or one of his subordinates.

<sup>141</sup> See the Smuggling Act of 1784 (24 Geo. III, sess. 2, c. 47, § 35).

Board to publish a *Police Gazette*, free of stamp-duty and postage, to contain such intelligence only as in its nature shall be subservient to the bringing Offenders to justice—to be printed in the London District and at any other places the Board may judge proper,<sup>142</sup> regard being had to the number of copies capable of being cast off in a given time from one press, and to the degree of speed necessary and attainable in regard to the circulation. Acting Justices, and persons licenced under this Act, to be supplied with it *gratis*; Public Houses, at a moderate price, with power to the Board to set the price at, below, or at not more than {^^} per cent above prime cost, according to the circumstances of the Houses, which for this purpose may be arranged into classes, according to their payments to the Assessed Taxes;<sup>143</sup> Persons in general, at a penny per number, or some other such low price, to be fixed [150\_162] from time to time by the Board.—Penalty for false information (not anonymous) communicated or attempted to be communicated to the Board maliciously, and with intent to create trouble, alarm, or other suffering in the minds of persons in general, or any undue trouble, alarm, loss, disgrace or other injury to any person or persons in particular, by a person knowing the same to be false, or having no probable cause for believing or supposing it to be true, £10, recoverable summarily as above, over and above other penalties inflictible and damages recoverable by the laws in being: if anonymous, or in a fictitious name, or accompanied with devices calculated to cause any other person not really concerned to be regarded as concerned in the communication, fine, imprisonment and Pillory, joint or separate at discretion, on indictment.

§ 50 (§ 2).—and an annual *Calendar of Delinquency*—abstracted from Returns of proceedings in matters criminal and penal, summary as well as regular—and Jail>Returns. Names of Defendants not to be divulged—except as excepted.

[150\_163] § 50 (§ 2). Whereas it might, by the blessing of providence, be a means of promoting well-grounded, well-considered, and substantial, amendments and improvements in the penal branch of the Law of these his Majesty's Realms, and of exciting and keeping up a due spirit of zeal and vigilance on the part of all persons, concerned, by Office or otherwise, in the execution of the same, if information of the number of offences known or suspected to have been committed, under each head of delinquency in each Year, in the several parts of this his Majesty's United Kingdom, together with the result, of each act of delinquency, in respect of punishment or impunity, were annually collected, digested, and exhibited to view, Power to the Board to frame, and

<sup>142</sup> Bentham has marked the remainder of the sentence for possible deletion.

<sup>143</sup> In the margin, Bentham has noted at this point: 'Licence-price raised accordingly—their licences to be raised sufficient to defray the copies.'

at the commencement of each Year fill up and publish or present to King and Parliament, an annual Statement, to be termed The Calendar of Delinquency, exhibiting the State of the Nation for the preceding Year in respect of the matters aforesaid.—Heads as per Schedule {^^^},<sup>144</sup> or such other or further heads, as shall, from time to time, appear to the Board best adapted to the purpose. Board to frame for this purpose a set of Blank Tables, Schemes or Forms, with requisite Instructions, and to transmitt them with a view to the three following branches of procedure, to the three following classes of [150\_164] persons:

1. For filling up heads relative to regular Procedure, to the Clerk of Assize, Clerk of the Peace or other Registering Clerk or other proper officer of each Court of Record, exercising criminal jurisdiction throughout England, and to the corresponding set of Officers in Scotland.

2. For d<sup>o</sup>, relative to such proceedings in the way of mesne Process before Justices as are preparatory to Trials, had in the way of regular Procedure, to the acting Justices throughout Great Britain (i:e: such as have taken out their *Dedimus*).<sup>145</sup>

3. For d<sup>o</sup> relative to proceedings before Justices out of General Sessions in matters in which they possess the power of convicting, a distinct set of Tables or Blank Forms (Example as per Schedule {^^^})<sup>146</sup> to be transmitted to the same Magistrates; who, receiving them free of all expence of paper as well as postage, are accordingly *required* to fill them up according to the Instructions and return them from time to time, as filled up, to the Board: in consideration whereof they are to be regularly supplied with the *Police Gazette*, as above, free of all expence, together with all other publications issuing from the Board; unless in as far as this may have been forbidden by the Treasury, in consideration of the expence. Direction (as per Stamp-Act 5 W. 3. c. 21. § 12) to ‘the Judges in their said

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<sup>144</sup> For Bentham’s proposed Schedules to the Bill see p. 66 n. above.

<sup>145</sup> In order to execute the office of a Justice of the Peace, an individual who had received a commission of the peace from the crown was required to obtain from the Clerk of the Crown a writ of *dedimus potestatem* (i.e. ‘we have given the power’), which authorized some other person to administer and certify the individual’s oath of office. See, for instance, Richard Burn, *The Justice of the Peace and Parish Officer*, (first published at London in 1755) 2nd edn., 2 vols. London, 1756, ii. 88: ‘On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of *dedimus potestatem* directed out of chancery, to some ancient justice (or other) to take the oath of him which is newly inserted’.

<sup>146</sup> For Bentham’s proposed Schedules to the Bill see p. 66 n. above.

respective Courts .^.^ at the request of ’ .^.^ the Board .^.^ ‘to make all such Orders, and do all such matters and things,’<sup>147</sup> as shall be requisite and necessary to the due and compleat filling up and returning the said Blank Forms.—In each of the three above cases, for neglect in not making the Return, Penalty on the Clerk £10, recoverable in the regular way, half to the Informer, with costs, half to the Police Fund.

4. For compleat and uninterrupted accounts-current of the State of the *Prisons* throughout Great Britain, Immediate Returns of each commitment, death, and discharge, to be transmitted from the several Gaolers, with particulars concerning the cause of commitment and discharge, and the condition of the Prisoner, according to the Blank Forms framed by the Board, and thence supplied to them free of expence: and by way of check to these particular and occasional returns, General and Periodical Returns. Example of both as per Schedule {^^^}.<sup>148</sup>

[150\_165]

5. By way of check to the abovementioned Returns from Justices and Jailors, and to supply as well as eventually to indicate, and by that means prevent, casual deficiencies in the list of such Returns, another set of periodical Returns to be made to the Police-Surveyor of each Surveying District by the Constable or other such Peace-Officer of each Parish or Parish-like Place comprized within his District, at such periods within the Year as the Board shall from time to time appoint; each Return to contain (according to the appointment of the Board) either a Copy of every Warrant received within that period by such Constable, together with a memorandum of the act or acts done in execution of such Warrant, or else an Abstract of the matter of and concerning such Warrant, expressed under a set of Heads according to a Blank Form or Scheme to be furnished by the Board; the entries made under such Heads to exhibit to view the several particulars of and concerning such Warrants (such as the *Date when* received, the *place where*, the Justice or Justices *from whom*, the person or persons *on whose body or goods* the powers thereof were to be exercised) as also of and concerning the several steps taken in execution of such Warrant, according to the purpose for which it was issued; such as *Arrest, Commitment, Search, Seizure, Distress and Sale &c.* Example of such Blank Form or Scheme, as per

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<sup>147</sup> See the Stamps Act of 1694 (5 & 6 Will. & Mar., c. 21, § 12). There are minor inaccuracies in the rendering of the passages.

Schedule {^^^}.<sup>149</sup> For every Warrant omitted to be returned, penalty not less than {1<sup>s</sup>} nor more than {10<sup>s</sup>}.

[150\_166]

Proviso against publishing, or suffering to be divulged, the names of persons convicted, prosecuted, or suspected, of offences under the rank of Felony: except in case of Forgery, Perjury or Conspiracy, and except in as far as necessary for bringing to justice persons absconding, or upon special Order of the Board made in relation to each person taken singly, and for reasons assigned, or where, on conviction, such publication has been ordered as part of the judgment.

§ 51 (§ 3).  
Correspondence  
of the Board to be  
free of postage.—  
No private  
correspondence to  
pass free.

[150\_167] § 51 (§ 3). Whereas for the receipt and circulation of the intelligence forming the matter of the said Police Gazette, and for the transmission and receipt of the materials for the said Calendar of Delinquency, as well as for the correspondence, with the local Magistrates throughout England, with the Officers subordinate to the said Commissioners of Police Revenue, and with other persons, touching applications for licences under this Act, and proceedings relative to Offences against the same, as well as in the transaction of Divers other businesses appertaining to their said Office, it will be necessary to the said Commissioners to send Letters and Instruments to, and receive Letters and Instruments from, persons resident in every part of this United Kingdom—And whereas the expence of postage, superadded to the trouble of framing and transmitting intelligence, would, in the instance of many persons, unavoidably prevent their furnishing of the same; And whereas it would neither be just, that the said Commissioners, or any other persons, to whom any such Letters or Instruments might come to be sent, for the benefit of the public service, should be put to any expence thereby, nor practicable for them to bear the whole of such expence, nor would it be productive of any [150\_168] benefit to his Majesty's Revenue, if, for the defraying of the expence of such correspondence, according to the established rates of postage, money were to be transferred from one of his Majesty's Boards or Offices to another—And whereas in making provision in this behalf for the public service it may be proper to establish such restrictions as shall be necessary and sufficient to prevent such provision from being applied by individuals to the purposes of private emolument or advantage, All Letters and

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<sup>148</sup> For Bentham's proposed Schedules to the Bill see p. 66 n. above.

<sup>149</sup> For Bentham's proposed Schedules to the Bill see p. 66 n. above.

Packets under {two Ounces} sent to or from the Board to be delivered post-free (as well by Penny P[ost] as by General Post) on the conditions following:

1. All Letters &c. directed for the Board, to be opened either at the Board, or (if too numerous for that) by one of two persons at least appointed by the Board, who shall read them aloud to and in presence of the other: and if a packet encloses any letter &c. directed to any person in particular, or without a direction, but sealed, such enclosed letter to be read in like manner, and if the person who sent such sealed or enclosed Letter directed to or intended for the use of any individual Member or Officer of the Board, or any other person, be known, the same shall be returned to him under cover, unfranked: and any [150\_169] printed paper or other article so enclosed and designed for the use of any individual, shall be deemed the property of his Majesty, and not be forwarded to the party it is intended for or remitted back to him who sent it, but by special Order of the Board, and on payment of double postage.

2. Letters &c., sent from and by the authority of the Board, to be directed by persons in any number appointed by the Board, but franked by the hand-writing of some one person, from time to time specially appointed for that purpose, or by a stamp engraved in imitation of his hand-writing, expressive of his name with the word *free* prefixed, together with the words *On his Majesty's service* and *From the Board of Police Revenue*; unless in such cases, if any, wherein, by special Order, the Board shall think fit to suppress the marks indicative of the authority from which such letter issued.—For delivering or communicating to any individual, any otherwise than as aforesaid, any letter or packet, addressed *to* the Board, for the purpose of saving the postage, as also for causing or endeavouring to cause any letter to pass free of postage as if *from* and by the authority of the Board, to any person, from any individual acting therein without authority from the Board, Penalty as by the Post Office Act, 4 G. 3. c. 24.<sup>150</sup> For counterfeiting the above stamp or the hand-writing of any person employ'd, as above, for franking, Penalty the same as appointed for counterfeit franking by that same Act.<sup>151</sup>

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<sup>150</sup> Under the Postage Act of 1764 (4 Geo. III, c. 24, § 3), any government servant who attempted to evade postage charges by endorsing private letters or packets as if they concerned official business was liable to pay a fine of £5 for a first offence and to be dismissed from office for a second offence.

<sup>151</sup> Under the Postage Act of 1764 (§ 8), any person who attempted to avoid paying postage by counterfeiting the handwriting of an official was to be deemed guilty of a felony and subject to seven years' transportation.

§ 52 (§ 4). Board to report proceedings and suggest improvements.

[150\_170] § 52 (§ 4). Board, so soon as it shall have collected the information sought for by the Returns aforesaid, or, if need be, sooner, shall, ‘from time to time at their discretion, or as often as they shall be thereunto required, give an account of their proceedings, in writing under their hands and seals, to the King’s Most Excellent Majesty and to both Houses of Parliament’:<sup>a</sup> and shall moreover from time to time ‘suggest all such regulations’ as in their judgments shall appear best calculated for augmenting the efficacy or, without prejudice to the efficacy, mitigating the severity, of the penal branch of the Law, or any part or parts thereof, and for diminishing (also without prejudice to the efficacy) the expence (whether to individuals or to the public) incident to the execution of the same.

<sup>a</sup> Taken from the *Commission-of-Accounts Act*, 20 G. 3. c. 54,—the *Fees-of-Office-Enquiry Act*, 25 G. 3. c. 19,—and the *Crown-Lands-Enquiry Act*, 26 G. 3. c. 87.<sup>152</sup>

§ 53 (§ 5). Abolition of the Hawkers, Hackney Coach and Superintendent of Aliens Offices.

§ 53 (§ 5). On a day to be appointed by the Board, by advertisement in the *London Gazette*, as the day on which they will be in readiness to proceed upon the business, the functions of the Hawkers and Pedlars Office,<sup>153</sup> the Hackney-Coach Office,<sup>154</sup> and the Superintendent of Aliens,<sup>155</sup> to cease, and the Commissioners of Police Revenue to be, in virtue of their Offices, Commissioners for the licencing Hawkers &c. &c., under the Laws in being touching those respective Offices.

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<sup>152</sup> Bentham’s quotation is taken (with minor omissions) from the Audit of Public Accounts Act of 1780 (20 Geo. III, c. 54, § 5), which goes on to prescribe that the Commissioners appointed under the Act should propose ‘such Orders, Rules, and Regulations as in their Judgement shall appear fit and expedient to be established’ to improve measures for the raising of revenue. Similar provisions, in variant wording, are found in the Inquiry into Fees, Public Offices Act of 1785 (25 Geo. III, c. 19, § 1) and the Crown Land Revenues, etc. Act of 1786 (26 Geo. III, c. 87, § 1).

<sup>153</sup> The Hawkers and Pedlars Office was established by the Hawkers Act of 1697 (9 & 10 Will. III, c. 27) to oversee the licensing of itinerant traders by Justices of the Peace. The Duty on Hawkers and Pedlars Act of 1789 (29 Geo. III, c. 26, § 1) had prescribed an annual licence fee of £4, with an additional £4 for each beast of burden.

<sup>154</sup> The Hackney Coaches Office had been established by the Hackney Coaches etc. Act of 1694 (5 & 6 Will. & Mar., c. 22) to oversee the licensing and regulation of Hackney coaches within the metropolitan area, and of stage coaches throughout England and Wales.

<sup>155</sup> The Superintendent of Aliens oversaw the Alien Office, which had been established after the passage of the Aliens Act of 1793 (33 Geo. III, c. 4) to monitor and control foreign visitors to Britain.

§ 54 (§ 6).  
Provision for the  
Officers of the  
abolished Offices.

§ 54 (§ 6). Allowance to the Officers of the abolished offices, as to the Officers of the Salt-Office, abolished by the last Salt-Act {38 G. 3. c. 89. § 141}.<sup>156</sup>

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<sup>156</sup> Under the Salt Duties Act of 1798 (38 Geo. III, c. 89, § 141), which abolished the Salt Commission, Commissioners and officers who lost their salaries were to be paid, out of the revenue of the excise, ‘such yearly Allowances as his Majesty, his Heirs and Successors, shall judge fit, so as no Allowance to any such Commissioner or Officer of the Salt Duties respectively shall exceed the yearly Amount of the Salary and Emolument of which he or they is, are, or shall by this Act be so deprived, and so as the Whole of such Allowance do not exceed the Sum of twenty-one thousand Pounds’.

[150\_723]

## Elucidations relative to the Police Revenue Bill

## I. *General or Preliminary Observations*<sup>157</sup>

As far as the subject-matter of the present Bill<sup>158</sup> is concerned, (a branch [of delinquency] which, in respect of its fecundity, outnumbered several times over all the other branches put together) the leading principle of the System is to apply a check to depredation by opposing fresh difficulties and dangers to the faculty of disposing of the fruits of it. But there is scarcely a species of article that is not liable to become the subject-matter and fruit of depredation: the system, therefore, to be commensurate to its object, ought to embrace every article of moveable property whatsoever. What distinguishes article from article in this point of view, is, not so much its being of this or that species, as its having passed from the hands of the dealer into those of an occupier: in which latter case the article is, in the instance of one class of articles only, but that a very extensive one, termed *second-hand*. Moveable property in general may, in this point of view, be distinguished into *live stock* and *dead stock*: dead stock, into articles for consumption and articles for wear and tear. It is to articles for wear and tear, and to this class alone, that the distinction between *new* and *second-hand* is applicable. An article of this class, if it has been stolen, or obtained by any other species of criminal depredation, can scarcely present itself to a purchaser, but under the denomination of a second-hand article: it can not, unless he by whom it is offered to sale presents himself as being either the manufacturer or known dealer, or agent for some known manufacturer or dealer, in that sort of article: a character which in general it will not be easy for a common thief or other depredator to assume. Hence the class of persons on whose dealings it is necessary to set a particular watch, for the purpose of applying a check to the disposal of the fruits of depredation, comprizes the several descriptions of persons whose business leads them to the purchase of *second-hand goods*.

1. At the head of the list, the class of dealers [150\_724] termed *Brokers* appear to present themselves: since their dealings embrace every sort of moveable article without exception. Next to these stand *Pawnbrokers*: whose dealings, though the transaction is of a different cast, are, in respect of their subject-matter, little less extensive. *Auctioneers* compose another class, the dealings of which are, in respect of their subject-matter, still more extensive than those of either of the preceding classes: embracing immovable

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<sup>157</sup> For details of this text and its relation to Bentham's other writings on the Police Bill see the Editorial Introduction, pp. 000–000 above.

<sup>158</sup> MS orig. 'prædatory branch of delinquency'.

property, incorporeal property, and, in short, every thing vendible. But, it being the business of the Auctioneer as such to *sell* only, and not to *buy*, and to sell on such terms as require the possessor to be known and forthcoming, and to wait for his money, hence the Auctioneer is not that sort of person from whom it lies, in general, in the way of the thief or other depredator to derive any assistance: unless it be now and then, in the case of goods obtained in large masses in the way of *swindling*. If the business of the Auctioneer stands in any respect in need of the superintending eye of the Police, it is in respect of the depredation which a dishonest dealer of this class will now and then commit, on his own account, to the prejudice of a purchaser, by selling bad goods at a high price, and not in respect of any prejudice done to any former lawful proprietor of the goods.

[150\_725]

Among articles for wear and tear, articles composed of materials of the *filamentous* kind, (comprehending *spun* goods and *piece* goods) and articles composed of materials of the *metallic* kind constitute two principal and very prominent classes. The amount of the articles comprized under these two classes respectively is so considerable, as to have furnished employment to divers subordinate classes of Brokers, whose dealings have respectively confined themselves to these articles. But though these classes of articles embrace, perhaps, by much the greatest part of the property exposed to depredation, they do not, (as we have seen)<sup>159</sup> by any means embrace the whole of it: not so much as the whole of the *wear and tear* branch. Hence, to pursue the principle as far as it leads, and to render the system perfect and consistent, it seems necessary to comprize the main body of the Brokers' business, as well as the particular branches that have detached themselves from it. A Broker at large will not find it easy to carry on his business without qualifying himself by a license to deal in the several species of articles herein already particularized. Household *furniture* appears to constitute the principal part of the subject-matter of the dealings of the Broker: but as the purpose, for which the Broker is called in, generally includes every thing vendible that a house contains, it would be an operation attended with a good deal of perplexity to the purchaser, the [150\_726r] Broker, and a good deal of loss to the frequently necessitous vender, if the Broker were obliged to pick out and discard at his peril all the sorts of articles which, in the event of the establishing the several license-Duties specified in this Bill, he would stand prohibited from meddling with for want of a

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<sup>159</sup> See p. 87 above.

licence.

All these things considered, it seems questionable whether much would be gained to the Bill in point of facility by the forbearance to insert *Brokers* by name: since, so many are the branches of their business already involved in it, that the insertion of the whole of it by name, would add little or nothing to the motives they would have already for opposing the Bill, if they saw a probability of opposing it with success.

2. Dealing in old materials for building is a branch of the Broker's business that seems less exposed to the being rendered subservient to the purpose of depredation than any other: yet still, if the system is to be rendered compleat, this branch as well as the others must be included in it. Timber, Stone and Marble are not so easily stolen as articles of a less bulky nature: but still they are but too much exposed to depredation, especially when Carts or boats are employ'd as instruments of conveyance, and night is made to afford its cover to the crime. And that in fact the materials of Houses and other Buildings are not more exempt from depredation than their contents will be seen in the paper of *Particular Observations*, in the note relative to this Class.<sup>160</sup>

[150\_727]

The leading principle of the Bill, as already observed, is the subjecting to controul and regulation the conduct of the persons whom it subjects to the obligation of taking out a licence.<sup>161</sup> The classes in question are more or less suspected of containing individuals whose dealings are at present not only eventually auxiliary, but wilfully conducive, to depredation or other enormities; and the preventing them from being so in future is the object with a view to which the controul is thus proposed to be applied.

But another principle, though but secondary and subservient with reference to the former, is the *obtaining information*: information such as may be of use with a view to this as well as other purposes of Police; and may be obtainable from various classes of persons whose occupations afford them the means of obtaining it, and who, by means of the influence created by the obligation of taking out the licence, may be induced to

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<sup>160</sup> i.e. 'Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations', pp. 212–363 below, at 229–30.

<sup>161</sup> Bentham in fact makes this point explicitly not in this work but in 'Introductory Observations relative to the Board-of-Police Bill', p. 126 below.

communicate it, to those departments of government which upon occasion will derive the proper use from it. These two objects, *controul* and *information*, may be considered as running hand in hand in the instance of most of the classes: but there are some instances in which criminality is nearly or altogether out of the question, and the obtaining of information is the only object aimed at. The several cases of *Letters of furnished lodgings*, *Keepers of Livery Stables*, *Letters of Post Horses*, and *Keepers of Stage Coaches*, may be particularly mentioned in this view. Persons of these descriptions can hardly be regarded as more liable than the rest of the community to be in league with malefactors: but malefactors as well as other persons will be having dealings with them and coming under their notice: and the indications which it may thus be occasionally in their power to afford with regard to the persons and motions of malefactors constitutes what appears a sufficient ground for including them in the licence system, especially as the obligations which it will be necessary to subject them to for this new purpose, need add but little to those to which they are already subjected for other purposes.

[150\_728]

Nevertheless, all things considered, it has been deemed more advisable not to attempt to include in the present Bill any of the Classes comprehended in the groupe last mentioned—1. Because, as already mentioned, of the two objects aimed [at], which concur in supporting the proposed application of the licencing system to the several occupations which consist in the purchasing of second-hand goods, viz: *controul* and *information*, the first, and that the principal one, extends not to this last groupe. 2. Because, the occupations comprized in this groupe being already in several instances subjected to other Boards already in existence, viz: to the two Revenue Boards of the Stamps and the Excise,<sup>162</sup> the complication that would be the necessary result of this circumstance would

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<sup>162</sup> The Duties on Post-Horses, etc. Act of 1785 (25 Geo. III, c. 51, § 4) imposed an annual licence duty of 5s. on every letter of post-horses and every keeper of a public stage-coach, placed the licensing of post-horses under the management of the Commissioners of Excise (§ 12) and the day-to-day regulation of their activities under the Commissioners of Stamp Duties (§ 27), and placed the licensing of stage coaches (§ 45) under the Commissioners of Stamp Duties. There was in fact no statutory licensing of either furnished lodgings or livery stables, although Colquhoun, *Treatise on the Police of the Metropolis*, p. 98, had proposed that a ‘Register of lodging-houses and lodgers in every parish .^.^ where the rent does not exceed a certain sum (suppose ten shillings) weekly, would prove one great means of embarassment to Thieves of every class’; and, *ibid.*, p. 367, proposed the registration of ‘Stable-keepers, and persons letting horses for hire’. The

be apt to create a demand for arrangement and discussion with the respective Boards such as would be altogether premature at a time when one of the requisite parties to such discussion was still waiting for existence. 3. Because, in case of the introduction of this groupe, its want of analogy to the other[s] would break the unity of the design and add bulk to a Bill already more voluminous than were to be wished. 4. Because, in a case where the demand for regulation is so much less urgent and incontrovertible, the addition of so large a mass of legislative matter might be apt to overload the measure, and throw obstacles in the way of its reception.<sup>a</sup>

<sup>a</sup> [150\_729] Considered<sup>163</sup> with a view to the subject matter of their respective

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House of Commons Select Committee on Finance, which had been appointed in March 1797 under the chairmanship of Bentham's step-brother Charles Abbot (1757–1829), Speaker of the House of Commons 1802–17, first Baron Colchester from 1817, to enquire into the public debts and aspects of public expenditure, on which it presented twenty-two reports in 1797, and a further fourteen in 1798, described Colquhoun's proposal for a register of all lodging-houses in the Metropolis as worthy of 'the attentive Consideration of this House; but which, perhaps, may be better matured after the official Arrangement here proposed [i.e. the establishment of the Board of Police] shall have taken place': see 'Twenty-Eighth Report from the Select Committee on Finance &c. Police, including convict establishments', ordered to be printed 26 June 1798, in *House of Commons Sessional Papers of the Eighteenth Century*, ed. S. Lambert, 145 vols., Wilmington, Delaware, 1975, cxii. 3–216, at 32–3.

In a cancelled fragment drafted for 'Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations' at UC cl. 666–7, containing possible precedents for lodging-letter licences, Bentham mentioned seven statutes: the Land Tax Act of 1763 (4 Geo. III, c. 2, § 53), which obliged householders to provide 'an account of the *names and qualities* of such persons as shall sojourn or *lodge* in their respective Houses'; the Duty on Servants Acts of 1777 (17 Geo. III, c. 39, § 10) and 1785 (25 Geo. III, c.43 § 10), which obliged householders to provide lists of their servants, and lists of both their lodgers who employed servants and of those servants, respectively; and the Excise Act of 1785 (25 Geo. III, c. 47, §§ 20, 29), the Duty on Hair Powder Act of 1795 (35 Geo. III, c. 49, §§ 10, 21), and the Duties on Dogs Act of 1796 (36 Geo. III, c. 124, § 5), which laid similar obligations on householders in relation to ownership of carriages and horses, use of hair powder, and ownership of dogs, respectively. Bentham's final example was the Aliens Act of 1793 (33 Geo. III, c. 4, § 22), which obliged householders, on receipt of notice from a Justice of the Peace, to declare any resident aliens and to provide details of their 'name, rank and occupation'. The Duties on Servants Act of 1798 (38 Geo. III, c. 41, § 18) reiterated the duties of householders having lodgers in relation to servants, carriages, horses, and dogs, and obliged the keepers of livery stables in which horses or carriages were housed to maintain lists of them and to supply these lists to the parish assessors.

<sup>163</sup> This note reproduces a superseded enumeration of groups to be licensed at UC cl. 729–30, which Bentham has marked 'Rewrite', and which, strictly speaking, might have been more appropriately presented in an

dealings, the several classes of persons whom at one time or other it may, for one reason or other, be deemed advisable to include in the licencing system may be cast into 8 groupes, the component classes of which will be here characterized by the several denominations by which it would be proposed to denote them in the several Bills.<sup>164</sup>

1. The 1st groupe is composed of general dealers, and comprehends two Classes, viz: 1. Brokers, or Dealers in second-hand Household and other Goods. 2. Sellers of forfeited pledges:—two others, viz: Auctioneers and Pawnbrokers considered as such, being exempted for reasons that will be mentioned.

2. The 2<sup>d</sup> groupe is composed of persons conversant with second-hand woven or piece-goods, and [with] spun goods; and comprehends five classes: viz: 1. Wholesale Dealers in Rags &c. for paper-making. 2. Retail Dealers in d<sup>o</sup>. 3. Dealers in Second-hand Naval Stores (understand of the woven and spun kind). 4. Dealers (not Itinerant) in Second-hand Apparel, Piece-Goods and remnants. 5. Itinerant Dealers in Second-hand Apparel, Piece-Goods and Remnants.

3. The 3<sup>d</sup> groupe is composed of persons conversant with metals: and comprehends three Classes. 1. Wholesale Dealers in Second-hand Metals. 2. Retail Dealers in d<sup>o</sup>. 3. Purchasers of d<sup>o</sup> for working up.

4. The 4<sup>th</sup> is composed of persons conversant with arms, and comprehends seven classes: 1. Gunpowder-makers. 2. Dealers in d<sup>o</sup>. 3. Makers of Fire-arms. 4. Dealers in d<sup>o</sup>. 5. Artillery Founders. 6. Makers of edged and pointed Weapons. 7. Dealers in d<sup>o</sup>.

5. The 5<sup>th</sup> is composed of persons conversant with Horses &c., and comprehends six classes: 1. Horse-dealers. 2. Post-Horse-Letters. 3. Stage-Coach-Keepers. 4. Hackney Coach-Keepers. 5. Livery Stable-Keepers. 6. Skinners, Slaughterers and Boilers.

6. The 6<sup>th</sup> is composed of persons conversant with shipping, and comprehends: 1. Water Hawkers and Bumboat Keepers. 2. Purchasers of Ship's Stock (from the crew), and 3. Master or Principal Lumpers.

[150\_730] 7. A seventh and miscellaneous groupe is composed of five classes, who have no subject-matter in common with each other, or with any other of the classes. These are: 1. Dealers in Second-hand Building Materials. 2. Hand-Cart Keepers for

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editorial footnote. However, given the need for annotation, the fragment is presented as a Bentham footnote. For further details see the Editorial Introduction, p. 000 above.

<sup>164</sup> For the series of Bills envisaged by Bentham see 'Introductory Observations relative to the Board-of-Police Bill', pp. 136–7 below.

second hand goods. 3. Hackney-Chair-Keepers. 4. Hawkers, or Itinerant Dealers in new goods. 5. Letters of ready-furnished Lodgings: this latter a class more numerous than all the preceding ones put together.<sup>165</sup>

[150\_731]

To the above classes of professional persons whom it is proposed to put or continue under subjection to licence duties, three other descriptions of persons are added, taken from *persons in general*, considered in as far as they may have become conversant with the three great classes of *arms* above mentioned. These it is proposed to subject to *registration*, and to a *registration-duty*, but not to either the controul or the name of a *licence*.

The system (it was thought) would appear to most advantage, by being exhibited all together, and in the utmost extent as yet indicated by the principles by which it was suggested, but, for various reasons, there are various branches of it which, perhaps, it may be found more eligible not to include in the present Bill.<sup>166 b</sup>

<sup>b</sup>[150\_732] 1.<sup>167</sup> A first set is composed of certain classes, which, though proposed to the Treasury in a supplemental address,<sup>168</sup> have not been proposed to, nor have consequently received the sanction of, the Committee of Finance:<sup>169</sup> nor indeed, as yet,

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<sup>165</sup> Bentham initially listed ‘Letters of ready-furnished lodgings’ as an eighth group, before subsuming them in the seventh group.

<sup>166</sup> The following paragraph which appears at this point has been cancelled by Bentham, possibly because both of the classes he mentions are included both in ‘Hheads of .^.^ a Bill for the granting to his Majesty certain duties on Licences’ (pp. 55, 59 above), and in ‘A Bill for the establishment of a Board of Police’ (pp. 151, 154 below): ‘1. Of these, the first set is composed of certain classes, which, though they had not failed to present themselves to the Author of the system as proper to be included in it, were, however, left out of his Proposal, partly through apprehension of the opposition that might be excited by them, partly in consideration that the reason for their being included did not appear altogether so strong as in the other cases. These are—1. *Dealers in Second-hand Houshold goods*, and 2. *Dealers in Second-hand Building materials*.’ The ‘Author of the system’ was Colquhoun.

<sup>167</sup> This note reproduces a passage at UC cl. 732, 656–7, which Bentham has marked ‘Rewrite’, and which, strictly speaking, might have been more appropriately presented in an editorial footnote. However, given the need for annotation, the passage is presented as a Bentham footnote. For further details see the Editorial Introduction, p. 000 above.

<sup>168</sup> No such address has been identified.

<sup>169</sup> On 23 February 1798 Charles Abbot, Chair of the House of Commons Select Committee on Finance, having met with William Pitt the Younger (1759–1806), leader of the administration as First Lord of the

that of the Treasury, no notice having as yet been taken of that address. In this [set] are included—1. Gunpowder Makers. 2. Gunpowder-Dealers. 3. Makers of Fire-arms. 4. Dealers in Fire-arms.

2. A second set is composed of certain classes which, though they have not as yet been proposed to the Treasury, nor were proposed to the Committee, have lately presented themselves to the consideration of the Author of the system,<sup>170</sup> as being pointed out by the leading principle, and that in so strong a light, that there can be little doubt of the addition's being approved. These are the classes here stiled 1. Water-Hawkers and Bumboat-Keepers. 2. Purchasers of Ship's Stock (who are mostly the same persons as the foregoing), and 3. Master or Principal Lumpers.<sup>171</sup>

3. A [third]<sup>172</sup> set is composed of certain classes which, though they have not as yet undergone the review either of the Committee, the Treasury, or even of the Author of the system, have, however, presented themselves to the framer of this Bill,<sup>173</sup> as classes that seemed to be indicated by the leading principle, and as being such as on that ground it might possibly be, sooner or later, deemed expedient to include in the system. In this are included—1. Gunpowder-makers. 2. Gunpowder Dealers. 3. Artillery Founders. 4. Makers of edged and pointed Weapons. 5. Dealers in edged and

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Treasury and Chancellor of the Exchequer 1783–1801, 1804–6, to discuss the continuance and future work of the Committee, requested 'Returns respecting Police Offices, Criminal Prisoners, Convicts within Great Britain, Convicts abroad': see The National Archives, Colchester Papers, P.R.O. 30/9/32, fo. 153. The Committee thereupon began investigations into 'Police, including Convict establishments'. The Committee took oral evidence from only two witnesses, Colquhoun and Bentham, though Bentham's evidence exclusively concerned his dealings with the Treasury in relation to the panopticon. For Colquhoun's examinations by the Committee between 5 March 1798 and 4 May 1798 and Bentham's examination on 23 June 1798 see 'Twenty-Eighth Report from the Select Committee on Finance', Appendices B–D and G, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 51–63, 78–82 respectively. The Committee's report endorsed both Colquhoun's general plan for reform of police and the panopticon: see *ibid.*, 31–2.

<sup>170</sup> See Colquhoun to Bentham, 5 October 1798, *The Correspondence of Jeremy Bentham*, vol. vi, ed. J.R. Dinwiddy, Oxford, 1984 (CW), pp. 90–2, at 91: 'Two other Classes of Dealers have occurred to me as perhaps more necessary to Be Licensed and put under Regulations than any of those already fixed on—I mean 1st *Contracting or Master Lumpers* and 2d *persons trafficking in Bumboats with ships in Navigable Rivers*.'

<sup>171</sup> Bentham had included these classes in 'H<sup>o</sup>u<sup>s</sup>e of C<sup>o</sup>m<sup>m</sup>o<sup>n</sup>s a Bill for the granting to his Majesty certain duties on Licences', pp. 60–2 above, but omitted them from 'A Bill for the establishment of a Board of Police'. For his treatment of them in his writings on Marine Police see pp. 26–8 and 34–6 above.

<sup>172</sup> MS 'fourth'.

<sup>173</sup> i.e. Bentham.

pointed weapons.<sup>174</sup>

[150\_656]

The [fourth]<sup>175</sup> and last set is composed of a number of classes, which, though they have presented themselves to the framer of the Bill, as well as, in all or most instances, as he believes, to the Author of the system, as proper to be included in it, and subjected to the authority of the proposed Board, (the expediency of subjecting them to the controul of a discretionary licence being indicated by the common fundamental principle) yet were neither proposed in that point of view to the Treasury, nor to the Committee, by reason of their being already subjected to licence duties under the authority of divers Boards, the abolition of which has not been, nor seems likely ever to be, proposed. These classes are—1. Auctioneers, who receive their licences from the Excise Office.<sup>176</sup> 2. Pawnbrokers.<sup>177</sup> 3. Letters of Post Horses. 4. Keepers of Stage Coaches, which three last receive their licences from the Stamp Office.<sup>178</sup> 5. The persons here stiled Slaughterers, Skinners and Boilers, who receive their licences from the Justices in General Sessions.<sup>179</sup> To these may be added 6. two classes already referred to, viz: Gunpowder-makers and Gunpowder-Dealers. For a different purpose, viz: that of guarding populous neighbourhoods against a dangerous nuisance, these two classes are already subjected to the controul of a licence under another authority, viz: that of the Justices in Sessions.<sup>180</sup> With [150\_657] a view to this last mentioned

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<sup>174</sup> This third class comprizes almost exactly the same occupations as the first class in this series.

<sup>175</sup> MS ‘fifth’.

<sup>176</sup> The Auctioneers’ Licences Act of 1777 (17 Geo. 3, c. 50, § 1) prescribed an annual licence fee for auctioneers of 20s. in London and 5s. in the rest of England and Wales, while the Act (§ 6) also stipulated that a bond of £200 be taken out as a surety for compliance with the terms of the Act.

<sup>177</sup> The Pawnbrokers Act of 1785 (25 Geo. III, c. 48, § 1) had prescribed that pawnbrokers be obliged to take out annual licences bearing a stamp duty of £10 in London, Westminster, Southwark, and within the Bills of Mortality, and £5 elsewhere.

<sup>178</sup> For the licensing of letters of post-horses and stage-coach keepers see pp. 90–1 n. above.

<sup>179</sup> For the licensing of slaughterers see p. 72 n. above.

<sup>180</sup> The Gunpowder Act of 1772 (12 Geo. III, c. 61) prescribed (§ 1) ‘That no Person or Person shall use, or cause to be used, any Mill or Mills, or other Engine or Engines, for the Making of Gunpowder .^^. except in Mills and other Places where the Manufacture of Gunpowder shall be actually carrying on at the Time of the Commencement of this Act, or where it shall afterwards become lawful to carry on such Manufacture, by obtaining a Licence to that purpose, under the provisions herein-after contained’, and (§ 13) that Magistrates at Quarter Sessions should be empowered to grant licences for the erection of new mills, reserving (§ 14) a right of appeal to the Court of King’s Bench in case of refusal to grant such licence.

purpose, the last mentioned authority seems to be by far the most proper to which these occupations can be subjected. But this need not prevent their being subjected to the authority of the Board of Police for another purpose, viz. that of enabling it to present government at all times with a statement of the stock existing, and obtainable within a given time, of this important article in the system of national defence, and at the same time to trace it into the several hands into which it may have to pass in large masses, that the machinations of the disaffected may be frustrated, or rather prevented, by the standing impossibility of that concealment, which would be necessary to their success. Divers classes of Publicans who receive licences from the Justices of the Peace, as well as from the Excise Office, afford so many examples of the practice of subjecting the same persons to take out licences under different authorities for different purposes.<sup>181</sup>

[150\_733]

The including [the several sorts of articles appropriated to the purpose of war]<sup>182</sup> in the system of licence-duties promises to be productive of several very distinct, as well as important, advantages—

1. It promises an addition to the revenue; in which point of view there seems no reason why the articles should not be subjected to a duty rising in proportion to number and quantity, as well as to the fixed and, therefore, necessar[il]y inconsiderable duty obtainable by a licence.

2. It affords a check to the practices of ordinary malefactors of the prædatory class, by affording the means of tracing them out.

3. It affords a check to the enterprizes of malefactors of the treasonable class, by enabling government to render it impossible for them ever to collect the means of warfare in sufficient quantity to endanger the public peace.

4. It affords a standing security against foreign enemies, by affording to government compleat and constant information with regard to the existing stock of these indispensable means of national defence at each given period, as well as with regard to the power of

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<sup>181</sup> For the licensing of publicans by Justices of the Peace see pp. 35 n. and 66 n. above, and for the requirement for excise licences for retailers of a variety of alcoholic liquors see pp. 195–6 n. below.

<sup>182</sup> MS ‘articles of this description’. The emendation is supplied from a cancelled paragraph at UC cl. 733.

encreasing it within a given time to any degree, in any emergency that may occur.

[150\_734]

5. It affords additional facility to the execution of any measures which now are taken, or at any future time may come to be taken, for preventing foreign enemies [from]<sup>183</sup> supplying themselves from this country with the means of prosecuting their designs against it.

6. In case of a duty on the export of this class of articles, by the comparison it would afford between the quantities manufactured previous and subsequent to the duty, it would serve to shew how far a duty of that sort (which, like other duties on exports, would have the great advantage of bearing exclusively upon foreigners)<sup>184</sup> might be eligible or otherwise.

7. It affords, in the instance of particular articles, particular advantages of subordinate importance, which will be mentioned in speaking of those articles: viz: lessening the number of accidents, and operating as a check to poaching, and to smuggling, in as far as the latter is endeavoured to be carried on by force.

[150\_735]

I. Gunpowder appears to be an article eminently proper for taxation: and that by a duty proportioned to the quantity manufactured, and levied upon the plan of the Excise Duties.

1. It is as remote as possible from the character of a *necessary of life*. It is as pure a luxury as any that can be imagined, and a luxury the use of which is attended with danger and mischief in a variety of shapes. Though the tax should operate to a certain degree in the character of a prohibition, it, therefore, will not be productive (as in other cases) of inconvenience, but rather, (as we shall see), of advantage on that score.

2. A tax on this branch of manufacture would be more difficult to evade than perhaps any other that can be imagined. On a small scale, it would not answer to carry it on: and on

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<sup>183</sup> MS 'for'.

<sup>184</sup> For earlier statements to this effect see, for instance, *Writings on Political Economy*: I, ed. M. Quinn, Oxford, 2016 (CW), pp. 212, 232, 261.

a large one, it could not be carried on without being exposed to notice. It would not answer to a man to bury himself for this purpose in a place remote from habitation: and if it were near other habitations, the idea of personal danger would give the neighbourhood an interest in lending their aid, by information and otherwise, to the execution of the law.

3. This species of manufacture has no secrets belonging to it: a consideration which has operated as an objection in the instance of some of the articles that have been brought under the Excise: Tobacco is one example, and the most recent one.<sup>185</sup>

[150\_736]

4. Among the collateral advantages of such a tax is its operating as a check upon the idle and dangerous practice of throwing squibs and crackers in the street—a practice which would not afford any diversion, but for the annoyance, terror and danger of which it is productive.<sup>186</sup>

5. In its restrictive tendency, the tax would operate in aid of the laws against poaching—by increasing the expence attending the exercise of that destructive and corruptive branch of industry.

6. In the restraint it would impose upon the accumulation of the means of giving effect to projects of sedition and rebellion, the use of the tax in the character of a measure of *finance*, and the use of it in the character of a measure of *police*, would give strength and efficacy to each other. The quantities of the article manufactured would, according to a capital and important observation made by the Author of the system, be much more vigilantly watched and accurately registered, than if police alone were the object, and not

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<sup>185</sup> In 1789 Pitt had proposed a Bill for transferring the larger part of the duties on tobacco from the Board of Customs to the Board of Excise. It met with vociferous opposition, both within and outside the House of Commons, partly on the grounds that it would expose trade secrets to the scrutiny of competitors. Richard Brinsley Sheridan (1751–1816), playwright and politician, in a debate in the House of Commons on 16 April 1790 stated that, ‘One hardship, perhaps, greater than any other, considered in a mere commercial light, which the manufacturers suffered under this act, was, that the mysteries of their trade were laid open, to the irreparable injury of their families and fortunes.’: see *Parliamentary History* (1789–91) xxviii. 665.

<sup>186</sup> The Fireworks Act of 1697 (9 & 10 William III, c. 7), enacted after a series of fatalities and injuries caused by ‘throwing, casting, and firing of Squibbs, Serpents, Rockets, and other Fire-works’, had prohibited the production, sale, and use of fireworks.

revenue.<sup>187</sup> The produce of the duty operates as a sort of premium given to the man of finance for his exertions in the service of the Police.<sup>c</sup>

<sup>c</sup> [150\_737] An observation that may present itself on the other side is that a tax laid upon this or any other species of information has a prohibitive tendency with regard to the exertions of those from whom the information is to come: the amount of the tax, the payment of which is to accompany the information, is, as it were, a penalty annexed to the act of furnishing it. Thus much is true: and the effect is, that with the tax, information will be apt not to be quite complete. But without the tax, the information would not be to be had at all. The trouble of giving the information is itself a tax, so that without compulsive measures it would not be to be obtained: hence it becomes necessary to add to this laborious duty, a pecuniary duty, the produce of which will serve to pay the man of finance for lending his assistance to the enforcement of both measures together.

7. The keeping and carriage of this Commodity have already been made the subject-matter of regulation: and among the regulations is included the requisition of a licence (by 12 G. 3. c. 61):<sup>188</sup> but, in respect of the object in view, the regulations have confined themselves to the prevention of mischief by pure accident. The power of granting the licence is given to the Magistracy in General Sessions, and no licence duty is imposed.

Gunpowder is sometimes made use of as an instrument of *mechanical* power in *Mines* and *Quarries*. Should the rate of duty that would otherwise be imposed be regarded as prejudicial to this use, the pressure of the overplus might easily be removed by a suitable drawback.

[150\_737]

8. Were it only with a view to the provision requisite for the purposes of national defence, it would be highly useful that Government should be possessed of exact and constant information of the stock in hand of this necessary article, and of the supply

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<sup>187</sup> See Colquhoun, *Treatise on the Police of the Metropolis*, pp. 15–16: ‘Whenever Dealers, of any description, are known to encourage or to support crimes .^.^ it becomes the indispensable interest of the State, that they should be restrained from pursuing at least the mischievous part of their trade; and that provisions should be made for carrying the laws strictly and regularly into execution. Restraints of a much severer nature attach to all trades upon which a revenue is collected’.

<sup>188</sup> See p. 95 n. above.

capable of being procured within a given time.

[150\_738]

II. Of the advantages derivable from the proposed duty on Gunpowder a part only adhere to that on Fire-Arms. Its operation does not apply to the case of the Nuisance of Street Fireworks.—But it applies in a more pointed manner to the mischief of *poaching*: and in a manner equally pointed to the danger of rebellion. It would be a most powerful check, (to say the least) to the practice of poaching, and at the same time make no small addition to the produce of the duty on Game-Licences,<sup>189</sup> if it were made penal for every person not having a game license, to have a fowling piece in his possession. The objection to this is, the injury that would thereby be done to the Gunsmith's trade: a remedy would be to appoint for the commencement of the regulation a distant period; suppose seven years.

Every man has a right (it has been said) to carry arms in his own defence—and to keep them for the defence of his House and Family. Every man's House is his Castle.<sup>190</sup> Admitted. But this does not prevent every man's Castle from being taxed: nor has it been understood to prevent a restraint upon the right of keeping guns for fowling, though the same gun which kills fowls would be equally capable of being employ'd upon occasion in killing Robbers. A Gun is a security against Robbers: but a policy of Insurance is a still more effectual security against loss by fire: and as Policies of Insurance against fire have been subjects of taxation,<sup>191</sup> so, with much more reason, may the sort of security afforded

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<sup>189</sup> The Game Certificates Act of 1785 (25 Geo. III, c. 50, § 2) required any person, other than a gamekeeper, who used 'any Dog, Gun, Net, or other Engine' to take or destroy game to be licensed annually, at a charge of £2 2s. in stamp duty, while licences for gamekeepers were charged at 10s. 6d. The Certificates for Killing Hares Act of 1791 (31 Geo. III, c. 21, § 1) raised the general licence fee to £3 3s.

<sup>190</sup> See Blackstone, *Commentaries on the Laws of England*, iv. 223: 'And the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity.'

<sup>191</sup> A stamp duty of 6d. on all policies of assurance, which in practice extended to those against fire, had been introduced by the Stamps Act of 1694 (5 & 6 Will. & Mar., c. 21, § 3), had subsequently been increased by a series of statutes, and in 1797 stood at 6s. on policies assuring property valued at less than £1,000, and 11s. on policies assuring property valued at £1,000 or more. The Stamp Act of 1797 (37 Geo. III, c. 90, §§ 23, 24) repealed these duties insofar as they related to policies of insurance against fire, replacing them with duties of 3s. on policies assuring property valued at less than £1,000, and 6s. on policies assuring property valued at £1,000 or more. A specific duty of 1s. 6d. for every £100 of property insured against fire had been introduced

by fire-arms against Robbers. The security afforded by the Policy of Insurance can not be productive of any other effect than the excellent effect of indemnifying a man in a certain degree against the tremendous calamity which it is employ'd to obviate: Fire-arms are equally applicable to a variety of most mischievous purposes as to this one good purpose: as easily employ'd *by* Robbers and other Disturbers of Society as *against* them.

[150\_739]

Over and above the duty on these articles in the hands of the Manufacturer and the Dealer, it is proposed to subject them—not to a licence or a licence-duty, but to a periodical *registration*-duty in the hands of the occupier: the duty to be a very low one, and established rather for the police purpose of knowing in what hands the articles in question are lodged, and what the quantity of them in the kingdom from time to time amounts to in the whole, than for any accession that may be derivable from it to the Revenue.

In this there is nothing inconsistent in the smallest degree with either the letter or the spirit of the Bill of Rights. What the Statute (1 W. & M. Sess. 2. c. 2. § 1. art. 7.) says on this head is—‘That the subjects .^.^ may have arms for their defence .^.^.’ But the ‘*subjects*’ spoken of are—not *all* subjects—but only ‘the subjects, which are Protestants .^.’. If, therefore, instead of being simply subjected to a *registration-duty* in common with all other keepers of arms, as proposed, the Democratical malecontents were to be subjected to the controul of a licence (which is not proposed) or even (which is still farther from being proposed) excluded altogether, as Papists were at the time of the Bill of Rights, and, it is believed, are still from the faculty of keeping arms,<sup>192</sup> and were even a new Test Act framed for the purpose,<sup>193</sup> the exclusion, so far from being repugnant, would

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by the Fire Insurance Duty Act of 1782 (22 Geo. III, c. 48, § 1), and was subsequently increased to 2s. by the Stamp Act of 1797 (37 Geo. III, c. 90, § 19).

<sup>192</sup> The Papists Act of 1689 (1 Will. & Mar., c. 15, § 2) ‘authorized and required’ Justices of the Peace to seek from anyone whom they ‘know or suspect to be a Papist’ the repetition of, and subscription to, a declaration against transubstantiation and the sacrament of the mass laid down by the Parliament Act of 1678 (30 Car. II, stat. 2), and further prescribed (§ 4) that no-one refusing to comply ‘shall or may have or keep .^.^ any Arms, Weapons, Gunpowder, or Ammunition (other than such necessary Weapons as shall be allowed to him by Order of the Justices of the Peace .^.^ for the Defence of his House or Person)’. The Act had been extended to Scotland by the Treason in Scotland Act of 1714 (1 Geo. I, stat. 2, c. 20, § 16).

<sup>193</sup> The Test Act of 1673 (25 Car. II, c. 2), designed to bar Roman Catholics and Protestant nonconformists from public office, required any candidate for such office, civil or military, to take the oaths of supremacy

be perfectly congenial to the spirit of the Bill of Rights. The object in view in the exception is—that the majority of the people, with the government at their head, may be secured against the machinations of a hostile minority, prone to plots and insurrections. This is the true spirit of the provision: whether this faction is composed of Jacobites or Jacobins, concerns only the *letter*.

[150\_740]

The Jacobins of the present day are beyond comparison more numerous, more dangerous, more ungovernable than the Jacobite Papists of that day. But the limitation which operates in exclusion of the Catholic portion of the mass of subjects is not the only limitation in the Act.—Speaking of arms, it goes on and adds, ‘*suitable to their conditions, and as allowed by law*’.<sup>194</sup> By the words ‘*suitable to their conditions*’, it provides carefully for limitations of the nature of those which have been applied by the *Game laws*:<sup>195</sup>—by the words, ‘*and as allowed by law*’, it carefully avoids weakening those securities which had been provided by Statutes then already existing and still continuing in force, viz: not only that before glanced at, and which, in the preceding session of the same year, had been established for the keeping of Papists in general constantly disarmed, but that of the early part of the reign of Charles the 2<sup>d</sup> (13 & 14 C. 2. c. 2. § 14) for the empowering the executive government at all times to disarm any such individuals as it might look upon as ‘*dangerous*’.<sup>d</sup>

<sup>d</sup>[150\_741] 1 W. & M. c. 15. {Recusants} §§ 5 & 6. Penalty on Recusants not discovering or hindering search for arms—Penalty upon Concealers of Arms—

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and allegiance to the Crown, to subscribe to a declaration against transubstantiation, and to receive communion according to the rites of the Church of England.

<sup>194</sup> See the Bill of Rights of 1689 (1 Will. & Mar., sess. 2, c. 2, § 1).

<sup>195</sup> The game laws were contained in a long series of statutes which sought to regulate the pursuit and killing of wild animals, fowl, or fish. Bentham may have had in mind such qualifications as that in the Game Act of 1717 (3 Geo. I, c. 11, § 1), which prohibited the lord or lady of a manor from appointing a gamekeeper with the authority to kill game, ‘unless such Person be qualified by the Laws of this Realm so to do, or unless such Person be truly and properly a Servant to the said Lord or Lady, or such Person be immediately employed and appointed to take and kill the Game for the sole Use or Benefit of the said Lord or Lady, and not otherwise’; or those in the Game Certificates Act of 1785 (25 Geo. III, c. 50), which exempted from the requirement to take out an annual game licence any person (§ 2) ‘acting as a Gamekeeper under or by virtue of a Deputation or Appointment duly registered’; and (§ 10) ‘any of the Royal Family ... [or] any Person or Persons appointed or deputed by them’.

Forfeiture of those arms, treble value and three months Imprisonment.

13 & 14 C. 2. c. 3. § 14. *Militia*—(unrepealed).<sup>196</sup> ‘And for the better securing the peace of the Kingdom, be it further enacted and [ordained],<sup>197</sup> and the said respective Lieutenants, or any two or more of their Deputies, are hereby enabled and authorized from time to time, by warrant under their Hands and Seals, to employ such person or persons as they shall think fit (of which a commissioned officer, and the constable or his Deputy, or the Tithingman, or in the absence of the constable and his Deputy and Tithingman, some other Person bearing office within the Parish where the search shall be, shall be two) to search for and seize all arms in the Custody or Possession of any Person or Persons whom the said Lieutenants, or any two or more of their Deputies, shall judge *dangerous to the Peace of the Kingdom*, and to secure such Arms for the service aforesaid, and thereof from time to time to give accounts to the said respective Lieutenants, and in their absence as aforesaid, or otherwise by their Directions, to their Deputies, or any two or more of them: Provided that no such search be made in any House or Houses between sun setting and sun rising, other than in Cities and their Suburbs, and Towns Corporate, Market Towns, and Houses within the Bills of Mortality, where it shall and may be lawful to search in the night time by warrant as aforesaid, if the warrant shall so direct, and in case of resistance to enter by force: (3) and that no Dwelling House of any Peer of this Realm be searched by virtue of this Act, but by immediate Warrant from his Majesty, under his sign manual, or in the presence of the Lieutenant, or one of the Deputy Lieutenants for the same County or Riding: (4) and that in all places and Houses whatsoever where search is to be made as aforesaid, it shall and may be lawful, in case of resistance, to enter by force; (5) and that the arms so seized may be restored to the Owners again, if the said Lieutenants, or in their absence as aforesaid, their Deputies, or any two or more of them, shall so think fit.’

[150\_742]

With regard to *Gunpowder*, restrictions have been established by other Statutes, consolidated by a Statute of the present reign: restrictions which, with a view to the object here in question, might upon occasion be found of considerable efficacy, though the object pointed at, and perhaps the only object in view in the framing of them, was the guarding against mischance or negligence. By 12 Geo. 3. ch. 61. § 11, more than 200lb at a time is

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<sup>196</sup> i.e. the Militia Act of 1662 (13 & 14 Car. II, c. 3, § 14).

<sup>197</sup> MS ‘declared’. The remainder of the note is in the hand of a copyist, but contains almost no punctuation, which is supplied from the Militia Act of 1662. There are minor inaccuracies in the rendering of the passage.

not to be kept, even by a Dealer, nor more than 50lb by any individual at large, in any one place within three miles of London or Westminster, or within one mile of any other Market Town in Great Britain, under a penalty of 2<sup>s</sup> per lb for the over-weight and forfeiture of the powder, with powers of search and seizure.<sup>198</sup> But this, though a considerable check, would not be an adequate one: because any quantities might notwithstanding be kept *without* those limits, and even *within* them, so long as they were distributed in parcels of less than 50lb weight each in different houses not actually contiguous.

In regard to *Artillery*, the Statute relative to Highways ([13]<sup>199</sup> G. 3. c. 78) contains a clause applicable to this purpose, though perhaps not established in this view. After limiting the weight capable of being carried on any one carriage by limiting the number of beasts of draught capable of being put to it, it establishes exemptions in favour of certain articles, among which is '*such ammunition or artillery as shall be for his Majesty's service*':<sup>200</sup> that being the case, ammunition or artillery not being for his Majesty's service remains unexempted. But this, though like the former a check, fails like the former of being an adequate one: since, by using wheels of a certain breadth, a man may draw artillery of any weight he pleases:<sup>201</sup> besides that here, the timely remedy by seizure being wanting, the tardy remedy by action or information would not come up to the purpose.

[150\_743]

Constitutional in the most perfect degree, and in every point of view, the proposed plan is warranted not only by the most sacred precedents as to that aspect of it which looks to the keeping of the means of offence out of improper hands, but by the most antient and venerable precedents, as to that part of it which regards the keeping in perpetual view the

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<sup>198</sup> See the Gunpowder Act (12 Geo. III, c. 61, § 23): 'That it shall be lawful for any Justice of the Peace of any County .^.^ in which Gunpowder is suspected to be made, kept or carried, contrary to this Act .^.^ to issue a Warrant .^.^ for searching in the Day-time, any House .^.^ or other Place .^.^ in which such Gunpowder is suspected to be made, kept or carried .^.^; and that all Gunpowder found upon Search .^.^ shall be immediately seized by the Searcher or Searchers'.

<sup>199</sup> MS '12'.

<sup>200</sup> See § 58 of the Highways Act of 1773 (13 Geo. III, c. 78).

<sup>201</sup> Bentham's point is that since § 55 of the Highways Act of 1773 prescribed that, 'Carriages moving upon Wheels or Rollers, of the Breadth of sixteen Inches, on each Side thereof .^.^ are hereby allowed to be drawn by any Number of Horses', any amount of gunpowder might be transported without contravening the Act, provided that the wheels of the vehicle used were sixteen inches wide.

stock of implements of national defence existing in national hands. It is after making it a matter of obligation to the subjects to be provided with the arms therein specified as being suitable to their property ‘*in lands and goods*’, (that is, to use the words afterwards employ’d by the Bill of Rights, *suitable to their conditions*)<sup>202</sup> that the Statute of Winton (13 E. 1. Stat. 2. c. 6) goes on and provides<sup>203</sup>—‘that View of armor be made every year two times. And in every Hundred and Franchise two Constables shall be chosen to make the view of Armour. And the *Constables* aforesaid shall present before *Justices assigned* such defaults as they do see in the Country about Armour .^.^ and also shall present all such as do lodge Strangers in uplandish Towns, for whom they will not answer:—and the Justices assigned shall present at every Parliament unto the King such defaults as they find, and the King shall provide remedy therein.’ Thus far the antient and truly wise and provident Statute of Winton.—In the proposed modern edition of it, accommodated to the times, what is proposed is—that ‘*View of Armor be made*’ every Year not ‘*two times*’ (as in the antient) but *one* time only: [150\_744] but that one time in such a manner as shall be effectual for the whole year round: and that the state of the Nation in this important point of view be presented not by ‘*Constables*’ to ‘*Justices assigned*’, (for at this time of day Constables and Justices assigned, i:e: Judges, have business enough without this) but by *Surveyors*, nominated by *Commissioners assigned*,<sup>204</sup> to those Commissioners, and by them to the King at all times, and, if need be, at any time to Parliament.

[150\_745]

As a part only of the advantages derivable from the proposed duties on Gunpowder adhere to those duties on that class of Fire-arms which is comprised under the name of *Small-arms*, so a part only of these adhere to the proposed duties on *Great Guns* and other *Artillery*. A tax on this latter article has no operation with regard to poaching: it has as little application to malefactors of the prædatory class. But it remains good against civil war, and it is still purer from objection than the purest of the two foregoing measures.

In as far as it were borne by Natives, it would be a very gentle and equal tax, diffusing itself, like a Port-Duty, in the most equable proportions over the whole mass of

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<sup>202</sup> See p. 102 & n. above.

<sup>203</sup> The Statute of Winton was enacted in 1285. There are minor inaccuracies in the rendering of the passage.

<sup>204</sup> Presumably the Surveyors appointed under ‘A Bill for the establishment of a Board of Police’: see pp. 162–6 below.

foreign trade. In as far as it were borne by foreigners, it would operate as an easement without pressure: and any danger of its operating in the way of a prohibition and a restraint on this branch of trade might easily be obviated by the known expedient of a drawback.

The salutariness of the Laws empowering the executive Government to prohibit upon occasion the exportation of Arms and ammunition to foreign Countries has never been disputed.<sup>205</sup> Those laws would derive a great accession of efficiency from the laws here proposed. A constant account current of the stock coming in, going out, and remaining in hand being thus kept up, not an article could be sent out of the Country without being missed.

[150\_746]

It is in the instance of the class of arms that stands last upon the list, viz: such as come under the denomination of *edged and pointed weapons*, that the advantage of including it in the system of registration and taxation is least considerable and most dubious. With a view to war, civil as well as foreign, this branch of the system is of less importance in proportion as the class of arms in question is of less importance in comparison of Gunpowder and fire-arms: and it does nothing with regard to *accidents* or *poaching*. Advantages, however, are not wanting, such as appear sufficient to warrant the adoption of it. *Cutlasses* and *Sabres* are employ'd in the Naval and Cavalry branches of warlike service. *Pikes*, partly by the facility and cheapness of their construction, partly by their supposed efficiency, in the opinion of some scarcely yielding to that of fire-arms,<sup>206</sup>

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<sup>205</sup> Examples of such statutes included the Correspondence with Enemies Act of 1705 (3 & 4 Ann., c. 13, § 1), which, for the duration of the War of the Spanish Succession, prohibited the export from England ‘unto or for the Use of the .^^. French King or any of His Subjects .^^. any Arms, Ordinance, Powder, Bulletts’ etc., on pain of the perpetrator being declared a traitor and subjected to the death penalty; the Exportation Act of 1756 (29 Geo. II, c. 16), which empowered the King to prohibit the export or coastal carrying of saltpetre, gunpowder, ‘or any Sort of Arms and Ammunition’, by Proclamation or Order in Council; and the Exportation Act of 1793 (33 Geo. III, c. 2), which prohibited the export of an extended range of items and authorized the seizure of such items by the Customs.

<sup>206</sup> Roger Boyle (1621–79), first Earl of Orrery (I), had lauded ‘the usefulness of the Pike, above the Musket’, noting that ‘besides the excellency of that Weapon, it is not only always in a readiness for Service, but needs no Ammunition to make it do Execution; both of which cannot be said of the Musket’; and arguing that in battle, ‘without dispute, the Pike is the usefulest Weapon for the Foot’: see *A Treatise Of the Art of War: Dedicated to the Kings Most Excellent Majesty*, London, 1677, pp. 24–5. By the end of the eighteenth century, the pike had been largely abandoned by modern armies, but military writers occasionally extolled its

are an implement unhappily well adapted to the purposes of insurrection and civil war, that the finding an article of this kind in any House, has in Ireland been regarded as conclusive proof of treasonable conduct or designs on the part of the occupier of the House.<sup>207</sup> Let no pikes, any more than any other species of military weapon, exist any where in the country in any [150\_747] considerable numbers, without government's knowing where to find them, treasonable conspiracies can never be to be apprehended, so long as Government possesses the affections of the majority of the people. Some small swords, though a mere remnant of barbarous luxury and ostentation, useless and inefficient for every purpose of national defence as well as offence, constitute on that account but the more proper and unexceptionable an object of taxation. Till within these few years, a tax on small swords would have been a tax on gentlemen in general: at present, it would be nothing but a tax on *courtiers*, who have no business to be so, unless they can afford it.

There is another consideration which may add to the arguments that plead in favour of that branch of the tax which concerns *edged and pointed weapons*. It is with a view to the practices of malefactors of the *prædatory* class that the utility of that which concerns fire-arms may appear most questionable. Whatever robberies are committed, it is better for the persons exposed to them that the instrument employ'd should be a pistol or other fire-arm, than that it should be an instrument belonging to the class of edged and pointed

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virtues and called for its return: see, for instance, Henry Lloyd, *A Rhapsody on the Present System of French Politics; on the Projected Invasion, and the Means to Defeat It*, London, 1789, pp. 69–70, 72\*–73\*.

<sup>207</sup> The Insurrections, Arms Act of 1798 (Statute of the Irish Parliament 38 Geo. III, c. 21, §§ 4–6) rendered any person found in possession of 'any arms or ammunition, or any pike, pike-head, spear, dirk, or any other offensive weapon of any kind whatsoever', after having been called upon to deliver them up, liable to punishment as a 'disorderly person' by being sent for compulsory service in the army or navy; empowered magistrates to issue warrants to search houses for illicit 'pikes, pike-heads, daggers or dirks'; and rendered any unlicensed manufacturer of such items liable to conviction as a felon and thence to seven years' transportation. The Act, however, did not state that the discovery of pikes constituted evidence of treasonable intentions. Bentham may have had in mind the case of Thomas Braughall (1730–1803), merchant, politician, and Secretary of the Dublin Society 1792–8, who in May 1798 (shortly after the outbreak of the rebellion initiated by the Society of United Irishmen) was arrested and committed to Kilmainham Gaol under a Privy Council Order for 'having been concerned in treasonable practices', one of the allegations against him being that, in the course of a search by the Revenue Yeomanry Corps, pikes had been found buried in his garden: he subsequently secured his release on bail, and the case proceeded no further. See *The Times*, 7 June 1798, p. 2; J.W. Hammond, 'Thomas Braughall, 1729–1803, Catholic emancipationist', *Dublin Historical Record*, vol. xiv (1956), 41–9.

weapons. A *pistol*, when once brought into action, loses for that time its power of serving any longer either for offence or defence: in general, therefore, it will not be thus employ'd, it will not be *fired off*, but at the last extremity. In the case of an *edged or pointed weapon*, whatever mischief may have been already done by it, the power of continuing to do mischief with it will not be at all diminished. Accordingly, in the present practice with pistols, a pistol is seldom fired at a man before the question is [150\_748] put to him whether he will surrender: and if it is fired, and fired without effect, the resource of the robber being exhausted with the firing of his last pistol, after that he has nothing left but flight for his security. Were pistols to be discarded, and cutlasses employ'd on these occasions in their room, the cutlass, it seems probable, would frequently be employ'd in the first instance and without any question put: particularly where the person assaulted appeared to be well qualified either for resistance or for flight. If, then, edged and pointed weapons were left out of the plan, while pistols were included in it, the tax on the latter would operate as a kind of bounty on the former: and in as far as it operated as a pistol tax, it would, by checking the use of the less pernicious species of the two, promote the use of the most pernicious.

The fate of the Watch tax, which promised so well in principle, may appear at first sight to afford an argument against the proposed taxes on arms.<sup>208</sup> But the cases are widely different. For, besides that there is nothing to be gained by checking the use of watches, or knowing who it is that wears, or how many there are that wear, watches, the tax on watches was such as operated in the event (little as it were to have been expected) in a great degree

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<sup>208</sup> Pitt had announced his intention to introduce a tax on watches in his budget of 30 June 1797 (*The Parliamentary Register; or, History of the Proceedings and Debates of the Houses of Lords and Commons*, 18 vols., London, 1797–1802, (1797) ii. 762–3), and the duties of 10s. on gold watches, 2s. 6d. on silver or metal watches, and 5s. on clocks were imposed from 5 July 1797 by the Duties on Clocks and Watches Act of 1797 (37 Geo. III, c. 108, § 1). Between December 1797 and March 1798 petitions against the duties were submitted to the House of Commons by parishes and by manufacturers or dealers in watches in London, Bristol, Coventry, Leicester, Prescott, Liverpool, Edinburgh, and Carlisle, which indicated that both sales and production of watches had fallen by more than 50% after the introduction of the tax: see *Commons Journals* (1797–8) liii. 158–9, 167–8, 174, 178–9, 230, 232–3, 247, 250–1. In response, on 14 March 1798 Pitt announced (*Parliamentary Register* (1798) v. 338–9) that he ‘should this day move for a repeal of the duty upon watches and clocks, from a conviction that it was insufficient and unproductive’, recognized that ‘it was found to bear most hard upon an ingenious and industrious part of the community, who could not endure the

in the character of a prohibition. In the instance of arms, no such result is to be apprehended. The amount of the duty is not proposed to be near so high as the amount of the duty on the lowest priced sorts of watches: instead of 2<sup>s</sup> 6<sup>d</sup>, not above 1/5 part—viz: 6<sup>d</sup>, for [150\_749] a single gun, blunderbuss or pistol: not above 2/5<sup>th</sup> parts, viz: 1<sup>s</sup>, for a *pair of pistols*. A watch is not less necessary to a *non*-housekeeper than to a housekeeper: a man who is not a housekeeper, especially if he be so low in circumstances that a tax of 6<sup>d</sup> or 1<sup>s</sup> a year would be more than he could bear, can scarce have any good occasion to keep swords or guns. Another thing is, that for *twenty* persons who keep watches, there probably is scarcely *one* who keeps a sword or pistol. All things considered, there does not seem, therefore, to be any danger that the trade in arms should suffer any material detriment from the operation of any such duty as is proposed: and so far as the trade did sustain a check (which again would be but a momentary one), so far that article of disadvantage would be compensated by the advantage of keeping the instrument out of dangerous and improper hands. The *time* too, viz: *war time*, would constitute another head of difference to the advantage of the proposed tax. War time, a season of itself disadvantageous to the watch trade, as well as to every other peaceful branch of trade, is eminently advantageous to every branch of the arm-trade: any little check given to it would, therefore, be in proportion the less felt: it would be—not, as in the case of the watch-tax, an enhancement of adversity, but only a defalcation, and that a slight one, from the amount of extraordinary prosperity.

[150\_750]

To the purpose of national defence, instruments of conveyance are of little less importance than arms and weapons. To pursue, compleat and adapt to the circumstances of modern times the system of which the foundation was laid in the Statute of Winton, (the Statute of the 13 Ed. I)<sup>209</sup> it would be necessary to add to the '*View of Armour*', i:e: to an acquaintance with the existing stock of implements of war, an acquaintance equally perfect, accurate and extensive with the existing stock of Beasts of Draught, and Carriages of all Sorts, *Water Carriages*, for inland as well as maritime conveyance, not excluded.

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loss and hardship it created', and indicated that he would seek to replace the expected yield of £200,000 by increasing assessed taxes.

<sup>209</sup> See p. 105 & n. above.

In this view, provision has already been made (by 35 G. 3. c. 58)<sup>210</sup> for obtaining information of some sort with regard to the stock of *Boats and Barges*: as likewise, though with views principally if not exclusively financial, information with regard to the existing stock of the means of land conveyance, animate and inanimate, Beasts of Draught and Burthen, and Carriages.<sup>211</sup> Much has, therefore, been done already in this important line of political science: much more than what remains to be done: but still no small part of the business remains as yet undone: partly because the stock of information called for has been narrowed and cut short by a variety of omissions and exceptions; partly because the means employ'd for securing obedience to the call have not been always so efficient as could have been wished.

[150\_751]

Not to dwell on the collateral advantage of completing the body of information relative to the national stock of the means of conveyance, the extending the licencing system to divers classes of persons having to do with Horses, has two main objects in view: 1. the applying a check to depredations of which the animals themselves are the subject-matter: 2. the obtaining intelligence upon occasion of the motions of travellers of various descriptions, by whom the animals come to be made use of as instruments of conveyance. By information obtained concerning horses, with reference to the hands through which they pass, means are obtained of bringing horse stealers to justice: and by information obtained of those by whom, on such or such an occasion, such or such a horse is *made use of for conveyance*, means are obtained of tracing out and intercepting delinquents of all classes in their attempts to fly from justice. This latter use, being confined to *beasts of*

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<sup>210</sup> i.e. the Registry of Boats Act of 1795.

<sup>211</sup> The National Debt Act of 1747 (20 Geo. II, c. 10), had introduced (§ 1) annual duties of £4 on four-wheeled coaches and carriages and £2 on two-wheeled chaises and similar vehicles, and made provision (§ 6) for the maintenance of registers of vehicles by the Offices of Excise in England and Scotland. Subsequent legislation raised the duties and extended their range to cover stage coaches (Taxation Act of 1776 (16 Geo. III, c. 34, § 1–2)), wagons and carts (Duties on Waggons, etc. Act of 1783 (23 Geo. III, c. 66)), and horses used for riding, drawing carriages, or racing (Duties on Horses Act of 1784: 24 Geo. III, sess. 2, c. 31)). Responsibility for monitoring and collecting these duties was transferred by the Excise Act of 1785 (25 Geo. III, c. 47) to the Commissioners for Taxes. The Duties on Horses Act of 1795 (36 Geo. III, c. 15) imposed a duty on horses and mules previously exempt (including those used for draught purposes). Most of the existing provisions were repealed and superseded by new scales of duties and revised requirements for the maintenance of records by the Duties on Servants, etc. Act of 1798 (38 Geo. III, c. 41).

*draught and burthen*, is in a manner confined to *horses*: the other extends itself to every other species of quadrupeds, *dogs* included, for instance, as well as the several sorts of animals included under the general denomination of *cattle*.

[150\_752]

By that branch of the system which concerns *horses*, combined with the branch which concerns *arms*, an additional assistance, and that of no mean importance, might be obtained against *smuggling*: and in this way the revenue might receive a sort of indirect accession to an amount more considerable, perhaps, than that of the direct produce of the duties on these classes of Dealers. The narrower the bounds within which the practise of smuggling can be confined, the greater the degree in which taxes on consumption, and, amongst taxes on consumption, taxes on those articles by the consumers of which the contribution can be best afforded, may be made to take place of other taxes more unequal and burthensome.

The principle upon which the Commutation Act is grounded seems to be—that in the instance of every article there is a certain fixed rate above which the duties upon that article can not be raised without taking away from the produce of the tax, by the encouragement given to smuggling, as much as is added to it by the extra-rate of duty.<sup>212</sup> The principle is true, under any given state of the laws relative to this subject: but if it be understood to mean, that there is a certain rate per cent, the same for *all articles*, and under every system of *regulations*, beyond which no augmentation can be made under any system of Laws, so as to add to the total produce of the tax, the notion would be found as erroneous in theory, as the influence and application of it might prove pernicious in [150\_753] practice. Under the existing system of laws, one species of article will, by reason of the superior difficulty of concealing it or what is done to it, bear a much heavier tax than another: and, under an improved system of laws, no article but what might be

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<sup>212</sup> The Commutation Act of 1784 (24 Geo. III, sess. 2, c. 38) reduced the rate of duty on imported tea from 119% to 12½%. The Bill was introduced by Pitt on the advice of Richard Twining (1749–1824), tea and coffee merchant and Director of the East India Company, who argued that it would both remove the incentive for smuggling and stimulate an increase in consumption, so that total revenue from this source would not decline in proportion to the reduction in duty, while the shortfall in revenue which did eventuate might be compensated by an increase in the window tax. See Richard Twining, *Observations on the Tea and Window Act, and on the Tea Trade*, London, 1784, pp. 4–10.

made to bear a much heavier tax than it does at present. The accession produced to the revenue by the application of the powers of the Excise laws to those two branches of the Revenue which concern Wine and Tobacco affords a perspicuous illustration, as well as an undeniable evidence, of this truth. Many are the prejudices, the vulgar errors, and those of the most groundless as well as pernicious nature, by which the operations of justice in relation to this branch of the national resources are obstructed: these prejudices, partly through artifice, partly through honest error, it is one principal and constant study of the intestine enemies of the country to foment and strengthen upon all occasions with their utmost industry. Every institution which tends to give strength and efficacy to the laws will be attacked with a degree of violence, every institution which tends to weaken them defended with a degree of pertinacity, exactly in proportion to that tendency: and the proposed system has too much efficiency in it in every branch, and especially in that which points with particular aim against insurrection and rebellion (I mean that which concerns the supply of the means of defence and offence, arms and ammunition) not to intitle itself to be taken for the object of their most strenuous attacks.

[150\_754]

According to a paragraph from the French Papers of the date of 28<sup>th</sup> February 1799, as repeated in the *Times* of 5<sup>th</sup> March 1799, the French Commander in Piedmont, ‘General Grouchy,<sup>213</sup> had published a Proclamation declaring that every person upon whom there should be found a poniard or stiletto, should be instantly shot; and that all cutlers and venders of cutlery, who should not within three days deposit with the Municipality all weapons of this description in their possession, should undergo the same fate.’<sup>214</sup> In regard to the principle of the measure, English and French Police may be perfectly agreed without departing from their respective characters: security is and ought to be equally the object of both: the only difference is in the application: English Police contents itself with laying open to government a man’s motions and proceedings,<sup>215</sup> which done, all danger from him is at an end: French Police, to make sure work, cuts his throat.<sup>216</sup>

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<sup>213</sup> Emmanuel de Grouchy (1767–1847), second Marquis de Grouchy.

<sup>214</sup> There are minor inaccuracies in the rendering of the passage.

<sup>215</sup> MS orig. ‘English police indicates a man as being what he is—as doing what he does’.

<sup>216</sup> Bentham has cancelled the following paragraph and noted above it: ‘Superseded’.

To complet the plan, besides the Classes of Hawkers, Hackney Coach-keepers, and Hackney Chair-Keepers, whom it is necessary in the course of the present Bill to assign over to the jurisdiction of the proposed Board of Police, for the purpose of suppressing the two Offices to which they are at present subject,<sup>217</sup> there remain the several classes of 1. Auctioneers, 2. Pawnbrokers (as such), 3. Horse-dealers, 4. Post-Horse-Letters, and 5. Stage-Coach-Keepers. But these being all of them subject at present to the jurisdiction of other Offices, and having all of them been taken for the subject-matter of regulation by existing Statutes,<sup>218</sup> the transferring them from these Offices to the proposed Board, would, besides the danger of opposition, require such a quantity of matter, as even according to the concicest mode of drawing, would form too heavy a load for the present Bill: since it would be necessary that the whole mass of existing regulations relative to these several objects should either be adopted *in toto* and without change, or else revised, in which latter case so many alterations would be requisite to adapt the existing system to the new plan, and so much recital of Statutes within Statutes would be necessary for the purpose, that the shortest, and indeed only feasible, course would be to establish a new Code on the subject of each of these occupations, repealing in the lump all the existing Statutes and parts of Statutes relative to that head. On this account, the leaving those parts of the plan out of the present Bill is a sort of omission, that seemed altogether unavoidable.<sup>219</sup>

[150\_756]

The only exception made to the above general rule, is that which concerns the Class intituled *Slaughterers, Skinners and Boilers*.<sup>220</sup> This has been inserted into the present Bill, because at the same time that the class seemed to be of the number of those that stand highly in need of being included in the proposed plan of controul and regulation, the existing *Statute* (for there is but *one* by which they have been put, or rather been *attempted* to be put, under regulation)<sup>221</sup> is so circumstanced that it may be repealed *in toto* with little or no danger of opposition, without any inconvenience, and with considerable advantage.

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<sup>217</sup> See pp. 85 above and 209 below.

<sup>218</sup> See pp. 90 & n. and 95 & n. above.

<sup>219</sup> Bentham has crossed through much of the following paragraph.

<sup>220</sup> This class was included by Bentham in ‘Heads of .^.^ a Bill for the granting to his Majesty certain duties on Licences’ (pp. 62–3 above), but omitted from ‘A Bill for the establishment of a Board of Police’.

<sup>221</sup> i.e. the Knackers Act of 1786 (26 Geo. III, c. 71).

That the repeal of it would be no loss to the Statute book may be inferred from the following considerations:

1. That in point of fact, except in the Metropolis and its near neighbourhood, it is not generally, if at all, carried into execution, because the Inspectors, who are to be chosen in the Parish Vestries, and by whom every thing is to be done, are not appointed.

2. That consequently, taking the whole country together, it could not be productive of much benefit, were it in other respects ever so well framed.

3. That it teems with excessive punishments for offences trivial in themselves, and very ill defined: viz: Felony for slaughtering &c. without licence, or a minute too early in the day, or too late, or without giving notice, or for not conforming to whatever directions may be given by the Inspector, with regard to time.<sup>222</sup>

4. That among the regulations, which, being made by Parliament, are consequently unchangeable and inflexible, unless by a fresh Act, are many that are of so complex a nature, and which it would require so much trouble and delay to observe, that the expence and inconvenience of the observance would be enough to eat up the profits of the trade. On pain of whipping, not a lamb, nor a pig, nor a kid is either to be killed (otherwise than for food) or skinned, without 6 hours' notice given to an Inspector;<sup>223</sup> so that if the class of Inspectors is not numerous enough to afford one within call of every man who has an unsound lamb or pig or kid to dispose of in this way, the business can not be carried on, and so much property must be lost.

[150\_757]

5. That the change, from the existing to the proposed system, will not in this instance be attended [with] any loss of existing power, since the Justices who would have had the

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<sup>222</sup> See the Knackers Act of 1786 (§ 8): 'if any Person or Persons, keeping or using any such Slaughtering House .^.^ shall .^.^ slaughter any Horse .^.^ or other Cattle, for any other purpose than for Butchers Meat, or shall flay any Horse .^.^ or other Cattle, brought dead to such Slaughtering House or other Place, without taking out such Licence, or without giving Notice as aforesaid, or shall slaughter, kill or flay the same, at any Time or Times other than and except within the Hours herein before limited, or shall not delay slaughtering or killing the same, according to the Direction of such Inspector authorised to prohibit the same as aforesaid, such Person or Persons so offending .^.^ shall be adjudged .^.^ guilty of Felony'.

<sup>223</sup> See p. 72 n. above.

granting the licences under the existing Act, had it found execution, will have the granting them under the proposed Act; but with an encrease of power, since under the new Act the grant will be *discretionary*, in this as in the other instances, whereas *now* it is matter of course.

As to the remaining classes already subject to license-duties, viz: Pawnbrokers, Auctioneers, Letters of Post-Horses, and Keepers of Stage-Coaches, the difference in point of advantage betwixt the existing system and the proposed system is not so considerable, but what the public may wait for it without much inconvenience till after the establishment of the proposed Board. 1. *Pawnbrokers* are already in effect brought within the discretionary powers of the Board in their quality of *Forfeited-Pledge-Sellers*: an occupation which appears so indispensable an appendage to the principal part of their business, that there seems little reason to apprehend that the proposed duty, though it were much heavier than it is, should cause them in any instance to give it up. 2. In regard to *Auctioneers*, the demand for the species of check in question is not of any great urgency. 3. and 4. The same may be said of the classes of *Post-Horse-Letters* and *Stage-Coach-Keepers*, who, at present, for the purpose of *revenue* merely, have been subjected to a very complex set of regulations, which could not be broke in upon without a good deal of consideration. 5. In the instance of *Horse-dealers*, indeed, the demand seems to be more urgent: but to include them in the system with effect might require a set of regulations not yet matured. What I have in view is the small tax that has been proposed on the *transfer* of this kind of property,<sup>224</sup> a plan which, considered merely with a view to the object for which it was proposed, viz: the affording an additional security against horse stealing, would hardly be found to *pay*, perhaps, in point of security, for what would be the necessary cost of it in the way of trouble and inconvenience; but which, at the same time, if the benefit in point of revenue were taken into the account, might perhaps be found a

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<sup>224</sup> In a brouillon at UC cvii. 191 (13 May 1798), headed ‘Police Revenue’, Bentham has noted ‘Quere the Maidstone man’s plan for prevention of Horse stealing’. The ‘Maidstone man’ has not been identified, though Bentham perhaps had in mind the ‘Plan for Prevention of Depredations on Horses’, copied at UC cxlix. 30–2, which called for the establishment of a national register of horses, with owners paying 2s. 6d. per horse for initial registration, and a further 3s. 6d. on sale. The author estimated that one-sixth of horses changed hands each year and that the annual duty on their sale would produce revenue of £43,750. Related materials in the form of a draft ‘Amendment to the late Act of Parliament passed July 20<sup>th</sup> 1786’, i.e. the Knackers Act of 1786, and ‘An Account of the Villainy that is carried on in regard to the Buying and Selling Horses’, by a Richard Minton of Hoxton, are at UC cxlix. 33–4 and 35 respectively.

measure not ineligible upon the whole.

[150\_758]

In the consideration of the means to be employ'd for bringing into action the system of controul above exhibited, a very important topic is that which concerns the nature and extent of the powers of regulation, if any, which shall be given to the Board.

In the Report of the Committee, a point is started, as a subject of farther inquiry, whether a portion of legislative authority (subject not only to the general and occasional controul to which the Board is to be subjected in respect of all its operations without exception, but also to the special and inseparable controul therein mentioned, viz: the concurrence of the four principal Judges) shall not be entrusted to the Board, exerciseable over all persons without exception with reference to certain topics of regulation therein specified.<sup>225</sup> For a power of an extent thus unbounded in respect of the description of the persons subject to it, I know of no precedent: the demand for it does not appear urgent; the repugnance towards it seems likely to be strong and general; and the operation of marking out the limits of it would, I imagine, appear the more difficult the more closely it were examined into: and upon the whole, the objections to the attempt of introducing any such ingredient into the system, present themselves, for the present at least, and antecedently to the establishment of the Board, as too strong to be contended with.

[150\_759]

In the case referred to by the Committee as affording a precedent of the establishment of a power of the sort in particular question, viz: that of Hackney Coach-Keepers, the power is not only controuled by the necessity of a concurrence on the part [of] the four Judges, as above mentioned, but, what is of much more importance, confined in respect of the persons subjected to it, to the particular, and very narrow class just

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<sup>225</sup> In its examination of Colquhoun, the House of Commons Select Committee on Finance asked whether it might 'not be desirable to give to the proposed Central Board of Police a Power similar to that now enjoyed by the Hackney Coach Office, and similar to what is enjoyed by many Corporations, of enacting Bye Laws for the better Regulation of minor Objects of Police, such Laws to be subject to the Revisal, and to require the Approbation and Sanction, of the superior Judges of the Courts of Westminster Hall?' See 'Twenty-Eighth Report from the Select Committee on Finance', Appendix D, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 58. The 'superior Judges' were the Lord Chancellor, the Lord Chief Justice, the Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.

mentioned. What concerns the controul will be considered farther on: but in the mean time, a circumstance that renders the enquiry of less moment is that a species of subordinate legislative authority is to be found conjoined with the power of superintendence in a variety of instances, unfettered by the necessity of any such preliminary allowance.

[150\_760]

The case of Publicans is the case which, in respect of all its principal points, has been taken for a model in the adjustment of the system delineated in the present Bill: a distinction to which it seems intitled not less well by the amplitude and efficiency of the powers which it exhibits, than by the success with which the plan appears to have been attended, and the degree of satisfaction with which it appears to be *generally*, and indeed, for aught that appears, *universally*, contemplated. But in this case the power, with regard to the grant or refusal of the licence, is discretionary, and so purely discretionary, as to be little less than arbitrary: for it is settled law that no reasons need be given in justification of the refusal of such a licence: and that no *Mandamus* will lie to compel the grant of it.<sup>226</sup> Under this species of discretionary superintending authority, a sort of indirect power of command,<sup>227</sup> exerciseable over individuals, is in the nature of things virtually included: since the refusal of the permission necessary to a man's carrying on the occupation on which his livelyhood depends is a punishment, and that a very heavy one, and the power of commanding can never be altogether wanting where the power of punishing is to be found. But to this, it seems, has been added a more explicit species of legislative power, and to all good purposes a more efficient one, by means of the *Recognizance*, which in this case has been made the inseparable accompaniment of a licence.<sup>228</sup>

[150\_761]

In Burn's *Justice*, article *Alehouses*, Section IV, entitled '*Recognizance and forfeiture thereof*', it is said, 'And he (M<sup>r</sup> Dalton) says, in some Shires the Justices have agreed upon certain articles framed by their discretion, and generally to be propounded to

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<sup>226</sup> See Burn, *Justice of the Peace*, i. 21: 'it is discretionary in the justices whom they will license, and a *mandamus* in such case will not lie to compel the justices to license any person; and on a conviction for selling without licence, the want of such licence can only come into question, and not the reason why it was denied'.

<sup>227</sup> MS orig. 'legislation'.

<sup>228</sup> See p. 66 n. above.

all common Ale-sellers: taking their Bond for performance of the same: a copy whereof they used to deliver to every [one] of them; which manner (he says) had been allowed.<sup>229</sup>

How far the practice thus approved of is pursued at present, is an enquiry not very material to the present purpose: the sanction thus given to the practice remains, and extends over the whole country, howsoever it may be with regard to the practice itself: and thus stands the matter in point of *precedent*.

Considered with reference to utility in the abstract, the power may appear a strong one, and has certainly for its direct object rather the advantage of the community in general, than that of the particular class of persons thus put under subjection:—but the more closely it is examined into, the more beneficent it will be found, even with reference to those very persons themselves. Admitting that they are to be subjected to controul and regulation in certain respects, it is altogether for their advantage that an intermediate authority, especially an authority so much more accessible to them, should be interposed between them and Parliament. Supposing Parliament to be on any occasion led into error, whether by error or corruption on the part of those on whom its confidence has been bestowed, there is no higher authority by which the error can be redressed: and having to do with a body at once so fully occupied and so difficult to be moved, the class thus aggrieved may have years to wait [150\_762] before the relief, which it is all the while suffering for the want of, can be extended to it. When the error originates with a subordinate authority, there is not only Parliament to set it to rights, but, if accompanied with blame, there are the Courts of Justice to punish it. Thus stands the question with regard to subordinate authority of the legislative cast considered in a general point of view: but in the present case, besides the general controuling authorities just mentioned, viz: the legislative and judicial powers, there are the superior branches of the executive authority, the Treasury Board and the Secretary of State's Office, not only to rectify any false steps taken in the exercise of this

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<sup>229</sup> See Burn, *Justice of the Peace*, i. 22. There are minor inaccuracies in the rendering of the passage. Burn himself was quoting Michael Dalton, *The Country Justice: containing the Practice, Duty and Power of the Justices of the Peace, as well in and out of their sessions* (first published as *The Countrey Justice* in 1618), London, 1742, p. 435. Among the 'articles' commended by Dalton to the Justices' care were that none but 'Travellers, and such as come upon necessary Business' should be received in an alehouse on a Sunday; that no-one 'resorting to their Houses only to eat or drink' should be permitted to remain after 10 pm between March and September, and after 9 pm between September and March; and that no-one so resorting should be suffered 'to remain Tippling there above one hour': see (*ibid.* pp. 435–6).

subordinate authority, but to prevent them from being taken—not only to apply an immediate remedy to any mischief flowing from this source, but to prevent its rise in the first instance.

Add to this, that where a discretionary power of punishing, such as that we have been seeing, exists, the direct and avowed exercise of the power of commanding is in fact—not an aggravation—but a real alleviation, of the yoke:—so far as the regulations made extend, so far a man knows what is expected of him, and what he has to trust to: and the will and pleasure thus de[c]lared to him on the part of those to whose governance he is subjected, is itself exposed to the examination, and subjected to the censure, of the public eye. In judicature, the value and use of the *right of appeal*, in the character of a security against an improper exercise of the power from which the appeal is given, is universally recognized: in legislation, the advantage of a similar right, though not equally adverted to, would, upon examination, be found equally incontestable.

[150\_763]

Thus stands the matter, in the case where the only limitation prescribed by the supreme authority to the extent of the power of subordinate legislation intrusted to a subordinate authority is that which is created by a specification given of a particular class of persons as being thus put under command, coupled with some general indication of the object or end in view: where the topics on which the exercise of the power is to bear are likewise defined and specified, the utility of it is, of course, still less open to dispute. Precedents in which this has been done are both numerous and extensive.

1. Under the Excise laws, *Books of account* are required to be kept, by the various Dealers and manufacturers subjected to that mode of taxation; and the power of prescribing the heads under which the articles in those Books shall be entered, and even of furnishing the Books themselves, is given to the Commissioners under whose government the classes of persons in question are placed: and the truth of the information thus allowed to be called for is required to be confirmed by oath.<sup>230</sup> The fruit of this power, when exercised, is—the

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<sup>230</sup> For the power to prescribe the mode of keeping accounts see, for instance, the Excise Act of 1724 (10 Geo I., c. 10, § 35), which directed that ‘all Sellers and Dealers’ in ‘Coffee, Tea, Cocoa Nuts and Chocolate’ should keep account by making nightly entries in Books ‘hereby directed to be prepared for the making such Entry .^.^ and delivered .^.^ by the Commissioners for the said Inland Duties’. The same Act (§ 17) directed

drawing forth a compleat and undiscontinued history of the transactions of the classes of persons in question in the way of their respective professions, so far as government is interested in being apprized of them, for the purpose of taking measures to prevent the evasion of the payments or other obligations to which it has subjected them: a power of the same nature as the judicial power of *examination*, except that the exercise of it is made perpetual and uninterrupted, instead of being, as in that case, but momentary and occasional: and, for the same purpose, a similar power is given in a variety of instances to other Boards of Revenue, such as the Stamp Office, for example.<sup>e</sup>

<sup>e</sup> [150\_764] 1. By the original Stamp Act (5 W. 3. c. 21) it is provided (§ 12) ‘that the Judges in the several Courts and such others to whom it may appertain, at the request or requests of the said Commissioners (of Stamp Duties) .^.^ to be appointed by their Majesties as aforesaid, or of any two or more of them, shall make such Orders in the respective Courts, and do *such other matters and things, for the better securing of the said Duties*, as shall be lawfully and reasonably desired in that behalf.’

2. By the *Post-Horse-Duty Act* (20 G. 3 c. 51) it is provided (§ 9) ‘that the said Commissioners (of Stamp Duties) shall, at the time of delivering such licence .^.^ deliver .^.^ to every .^.^ person so to be licenced, .^.^ papers (intituled Stamp-Office Weekly Account) in which shall be inserted the day of the week, and blanks left for .^.^ &c. to be filled up as herein after directed, according to the following form, *or such other form as the said Commissioners shall judge convenient for keeping such accounts* .^.^.’

3. By the *Hat-Duty Act* (36 G. 3. c. 125) power is given to the Commissioners (of Stamp Duties) ‘to make such regulations as they shall think fit and necessary, as well to prevent the concealment of the stamp upon any linings or inside coverings affixed to or in any such Hats, as to prevent the stamps sold and disposed of therewith from being made use of again for the like purpose’.<sup>231</sup>

[150\_765]

In the case of *Pawnbrokers*, and in that of *Horse-slaughterers*, an obligation of the same sort is imposed, and in these instances for the mere purpose of Police, without any

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that every ‘Maker of Chocolate’ should regularly make ‘a true and particular Entry in Writing at the next Office .^.^ of all Chocolate .^.^ made by or for him, her, or them .^.^ ; which Entry shall be made upon Oath’.

view to Revenue. In the present case, where the interests of Police and Revenue are combined, the reason in favour of the regulation contended for applies with double force. In those cases, it is true, the function of prescribing the forms of the Books is not committed to any subordinate authority, being performed by the legislature itself: but the cause and reason of the omission is evident. In the above quoted *Revenue Cases*, a superintending authority was provided under whose superintendence the classes in question were placed; viz: the Board of Excise: in these *Police* cases, there was no such superintending authority, to which the function could be assigned. In the Revenue cases, Parliament, being provided with a subordinate authority, capable of receiving and executing a power of subordinate legislation in that behalf, invested it with such a power, and in this way turned over the business in question to those subordinate and inferior hands: in the Police cases, not being provided with any such hands, it found itself obliged to do the business with its own hands, as well as it could: which, however, was but indifferently, as we shall see.

An experimental proof of the inconveniences resulting from the want of such an intermediate power, and of the disadvantage with which a business of this sort must be executed when there is no power of greater accessibility and mobility than that of Parliament to execute it, may be seen in one of those two very cases. By the Pawnbrokers Act {29<sup>th</sup> G. 3. c. 57. § 4}, a set of heads had been [150\_766] prescribed for the Books therein required to be kept by that class of Dealers. These heads, not having been found sufficiently particular and minute, another Statute was made a few years afterwards {36 G. 3. c. 87. § 5} in which, amongst other things, the topic of Book-keeping was resumed—‘*Name and Place of Abode*’, two of the heads indicated by the prior Act, not having been found sufficiently particular and descriptive for the sort of person in question, viz: the Pawner of the goods, two other heads were now added, viz: ‘*the number of the House, if said to be numbered*’—and ‘whether such person is a Lodger or Housekeeper .^.^ by using the Letter L. if a Lodger, and the Letters H.K. if a Housekeeper’.—It would be easy to shew that, in regard to the abode, even this mode of description is not sufficiently particular for all cases, and that, under favour of the varieties in local nomenclature exhibited by the several denominations of Towns, Villages, Hamlets, Streets, Lanes, Alleys, Courts, Squares, Places, Circus’s, &c., the measures thus taken by Parliament for making

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<sup>231</sup> See the Duty on Hats Act of 1796 (§ 7).

the person of the pawner in all cases ascertainable and accessible might in many instances be eluded and rendered ineffectual: but even for this amendment, such as it is, the public had to wait seven years, coming, as it was necessary it should come, from Parliament:—the experience of as many weeks might have been sufficient to suggest it to, and to obtain it from, a permanent Board of Commissioners. The above deficiencies may be considered as affording an exemplification of the unavoidable imperfections which must be the continual result of the attempt to descend into details of such minuteness on the part of an authority so unwieldy as that of Parliament, and so incapable of collecting that body of particular and ever variable experience on which the faculty of forming proper decisions in regard to them must ever depend.

[150\_767]

Upon the whole, the following (it is conceived) may be reckoned as so many heads of Cases which appear to call for powers of subordinate legislation to be executed by an authority constantly in exercise, in preference to the attempting to do the business by an immediate exertion of the supreme legislative power of Parliament.

1. Where the regulations, which the Case appears to call for, appear of too minute a nature to be suitable to the *dignity*, or of too little importance to occupy the *time*, of Parliament.

2. Where the object in view may require *variations* to be made, the demand for which will be apt to occur at shorter intervals than those within which the same subject-matter can be readily brought under the review of Parliament.

3. Where the expediency of the regulations called for depends upon a stock of *information*, either such as, in the nature of it, will be continually calling for *fresh* and frequent supplies, or such as hath not as yet been collected, nor can be collected, on each separate occasion by Parliament, without more time than can conveniently be afforded by Parliament for such a purpose.

4. Where the directions to be given are such as can not be rendered completely adequate to the purpose without the help of *patterns*.

5. Where the propriety of the directions to be given is liable to depend upon the particular circumstances of *individual places, persons or things*.

Of all or most of these cases, examples will be found in the string of Sections in and by which powers of regulation are given by the Bill to the proposed Board in respect of the several particular heads of subject-matter therein specified.<sup>232</sup>

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<sup>232</sup> See, for instance, pp. 68–73 above and 174–83 below.

## Introductory Observations

relative to the

### Board-of-Police Bill<sup>a</sup>

<sup>a</sup> Such Observations as have a particular application to particular clauses are given in the form of *Notes* to the several Sections, and occupy a separate Paper, to which references are all along made in the margin of the Bill, from the passages to which they respectively relate.<sup>233</sup>

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<sup>233</sup> See ‘Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations’, pp. 212–363 below. For the presentation of the cross-references in the text of the Bill itself to ‘Notes to the Police Bill’ see the Editorial Introduction, p. 000 above. For the incomplete nature of this work and the uncertainty of its intended organization see the Editorial Introduction, pp. 000–000 above.

The Bill for which the explanation of which the ensuing pages are intended, will, of course, if presented to Parliament, make its appearance, like all other Bills, without any other Divisions than the accustomed Division into Sections: but in the mean time, for the purpose of exhibiting the plan and design of it, and of stating the grounds on which it rests throughout in point of reason and precedent, it will be impossible to avoid considering it as subjected to an intermediate division into *Parts*.

1. Part the first (distinguished by the title *Licence-Duties*)<sup>234</sup> occupies itself with the establishment of a system of Licence-Duties, to be imposed on 13 different classes of persons, all of them comprizable under the general denomination of *Purchasers of Second-hand Goods for Sale*.

2. Part the second (intituled *Board*)<sup>235</sup> occupies itself with the establishment of a new Board, under the name of the *Board of Police*, having for its functions the collection of the above duties—the superintendence of the classes of Dealers on whom those duties are imposed, together with other functions which will presently be mentioned.

3. Part the third (intituled *Licensing*)<sup>236</sup> comprehends divers provisions relative to the mode of proceeding in relation to the granting of the licences.

4. Part the fourth (intit[u]led *Regulations*)<sup>237</sup> occupies itself about the establishment of divers regulations relative to the mode of carrying on the several occupations subjected to the controul of a licence—and operating in some instances by the actual establishment of regulations relative to the points in question, in other instances by investing the Board with powers for establishing regulations relative to such and such points.

[150\_643]

5. In Part the 5<sup>th</sup> (intituled *Penalties and Procedure*)<sup>238</sup> are collected together the several necessary provisions by which Penalties are appointed for offences committed against the Act, and the jurisdiction and mode of Procedure for the recovery of those

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<sup>234</sup> See pp. 150–9 below, where Bentham in fact gave this part of the Bill the title *Licentiandi*, i.e. ‘those to be licensed’.

<sup>235</sup> See pp. 160–6 below.

<sup>236</sup> See pp. 167–74 below.

<sup>237</sup> See pp. 174–83 below.

<sup>238</sup> See pp. 183–94 below.

Penalties is prescribed.

6. In Part 6<sup>th</sup> (intituled *Gazette and Calendar*)<sup>239</sup> are contained such provisions as relate to the *Gazette* proposed to be published for Police purposes by the authority of the Board, the Annual Calendar of Delinquency proposed to be framed from documents furnished to and collected by the Board, the authority proposed to be given to the Board to report any such amendments as may appear to be suggested by the consideration of the facts exhibited by the Calendar of Delinquency, and the transfer to be made to the Board of the functions of the two existing Offices (the Hawkers and Hackney Coach Offices) proposed to be abolished.

[150\_659]

The System which it is the object of the annexed Bill to bring into existence is but a part of a more extensive system. Of the remaining parts, a general view will be given presently,<sup>240</sup> and it will then be stated why so much as is contained in the present Bill was thus detached and brought forward without the rest:—leaving the other Parts to be brought forward, if approved of, at a future period in so many separate Bills.

In the mean time, it may not be amiss to give a brief intimation of what may be considered as the leading points of the proposed System of Police as they appear upon the face of the present Bill.

The leading points and characteristic features of the entire system, as well as of the present Bill, may be summed up as follows:

1. Subjecting to the controul of a periodical licence, and that a discretionary one, the exercise of a variety of occupations, under the notion of their agreeing in this one common property, viz: that of affording facilities and incentives to various heads of delinquency—that of depredation in particular in its various branches, viz: now that they stand exempt from that inspection and discriminating controul which it is the business of the present Bill to apply.

2. The coupling the controul thus applied with a set of licence-duties payable by the

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<sup>239</sup> See pp. 194–210 below.

<sup>240</sup> See pp. 136–7 below.

several classes to which it is applied.

[150\_647]

3. The pursuing by the same set of means, and thereby at the same expence, divers objects in conjunction—viz: Revenue—Police (the prevention of Offences)—and *Statisticks*—the business of collecting information applicable to the above and other political uses.

4. The operating by powers of regulation bearing on particular specified topics, and to be exercised for particular purposes, by a subordinate authority, viz: the proposed Board, in preference to the operating, as in the most usual mode, by actual regulations, established in the first instance by Parliament itself.

[150\_648]

With regard to the first point—viz: the subjecting the occupations in question to the controul of a licence, and that a discretionary one.

On the footing of precedent the matter stands thus. The pattern pursued in the present case is the case of Alehouse licences: and in that case the latitude of discretion given is as ample as possible. No reasons are required to be given for the refusal of a license in any instance: the reasons remain locked up in the breasts of those to whom the authority is committed. This latitude has not only been established by Statute Law, but recognized in its full and utmost extent by judicial decisions.<sup>241</sup> The class of persons to whom it is intrusted in the present case are the same precisely as in that case—viz: the Justices of the Peace assembled at Meetings held specially for that purpose in and for the several territorial divisions that have been carved out for that purpose—except within the peculiar jurisdiction of the proposed Board, composed of persons from whom any improper exercise of the authority seems still less to be apprehended— for 1. They are not, as in that case, a fluctuating body subject to be garbled by accident or design, and exposed to the influence of electioneering and the many other party and personal influences which are so apt to spring out of the relations of provincial neighbourhood—but a permanent body composed of members, in a small and determinate number, always the same, acting

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<sup>241</sup> See pp. 34 n., 117 n. above.

under<sup>242</sup>

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[150\_644]

2. As to the second point, viz: the adding the burthen of a license duty to the controul to which the parties are subjected by a discretionary licence, the ground—or at least one ground—on which a duty thus laid was, at the first proposal of it, endeavoured to be supported, was that of its being productive of a Revenue ‘*arising out of the vices of the people*’.<sup>243</sup> Upon a closer inspection, however, this will not appear to be the case. The result expected and hoped for—hoped for by the author of the proposal—is that, by means of the controul thus imposed upon the several occupations, the dishonest members of the several [professions]<sup>244</sup> will be thrown out of them, and none but the honest left behind: at least that such will be [the] effect produced, in so far as the measure operates and contributes to the end which it has in view and to which it is directed. So far then as the controul annexed to the license is productive of its intended effect, so far will the duty be paid—not by the *vices* of the people, but by their *virtues*—not by the dishonest members of the fraternity of dealers, but by the honest: and this whether the system of controul has found [them] honest, or whether it has made them so.

[150\_645]

The true ground, therefore, on which, if at all, this point in the system appears to be defensible is as follows. The expence of this operation, as of every other operation of government, must rest in the shape of a burthen upon somebody. In the present instance, the effect of the burthen will be to bring a profit into the pockets of a certain description of persons. These, then, are the persons on whom to lay the burthen, especially if the amount

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<sup>242</sup> The continuation of this sequence has been located. The discussion of the second ‘leading point and characteristic’ of the system, which begins in the next paragraph, carries a new pagination.

<sup>243</sup> In evidence given to the House of Commons Select Committee on Finance, Colquhoun stated that, should his suggestions for licensing traders in second-hand goods be adopted, ‘a considerable Revenue might be obtained for Police Purposes, arising, as it were, out of the Vices of the People, and calculated in its Operation to destroy those Facilities which at present encourage the Increase of Crimes’: see ‘Twenty-Eighth Report from the Select Committee on Finance’, Appendix B, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 44–6, at 45.

of the profit promises to be greater than the amount of the burthen necessitated and produced by the same measure. So many distinct individuals of each class of traders as are drawn out of the trade by the controul of the licence, so much trade, and thence so much profit, remains to be shared by the honest individuals, who, having nothing to fear from that controul, remain in the trade.<sup>b 245</sup>

<sup>b</sup> [150\_718] Admitting the utility of the licensing system with a view to police,<sup>246</sup> an objection presents itself against the taking it as source of revenue. All license duties are in the very nature of them very unequal: those which do not so much as aim at proportioning themselves to the magnitude of the trade, are so in the extreme: and in several of the instances, the quantum of duty appears heavy even when compared with the medium of probable ability on the part of those who are to bear it. All this is admitted: such would be the burthen if it brought with it no equivalent: but it brings with it, it will be found on enquiry, an accompaniment of advantage not only to equal amount but to much greater. It is the peculiar character of the class of occupation in question to harbour a proportion, and that a very large one, of dishonest dealers. The efficiency of the system with regard to the driving out of the trade the dishonest members, and perhaps without exception, may be regarded as indubitable. But these dishonest dealers took whatever portion of the trade fell in their way: dishonest it is true, but honest likewise:—the honest part of their trade constitutes the indemnity that will go to the honest traders who submit to the duty, and continue in the trade.

[150\_719]

In the instance of the general run of Licence Duties no such indemnity can be regarded as having accrued: for in these instances dishonesty, or at least the species of dishonesty in question, making no part of the case, it was not expected, much less wished, that among the effects of the duty should be that of driving any body out of

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<sup>244</sup> MS ‘professionals’.

<sup>245</sup> The fifteen paragraphs following the short rule form a distinct sequence which may be an alternative draft of the beginning of ‘Introductory Observations relative to the Board-of-Police Bill’. Since there is no conclusive evidence that such is the case and since there is no indication that either sequence supersedes the other, it is reproduced in full. For further details see the Editorial Introduction, pp. 000–000 above.

<sup>246</sup> This note reproduces a passage at UC cl. 718–19, headed ‘Introductory Observations’, which appears to be an alternative draft of this discussion. Strictly speaking, the passage might have been more appropriately presented in an editorial footnote; however, for ease of annotation and presentation, it is presented as a Bentham footnote. For further details see the Editorial Introduction, p. 000 above.

the trade. The case of the Hawkers and Pedlars is that which comes nearest to the present: for in that case, though it be not among the effects of the licence duty itself to drive the dishonest, any more than the honest, out of the trade, yet a set of provisions having in view the driving out in a greater or less proportion the dishonest class formed part of the most recent Act on that subject, an Act whereby an augmentation in the rate of duty was made at the same time.<sup>247</sup> In that case, the rate of duty is much higher than under the proposed system it is in those instances in which it is stated at the highest pitch.<sup>248</sup> although, on the other hand, the indemnity resulting from the reduction made in the number of persons embarked in the trade could not be regarded as near so certain or considerable. It is with the trade of the settled Shop-keeper that the Hawker interferes, as do settled Shop-keepers one with another. Hawkers themselves being comparatively dispersed on so large a field of custom[?], what one Hawker takes from another can not be regarded as near so considerable.<sup>249</sup>

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[149\_149]

The provisions of the present Bill embrace a part, and but a part, of a more extensive

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<sup>247</sup> i.e. the Duty on Hawkers and Pedlars Act of 1789 (29 Geo. III, c. 26), which had, in fact (§§ 1, 3) reversed the doubling of the annual licence fee to £8, and the imposition of additional duties of £8 per beast on hawkers using beasts of burden, introduced by the Hawkers Act of 1785 (25 Geo. III, c. 78, § 1). The Act of 1789 (§ 6) had, however, stipulated that no licence would be granted until the applicant produced a certificate ‘attesting them to be of good Character and reputation’ signed by one officiating clergyman and two reputable inhabitants of their home parish.

<sup>248</sup> The highest licence duties proposed in ‘A Bill For the establishment of a Board of Police’ were £5 in London and £2. 10s. elsewhere, which were to apply to classes 2. Licenced Wholesale Purchasers of Rags and unserviceable Cordage for sale to Paper-makers, 6. Licenced Purchasers of Second-hand Naval Stores for Sale, and 7. Licensed Wholesale Purchasers of Second-hand Metals for Sale: see pp. 151–2, 153 below.

<sup>249</sup> The following related passage, headed ‘Prospectus of Introd.<sup>y</sup> Observations’ and subheaded ‘Board of Police’, is at UC cl. 130: ‘On a *first view*, the rates of licence-duty proposed may possibly appear too heavy: and in the instance of *some* of the trades, almost *any* rate of duty may appear too heavy. On calculation, however, it will appear, that the *honest* part of the dealers will be *gainers*, instead of sufferers, by the duty: for that under the system of inspection and controul coupled with it, it will be impossible for them, whose principal dependence is upon the *dishonest* branch of the trade, to continue in it: and the *profit* which, on the expulsion of the dishonest, will fall to be shared among the honest, will be much greater than the *loss* by the duty.’

plan, the remaining parts of which will be brought forward or not, according to the determination of those to whom it belongs to judge.

The main feature of it comes under the head of Police: and consists in the idea of applying a new check to depredation in all its forms, by opposing fresh difficulties and dangers to the faculty of disposing of the fruits of it. The principal means employed is the subjecting to a discretionary licence, as in the case of Public Houses, such occupations as, by reason of the mode of dealing in them, joined to the nature of the articles dealt in, have a peculiar tendency to afford facilities for that purpose.

Another feature of it consists in the idea of extracting from the measures necessary, [and] directed more particularly, to the prevention of offences, a collateral advantage referable to the head of revenue, as also a stock of political or statistical information, a secondary acquisition in its nature alike serviceable, or capable of being rendered alike serviceable, to both these primary purposes. Three objects are accordingly pursued, and pursued in conjunction, throughout the whole—Prevention of crimes—augmentation of Revenue—and procurement of information.

Using the word economy in the most extensive sense, this is carrying economy to the highest pitch: compassing sometimes two, sometimes three ends, at an expence not greater than what would have been necessary to the at[149\_150]tainment of one of them, if pursued by itself. If, then, there be any one of them in the instance of which the advantage obtained affords an adequate equivalent for the expence, the other, or the two others, may thus be said to be obtained *gratis*.

The expence here in question may be distinguished into what is commonly meant by expence, viz: pecuniary expence—and *vexation*; which, if not strictly included under the acceptation of the term expence, can no otherwise be estimated (as is intimated by Adam Smith) than by reference to the expence which a man would willingly be subjected to, rather than undergo it.<sup>250</sup>

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<sup>250</sup> See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (first published in 1776), ed. R.H. Campbell, A.S. Skinner, and W.B. Todd, 2 vols., Oxford, 1976 (*The Glasgow Edition of the Works and Correspondence of Adam Smith*), Bk. V, ii. 827: 'though vexation is not, strictly speaking, expence, it is certainly equivalent to the expence at which every man would be willing to redeem himself from it'. Adam Smith (bap. 1723, d. 1790), moral philosopher and political economist.

All measures of the coercive cast—that is all legislative measures but those which consist in the modification or abrogation of existing ones—involve what may be termed vexation (for all coercion is productive of vexation) in their result: avoidance of vexation being absolutely impossible, there remains only this problem—viz: from a given necessary quantity of political vexation, to extract as much political advantage as possible, in all imaginable shapes.

Between Police and Revenue there is happily a sort of natural connection, which requires only to be improved: insomuch that, from the quantity of vexation necessary to be produced for the sake of one of these objects, there either accrues without contrivance, or by contrivance may be made to accrue, a quantity of advantage referable to the other. In the association [149\_151] between the two connected objects, sometimes it is one, sometimes the other, that is the principal one. In some instances, a measure presents itself as necessary on the score of finance: and there the thing to be done is to consider, whether at the same expence, or with a small addition to the expence (vexation and pecuniary expence taken together), an advantage referable to the head of Police may not be obtainable from the same measure. In other instances, it is by some view of Police that the measure is suggested in the first instance; and then comes the consideration whether and in what degree the measure necessary for that purpose may be turned to account and improved for the purpose of Finance.<sup>251</sup>

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<sup>251</sup> The following related passage, drafted for ‘Elucidations relative to the Police Revenue-Bill’ and subheaded ‘Vexation turned to account’, is at UC cl. 720–2: ‘In contemplating the several occupations which for one reason or another had presented themselves as proper to be included in the proposed licencing system for the purposes of Police, it was impossible either for the original Author of the System or for the Drawer of the present Bill, whose assistance for that purpose he had engaged, to be insensible to the occasions and opportunities which from time to time presented themselves, of which the same subject matter appeared so frequently to suggest for the deriving from the same subject matter an accession in one way or other to the Revenue. The idea of union of these two designs appeared throughout as being uniformly attended with one very considerable and prominent head of recommendation: viz. that of purchasing, at the expence of one and the same mass of *vexation*, if the expression may be allowed, two separate and independent masses of benefits: so that, in short, under favour of this combination of views, one of two very good and necessary things, each of which could not be obtained, if aimed at alone, without a very considerable degree of vexation, might thus be obtained *gratis*, and without the payment of any such price. Vexation, more or less, vexation (it would be in vain to attempt disassembling it) is the constant and unavoidable concomitant and result, if not of every operation of government, at least of every act of legislation in which coercion is employed: a given

There is again another bond of connection not only between measures of finance, and measures of police, but between measures of finance and measures conducive to the purpose of obtaining political information. A stream of revenue, drawn from any subject-matter, gives a degree of efficacy and stability to a measure suggested in the first instance by one or both of these other considerations: a deficiency in a set of returns required with a view principally or wholly to political information, or a want of execution in regard to measures suggested primarily by considerations of police, neither of these deficiencies either shews itself in so determinate and palpable a shape, or is equally capable of exciting that attention which [149\_152] is necessary to the application of an effectual remedy, as where a defect in point of revenue is seen to flow at the same time from the same source. The advantage derivable to the revenue, the money to be got up by the stopping of the gap, wherever it happens to be, operates as a sort of premium to the man of finance (the most powerful among public men) for whatever assistance he may lend in such a case to his

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quantity of vexation being necessary to the attainment of a given object of legislation which is itself necessary. By what means, at the expence of this given mass of vexation, to compass in any way, and in all manner of ways, the greatest possible mass of benefit, is accordingly a problem that ought never to be lost sight [of].—Happily so close, so natural will the alliance between these two great branches of Government, *Revenue* and *Police*, be found to be, that there is perhaps scarce an instance in which, from the measures suggested in the first instance as necessary by the one, a collateral help may not be afforded to the other. Information, information of the statistic kind, is an aliment and support alike necessary to both: and scarce a species of information can be conceived as being called for the purposes [of] either, from which some collateral use may not be derived by the other.

‘The Alliance between Church and State (comprehending the terrestrial government in all its branches) is an alliance the advantages of which have, with ability and success, been long ago held up to view: the alliance between these two branches of temporal government itself, *Revenue* and *Police*, is an alliance which, close and natural and as it will be seen to be, appears, comparatively speaking, to have hitherto escaped from observation: to hold it up to view and place its importance in a clear and conspicuous point of view, and to point out the particular applications that might be made of this new principle, will constitute a principal part of the business of these introductory pages, and of the several Bills which they are intended to produce. To turn to the best account every lot of vexation which for any purpose whatsoever it becomes necessary to produce—to make the most of it—to make it go as far as possible—is a memento that may be laid down as a capital rule in the economy of government. It is under favour of this natural alliance just spoken of between *Finance* and *Police* that this rule will be found capable of receiving its most numerous and most important applications.’

Bentham’s reference is no doubt to William Warburton, *The Alliance between Church and State, or, the Necessity and Equity of an Established Religion and a Test-Law demonstrated, from the Essence and End of Civil Society, upon the fundamental Principles of the Law of Nature and Nations*, London, 1736.

neighbours, the *statisticalist* and the man of police. Hence it is, that whatever be the projects that happen to originate with either of these two, policy joins with economy in suggesting to them the advantage that may be gained in point of vigilance, and that efficiency which is the fruit of it, by calling in the man of finance, and taking him, as it were, into partnership, and letting him in for a share in the profits of the business.

[149\_153]

In the existing Statute Book, examples are by no means wanting of the formation of this useful partnership: for in every line of knowledge examples come before rules, and it is from a series of useful examples that those rules come in time to be abstracted and formed, by which the catalogue of similar examples is, at a still more improved period, compleated.

One example is the Public House licensing system,<sup>252</sup> from which, while the man of finance derives no contemptible mass of revenue, the man of police extracts, by means of the discretionary power of granting or refusing the license, no small degree of security against a variety of disorders, while the statisticalist learns and reports to them both, as well as to the moralist, the deplorable number of those prolific sources of revenue, debauchery and disease.

Another example is the Hawker-licensing system,<sup>253</sup> from which, while the man of finance draws a mass of revenue of no great account,<sup>254</sup> the man of police, by means of a variety of regulations collateral to the financial part of the system, and indeed established in great measure at the expence of it, derives security against a variety of abuses: and such has been his activity in this field as to leave little information to be gleaned by the statisticalist.

[149\_154]

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<sup>252</sup> See pp. 34 n., 66 n. above.

<sup>253</sup> See p. 84 n. above.

<sup>254</sup> See 'Twenty-Third Report from the Select Committee on Finance &c. The Public Revenue for the Year 1797', ordered to be printed 26 June 1798, Appendix I, in *Commons Sessional Papers of the Eighteenth Century*, cx. 180, where the gross receipts for year ending 5 January 1798 appear as £8,219 9s. 6d, and the net receipts as £5,303 16s. 6d.

A third example is the London Hackney Coach system,<sup>255</sup> in which the same junction of views is still discernible:—but, not to go into any further minuteness upon an object comparatively so minute, the bare intimation may here suffice.

With which of the three divisions of statesmen the several systems happened respectively to originate may not in every instance be easy to ascertain. The man of finance stands forth as the most probable author of all inventions: his necessities being the most pressing in their nature. But frequently, where one of the three has been the only one to open the mine, the others have slipt in, and set to work at it, each for his own benefit: and thus it has happened that the man of finance has from time to time added to the licence duty upon publicans for the sole purposes of finance, while an inferior rate of duty, seconded by the discretionary part of the licencing system, was all that would have been necessary to the accomplishment of the principal views at least of the man of Police.<sup>256</sup>

[149\_155]

What may be regarded as the second part of the Bill, is occupied in the collection and exhibition of an assemblage of useful facts. In respect of the nature of the provisions contained in it, it bears little or no resemblance to the first part. The bond of connection between them is no more than this. A particular set of political hands, a particular Board, would be necessary for either purpose, were it to be pursued alone. But the same set of hands that will serve for the one, will suffice for that and the other [too].<sup>257</sup> As far as pecuniary expence, therefore, is alone concerned (vexation being a separate consideration), by joining the two, either of them may be considered as being compassed *gratis*. And not only one set of hands will suffice for both tasks, but, by engaging in either, any set of hands is rendered the better qualified for the performance of the other.

[149\_156]

The information of which it is the business of this second part of the Bill to provide for the collection and preservation consist[s] of two branches perfectly distinguishable in

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<sup>255</sup> See p. 85 n. above.

<sup>256</sup> A stamp duty of 1s. on licences to sell beer by retail was introduced by the Stamp Act of 1711 (9 Ann. c. 23, § 23) and increased to £1 1s. by the Alehouses Act of 1756 (29 Geo. II, c. 12, § 1), and then to £2 11s. 6d. by the Licences for Retailing Beer, etc. Act of 1784 (24 Geo. III, sess. 2, c. 30, § 1).

<sup>257</sup> MS 'two'.

themselves, tho' both pointing to the same end:—the one particular and casual: intelligence of individual acts of delinquency as they come to light in this or that part of the country:—the matter of the proposed *Police Gazette*:—the other periodical and aggregate: information of all acts of delinquency committed in all parts of the kingdom in the course of the Year, accompanied with an intimation of the operations they have respectively given birth to on the part of Justice. That both branches of information are of an interesting nature, and that [both] promise to be useful in various points of view, will be apparent upon the bare mention of them: the particular utilities they are pregnant with will be stated with precision and in detail in the particular Notes of which they are respectively the subject.<sup>258</sup> By pursuing still the same fundamental principle of economy—viz: that of extracting from a given mass of expence the greatest possible mass of advantage in each of the greatest possible number of shapes, a distinct and collateral use presented itself as capable of being derived from the *Police Gazette*, viz:—the guarding and preserving the public mind from impressions dangerous to the public peace. Of this likewise, a particular statement will be given in a Note to the Passage by which a provision for that purpose is made in the Bill.<sup>259</sup>

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[150\_126]

1.<sup>260</sup> *Arms Police and Duty Bill*—affording *Police* (viz: prevention of Robbery &c.)—*Revenue*—and *Information* subservient to *National Defence*. The advantages looked to from this part of the plan are already stated in the Paper of Preliminary Observations as already given in.<sup>261</sup>

2. *Horse Police and Duty Bill*—affording *Police*—*Revenue*—and *Information*, as above. The provisions in this Bill may be extended in part to other Cattle. This subject is

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<sup>258</sup> See pp. 319–21 and 333–47 below respectively.

<sup>259</sup> See pp. 321–30 below.

<sup>260</sup> According to Bentham's pagination a folio is missing from the beginning of this sequence, in which he presumably indicated his intention to set out the series of Bills that together would fulfill Colquhoun's plan for the reform of police.

<sup>261</sup> See pp. 96–109 above.

slightly touched upon in the Paper already delivered in,<sup>262</sup> but, the plan having since been brought to a greater degree of maturity, will require to be spoken to more at large.

3. *Coin Police Bill*:—affording *Police* by prevention of false coinage, and in that way affording protection to the *Revenue*. The chief part of this Bill was intended to have been brought forward by the late M<sup>r</sup> *Serjeant Adair*.<sup>263</sup>—This topic is not at all touched upon in the Paper already given in.<sup>264</sup>

4. *Lodging Police Bill*—designed principally for obtaining *Information* subservient to *Police* purposes. The principle seems to have been regarded with approbation by the Committee of Finance. (See 28<sup>th</sup> Report.)<sup>265</sup>

5. *Hawkers Police Bill*—for extending to that class of dealers the system of *discretionary* licencing already applied to *Public Houses*—for taking into it *Bumboat Keepers* and other *Water Hawk*ers (Hawkers—not of Water but *on the Water*)—and for reducing the existing Statutes on this subject into one. On this, nothing has as yet been said:<sup>266</sup> any more than of the [*Coin Police Bill*].

6. *London Marine Police Bill*—already called for, and approved in substance, by the parties concerned (viz: the several Mercantile bodies) and at present nearly finished.<sup>267</sup>

[150\_127]

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<sup>262</sup> See pp. 110–11 above.

<sup>263</sup> James Adair (1743?–97), MP for Cockermouth 1775–80, and for Higham Ferrers 1793–8, Recorder of London 1779–89, Chief Justice of Chester 1796–8. No other evidence has been discovered of any intention on Adair's part to bring in a coin police bill, but Bentham may have in mind a Bill drafted by John Vernon junior (d. 1825), solicitor to the Mint 1783–1824, in co-operation with Colquhoun: see 'Substance of the Clauses of a Bill for the better preventing the Counterfeiting and circulating the Gold, Silver, and Copper Money of the Realm. Prepared for the Consideration of the Attorney General by the Solicitor to the Mint. 9<sup>th</sup> April 1799', in a copyist's hand, at UC cxlix. 171.

<sup>264</sup> For Bentham's discussion of coin police see pp. 141–7 below.

<sup>265</sup> For the partial endorsement by the House of Commons Select Committee on Finance of the proposal for a register of lodging-houses in London see pp. 90–1 n. above. The Committee also reported that the proposed Police Board might enforce the obligations on householders, prescribed by the Aliens Act of 1793 (33 Geo. III, c.4, § 21), to give accounts of aliens received into their houses: see 'Twenty-Eighth Report from the Select Committee on Finance', in *Commons Sessional Papers of the Eighteenth Century*, cxii. 7.

<sup>266</sup> No mention of such a Bill has been discovered in Bentham's manuscripts on preventive police.

The advantages attending the separation thus made will hardly appear disputable—

1. The *demand for attention*, on the part of those to whom it belongs to judge, is thereby proportionably reduced:—for if the present Bill be approved of, it may be decided upon without waiting to look at the rest: and so with regard to each of those other Bills, supposing the present one to be approved of.

2. *Dispatch* is proportionably promoted:—since, of those remaining Bills, no one need be made to wait for any other; nor this for any of them.

3. The *danger of rejection* is proportionably reduced. Admitting that each would, if presented by itself, be approved of by a great majority, it might nevertheless happen, that were they presented in the lump, the several *minorities of disapprovers*, might, by joining together, though on different grounds, put a negative upon the whole.<sup>268</sup>

The bond of connection and *principle of unity* as between these several pieces of political mechanism is their common *primum mobile*—the proposed *Board of Police*.

[150\_128]

As to the Bill *already* given in, after the defalcations made in it since the paper of PRELIMINARY OBSERVATIONS was written,<sup>269</sup> the plan of it is extremely simple. As far as *licencing* is concerned, it takes in the *whole* trade in *Second-hand Goods*—but nothing more. The *Board of Police* seemed alike necessary to every branch of the *Licencing* System, as did the *Police Gazette* and *Calendar of Delinquency* to the Board of Police, to

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<sup>267</sup> See Part I. Writings on Marine Police, pp. 1–43 above, esp. pp. 24–37 above.

<sup>268</sup> The following related passage, drafted for ‘Introductory Observations’, is at UC cl. 646: ‘*In the present instance, as in others, simplifying the foundations of the system, is an obvious point of policy: because, the more distinct parts, the more sources of opposition from different classes of opponents: so that a plan every part of which, if proposed separately, might have been approved by a large majority, may be disapproved and rejected, when brought forward in the lump.*

‘On the other hand considerations are not wanting, to limit the degree of simplification: what is brought forward must be *equal, of itself*, to the fulfilling of some one desirable object, and the value of that object must, of itself, be such, as to be an equivalent for the expence.’

<sup>269</sup> i.e. ‘Elucidations relative to the Police Revenue Bill’. For details of the ‘defalcations’ to which Bentham refers see *ibid.*, pp. 93–6 n. above, and the Editorial Introduction, p. 000 above.

enable it to display its energies.<sup>270</sup>

Of the *Gazette* and *Calendar* a good deal, and perhaps enough, has been said already in the NOTES.<sup>271</sup>

Of the remainder of the plan (which all turns upon the licencing system) the principal features seem to be as follows—

1. Subjecting to particular *inspection* as many occupations as are observed to afford particular *facilities*, and thereby *incentives*, to *delinquency* in its several forms, but more particularly *depredation*. (This topic was originally started and is handled at large in Mr Colquhoun's printed Work.)<sup>272</sup>

2. Adding to inspection, *controul*, and that *discretionary*, upon the principle so well established and approved of in the case of the Public Houses. This topic is already touched upon, but not exhausted, in the paper of NOTES.<sup>273</sup>

[150\_129]

3. Compassing divers objects (viz: *Police*, *Revenue*, and *Statistical Information* subservient to *National Defence* as well as to *Political Economy*) *at once*: i:e: by one and the same set of measures; and thence without more *expence* (whether in the shape of *pecuniary* expence, or of unavoidable *vexation*) than would have been necessary for one of

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<sup>270</sup> In a cancelled draft of this material at UC ii. 409<sup>v</sup>, headed 'Prospectus of amended Introduct<sup>y</sup> Observations', the following version of this sentence appears: 'The institution of the Board seemed necessary to the Licencing System: and the *Gazette* and *Calendar* seemed so indispensably useful, and the demand for them so immediate, as to wait for nothing but hands to put them into.'

<sup>271</sup> See 'Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations', pp. 319–54 below.

<sup>272</sup> See Colquhoun, *Treatise on the Police of the Metropolis*, pp. 190–1: 'This principle of activity is .^.^ only to be established by the introduction of .^.^ some similar system of *regulation*; which shall attach to all classes of dealers, who .^.^ are in the train of encouraging .^.^ transactions of *an immoral, a fraudulent, or a mischievous nature*. .^.^ let the legislature .^.^ establish such a system of *regulation, inspection, and superintendance*, as will insure to the public the full benefits arising from good laws administered with activity, purity and discretion.'

<sup>273</sup> See 'Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations', pp. 263, 268–9, and 309–16 below.

them alone. This topic was started in M<sup>r</sup> Colquhoun's work abovementioned,<sup>274</sup> but remains to be presented in some additional points of view.

4. Employing, for the inspection of the several classes of persons, however various, brought under *inspection, with or without controul*, one and the same system of Inspectors; and thereby *reducing the field of inspection*, and thence *encreasing the facility* of the task to each Inspector, and the degree of perfection to which the execution of it may be carried. On this head something, and perhaps enough, has been *already* said in the PRELIMINARY OBSERVATIONS.<sup>275</sup>

5. Operating on *certain* occasions by *powers of regulation*, committed to a *subordinate* authority (the proposed Board of Police) in preference to *Parliamentary* regulations ready made.—This topic has already been pretty fully handled, though by no means exhausted, partly in the PRELIMINARY OBSERVATIONS, partly in the paper of NOTES.<sup>276</sup>

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<sup>274</sup> For Colquhoun's critique of the piecemeal and counter-productive nature of previous reforms, his advocacy of an active 'centre-point' to co-ordinate police activities, and his assertion of the benefits of such an institution in reducing both crime and expenditure, see *Treatise on the Police of the Metropolis*, pp. 27–9, 185, 191, 346–8, 359–63.

<sup>275</sup> Bentham does not in fact address this issue explicitly in 'Elucidations relative to the Police Revenue Bill'.

<sup>276</sup> See *ibid.*, pp. 118–23 above, and 'Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations', pp. 279–80, 286–7, and 337–9 below.

[149\_175]

APPENDIX to 'INTRODUCTORY OBSERVATIONS RELATIVE TO THE  
BOARD-OF-POLICE BILL'.

COIN POLICE<sup>277</sup>

Offences relative to the Coin require to be distinguished in the first place into Offences for lucre, and Offences for self-indemnification—a branch of self-preservation—self-defence against loss. The latter grew out of the former, in such sort that if the former were made to cease, the latter would cease of course. The distinction is a fundamental one: from the bare terms of it, it follows that it is attended with a very material distinction in the state of the mental faculties of the embarker[?]: i:e: the will of the party concerned, and thence in the demand for punishment.

[149\_176]

Different as they are in respect of their degrees of guilt, they agree so far, however, as to be both of them referable without impropriety to the head of *fraud*: the one a criminal fraud, the other a venial fraud.

A fraud in general is where a man obtains, or endeavours or studies to obtain, by means of some false assertion, expressed or implied—i:e: expressed by words or by behaviour expressed, according to the nature of the transaction—that assertion known by him to be false—some gain which is not his due, and which he knows not to be his due.

A fraud relative to the Coin is where the medium by which the unlawful, and known to be unlawful, gain is made or attempted to be made is a mass of matter to which, for this purpose, endeavours are used to give the resemblance of some metallic mass, to which a particular form has been given by the authority of the government of some political state, for the purpose of certifying to mankind in general the quantity and quality of it.

[149\_177]

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<sup>277</sup> This Appendix reproduces two draft sequences composed by Bentham in the spring of 1799. The title is taken from a related brouillon at UC cl. 170 (19 March 1799). For further details see the Editorial Introduction, pp. 000–000 above.

The gain to be made by the false coin, is made by the utterance of it—i:e: the transfer of it, and is proportioned to its inferiority in point of value when compared with the species of true coin as and for which it is made, or intended by such transfer to be made, to pass. The gain aimed at is aimed at by the utterance of it, but to be uttered it must have [been] manufactured.

To bring the transaction under the idea of fraud, both acts, viz: the utterance of the false coin and the manufacturing of it, must be accompanied with two circumstances of criminality, both of them referable to the state of the mental faculties of the agent—1. a criminal consciousness, and a criminal intention:—the consciousness of its diversity with reference to the true coin which it is designed to emulate, and thence of its inferiority in point of constantly exchangeable value: 2: the intention of uttering it as being of equal and the same value with the true coin, notwithstanding its inferiority as abovementioned. If either of these criminative [circumstances] fails, the imputation of criminality has no place.

These circumstances, notwithstanding [that] the recesses of the human mind are the only place in which they come into existence, are as susceptible of legal proof as if they were perceptible to sense: if they were not, no crime could ever be proved, punished or repressed.

[149\_178]

The act or process of manufacturing is distinguishable into as many different acts as there are operations which it may happen to the mass of matter in question to be subjected to, from its state of original rawness or crudity to the state in which it is first uttered. But of these acts none can with propriety (i:e: consistently with the regard due to innocence), nor even with effect, be invested by the law with the stamp of criminality, except such as are accompanied with the two criminative circumstances above mentioned.

The more numerous and diversified they are (such of them, be it always remembered, as are or can be *made* to be accompanied with the above criminative circumstances), the better, because the more exposed to detection:—the better, even if the different acts in each instance were confined to the same hands:—still more, in as far as they are the acts of different hands: the greater the number of different acts, the greater the assemblage of concomitant evidentiary circumstances by which they are exposed to betray themselves, in spite of every thing that can be done in favour of criminal concealment by criminal fidelity

and prudence: the greater the number of different hands, the greater the number of chances in favour of useful treachery and imprudence.

In the tracing out the several separate links in a chain or fluxion of acts or transactions thus connected is one of the resources of what may be termed *indirect legislation*: to create proofs of the criminative consciousness above spoken of, or even to give birth to the perception[?] itself, is another, but of this a little farther on.<sup>278</sup>

[149\_179]

In the description of the offence for the purpose of prohibition, punishment, and other operations subservient to the purpose of prevention, it will be necessary, or at least advantageous, to the legislator, to include, on the one hand, the whole assemblage of the distinguishable acts or operations concerned, on the other, the different descriptions of persons that on any occasion may come to be concerned, in the production of the obnoxious effect. This may be endeavoured either 1. by generic terms sufficiently comprehensive; or 2. by specific terms sufficiently numerous and precise. Neither of these expedients are to be neglected: the latter is useful for facility of intelligence: the former for permanence of effect. The latter will be the work of history; the former, of genius. Observation and memory will be the faculties employ'd in the description of the latter: imagination, in the description of the former. Specification must comprize every thing that has been done—Generic notation every thing that either has been done or can be done. Specification is necessary for the information of the delinquent, that he may see beyond a doubt that his case has been provided for, and that, in case of his perseverance in delinquency, the hand of the law will reach (it is the more necessary in proportion to the weakness of his intellectual faculties): nor is it altogether unnecessary for the information of the Judge, that he may be forearmed against all doubts with regard to the real intention and true interpretation of the law. But had the necessity of it no other reference [but] to the person exposed to the temptation of falling into delinquency, this would be sufficient to prescribe the use of it: for cruel at once and impotent is that law which wants any of the necessary means for conveying to the knowledge of any one of those whose conduct it is designed to guide.

[149\_180]

As to the physical subject matter of the offence, the description of it is very different from what it is in the case of many, and indeed most, other species of delinquency. It is not the substance—the mass of matter—on which the physical acts in question are exercised: it is a very different object—a mass of matter with a view to the imitation of which those acts are exercised.<sup>a</sup> It may by accident, indeed, be the genuine coin as well as the spurious: but whether it be or no makes no difference in regard to the mischief, or in any other way in regard to the demand for punishment. An accident of this sort has no other effect than to give a rarity to the description, and to necessitate the insertion of an additional species in order to make the list compleat and exhaustive.

<sup>a</sup> In the case of theft, for example, the physical subject matter of the offence is the individual *thing* acted upon: in the case of offences relative to the Coin, it is the *genus* or class of things borne in mind, for the purpose of the offence:—for the purpose of producing other things, which though different from them, shall be so like them as to be taken and accepted for the same.

[149\_181]

The particular nature of the object imitated is, if in any respect, of moment, no otherwise so, than in as far as on the differences belonging to this topic depend either a correspondent difference with regard to the amount of the loss produced, or else with regard to the description of the operations which are apt to be performed in the pursuit of the criminal gain connected with that loss.<sup>279</sup>

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<sup>278</sup> No further discussion of this point has been located.

<sup>279</sup> The text appears to have been abandoned at this point. In a brouillon at UC cxlix. 171 (19 March 1799), headed ‘Coin Police’, Bentham sketched nine points ‘*Tractanda per* [i.e. to be treated by] JB’, only the first two and the last of which are addressed in the surviving text presented above. The remaining six are as follows:

‘3. [Description of the offence]—in respect of the *political* nature of d<sup>o</sup>—British Coin—Irish, Foreign.

‘4. Punishment, degrees of, with reference to the different degrees, if any, of the offences, as resulting from the several modifications above-mentioned.

‘5. [Description of the offence]—in respect of the different parts acted by the members of an associated group of delinquents, in the production of the obnoxious effect.—Offences of Co-Offenders.

‘6. Indirect legislation, by subjecting to Inspection and exposing to observation the practice of innocent arts the products of which are easily transferable to this criminal purpose.

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[150\_174]

Another<sup>280</sup> topic affording matter for a separate Bill including regulations of Police, is that of the Coin. That frauds having this article of property for their subject are exercised to a prodigious extent is not to be wondered at, since in any branches of them they are not comprehended by either the penalties or the powers that are extended to the rest.

This species of fraud is carried on in the face of day. The delinquents, that is those who would have been made delinquents had the legislator done his duty, are known and numbered. It is now <sup>^^^</sup> years since the Author of the *Treatise of the Police* has had the merit of denouncing the defects of the law on this ground, and consequently the remedies, and the mortification of indicating them without effect.<sup>281</sup> The mischiefs that prevail in this department ought not to be imputed to the individual, who is whatever the law makes him or suffers him to be, but to legislation.<sup>282</sup>

A stronger exemplification of the demand for such an instrument of government as

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‘7. Tribunal and Procedure—Evidence. i. Misdemeanour punishment *vice* severer punishment. ii. Justice *vice* Jury. iii. Self-convicting evidence, or *onus probandi* reversed.

‘8. Effects of the Division of Labour on the description of the offence.’

<sup>280</sup> This and the following six paragraphs form a discrete sequence which was originally drafted for ‘Introductory Observations relative to the Board-of-Police Bill’. For further details see the Editorial Introduction, p. 000 above.

<sup>281</sup> The first edition of Colquhoun’s *Treatise on the Police of the Metropolis* had appeared early in 1796, but Colquhoun had drafted a set of ‘Reasons offered in favour of the Bill for establishing Regulations for the purpose of preventing frauds and embezzlements by obliging certain Classes of Dealers who are generally Known to be receivers of Stolen Goods to take out Licenses and to subject the said Dealers to Sundry restrictions’, in early 1794, five years before Bentham wrote this text: see UC cxlix. 12–13 (1 March 1794). Two further documents relating to the same or a very similar Bill, but with the specific object of reducing losses by theft from naval dockyards, namely ‘Explanatory Observations a Bill for more effectually securing His Majesty’s Stores against embezzlement in the Dock Yards and other Repositories’, and ‘Queries and Observations on the proposed Bill for more effectually Securing His Majesty’s Stores against embezzlements and for establishing Regulations for preventing Frauds by Persons Dealing in Second Hand Naval Stores, Hand Stuffs, Rags, Iron &c.’ are at UC cxlix. 14–22, and 23–7 respectively.

<sup>282</sup> MS orig. ‘law itself’.

the proposed Board can not be afforded than what is furnished by the present topic. During this whole period, the time of the persons filling the superior situations of finance has been absolutely preoccupied. Among particular Members of Parliament, the old adage ‘what is every body’s business is nobody’s business’<sup>283</sup> is as true on this as on so many other grounds. Those who, to the inclination of grappling with a task of such labour add the ability, reputed as well as real, adequate to the task *are* not, can not be expected to be, numerous: and were they ever so numerous [150\_176] that, without the concurrence of government, and with views not considered, and, therefore, not approved, by government, [they] should tamper with a branch of business so intimately interwoven with the plans and operations of government, is a practice which will not naturally, nor perhaps ought to, meet with much encouragement from government. But by the assistance [of] a Board, instituted by Government itself, composed of Members chosen by Government, possessed consequently of the confidence of government, this, as well as so many other things which at present are impracticable, might long ago have been executed with ease.

[150\_173]

The numerous defects of the law with relation to this species of political mischief may be traced to one or two very simple source[s]. To every act of political misconduct considered in the light of a principal act, i:e: an act that presents itself in the most prominent point of view as being productive of a distinct mass of political mischief, a multitude of other acts may be seen to adhere, and form, as it were, its *suite*, in the character of accessories. Of these, some are antecedent in point of time to the principal, and form so many links in the chain of conduct which terminates in it: others consequent, and serve as indications and evidences of its having been performed: others again contemporaneous, and operating in either or both the above characters. From this general view, and without entering into particular details, it is evident that so long as any one of the assignable acts of an accessory nature with which a mischievous act, considered in the light of a principal act, may be regarded as connected in either of the above ways are omitted to be included in the system of penalties and powers provided by the law, so far the dispensations of the law are inadequate to their object, or what ought to be their object, are defective, and delinquency, accompanied by impunity, will be the effect. Within the whole field of action of the penal law, there is no head of delinquency in relation to which

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<sup>283</sup> See p. 42 n. above.

the provision made in regard to the train of accessory offences as above described is so scanty and inadequate as that which is now under consideration.

[150\_175]

The historical cause or reason of this imperfect[ion] is sufficiently apparent. Every thing that has been done by the law in this view, has been bottomed on false ground. In the Old Statute of Edward the 3<sup>d</sup>, called the Statute of Treasons, (one of the first and almost the only act of Parliament that has attempted in form the applying the operation of definition to offences) private manufacturers of coined metal have been set down as rebels and traitors.<sup>284</sup> The trembling caitiff whose only aim and hope is, by eluding the eye, to elude the hand of the government, is regarded and treated on the same footing with him whose endeavour is to rise up in arms against government, and overturn it by main force.

The times which gave birth to this very ancient, and consequently very crude and imperfect, Statute, were times in which the opposition given to the personal will of the Sovereign was almost the only thing considered in an act, the consequence of it to the country being in comparison very little heeded or understood. The Rebel was a would-be usurper of the whole of the Sovereign's prerogative: the Coiner was a would-be usurper of one branch of it. The analogy, slight as it is, was in those days sufficient to confound, in the mind of the Parliamentary Draughtsman, the ideas of the two classes. Hence a most absurd and inconsistent mixture of excessive rigour with excessive relaxation. All who were laid hold of by the law were treated as rebels: all who were not so treated were suffered to go on unmolested.

[150\_177]

It seems so generally understood in the exercise of legislation in this country, that no species of mischief shall ever be prevented—that nothing mischievous shall ever be so much as prohibited—till it has been practiced, and practiced for [such] a length of time, that the omission of preventive measures in this line can hardly be stated as a defect.<sup>285</sup>

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<sup>284</sup> The Statute of Treasons of 1351 (25 Edw. III, stat. 5, c. 2) provided that, 'if a Man counterfeit the King's Great or Privy Seal, or his Money', it should be judged an act of treason.

<sup>285</sup> The text appears to have been abandoned at this point.

## A Bill

For the establishment of a Board of Police, and for the suppression of divers Offices:—or else,

## A Bill

For the establishment of a Board of Police, for the suppression of divers Offices, and for the more effectual prevention of predatory and other offences, by the licencing and regulation of divers trades and occupations **{1}**<sup>286</sup>

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<sup>286</sup> The bold numerals in braces refer to the text of ‘Notes on the Police Bill: containing Reasons, Precedents, and other Elucidations’, pp. 212–363 below. For this note see pp. 213–14 below.

[150\_180]

Whereas by the natural facilities administered by divers trades and occupations to the receipt and advantageous disposal of goods stolen or otherwise unlawfully obtained, great and manifest encouragement is afforded to Larceny and other species of depredation, to the reproach and injury of the fair trader, as well as to the insecurity of property in general, which encouragement might be done away and such unlawful dealings in a great degree repressed, and his Majesty's revenue at the same time augmented, were the exercise of the said trades and occupations subjected by means of licence duties to proper regulation and controul; And whereas great difficulties are daily experienced in investigating and pursuing the traces of delinquency for want of an all-pervading system of national Police, having its chief seat or central point in the Metropolis, and from thence maintaining a close and connected chain of correspondence, by receiving information from, and communicating the same with regularity and promptitude to, all parts of this United Kingdom, by a permanent authority which, in consideration of the continually accumulating fund of information and experience so collected and preserved, might moreover stand charged in an especial [150\_181] manner with the business of devising, selecting, and from time to time reporting to his Majesty in Parliament, such measures {2}<sup>288</sup> as shall appear conducive to the more effectual prevention of predatory and other offences and to the attainment of the several ends of penal justice:—*or thus*—to the lessening the demand for punishment, to the diminishing the expence and alleviating the burthen of prosecution, to the turning the hearts or arresting the hands of evil-doers, to the preservation of the untainted, and the forewarning of the unwary, and to the attainment of the various particular ends of penal justice;

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<sup>287</sup> A slightly amended version of this preamble was published in Colquhoun, *A General View of the National Police System, recommended by the Select Committee of Finance to the House of Commons; and the functions of the proposed Central Board of Police Revenue: with observations on the probable effects of the general designs in the prevention of crimes, and in securing the rights of the peaceful subject*, London, 1799, pp. 31–2.

<sup>288</sup> See p. 214 below.

[150\_182]

§ 1. We your Majesty's most dutiful and loyal Subjects, the Commons of Great Britain in Parliament assembled, as well for the furtherance of the designs abovementioned as for the contributing towards raising the necessary supplies to defray Your Majesty's public expences, and making a permanent addition to the Public Revenue, have freely and voluntarily resolved to give and grant to your Majesty the several Duties hereinafter mentioned; and do most humbly beseech Your Majesty that it may be enacted, and Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal in this present Parliament assembled, and by the authority of the same, that the several classes of persons respectively exercising the several trades and occupations following shall, at the several times and places herein after appointed for that purpose, take out, each person a licence, empowering him or her to exercise such his or her trade or occupation, and shall pay each of them for every year during which such his or her license shall be in force, such sum or sums as are in that behalf hereinafter specified, differing in divers instances according as the place, at or in which such person [150\_183] shall be empowered to exercise such his or her occupation, shall be situate within the District composed of the several Parishes and places in, to and from which Letters are at present delivered by the Post called the London Penny Post,<sup>290</sup> according to the list thereof contained in the Schedule marked {A}<sup>291</sup> and hereunto annexed (which District shall be termed the *London Police District*), {3} {1}<sup>292</sup> or elsewhere in that part of Great Britain

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<sup>289</sup> i.e. 'Those to be licensed.'

<sup>290</sup> A Penny Post, which delivered mail within the London area for one penny, was established by private enterprise in 1680 and taken over by the government in 1682. The Post Office (Revenues) Act of 1711 (9 Ann., c. 11, § 7) limited its geographical scope to a radius of 10 miles from the General Post Office in Lombard Street, although the Penny Post Act of 1794 (34 Geo. III, c. 17, § 6) gave the Postmaster General authority to extend this limit at his discretion.

<sup>291</sup> No Schedules drafted for the Police Bill have been located. For Bentham's proposed Schedules to the Bill see p. 66 n. above.

<sup>292</sup> See p. 217 below. In the body of the Bill, Bentham usually provided two numbers for each reference to 'Notes on the Police Bill: containing Reasons, Precedents, and other Elucidations', the first referring to the consecutive numeration of the notes as a whole, and the second to a discrete numeration for each section. Inconsistencies and inaccuracies in his numeration have been silently corrected. For further details see the Editorial Introduction, p. 000 above.

called England, that is to say in any of the Districts or Divisions {4} {2}<sup>293</sup> hereinafter described (which Districts or Divisions shall respectively be characterized by the common appellation of *Country Police Districts*), [150\_184] and shall moreover, during the time comprized in each respective licence, keep constantly exhibited in durable and conspicuous characters, each of them, over the principal door or doors of such his or her place of trade or occupation, as also, in the several instances herein after in that behalf specified, in some conspicuous part of the cloathing worn, or of the carriages employ'd, in the exercise of such occupations respectively, inscriptions expressive of the name of such person at length, the occupation which by such license such person shall be empowered to exercise, [150\_185] together with such other particulars as in the several cases are hereinafter respectively mentioned, subject nevertheless to all such lawful regulations touching the situation, number, form and contents of the said inscriptions as, in virtue of the powers hereinafter given, shall from time to time have been made by the Commissioners hereinafter mentioned; the descriptions of which said several classes, together with the inscriptions by which the same may and shall for the aforesaid, and for all other, purposes be respectively directed, are as follows, that is to say:

[150\_186]

1. Purchasers of Household and other Goods for sale.

1. Class the first. {5} {3}<sup>294</sup> Every person seeking his or her living by purchasing, {6} {4}<sup>295</sup> (whether for sale or on commission) any Second-hand Houshold Goods, or any other kind of Second-hand Goods other than such as are hereinafter enumerated and made subject to particular license-duties.—Licence-Duty, within the London Police District {^^}, elsewhere, that is to say within the several Country Police Districts herein above and hereinafter mentioned, {^^}. Inscription, *Licensed Purchaser of Second-hand Houshold and other goods for sale.*

2. Wholesale Purchasers of Rags and Cordage for Paper-making.

2. Class the second. Every person seeking his or her living by purchasing (whether for sale or on commission) by wholesale (that is to say, to the amount of 28lb weight, of any one person, or number of persons in partnership, at any one time) and for the purpose of being sold for making into paper, any refuse or second-hand materials commonly used for the making of any kind of paper, and in particular any kind of cloth or piece-goods in

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<sup>293</sup> See p. 221 below.

<sup>294</sup> See p. 221 below.

<sup>295</sup> See p. 221 below.

the state of rags, whether the same be of flax, hemp, Cotton, Wooll, silk, or any mixture of the said materials, or any kind of decay'd or unserviceable cordage known by the name of *Hand-stuff*, or any other of the aforesaid materials, whether spun or not. Licence-Duty, within the London Police District, {£5}; elsewhere {£2: 10}. Inscription, *Licensed Wholesale Purchaser of Rags and Cordage for Paper-making*.

3. Retail purchasers of Rags and Cordage for Paper-making.

3. Class the third. Every person seeking his or her living by purchasing (whether for sale or by commission) any rags or cordage for Paper-making as particularized under Class the second, but never otherwise than by retail, (that is to say in less quantity than 28lb as abovementioned). Licence-Duty, within the London Police District, {£1}; elsewhere, {^^^}.<sup>296</sup> Inscription, *Licensed Purchaser of Rags and unserviceable Cordage for sale to Paper-Makers*.

[150\_187]

4. Purchasers of Second-hand Apparel &c.

4. Class the fourth. Every person seeking his or her living by purchasing (whether for sale or by commission) any Second-hand Apparel (except Shoes) or any Second-hand furniture or other articles composed and made up in the whole or principally of Piece-Goods, other than such as have been employ'd as Naval Stores, or any unmade-up shreds or remnants {7} {5}<sup>297</sup> of Piece-Goods. Licence-duty, within the London Police District, {£2}; elsewhere, {£1}. Inscription, *Licensed Purchaser of Second-hand Apparel, made up Piece-Goods, and remnants for sale*.

5. Walking Purchasers of Second-hand Apparel &c.

5. Class the fifth. Every person who, for the purpose of seeking his or her living, by purchasing, (whether for sale or by commission) any Second-hand Apparel, made-up Piece-Goods, or Remnants, as particularized under Class the fourth, shall go about from House to House or from Place to Place as a Pedlar (whether he or she have or have not any fixt shop or place of trade). Licence-Duty, within the London Police District, {£1}; elsewhere, {10<sup>s</sup>}. Inscription for the House, lodging or other fixed abode of such Dealer, as also for a Badge {8} {6}<sup>298</sup> to be worn by him or her according to such regulations as shall have been made by the Commissioners herein after mentioned, *Licensed Walking*

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<sup>296</sup> Given that the proposed rates of duty for trades outside the London Police District were invariably half that for those inside it, the rate of duty in this case would be 10s., which is the figure given by Bentham in a brouillon at UC clvii. 9 (8 October 1798), headed 'Police Bill Contents'.

<sup>297</sup> See p. 223 below.

<sup>298</sup> See p. 223 below.

*Purchaser of Second-hand Apparel, made-up Piece-goods and remnants for sale.*

[150\_188]

6. Purchasers of  
Second-hand Naval  
Stores.

6. Class the sixth. Every person seeking his or her living, by purchasing, (whether for sale or by commission) any Second-hand Sail-cloth, Sacking, Bunting, Junk, Cordage, Rope, Yarn or any other article which, being manufactured in the way of spinning or weaving, hath been employ'd, or is of any sort commonly employ'd, as naval stores. Licence-duty, within the London Police District, {£5}: elsewhere, {£2: 10<sup>s</sup>}. Inscription, *Licensed Purchaser of Second-hand Naval Stores for sale.*

7. Wholesale  
Purchasers of  
Second-hand Metals.

7. Class the seventh. Every person seeking his or her living, by purchasing (whether for sale or by commission) any second hand articles or masses consisting wholly or principally of Gold, Silver, {9} {7}<sup>299</sup> Copper, Tin, Lead, Iron, Steel, Zinc, Bismuth, Brass, Bell-metal, Pot-metal, Tutenag, or any other kind of metal or semi-metal, pure, plated or in mixture, by wholesale: that is to say, to the amount of {^^^} weight in gold, or {^^^} in Silver, or {^^^} in any other such metallic substance, of any one person, or number of persons in partnership, at any one time. Licence-duty, within the London Police District, {£5}: elsewhere, {£2: 10}. Inscription, *Licensed Wholesale Purchaser of Second-hand Metals for sale.*

8. Retail Purchasers  
of Second-hand  
Metals.

8. Class the eighth. Every person seeking his or her living by purchasing (whether for sale or by commission) any Second-hand Metals as last above particularized, but never purchasing the same otherwise than by retail; that is to say, never but in a quantity less than the wholesale quantities respectively above mentioned. Licence-duty, within the London Police District, {£2}; elsewhere, {£1}. Inscription, *Licensed Retail Purchaser of Second-hand Metals.*

[150\_189]

9. Purchasers of  
Second-hand Metals  
for working-up.

9. Class the ninth. Every Goldsmith, {10} {8}<sup>300</sup> Silversmith, Copper Smith, Plumber, Black Smith, White Smith, Brazier, Pewterer, Tinman, Founder, Pewter-and-Lead-Toy-Maker, Watchmaker, and every other worker in any kind of metallic or semi-metallic substance purchasing any Gold, Silver, Copper, Lead, Iron, Steel, Zinc, Bismuth, Brass, Bell-Metal, Pot-metal, Tutenag, or any other kind of second-hand article or mass consisting

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<sup>299</sup> See p. 225 below.

<sup>300</sup> See p. 225 below.

of metal or semi-metal, pure, plated or in mixture, for the purpose of manufacturing or working up the same in the course of his or her trade, with or without melting, and not for the purpose of selling the same in the same form as purchased, from any person other than a person licenced as a Wholesale Purchaser of Second-hand metals or as a Retail Purchaser of second-hand metals for sale. Licence-duty, within the London Police District, £2; elsewhere, £1. Inscription, *Licenced Purchaser of Second-hand metals of persons in general for working up.*<sup>301</sup>

[150\_190]

10. Purchasers of  
Second-hand  
Building Materials.

10. Class the tenth. **{11} {9}**<sup>302</sup> Every person seeking his or her living by purchasing (whether for sale or by commission) any Timber, Woodwork, Marble, Stone, Slate, Tiles, Bricks, or other materials that have already been employ'd in building. Licence-Duty, within the London Police District, {^^^}; elsewhere, {^^^}. Inscription, *Licenced Purchaser of Second-hand Building Materials for sale.*

11. Cart-Keepers for  
Second-hand Goods.

11. Class the eleventh. Every person keeping, hiring or borrowing any Cart, Waggon, or other carriage drawn by any Beast of Draught, and seeking his or her living by employing the same in the collection<sup>303</sup> or carriage of any of the articles in respect whereof any person is hereby required to take out a licence as a *Purchaser of Second-hand Household goods for sale, a Wholesale or Retail Purchaser of Rags and unserviceable Cordage for sale to Paper-makers, a Purchaser of Second-hand Apparel, made-up Piece-goods and Remnants for sale, a Purchaser of Second-hand Naval Stores for sale, a Purchaser, wholesale or retail, of Second-hand Metals for sale, a Purchaser of Second-hand Metals for working up, or a Purchaser of Second-hand Building Materials for sale.*

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<sup>301</sup> Bentham has cancelled the following passage which appears at this point: 'Class the tenth. **{10}** Every person who, being comprized under Class the ninth, shall use any furnace, crucible or other vessel for melting or casting (otherwise than from the ore) any Gold, Silver, Copper, Tin, Lead, Iron, Steel, Zinc, Brass, Bell-metal, Pot-metal, Tutenag or any other kind of metal or semi-metal, pure, plated or in mixture. Licence-Duty (over and above all licence-duties which any such persons may be bound to pay in virtue of any laws in being, as Dealers in Plate, or Assayers of Gold or Silver), within the London Police District, {£1}; elsewhere, {10<sup>s</sup>}. Inscription, *Licenced Metal Founder.*'

<sup>302</sup> See p. 229 below.

<sup>303</sup> In the margin, under the heading '*Collections*', Bentham has added and then cancelled the following note: 'In case of an ordinary cart casually hired by a Purchaser &c., Purchaser to pay the Duty.'

Licence-Duty, for every such Carriage **{12}** **{10}**,<sup>304</sup> within the London Police District, **{^^^}**; elsewhere, **{^^^}**; Inscription for the House or place of trade, and for every such Carriage, *Licensed Keeper of Draught Carts for Second-hand Goods purchased for sale.*

[150\_191]

12. Hand Cart-  
Keepers for Second-  
hand Goods.

12. Class the twelfth. Every person keeping, hiring or borrowing any Cart commonly called a *Hand Cart* or *Truck Cart*, or any other Cart or carriage, with more wheels than one, **{13}** **{11}**<sup>305</sup> drawn by human strength alone, and seeking his or her living by employing the same in the carriage of any of the articles in respect whereof a person employing in the conveyance thereof any carriage drawn by any Beast of Draught is hereby required to take out a licence as a *Licensed Cart-Keeper for Second-hand Goods purchased for sale.*

License-Duty for every such carriage, within the London Police District, **{^^^}**; elsewhere, **{^^^}**; Inscription for the House, and for every such carriage, *Licensed Hand-Cart Keeper for Second-hand Goods purchased for sale.*

13. Forfeited-Pledge  
Seller.

13. Class the thirteenth. Every person who, whether licenced or not as a Pawnbroker, shall seek his or her living by selling, whether on his or her own account, or by commission, at any less price than ten shillings, and any otherwise than by public Auction, any unredeemed pledge. Licence-duty, within the London Police District, **{£1}**; elsewhere, **{10<sup>s</sup>}**; Inscription, *Licensed Seller of Forfeited-Pledges.*

[150\_192]

Provided nevertheless that in the several Towns or Places in which his Majesty's Dock Yards **{14}** **{12}**<sup>306</sup> at Sheerness, Chatham, Portsmouth and Plymouth are respectively situated, and in the several sets of Parishes which, in the whole or in any part thereof respectively, are situated within the distance of five miles or thereabouts **{15}** **{13}**<sup>307</sup> from each respective Yard (lists of which several sets of Parishes are contained in the Schedule marked **{^^^}** and hereunto annexed),<sup>308</sup> the same rates of duty shall be paid as in the said London Police District.

[150\_193]

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<sup>304</sup> See p. 230 below.

<sup>305</sup> See p. 231 below.

<sup>306</sup> See p. 231 below.

<sup>307</sup> See p. 232 below.

<sup>308</sup> For Bentham's proposed Schedules to the Bill see p. 66 n. above.

§ 2. Classes  
exempted: 1.  
Purchasers at  
Auction.

§ 2. Provided always, that no person purchasing second-hand goods of any kind at any public auction {16} {1}<sup>309</sup> shall, by reason of such purchase, be obliged to take out any licence under and by virtue of this Act, although such purchase were made for the purpose of sale or for the purpose of working up such goods respectively, as aforesaid, such Auction having been *bonâ fide* advertised in some Newspaper or Newspapers in time for general attendance, and the same being open to all bidders without distinction.

[150\_194]

2. Pawnbrokers.

Provided also, that no Pawnbroker {17} {2}<sup>310</sup> shall, under or by virtue of this Act, be obliged to take out any licence, over and above such licence or licences as he is already obliged to take out by Law,<sup>311</sup> except in as far as he or she shall be a *Seller of forfeited Pledges* as herein above described.

Nor shall any person taking out a licence as a seller of Forfeited Pledges {18} {3}<sup>312</sup> be bound to take out any other licence under and by virtue of this Act, in respect of any goods sold by him or her as pledges, although the same be among the classes of goods in respect whereof a licence-duty is made payable, as aforesaid.

3. Booksellers.

Nor shall any Bookseller, {19} {4}<sup>313</sup> by reason of his purchasing Second-hand Books for sale, be obliged to take out any licence under the name of a *Licensed Purchaser of Second-hand Household and other goods for sale*, or under any other name whatsoever, under and by virtue of this Act.

[150\_195]

4. Manufacturers of  
Metals, in respect of  
old Metals taken in  
exchange.

Nor shall any Purchaser of Second-hand Metals of persons in general for working up be obliged to take out a licence in the class so denominated or in any other of the aforesaid classes, by reason of any second-hand articles of any such sort as he or she shall be in use to work up in the course of his or her trade, such articles being *bonâ fide* taken in the way of exchange {20} {5}<sup>314</sup> in payment or part-payment for other articles, new or second-hand,

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<sup>309</sup> See p. 233 below.

<sup>310</sup> See p. 233 below.

<sup>311</sup> See p. 95 n. above.

<sup>312</sup> See p. 234 below.

<sup>313</sup> See p. 234 below.

<sup>314</sup> See p. 235 below.

or new and second-hand together, of any such sort as he or she is also in use so to work up as aforesaid, so long as the agreed value of the articles so purchased shall not exceed the agreed value of the articles so furnished at the same time.<sup>315</sup>

[150\_196]

5. Common or Private Cart-keepers.

Nor shall any person, keeping any Draught Cart, Hand Cart, or other such Carriage as aforesaid, for his or her own use, or keeping any such Cart or Carriage and seeking his or her living by lending the same or letting out the same for hire, be obliged to take out any licence under and by virtue of this Act, unless in the case where he or she shall know that the purpose for which such Cart or Carriage was borrowed or hired was for the collection or conveyance of goods belonging to some class of goods in respect whereof a licence is herein above required to be taken out by the purchasers of such goods for sale or working up.

§ 3. A Keeper of a Cart &c. for the purpose of any such licenced trade shall, if a purchaser, pay duty as a purchaser.

§ 3. Provided always, and be it further enacted, that every person who, besides keeping, having or borrowing any such Carriage as aforesaid for the collection or conveyance of any such second-hand goods as aforesaid, shall himself or herself be a purchaser of any such goods, shall answer and pay such duty or duties of so much per cart or other carriage as aforesaid, over and above such duties as he or she shall be bound to pay in respect of the several classes of goods by the purchase whereof he or she shall seek his or her living as aforesaid.

[150\_197]

§ 4. Wholesale Licences include Retail: Proviso against splitting wholesale purchases to evade the wholesale duty.

§ 4. Provided also, and be it further enacted and declared, that a wholesale Purchaser's or other Dealer's licence shall be deemed and construed to include a Retail Purchaser's or other Dealer's licence in respect of the same goods.

Provided always, that if, by procurement or with the privity of any person licenced to purchase by retail only, any wholesale quantity shall be distributed into parcels and sold or

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<sup>315</sup> Bentham has marked the following passage, which appears in the text at this point, for deletion: 'as for example, a Silversmith furnishing silver plate new or second-hand, or new and second-hand together, and charging for the same £10, may without licence take in exchange for the same any quantity of old silver or gold, or silver and gold together, in respect of which he or she shall not give credit for more than £10: and so in regard to old copper taken in exchange for new or old copper laid down or otherwise furnished by a Coppersmith, brass for brass by a Brazier, or brass for copper, or copper for brass by any one who is at the same time a Brazier and a Coppersmith, and so in regard to Plumbers, Pewterers, and the like.'

purchased at divers times or by divers persons acting as distinct purchasers, any such distribution shall be deemed an attempt to evade this act, {21} {1}<sup>316</sup> and such purchaser, not having taken out a wholesale licence for or in respect of the articles so purchased, shall, notwithstanding his or her having a retail licence for or in respect of the purchasing of the same articles, be convicted as and for purchasing without licence.

[150\_198]

§ 5. Licences at under-rates to purchasers having several licences.

§ 5. Provided also, and be it further enacted, that every person taking out a licence as a *Purchaser of Second-hand Household or other Goods for sale* shall be intitled to take out licences as a *Wholesale Purchaser of Rags and Cordage for sale to Paper-makers*, as a *Retail Purchaser of Rags and Cordage for sale to Paper-makers*, as a *Purchaser of Second-hand Apparel, Piece-goods and Remnants*, as a *Purchaser of Second-hand Naval Stores*, and as a *Wholesale Purchaser of Second-hand Metals for sale*, respectively, at the inferior rates following, {22} {1}<sup>317</sup> that is to say: {^^^}.<sup>318</sup>

Provided also, that any person taking out a licence as a *Purchaser of Second-hand Apparel, Piece-goods and Remnants*, shall be intitled to take out licences as a *Purchaser of Second-hand Naval Stores*, as a *Wholesale Purchaser of Rags and unserviceable Cordage for sale to Paper-makers*, and as a *Retail Purchaser of Rags and unserviceable Cordage for sale to Paper-makers*, respectively, at the inferior rates following, that is to say: {^^^}.

Provided also, that every person taking out a licence as a *Purchaser of Second-hand Metals of persons in general for working up* shall be intitled to take out licences as a *Wholesale Purchaser of Second-hand Metals for sale*, and as a *Retail Purchaser of Second-hand Metals for sale*, respectively, at the inferior rates following, that is to say: {^^^}.

[150\_199]

§ 6. Each Licence good but for one place.

§ 6. Provided also, and be it further enacted, that in every such Licence mention shall be made of the House, Shop, Warehouse, Yard, or other place of Trade {23} {1}<sup>319</sup> or occupation in respect whereof the same shall be granted; and that no such Licence shall extend to more than one such place of Trade.

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<sup>316</sup> See p. 235 below.

<sup>317</sup> See p. 235 below.

<sup>318</sup> In the margin, Bentham has noted at this point: 'A scale to be made.' No such scale has been located.

<sup>319</sup> See p. 236 below.

Provided nevertheless, that any two or more Houses, Yards, or other places of Trade or occupation, which, being in the occupation of one and the same person, are not more than {^^^}<sup>320</sup> Yards {24} {2}<sup>321</sup> distant from each other, in the nearest parts thereof, shall, in respect of the payment of any such Licence-duty as aforesaid, be considered but as one; Provided also that if it should chance that any one such House, Yard, or other place should be partly within and partly without the said London District, the same shall be considered for the purpose of payment as aforesaid, as if the whole were within the said District.

Partners to pay as one.

Provided also, that Partners {25} {3}<sup>322</sup> in any number shall, in respect of every such Licence-Duty, be charged only as one person.

Servants not to pay.

Provided also, that a person purchasing or otherwise dealing on account of any employer in the general capacity of a Journeyman, Apprentice or other Servant, {26} {4}<sup>323</sup> and not by virtue of any special commission, shall not, as such, be bound to take out any such Licence; but such Licence shall be taken out by the Master or Mistress on whose account such purchase shall have been made or other business carried on.<sup>324</sup>

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<sup>320</sup> MS del. 'one hundred', a figure which Bentham repeats in his note to this paragraph: see p. 237 below.

<sup>321</sup> See p. 237 below.

<sup>322</sup> See p. 237 below.

<sup>323</sup> See p. 237 below.

<sup>324</sup> The following passage, which appears in the text at this point, has been cancelled by Bentham: 'Provided also that where, in the case of death, removal or giving up business {6} on the Part of any such licenced person, any other person already provided with a licence of the same class, though for a different place, shall come in and succeed to such business for the remainder of the period comprized in such Licence, every such person so succeeding shall within a certain period as hereinafter described take out a fresh Licence, and enter into a fresh recognizance: paying for such recognizance as aforesaid, but not paying any thing for such Licence.'

The corresponding note to this provision, which Bentham omitted from 'Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations', is at UC cl. 465: '§ 6. {6} {Giving up business.} The general idea of the provision made in this case is taken from a variety of precedents: but as to the particular mode, the precedents differ, and the mode pursued here is not an exact copy of any of them. According to a simple view of the matter, when the licence-duty has once been paid on account of any such *place* of trade for the whole year to come, whoever carries on the occupation in that same *place*, ought for the remainder of the year to be scot-free; since the *quantum* of annual duty imposed is as much, in the instance of each occupation, as it is deemed expedient that that occupation should be made to bear. If, as in the case just supposed, the party thus succeeding to any licenced shop &c. is already a licenced dealer of the same class,

[150\_200]

§ 7 (§ 1).  
Commissioners of  
Police—their  
appointment—func-  
tions—Emoluments  
—Local  
authority—Police  
Fund.

§ 7 (§ 1).<sup>325</sup> And be it further enacted, that, for the granting of the several Licences abovementioned, to the several classes of persons respectively abovementioned, for the collection of the duties so to be paid by the several classes of persons taking out such licences respectively, as aforesaid, and for the exercise of divers other functions hereinafter mentioned, it shall be lawful for his Majesty, {27} {1}<sup>326</sup> from time to time, by Commission under the Great Seal, revocable at pleasure, to constitute and appoint Commissioners in such number as to his Majesty may seem meet,<sup>a</sup> {28} {2}<sup>327</sup> and therein to specify and declare what number less than the whole number {29} {3}<sup>328</sup> of such Commissioners shall be necessary and sufficient to constitute a Board for all purposes generally, or for such and such purposes in particular, as also for what days {30} {4}<sup>329</sup> and during what hours {31} {5}<sup>330</sup> such Commissioners shall collectively or severally be bound to give attendance, with such Salaries {32} {6}<sup>331</sup> and other Emoluments for themselves and their subordinates hereinafter mentioned, as his Majesty may from time to time be pleased to appoint, which said Commissioners shall be stiled *Commissioners of Police*, {33}

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being in possession of a licence taken out for a different place, in such case, paying a fresh duty in the fresh shop &c. would be paying double duty, a factitious burthen unnecessarily imposed upon a person already loaded with the unavoidable burthen of the expence of removal: if he be not already licenced, it is a case provided for farther on, in the part which concerns the functions of the Board &c. It seemed proper thus briefly to touch upon this topic, in the part specially occupied in the appointing of what regards the quantum of duty in the several cases: matters of detail will come in further on.’

<sup>325</sup> i.e. § 7 of the Bill, and § 1 of Part II of the Bill. Bentham provided two numbers for each section contained in Parts II–VI of the Bill, the first forming part of the consecutive numeration of the sections of the Bill as a whole, and the second part of a discrete numeration of the sections in each Part thereof. Inconsistencies, omissions, and inaccuracies in his numeration have been silently corrected. For further details see the Editorial Introduction, p. 000 above.

<sup>326</sup> See p. 238 below.

<sup>327</sup> See p. 238 below.

<sup>328</sup> See p. 239 below.

<sup>329</sup> See p. 239 below.

<sup>330</sup> See p. 240 below.

<sup>331</sup> See p. 240 below.

{7}<sup>332</sup> and the fund formed for the purpose of defraying the expences of the Police by and out of the produce of such Duties as aforesaid, shall be termed the Police Fund, {34} {8}<sup>333</sup> and after defraying the expence of such Salaries and Emoluments and [150\_201] other expences created or provided for by this Act, the surplus of such product shall from time to time be paid into his Majesty's Exchequer, and be carried to and made part of the Consolidated Fund,<sup>334</sup> and in so far as the situation of the House, Shop, Warehouse, Yard, or other place of trade or occupation, in respect whereof any such licence is so to be taken out, shall be comprized within the the said *London Police District*, such licences shall be granted by the said Commissioners, who for that purpose shall hold their Office in some convenient part of the said District; {35} {9}<sup>335</sup> {36} {10}<sup>336</sup> and in so far as the situation of such place of trade or occupation as aforesaid shall be in any such Country District, as aforesaid, such Licences shall be granted in manner as hereinafter mentioned by the same Justices by whom, under the laws in being, licences are granted to Alehouse keepers; {37} {11}<sup>337</sup> and if it shall happen that one and the same such place of dealing or occupation, as aforesaid, shall be situated partly within and partly without the said London Police District, or if one and the same person shall have in his or her occupation [150\_202] two or more such places of dealing or occupation, as aforesaid, of which one or more shall be situated within the said London Police District, and one or more without the same, then and in every such case such licence or licences respectively shall be granted by the said Commissioners alone, and not by such Justices as aforesaid; and in respect of the granting of such several licences, the said Commissioners and such Justices as aforesaid shall respectively have and exercise the same authority and discretion as, under the laws in being, are exercised by such Justices in respect of the granting of such licences to Alehouse keepers, {38} {12}<sup>338</sup> as aforesaid.

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<sup>332</sup> See p. 240 below.

<sup>333</sup> See p. 241 below.

<sup>334</sup> In the margin, Bentham has noted at this point: '38 G. 3. c. 89. § 137. *Salt*.' This section of the Salt Duties Act of 1798 prescribed that 'all Monies arising by the said Duties by this Act granted or imposed (the necessary Charges of raising and accounting for the same excepted) shall from Time to Time be paid into the Receipt of his Majesty's Exchequer, and shall be carried to and made Part of the Consolidated Fund'.

<sup>335</sup> See p. 241 below.

<sup>336</sup> See p. 243 below.

<sup>337</sup> See p. 245 below.

<sup>338</sup> See p. 246–7 below.

<sup>a</sup> [150\_200] 5 W. c. 21. Stamps.<sup>339</sup>

9 An. c. 23. Hackney Coaches.<sup>340</sup>

9 & 10 W. c. 27. Hawkers.<sup>341</sup>

1 An. Stat. 1. c. 21. § 26. Salt.<sup>342</sup>

[150\_203]

§ 8 (§ 2)—their superiors and subordinates. Receiver General to be appointed by the Treasury.

§ 8 (§ 2). And be it further enacted, that for their assistance in the collection of the said duties and of such other monies as shall become payable into the said Police Fund, as also in discharge of the several other functions hereinafter mentioned, as well within the said London Police District, as in the said several Country Police Districts or Divisions, it shall and may be lawful to and for the said Commissioners from time to time to appoint, by order in writing (subject nevertheless to all such orders as shall from time to time be given by the Lord High Treasurer or Commissioners of the Treasury for the time being, and also excepting as hereinafter is excepted), and upon occasion to suspend or remove, **{39} {1}**<sup>343</sup> such Collectors, Surveyors and other Officers and Clerks as they, the said Commissioners, shall from time to time think necessary for the said purposes. Provided always, that the person or persons acting as Receiver General or Receivers General of the monies payable into and to be made part of the said Police Fund shall be appointed, and upon occasion suspended or removed, by the said Lord High Treasurer or Commissioners of the Treasury, and not by the said Commissioners of Police: **{40} {2}**<sup>344</sup> and for the payment of such Salaries and allowances as shall have been appointed for such subordinate Officers and Clerks respectively, as well as for the defraying of the several other charges hereby imposed or hereafter to be imposed upon the said Police Fund, it shall be lawful for the

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<sup>339</sup> The Stamps Act of 1694 (5 & 6 Will. & Mar., c. 21, § 7) empowered the Crown to appoint Commissioners to oversee the Act's provisions.

<sup>340</sup> The Stamp Act of 1711 (9 Ann., c. 23, § 1), restating the provisions of the Hackney Coaches etc. Act of 1694 (5 & 6 Will & Mar., c. 22, § 1), empowered the Crown to appoint up to five Commissioners to regulate and license Hackney coaches within the metropolitan area.

<sup>341</sup> The Hawkers Act of 1697 empowered the Lord Treasurer or Lords Commissioners of the Treasury to appoint up to three Commissioners to oversee the licensing of hawkers, pedlars, and petty chapmen.

<sup>342</sup> The Salt Duties etc. Act of 1702 (§ 26) empowered the Crown to appoint Commissioners, distinct from the Commissioners of Excise, to oversee the collection of duties on salt.

<sup>343</sup> See p. 247 below.

<sup>344</sup> See p. 248 below.

said Commissioners of Police from time to time to draw Bills or Orders upon such Receiver General or Receivers General: (subject always to the orders of the said Lord High Treasurer or Commissioners of the Treasury, as aforesaid:) and as to all other matters, the said Commissioners of Police shall be subject to such orders of his Majesty as shall from time to time be signified by his Majesty's Principal Secretary of State {41} {3}<sup>345</sup> for the Home Department.

[150\_204]

§ 9 (§ 3). Power to the King to appoint for each Alehouse-licencing Division a Police Magistrate or Commissioner from among the Justices—to correspond and appoint Police Surveyors.

§ 9 (§ 3). And, as well for the collection of the said Duties as for the discharge of various functions of Police hereinafter-mentioned, be it further enacted, that it shall be lawful for his Majesty from time to time, by Order signified by his Majesty's Secretary of State for the Home Department, to nominate and appoint in and for every such Country Police District or Division as aforesaid some one person, being one of his Majesty's Justices of the Peace acting in and for such Division in the business of granting Licences to Alehouse-keepers, with the stile and title of *Country Commissioner of Police* or *Country Police Magistrate* {42} {1}<sup>346</sup> in and for such District, to continue in such office during his Majesty's pleasure, or with such other stile and title as it shall please his Majesty to appoint and confer, which said Officer, so appointed, shall serve without fee or reward, and shall, during his continuance in such Office, be distinguished by {the appellation of Honourable or} by any such {other} title or titles, mark or marks of honour, as it may please his Majesty to appoint, {43} {2}<sup>347</sup> and shall have precedency for himself, or for himself and family, in such rank as it may please his Majesty to appoint; and on his resignation of his said Office, after continuing in the same for any such number of Years as from time to time it shall please his Majesty to appoint, or without any such condition, shall continue in the possession of such distinctions as aforesaid, or any of them, for the term of his natural life or any other such term as in the instance of each individual it shall please his Majesty to appoint; and such Country Commissioner of Police or Police Magistrate shall, in virtue of such his Office, be specially bound to keep up and maintain a correspondence with the said Board of Police for Police purposes in general, and in particular for the several special purposes hereinafter mentioned, and for the said purposes

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<sup>345</sup> See p. 248 below.

<sup>346</sup> See p. 249 below.

<sup>347</sup> See p. 252 below.

shall fulfill all such lawful requests and Instructions as shall from time to time be made and communicated to him by and [150\_205] by authority of the said Commissioners; Provided always, that any one such Country Police Commissioner or Police Magistrate may be appointed for any two or more contiguous Districts or Divisions, or any two or more such Commissioners or Police Magistrates respectively for any one such District or Division, so as the boundaries of the local authority of every such Country Commissioner or Police Magistrate be distinct and separate, and that the several subordinate local divisions or districts in and for which such Commissioners or Magistrates shall respectively be appointed, be distinguished from one another by known boundary-lines (such as those by which contiguous Parishes are distinguished), and denoted each of them by an appropriate name, to be settled and appointed by the said Board of Police.

[150\_206]

§ 10 (§ 4). For collecting the Licence Duties &c., Power to Country Police Magistrates to appoint Police-Surveyors, dismissible or finable by the Board.

**§ 10 (§ 4).** And be it further enacted, that for the collection of the said Duties and for the discharge of such other functions as are herein after mentioned, such Commissioners or Police Magistrates shall, as soon as conveniently may be after their appointment, by instrument in writing, nominate and appoint each of them in such his District or Division as aforesaid a Surveyor or such other number of Surveyors, to be resident in such place or places as shall have been fixed by the said Board: who shall moreover have the authority of Constables in manner hereinafter mentioned: and shall be paid for such their time and trouble by a poundage upon the amount of the Duties by them respectively collected, the rate of the said poundage to be fixed by the said Board for each such Division or District, regard being had to the magnitude of the amount of the sum likely to be collected in each instance, and to the extent of such Division or District, in such sort that where in two districts of equal extent such amount is at the greatest, the rate per Cent shall be the smallest, and that where in two Districts of unequal extent the amount shall be the same, the rate per Cent shall be at the greatest in that one of the two Districts which is most extensive; Provided always, that the sum total of the expence of collecting and remitting to the said Board or their Receiver General the produce of the said Duties shall not in the whole exceed 1<sup>s</sup> in the £: every such Commissioner or Police Magistrate taking, on the appointment of every such Surveyor, Security for such sum, and with such reasonable number of Sureties, as the said Board, (regard being had to the greatest sum likely to be lodged in the hands of the Surveyor of such District or Division at any one time) shall have thought fit to appoint; and every such Surveyor so appointed shall continue in such his

Office until his appointment [150\_207] shall, on his resignation or misbehaviour or otherwise, have been revoked by the said Board; Provided always, that it shall and may be lawful to and for every such Commissioner or Police Magistrate, by order in writing, to suspend any or every such Collector acting in and for such his District or Division as aforesaid for one week from the date thereof, and so from week to week, and to appoint to act during such interval of suspension any other fit person in the stead of such suspended person, and so *toties quoties*, until the directions of the said Board respecting the reinstatement or dismissal of such suspended person shall have been received; Provided also, that in case of any negligence or other misconduct on the part of any such Surveyor, or any other person whom the said Commissioners are or shall be empowered to dismiss, it shall be lawful to and for such Commissioners, on the petition of such person so misconducting himself, to impose upon and receive or cause to be received from him any such fine or forfeiture (the amount of which shall in such case be carried to the said Police Fund) as such person shall by such his petition submit to pay. {44} {1}<sup>348</sup>

[150\_208]

§ 11 (§ 5). Police Surveyor to have the authority of a Constable, and to be compellable by a Justice to account for moneys in his hands.

§ 11 (§ 5). And be it further enacted, that for the preserving the peace and preventing Robberies and other Felonies, and apprehending Offenders against the peace, and executing the Orders of such Country Commissioners or Police Magistrates and other his Majesty's Justices of the Peace, and doing all such things as he shall be authorized and required to do under and by virtue of this Act, every such Surveyor so appointed as aforesaid shall, within the County in which the District or Division in and for which he shall so have been appointed as aforesaid, possess and exercise the power, authority and privileges of a Constable, {45} {1}<sup>349</sup> so long as he shall continue in the possession and exercise of such his Office or Employment, and no longer: and shall take an Oath of due and faithful execution of such his Office, which said Oath shall be of such form and tenor as the said Commissioners of Police shall from time to time appoint, {46} {2}<sup>350</sup> and shall be administered to each such Surveyor at the time of such his appointment by such Country Commissioner or Police Magistrate by whom he shall have been appointed as aforesaid; and every such Police Surveyor shall remitt to the said Board the produce of the Duties so by him collected, together with all such other monies, if any, as shall be in his

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<sup>348</sup> See p. 254 below.

<sup>349</sup> See p. 256 below.

<sup>350</sup> See p. 257 below.

hands belonging and appertaining to the said Police Fund, weekly through the medium of the Post, or at such other times and in such other manner as the said Board shall from time to time direct: and in case any such Surveyor shall at any time be in arrear in respect of any such payment as aforesaid, it shall be lawful to and for the Justice or Police Magistrate of such his District or Division as aforesaid, or any other Justice of the Peace acting in and for such District or Division, or in case of such Surveyor's not being to be found within the jurisdiction of such Justice, then to and [150\_209] for any Justice of the Peace in and for the County or other jurisdiction in which he may be found, to cause him to account, upon oath and in a summary way, and make payment of what shall appear to be due, examining, moreover, all such other persons, if any, as there shall be occasion to examine for that purpose: and for the purpose of compelling such payment, such Justice shall, if necessary, proceed by imprisonment, with or without distress and sale, {47} {3}<sup>351</sup> corresponding with and taking any such instructions from the said Board, or from the Justice or Police Magistrate of the Division or District for which such person shall be Surveyor, as occasion may require.

[150\_210]

§ 12 (§ 6).  
Electioneering  
prohibited, on the  
part of Police  
Officers.

§ 12 (§ 6). And be it further enacted, that no Member of the said Board, nor any such Country Commissioner or Police Magistrate as aforesaid, nor any Surveyor or other subordinate Officer or Clerk acting under the authority of the said Board, shall, during his continuance in such his Office or employment, give any vote, or directly or indirectly endeavour to persuade any Elector to give, or dissuade any Elector from giving, his vote for the choice of any person to be a Member of the House of Commons, on pain of forfeiting the sum of one hundred pounds, to be recovered by any person that shall sue for the same in any of his Majesty's Courts of Record at Westminster, in which no Essoin or Wager of Law, nor more than one Imparlance, shall be allowed.<sup>352</sup>

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<sup>351</sup> See p. 258 below.

<sup>352</sup> An essoin was an excuse given for non-appearance in court; a wager of law an offer by an accused person to swear his innocence or non-liability with the support of a number of compurgators, or character-witnesses; and an imparlance an extension of the time allowed for entering a plea to an accusation. A provision limiting a party's recourse to such delaying tactics when a fine had been imposed was included as a standard clause in numerous statutes. See, for instance, the Land Tax Perpetuation Act of 1798 (38 Geo. III, c. 60, § 96), which prescribed that 'no Essoign, Protection, Privilege, Wager of Law, nor more than one Imparlance shall be allowed'.

Part III.  
Licencing

[150\_211]

§ 13 (§ 1). And be it further enacted, that the first Board for the business of granting of licences under and by virtue of this Act, to be in force within the said London Police District, shall (unless some earlier time shall have been appointed by his Majesty under the powers hereinafter mentioned) be held by the said Commissioners on the first day of September {48} {1}<sup>353</sup> next ensuing; and if the whole of such business be not then dispatched, then on the several succeeding days or on any other days to which such business or any part thereof shall have been adjourned, until the whole thereof shall have been dispatched; ‘and that every such licence shall be granted and be in force’ for ‘one whole year, commencing on the twenty-ninth day of the said September, {49} {2}<sup>354</sup> and no longer’; and shall be signed by the major part of the said Commissioners {50} {3}<sup>355</sup> or such number as shall be requisite and sufficient to constitute a Board for that purpose, or by any person Officiating as Secretary at any such Board by direction of the Board; and in respect of every licence so granted, the licence-duty payable—as herein before mentioned—on account thereof, shall, previously to the signature thereof, be paid to the said Commissioners or their Receiver appointed for that purpose.

§ 13 (§ 1). First annual time for granting the Licences by the Board.

[150\_212]

§ 14 (§ 2). And be it further enacted, that in and for every such Country Police District as aforesaid, the said Licences shall be granted by the Justices assembled at the General licensing Meetings which shall be, or under the laws now in being {51} {1}<sup>356</sup> ought to be, holden in and for the respective Divisions for the licencing of Alehouses, to wit on the first day of September next ensuing, or, if the whole of such business be not then dispatched, then on the several succeeding days between that and the twenty-first Day of the said September, to which such business or any part thereof shall have been adjourned,

§ 14 (§ 2).—in the Country by the Justices.

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<sup>353</sup> See p. 261 below.

<sup>354</sup> See p. 261 below, where Bentham explains that in this section he is reciting the Alehouses Act of 1753 (26 Geo. II, c. 31, § 4), which is, in fact worded as follows: ‘no Licence for the Purposes aforesaid shall be granted, but on the first Day of *September* yearly, or within twenty Days after; and that such Licence shall be made for one Year only, to commence on the twenty-ninth Day of the said *September*’.

<sup>355</sup> See p. 262 below.

<sup>356</sup> See p. 262 below.

untill the whole thereof be dispatched; {52} {2}<sup>357</sup> and every such licence so granted shall also be in force for one whole Year, commencing on the 29<sup>th</sup> of the said September, and no longer; and in respect of every licence so granted, the licence-duty payable, as herein before mentioned, on account thereof, shall, previously to the signature thereof by such Justices, have been paid to such Surveyor [150\_213] as shall have been appointed in that behalf in manner abovementioned; and such licence shall not be valid without a receipt signed by such Officer, {53} {3}<sup>358</sup> and endorsed upon the same, which said licence-duty shall, if such licence shall have been refused by such Justices or shall not have been granted within the time appointed for that purpose as aforesaid, be forthwith returned by such Surveyor on demand to the party by whom the same was paid.

[150\_214]

§ 15 (§ 3). Provided always, and be it further enacted, that every person intending to apply for any licence at such first licencing times as aforesaid shall previously thereto give notice of such his or her intention to such Commissioners, if the place in respect of which such licence is applied for be within the said London Police District, or if not within the same, then to such Justices, as aforesaid, as also to such Surveyor as aforesaid; which Notice shall moreover be expressed in such Form as the said Commissioners shall from time to time think fit to appoint in that behalf; and such Notice shall, if the House or other place of trade or occupation in respect of which such licence is to be granted be situate within the said London Police District, be given {20} days {54} {1}<sup>359</sup> at the least, or if elsewhere than within the said District {30} days, {55} {2}<sup>360</sup> before the said first day of September abovementioned; [150\_215] and previous to the granting of every such licence at such first general time of licensing, it shall and may be lawful to and for such Commissioners and Justices respectively, to examine the party applying for such licence, {56} {3}<sup>361</sup> as also any such other person or persons as it may appear proper and necessary to the said Commissioners and Justices respectively to examine, for the purpose of ascertaining whether such party be a person of honest and sober life and conversation, and

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<sup>357</sup> See p. 262 below.

<sup>358</sup> See p. 263 below.

<sup>359</sup> See p. 263 below.

<sup>360</sup> See p. 263 below.

<sup>361</sup> See p. 264 below.

§ 15 (§ 3). Notice to be given by a Candidate for a licence.—Powers for examining into his fitness.

fit in that behalf to be admitted to enter upon or continue in the exercise of the occupation in respect of which he or she is desirous of taking out a license.

[150\_216]

§ 16 (§ 4). Powers for appointing Bye-Licencing times.

§16 (§ 4). Provided always, {57} {1}<sup>362</sup> and be it further enacted, that at the request of the said Commissioners, {58} {2}<sup>363</sup> ‘the Justices assembled at the General licensing meetings holden as aforesaid for the respective Divisions within<sup>b</sup> any County except Middlesex and Surry, {59} {3}<sup>364</sup> ‘shall have power and authority to appoint’ one, two, three or more, but ‘in the said Counties of Middlesex and Surrey not less than six nor more than eight, special days of meeting at different fixed and equal periods, as near as may be, in every year after the aforesaid first General Licencing Meeting’ to be holden for the granting of licences in respect of the several occupations to such persons as shall then apply to be licenced for the first time in respect of their several occupations; and for every licence granted at any such special Meeting there shall be paid a proportionable rate of duty, proportioned to the fraction of a Year which such licence will have to run; and the Justices ‘assembled at the said General Licencing Meetings are hereby directed and required to cause due notice to be given of the Times and Places at which such special meetings shall respectively be holden’; Provided nevertheless that no license for the carrying on of any occupation shall be granted to any person having already been licenced in respect to that same occupation, nor shall any such license be renewed as aforesaid, at any other time of the Year than such General time of licencing {60} {4}<sup>365</sup> as is before mentioned.

<sup>b</sup> 32 G. 3. c. 59. § 2.<sup>366</sup>

[150\_217]

§ 17 (§ 5). Renewal of Licences.

§ 17 (§ 5). And be it further enacted, that every person having been so licenced, whether at any General licensing day or any Bye or Special licensing day as aforesaid,

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<sup>362</sup> See p. 267 below.

<sup>363</sup> See p. 269 below.

<sup>364</sup> See p. 270 below.

<sup>365</sup> See p. 270 below.

<sup>366</sup> Bentham’s quotations are taken from the Alehouse Licensing Act of 1792 (32 Geo. III, c. 59). There are minor inaccuracies in the rendering of the passages.

shall, Yearly and every Year at each General licencing time as aforesaid, for so long as he or she shall continue to exercise the occupation in respect of which he or she shall so have been licenced, take out a fresh licence, and shall on each occasion attend in person at the Board or Meeting respectively, at which such fresh licence shall be taken out; Provided always, that for the better accommodation of individuals, and for the better indication of the length of time during which each licenced person shall have continued in the exercise of his or her occupation without reproach, it shall and may be lawful to and for such Commissioners and Justices respectively, to take order in such manner that the same instrument shall be made use of {61} {1}<sup>367</sup> year after year for the renewal of each licence, as also that the personal attendance of the party may upon occasion be dispensed with, {62} {2}<sup>368</sup> the business of such renewal being transacted through the medium of the post, free of postage in manner hereinafter mentioned, or in any other such convenient manner as shall from time to time be appointed by the said Commissioners.

[150\_218]

**§ 18 (§ 6).** Provided always, and be it further enacted, that upon the decease of any person so licenced in respect of any place not within the said London Police District, it shall be lawful to and for any two or more Justices of the Peace for the Division in which such House shall be situated, to allow, at their discretion, to any Widow, Child, Executor, Administrator, Devisee, person intitled to take out Administration, or any other such person who shall appear to such Justices to be intitled to the temporary possession of such House and the stock thereof, whether in trust or for his or her own use, to keep open such House {63} {1}<sup>369</sup> for the exercise of the trade or occupation in respect of which the same shall have been licenced, untill the next licencing day at which such person, if approved of, would have it in his or her power to obtain a licence; Provided also, that no such person as aforesaid, nor any servant of the deceased, nor any other person carrying on such trade or occupation, and acting therein *bonâ fide* for the benefit of the estate of the deceased, shall, whether intitled so to act or no, be liable to any penalty for any such act done within 30 days after such decease, although no such permission as aforesaid should within that time have been obtained.

§ 18 (§ 6).  
Continuation of the  
Trade in cases of  
Death, Bankruptcy,  
&c.

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<sup>367</sup> See p. 270 below.

<sup>368</sup> See p. 271 below.

<sup>369</sup> See p. 271 below.

[150\_219]

Provided also, that no person coming into possession of any such stock, *bonâ fide* and without collusion, by reason of Bankruptcy, Execution, Distress or otherwise by process of law, shall be liable to any penalty for acting in any such licenced house or place of trade in the exercise thereof, {64} {2}<sup>370</sup> so far as shall be necessary for the disposal of such stock according to law and the temporary maintenance of such trade.

Provided also, that a person having already a license to exercise any such occupation in a certain place shall not, during the time such licence has to run, pay any thing for any fresh licence granted to him or her in respect of any other place, save and except the difference between the Town Duty and Country Duty in the case of his or her migrating into the said London Police District from a place not within the same.

[150\_220]

**§ 19 (§ 7).** Provided always, and be it [further] enacted, that if, for the purpose of enquiry into any matter of fact respecting the character or behaviour of any person applying for a licence, or for any other purpose, it should be found necessary at any time to adjourn such Meetings to any subsequent day beyond the regular time in that behalf above mentioned, such license, if granted on any such subsequent day, shall not on that account be void; although the date thereof should be posterior to the commencement of the Year or other time which such licence shall have to run; and if the person concerning whom such enquiry shall be made be a person who had been licenced for the year or fraction of a year preceding, in respect of any occupation or occupations, it shall be lawful for such person to continue in the exercise of such occupation or occupations, during such interval, and until it shall have been duly signified to him or her, by or by order of such Justices, that the renewal of his or her licence is refused; and if in the course of any such enquiry any material allegation or suggestion should be made, the truth of which can not be ascertained but by the examination of some person or persons living out of the Jurisdiction {65} {1}<sup>371</sup> of the Justices by whom such licence is to be granted, it shall and may be lawful to and for any Justice within whose jurisdiction any such person or persons so to be examined shall be then resident, at the request of such Justices, to take and transmitt to them the examination of such person or persons in that behalf; [150\_221] and the necessary

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<sup>370</sup> See p. 272 below.

<sup>371</sup> See p. 272 below.

§ 19 (§ 7). Signature of Licences adjournable for the purpose of enquiry.

correspondence carried on for such purpose may and shall be carried on through the medium of the said Board, and being so carried on shall be exempt from all duty and charge on account of postage, in manner hereinafter mentioned.

[150\_222]

**§ 20. (§ 8).** And whereas in certain Towns Corporate and other places the annual Meetings for the licencing of Ale houses are customarily held in the month of February, or at some other time or times, and not in the first twenty days of the month of September as aforesaid, Be it further enacted, that for the purpose of granting such licences as are required to be taken out under and by virtue of this Act, such Justices as, for the purpose of granting such licences as aforesaid to Alehouse-keepers, ought or are in use to assemble, or would otherwise have assembled, in the month of February next ensuing, or at any period as aforesaid other than the said commencement of the said month of September, shall, in every such town corporate or other place, on some one of the three first days of September next ensuing, assemble together and hold a meeting at their respective usual places of meeting, or some other equally convenient places, for the purpose of granting such licences as shall be applied for under and by virtue of this Act; [150\_223] and in every such District or Division, the person or persons acting as Clerk or Clerks to the meetings of Justices so held therein for the granting of licenses to Alehouse-keepers shall by public outcry, as also by such means as in such Towns Corporate or other places are usually practiced in the instance of Alehouse-keepers, give notice or cause notice to be given, to every person exercising any such trade or occupation in respect of which any licence is required to be taken out under and by virtue of this Act, with such intervals of notice as are herein above mentioned (to wit within the said London Police District, 20 days, and in any place without the same, 30 days), in such manner that every such person having occasion to apply for any such licence shall be duly prepared to attend and make application for the same; and in whatever such Town Corporate or other place any such meeting shall be thereupon held, the Justices present at such meeting, or some sufficient number of them, shall be bound to continue such meeting (with or without adjournment as the case may require) untill a licence shall have been either granted or refused to every such person so making application for the same; and if, in any such Town Corporate or other place, no such meeting [150\_224] shall have been holden within the said period of three days, or sufficient notices shall not have been given, or proper and sufficient steps shall not have been taken for the entering upon the said business, it shall and may be lawful for any or

§ 20 (§ 8). In Towns Corporate &c. where Ale-house-Licencing Meetings are held in February &c., Meetings for licencing under this Act shall be held in September.

every such person by whom any such licence is hereby required to be taken out, to make application for the same at any such meeting which shall be holden for that purpose, at the request of the said Board or otherwise, in and for the Division or District in which such Town Corporate or other place is included; or if such Town Corporate or other place be not included in any such Division or District, then at any such meeting as shall be holden in and for any such Division or District contiguous or adjacent to such Town Corporate or other place.

[150\_225]

§ 21 (§ 9). Board to appoint Surveyors and grant Licences, wherever the business fails of being gone through otherwise.

§ 21 (§ 9). And be it further enacted, that no such appointment of Surveyor as aforesaid shall be valid unless the same shall have been made fourteen days at the least before the latest day on which applications are allowed to be made for licences under and by virtue of this Act; ~~{66}~~ ~~{1}~~<sup>372</sup> and if, in any such Division or Country Police District as aforesaid, it should happen that, at the expiration of such time hereby allowed, any such Office of Surveyor shall have remained unfilled (whether by reason that no fit person shall have been found able and willing to undertake the said Office of Police Magistrate, or that in any such Police District or Sub-District as aforesaid, no sufficient appointment of Surveyor shall have been made by the Police Magistrate of such District), then and in such case it shall and may be lawful to and for the said Board to fill up every such vacancy resulting from every such default as aforesaid; and if, in any such Country Police District, it should happen that, within the time herein above limited for granting licences, no sufficient course shall have been taken for the granting or refusing a licence to every person making application for the same (by reason that no sufficient meeting or meetings were holden for the said purpose within such time, or otherwise), it shall and may [150\_226] be lawful to the said Commissioners to transact the business of granting or refusing licences in and for every such Country Police District in the same manner, as near as may be, as the said business ought to have been transacted at such Meetings of Justices as aforesaid, for which purpose applications on the part of persons desirous of taking out such licences shall be made to the Surveyor of each respective District, or to such other person and in such other manner as the said Commissioners may think fit to appoint.

[150\_227]

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<sup>372</sup> See p. 273 below.

§ 22 (§ 10). Fee for the Clerk of the Licencing Meeting.

§ 22 (§ 10). Provided also, and be it further enacted, that at every such licencing meeting out of the said London Police District, on every such grant or renewal of a licence, there shall be paid by the party licenced to the person or persons officiating on such occasion as Clerk or Clerks, any such sum not less than 1<sup>s</sup> nor more than 2<sup>s</sup> 6<sup>d</sup>, as the said Board shall from time to time appoint as his or their fee {67} {1}<sup>373</sup> for such business as shall be done by him or them on the occasion of such grant or renewal, including not only the registration or entry thereof in the Minutes of such meeting, but also, in such Towns Corporate and places as aforesaid, the giving or causing to be given such Notices as in that behalf are herein above required.

[150\_228]

§ 23 (§ 11). Stamps employable or not by the Board for collection of the Licence-Duties.

§ 23 (§ 11). And be it further enacted, that the words and figures expressive of the amount of the several duties payable on account of the several licences, together with any other part or parts of such instruments, shall be made and expressed by stamps or otherwise, {68} {1}<sup>374</sup> and the stamps employ'd for that purpose may from time to time be changed, by order of the said Commissioners, in such manner as to them in their discretion shall seem meet.

#### Part IV. *Regulations*

[150\_229]

§ 24 (§ 1). Second-hand articles (other than Apparel &c.) not to be purchased by Walking Purchasers, unless they have Carts with them—nor by others, elsewhere than at the licenced shop.

§ 24 (§ 1). And be it further enacted, that no licence to be granted under and by virtue of this Act shall extend, or be deemed or construed to extend, to empower any person to purchase any second-hand metals, or any other second-hand goods whatsoever, by going about as a Walking Purchaser thereof from house to house, (excepting persons licenced as Walking Purchasers of Second-hand Apparel, Piece-goods and Remnants as aforesaid) unless such person be licenced as a Keeper of Draught Carts or as a Keeper of Hand Carts respectively, as aforesaid, and shall at the time of such purchase have with him or her some Cart {69} {1}<sup>375</sup> or other such Carriage in respect whereof he or she shall at the same time be licenced; nor shall any such licenced person (excepting Walking Purchasers

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<sup>373</sup> See p. 274 below.

<sup>374</sup> See p. 275 below.

<sup>375</sup> See p. 276 below.

and Cart-Keepers in manner last above-mentioned) receive into his or her possession any such goods, elsewhere than at the shop or other place in respect whereof his or her licence shall have been granted, as aforesaid; [150\_230] and every person who, being licenced as a Walking Purchaser of Second-hand Apparel, Piece-Goods and Remnants, shall, in going about from House to House (not having with him or her any such licenced Cart or Carriage as aforesaid), presume to purchase, whether for sale or working up, any such Second-hand article or mass composed of any metallic or semi-metallic substance as aforesaid (other than such as may chance to be worked up in the form of buttons, embroidery or other appendage or appendages with or upon any apparel or made-up Piece-Goods), or any other kind of second-hand goods except Rags, shall incur the forfeiture of his or her licence or licences, over and above all such pecuniary penalties as he or she may have incurred in respect of any such goods the purchase whereof is hereby intended to be prohibited as aforesaid.

[150\_231]

§ 25 (§ 2). Hours for purchasing— Children not to be dealt with.

§ 25 (§ 2). And be it further enacted, that no person who, under and by virtue of this Act, is required to take out a licence under the name of [a] Purchaser of Second-hand Household and other Goods for sale, a Wholesale Purchaser of Rags and Cordage for sale to Papermakers, a Retail Purchaser of Rags and Cordage for sale to Paper-makers, a Purchaser of Second-hand Apparel, Piece-Goods and Remnants for sale, an Itinerant Purchaser of Second-hand Apparel, Piece-Goods and Remnants for sale, a Purchaser of Second-hand Naval Stores for sale, a Wholesale Purchaser of Second-hand Metals for sale, a Retail Purchaser of Second-hand Metals for sale, a Purchaser of Second-hand Metals of persons in general for melting or working up, a Purchaser of Second-hand Building Materials for sale, a Keeper of Draught Carts for Second-hand goods, a Keeper of Hand-Carts for Second-hand Goods, a Seller of Forfeited Pledges, or a Purchaser of Ship's Stock for sale,<sup>376</sup> respectively, shall exercise such his [or her] occupation at any time of the four-and-twenty hours other than {70} {1}<sup>377</sup> between the hours of {^^} in the forenoon and {^^} in the afternoon from Lady Day to Michaelmas, both inclusive, and between the hours of {^^} in the forenoon and {^^} in the afternoon from Michaelmas to Lady Day,

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<sup>376</sup> This final category of licensee does not appear among the '*Licentiandi*' in § 1, pp. 150–5 above, but does appear in 'Heads of .^.^ a Bill for the granting to his Majesty certain duties on Licences', § 1, p. 61 above.

<sup>377</sup> See p. 277 below.

both exclusive: or such other hours as shall from time to time have been prescribed instead thereof by the said Commissioners; {71} {2}<sup>378</sup> nor shall, in the course of such his [or her] dealings, purchase any article whatsoever from any child {72} {3}<sup>379</sup> under the age of {^^^} years, if such child be unknown to such purchaser, nor although known, unless the name and abode of such child be forthwith entered upon the Account books of such Purchaser in manner hereinafter mentioned.

[150\_232]

§ 26 (§ 3). And for the more uniformly and effectually exhibiting to view the several inscriptions {73} {1}<sup>380</sup> herein above required to be exhibited, as also for the more orderly and effectually registering and keeping account of the several persons so required to be licenced as aforesaid, Be it further enacted, that it shall and may be lawful to and for the said Commissioners, from time to time, to prescribe the words, form, dimensions, place and mode of exhibition for each several inscription, either in the way of general direction or by patterns, or to cause the same to be painted on each such place by some person of their appointment, or else to furnish {74} {2}<sup>381</sup> a printed paper or other competent number of printed papers in which such inscription, accompanied with his Majesty's arms, or some other engraved device to answer the purpose of a stamp, as also a distinctive number, {75} {3}<sup>382</sup> shall have been printed, to the end that the same may be pasted up in the place in which the same is to be kept exhibited, and over all or as many of the Doors or other conspicuous parts of the shop, manufactory or other place or places of trade as they shall think fit in the instance of each person so to be licenced; Provided always, that there shall not be taken, in the first instance, above 1<sup>s</sup> for the inscription or inscriptions in the instance of any one person so to be licenced, nor above 6<sup>d</sup> for the renewal of the same, if the same should come afterwards to be torn off or defaced; nor, in the case of a Badge, more than {^^^}; And moreover, the said Commissioners, in registering or entering in the Books of their said Office the several names and abodes of such licenced persons, shall subjoin

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<sup>378</sup> See p. 278 below.

<sup>379</sup> See p. 278 below.

<sup>380</sup> See p. 279 below.

<sup>381</sup> See p. 280 below.

<sup>382</sup> See p. 280 below.

thereto the several Numbers of their respective Houses, if the same have already numbers marked thereon, and in the instance of such Houses as are not as yet marked, then the said Commissioners shall cause the same to be numbered and marked with proper numbers respectively, and may also in such a case, if they think proper, cause the series of numbers to be completed by marking the same upon the several other Houses in the same Street, Square, Court, Alley or other place, as the case may be.

[150\_233]

§ 27 (§ 4). Board  
may prescribe Forms  
of Book-keeping to  
licenced persons

§ 27 (§ 4). And to the end that illicit dealings may be the more effectually exposed to detection, and the fair trader the more effectually distinguished and protected, Be it enacted, that it shall be lawful for the said Commissioners from time to time to frame Forms of Account—Books or Registers {76} {1}<sup>383</sup> for the use of all or any of the said several classes of Licenced Purchasers, with apt and proper heads under which, for the purposes aforesaid, the transactions of such purchasers, whether in the way of purchase, receipt or conveyance from place to place for the purpose of such purchase, shall respectively be entered and recorded, with such differences in the list of such heads as, upon a due consideration of the nature of each several trade and occupation, may appear proper to be made; of which heads the following may serve as examples, that is to say: Year, Month, Day of the Month, and Day of the week of each purchase—Vendor’s Surname or Surnames—Vendor’s Christian or other name or names preceding the Surname or Surnames—Vendor, whether known to such Purchaser or unknown—If unknown, whether accompanied by any person known—Vendor’s declared or apparent age, whether above or under the ages of 14 and 21 respectively—Vendor’s place or declared place of abode, specifying, if in a Town or Village, the County and Town or Village, and Street, Lane or Row, together with the Square, Place, Court or Alley, if any, as also in such case the Street, Lane or Row nearest to such Square, Place, Court or Alley—if in the Country, the Parish, Hamlet, if any, and Road or Lane—N<sup>o</sup> of the House, if numbered—Relation to the House, in quality of Housekeeper, Lodger, Housekeeper’s Inmate or Lodger’s Inmate—Articles offered by such Vendor to sale—quantity of each article—quantity purchased—price agreed on—price paid—Account given by the Vendor of the manner of his coming by the article {77} {2}<sup>384</sup> offered by him or her to sale, more especially in the case of articles

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<sup>383</sup> See p. 282 below.

<sup>384</sup> See p. 283 below.

[150\_234] of considerable value: distinctive marks and points of description of the article in such cases;<sup>385</sup> And when and as often as any blank form of any such book or register as aforesaid shall have been framed and allowed as aforesaid, adapted to the nature of any occupation hereby intended to be regulated as aforesaid, it shall be lawful to the said Commissioners to cause a competent number of copies of such Register to be printed, and to set a price upon the same, and to cause every person licenced to exercise and exercising such occupation to purchase at the price so set, and constantly to use and employ, a copy or other competent number of such copies, observing not to set the price thereof higher than the prices ordinarily charged for such articles in the way of trade, nor so as to operate thereby in enhancement of any of the clear rates of duty hereby intended to be [150\_235] imposed; And if any such licenced Purchaser, after having received any such Blank Account Book or Register with directions, from and by authority of the said Commissioners, to make entries under the heads therein contained, shall, in transacting any business in the course of such his or her licenced occupation, neglect or wilfully omitt to make or cause to be made, any entry which according to such directions ought to be made therein, he or she shall forfeit and pay any sum not less than {£2} nor more than {[£]5}: and it shall be lawful to and for any Justice of the Peace within his jurisdiction, by Warrant or Order directed to such licenced Purchaser or to any other person or persons, to cause every such Book so kept to be brought before him so often as, and to detain the same for such time as, there shall be need thereof, to the end that the same may be produced in evidence; and if any person by whom any such Book shall have been kept, or any other person whatsoever, shall have been concerned in knowingly and purposely making any false and deceitful entry therein, or any deceitful addition, erasure or alteration, or in

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<sup>385</sup> In the margin, the following cancelled note appears at this point: ‘If Lodging-Letters be comprized in the list, this power of presenting heads for registration will, if pushed to the utmost, render the measure a very strong, and on that account perhaps obnoxious, though very salutary measure.

‘Better let the Board be established: since such an article, though it were not to prevent the establishment, might be apt to delay it.

‘If the power of refusing a licence were not in some measure discretionary, it would answer but little purpose; if it were, it would *appear* at least liable to be abused to Election purposes. It might afford a plausible pretence to Fox &c. for stirring up the petty Housekeepers of Westminster.’

For Colquhoun’s recommendation of the registration of lodging-houses and lodgers see p. 91 n. above. Charles James Fox (1749–1806), Foreign Secretary 1782, 1783, 1806, and leader of the Whig opposition, was MP for Westminster 1780–4, 1785–1806, a constituency with some 12,000 electors, including many artisans and shopkeepers.

destroying, concealing or defacing the same or any part thereof, every such person so offending shall forfeit and pay any sum not less than {£2} nor more than {£20}; and every such licenced Purchaser so offending may moreover be adjudged to have forfeited his or her licence or licences.

[150\_236]

§ 28 (§ 5). Vendor giving no account of himself, or a false account, shall be carried before a Justice, and pay a penalty.

**§28 (§ 5).** And be it further enacted, that the several heads of enquiry relative to such offerer to sale shall be shewn or read to him or her, and such answers as he or she shall make shall thereupon be entered in such Book under the heads to which they respectively belong, and he or she shall be required to attest the same by his or her signature or mark, as the case may be, and if he or she shall thereupon refuse or wilfully forbear to give such account of himself or herself as, in and by any such head in any such Book or Register, is required to be given, or shall refuse [150\_237] or wilfully forbear to give his or her attestation thereto as aforesaid, or if the account so given by him or her shall by such Licenced Purchaser be suspected to be in any material respect wilfully false, it shall be lawful to detain the several articles brought by such offerer to sale, and offered or appearing to be intended so to be offered for sale, as also to stop and detain such person, and forthwith, with or without the assistance or intervention of a Constable or other Peace Officer, to convey him or her before a Justice of the Peace, by whom he or she shall thereupon be examined and dealt with in manner hereinafter mentioned; and every person knowingly and wilfully giving any false account of him or her self in relation to any such head as aforesaid shall forfeit and pay **{78} {1}**<sup>386</sup> any sum not less than {^^^} nor more than £{^^^};<sup>387</sup> and by order of such Justice, and on communication made thereof to the said Commissioners, may, in such manner as shall be appointed by the said Commissioners, be registered and advertised as a person of evil fame and a reputed thief, or Receiver of goods unlawfully obtained; and if any such Licenced Purchaser, knowing, or having reasonable cause to believe or suspect, that the account given by such offerer to sale is in any part thereof wilfully false, shall, purposely or through culpable negligence, suffer him or her to depart, **{79} {2}**<sup>388</sup> or any part of such articles so offered to sale to be taken away, before such offerer to sale shall be so convey'd before a Justice of the Peace as aforesaid,

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<sup>386</sup> See p. 285 below.

<sup>387</sup> The following clause ('and by .^^. unlawfully obtained') has been marked by Bentham for deletion.

<sup>388</sup> See p. 285 below.

or shall suffer him or her to depart, or such articles to be taken away as aforesaid, before he or she shall, under every such head as aforesaid, have given such account of him or herself as aforesaid, and also given his or her attestation thereunto as aforesaid, every such Licenced Purchaser so offending shall forfeit and pay any sum not less than {^^} nor more than {^^}, and may also, if such Commissioners and licencing Justices respectively shall think fit, be adjudged to have forfeited his or her licence.

[150\_239]

§ 29 (§ 6).  
Board may make regulations for keeping in *statu quo* articles offered to sale—impounding part of the purchase-money, and advertising for owners.

§ 29 (§ 6). And to the end that in the case of property lost, whether by depredation or otherwise, and in particular in the case of Plate, Watches, Jewels, or other articles susceptible of distinctive marks and of considerable value, time may be afforded to the lawful owner for tracing out and recovering the same, it shall be lawful for the said Commissioners to make Regulations declaring, in relation to all or any of the articles in respect of the purchasing whereof licences are to be taken out under and by virtue of this Act, for what length of time such articles, upon their being offered to sale<sup>389</sup> to any such licenced Purchaser, as aforesaid, shall, in case of his or her making purchase thereof, remand in his or her custody or possession, in deposit, without any alteration {80} {1}<sup>390</sup> being purposely made or suffered in the appearance or condition of the same, or to declare what particular alterations may, and what alterations may not, be made therein, and in what manner the same may or may not be kept and dealt with during such time; and moreover, in such case to declare whether any and what notice of such deposit shall be given to any and what class of officers appointed by the said Commissioners for the purpose of inspecting the condition of such articles so remaining in deposit, together with the entries, if any, which shall have been required to be made as aforesaid in the Books of such Purchaser in relation to the same—as also whether any and what proportion of the purchase-money agreed on for such article shall be reserved {81} {2}<sup>391</sup> for such time as aforesaid or for any less or greater length of time; [150\_238] as also to declare in what circumstances, if any, and on what conditions, articles usually bearing distinctive marks, may, if offered for sale without such marks, or with a counterfeit appearance of such marks, be or not be purchased by such licenced Purchasers respectively, and thereupon be or not

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<sup>389</sup> In the margin, Bentham has added and then deleted the following note: ‘or pawn? *Quere* how to prevent its impeding the necessary relief of distress?’

<sup>390</sup> See p. 286 below.

<sup>391</sup> See p. 287 below.

be detained, and, with the person or persons offering the same to sale, convey'd for examination before some Justice of the Peace, as herein before provided in case of false answers given by a person offering goods to sale; [150\_239] and whether, by advertisement in any and what newspaper or newspapers or otherwise, and whether at the expence of such licenced Purchaser or at the expence of the said Police Fund, any and what general or other further notice shall be given of the circumstances [150\_240] accompanying such offer to sale—they, the said Commissioners, having regard in each case to the inconvenience that may ensue to necessitous persons in regard to the postponing of relief which they might obtain by the disposal of such property as they have to spare: as also to the nature of the article concerned and the nature and course of the trade in relation to the same, to the end that in every case as little inconvenience as may be may be occasioned to the fair trader by the regulations so made and devised for the prevention of dishonest practices and crimes.

[150\_241]

§ 30 (§ 7). King in Council may prescribe marks for Ingots &c.—and when they are become universal, make it penal to possess an ingot &c. without such marks.

§ 30 (§ 7). And whereas it is customary for metallic and semi-metallic masses, when in the state of pigs, ingots, bars, or in any other unfashioned state (whether the same have been imported from beyond sea or smelted from the ore or otherwise reduced into such unfashioned state any where in Great Britain), to exhibit certain distinctive marks which have been put upon them by the smelters, founders or forgers thereof, and consist commonly, in the whole or in part, of an indication of the name of the place where, and of the person by whom, or on whose account, the same have been smelted, forged or cast, and whereas, if metals in an unfashioned state were not allowed to be bought or sold in case of their not bearing and exhibiting such marks, it would be difficult for persons having unlawfully obtained any such metallic masses to dispose thereof, by reason that howsoever they might be able to melt or cast the same, they might not be able effectually to counterfeit such distinctive marks, [150\_242] Be it further enacted, that in the case where any such metal, semi-metal or metallic mixture as aforesaid shall come hereafter to be smelted, cast or forged any where in Great Britain, it shall be lawful for his Majesty, by Order of Council, after Report made by the said Commissioners, to ordain and direct what stamps or other distinctive marks shall respectively be and remain exhibited thereupon,

{82}^{1}<sup>392</sup> specifying in particular the name and place of manufacture of the respective Smelters, Founders or Forgers—Provided always, that in such Order of Council special regard be had to the convenience of such Smelters, Founders and Forgers, and that, in as far as any marks already in use among such smelters, founders and Forgers respectively may be capable of answering the purpose of such regulation so to be made, the several marks in use shall be ordered to be continued, rather than that any alteration shall be required to be made in the same;—and moreover, in the case where any such metal, semi-metal or metallic mixture shall come thereafter to be imported from beyond sea, to ordain and direct what marks shall be affixed upon the same by the Officers of his Majesty’s Customs on the importation thereof; and moreover, in the case where any such masses exist already, either (if imported) in the state in which the same were imported, or (if smelted or cast any where in Great Britain) in the state in which the same shall have been so smelted or cast, without exhibiting any such marks as to his Majesty’s wisdom shall appear to be sufficiently distinctive, it shall be lawful for his Majesty in Council to make Orders for the imprinting or otherwise making, by the hands of the Officers of his Majesty’s Customs or Excise or of the said Board of Police, upon all such masses [150\_243] then existing in the hands of the respective dealers, such marks as to his Majesty’s Wisdom shall appear best adapted to that purpose; provided that no fee or reward shall be taken by any such Officer for the making of any such marks; and moreover when, in virtue of such Orders of Council or otherwise, the practice of making such marks shall, in the judgment of his Majesty, have, in the instance of any species of metal, semi-metal or metallic mixture, become sufficiently and universally established, it shall be lawful to and for his Majesty, by like Order of Council, to prohibit the said several Dealers and Workers in metal as aforesaid from having in their possession in an unfashioned state any portion or mass of such species of metal, semi-metal, or metallic mixture in or upon which, if in the state of entire ingots, pigs or bars, or in and upon the respective remnants thereof, if cut or otherwise reduced, such marks so prescribed as aforesaid shall not be visible; and moreover, for the breach of such prohibition, to appoint such pecuniary penalties as to his Majesty[’s] wisdom shall seem meet, not exceeding {^^^} for every Offence, over and above the forfeiture of all such masses as aforesaid in respect of which such penalties shall respectively have been incurred: which penalties and forfeiture shall be recoverable in like manner as any other pecuniary penalties and forfeitures are made

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<sup>392</sup> See p. 287 below.

recoverable under and by virtue of this Act.

[150\_244]

§ 31 (§ 8). Run Pewter to be assay'd and booked before purchase.

§ 31 (§ 8).<sup>393</sup> And be it further enacted, that whenever any pewter in the state of run metal shall be offered to sale to any Pewterer or other person who shall have been licensed, or who, under and by virtue of this Act, ought to be licenced under any one of the several appellations of a Wholesale Purchaser of Second-hand Metals for sale, a Retail Purchaser of Second-hand Metals for sale, or a Purchaser of Second-hand Metals of persons in general for working up, then and in such case, if the quantity of such pewter so offered to sale by the same person at the same time shall amount to {^^^} Lb or upwards, such Purchaser shall, previous to any agreement concerning the price to be given for the said pewter, make or cause to be made an assay thereof, in the presence of the person by whom the same was brought to sale,<sup>394</sup> and shall also, in the presence of such vendor, make or cause to be made in the Shop-book of him the said purchaser, a just and true entry of the result of such assay {83} {1},<sup>395</sup> in which said entry such pewter shall be distinguished by one or other of the several names of Lay-metal, Trifle or Hard-metal, as the case may be.

[150\_245]

Part V. Penalties and Procedure

§ 32 (§ 1). Penalty for dealing without licence—and for infringing regulations made by the Board.

§ 32 (§ 1). And be it further enacted, that if in any District or Division in which a Meeting shall have been duly holden for the granting of licences as aforesaid, any person who, by reason of any occupation exercised by him or her, is hereby required to take out any such licence as aforesaid, under and by virtue of this Act, shall, at any time after the said 29<sup>th</sup> of September next ensuing, (save and except in case of any such adjournment as is herein above allowed for inquiry into character)<sup>396</sup> exercise such occupation without

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<sup>393</sup> Bentham has added the following memorandum in relation to this Section: '*Quere* whether it be worth while to insert this clause after the preceding?'

<sup>394</sup> In the margin, Bentham has added and then deleted the following note at this point: 'This no hardship: it being no more than is commonly done in trade, if not necessarily, when the goods are to be sent to the purchaser's home.'

<sup>395</sup> See p. 291 below.

<sup>396</sup> See § 19, pp. 171–2 above.

having duly taken out and received such his [or her] licence, (whether such default took place for want of due application made for such license, or by reason that on such application such licence was refused) every such person so offending shall, on conviction before any one Justice of the Peace, forfeit and pay any sum not less than {^^^} nor more than {^^^}; and every such licenced Purchaser as aforesaid who shall offend against any regulation which shall have been lawfully made and published by and by the authority of the said Board of Police, in virtue and pursuance of the powers herein in that behalf above given to the said Board, shall for every such offence, on conviction before any one Justice as aforesaid, or before the said Board, as the case may be, forfeit and pay any such sum not exceeding {£5}, or any such sum not exceeding the said sum of {£5} as shall in each case have been appointed in that behalf by and by the authority of the said Board.

[150\_246]

§ 33 (§ 2). Powers of search for goods dealt in without licence.

§ 33 (§ 2). And be it further enacted, that when and so often as there shall be reasonable cause for suspecting that any person, not being duly licenced under and by virtue of this Act as a Purchaser of Second-hand Household and other goods for sale, a Wholesale Purchaser of Rags and Cordage for sale to Paper-makers, a Retail Purchaser of Rags and Cordage for sale to Paper-makers, a Purchaser of Second-hand Apparel, Piece-Goods and Remnants for sale, a Walking Purchaser of Second-hand Apparel, Piece-Goods and Remnants for sale, a Purchaser of Second-hand Naval Stores for sale, a Wholesale Purchaser of Second-hand Metals for sale, a Retail Purchaser of Second-hand Metals for sale, a Purchaser of Second-hand Metals of persons in general for working up, a Purchaser of Second-hand Building materials for sale, a Cart Keeper for Second-hand Goods purchased for sale, a Hand Cart Keeper for second-hand goods purchased for sale, or a Seller of Forfeited Pledges, has in his or her possession, for the purpose of sale, any goods or articles in respect of which [he or she] ought to have taken out any such licence as aforesaid, or, that any person, though duly licenced as aforesaid, in respect of certain sorts of goods or articles, has in his or her possession, for the like purpose, any goods or articles in respect of which he or she shall not have been so licenced as aforesaid, and proof of such reasonable cause shall have been made upon oath before and to the satisfaction of any Justice of the Peace, {84} {1}<sup>397</sup> it shall be lawful for any and every Constable and other such Peace-Officer, upon warrant duly issued by such Justice, at any seasonable hour in the

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<sup>397</sup> See p. 292 below.

day time, to enter into, and make search in, any Dwelling-House, as well as any Warehouse, Shop, Yard or other place in which such goods or articles shall so have been suspected to be, as aforesaid; and if any such goods or articles be thereupon found in such place, or in the act of being removed {85} {2}<sup>398</sup> to or from the same, then and in such case to seize [150\_247] and secure any and every such article so possessed for the purpose of sale without licence as aforesaid, or such thereof as shall be necessary and sufficient to be produced in evidence for the conviction of the Offender, and to convey the same, as soon as conveniently may be, before some Justice or Justices of the Peace, before whom information of such offence so committed shall be lodged.

[150\_248]

§ 34 (§ 3). Power of search for goods stolen.

§ 34 (§ 3). And be it further enacted, that upon reasonable cause (proved by Oath) for suspecting that any goods or other valuable articles, stolen or otherwise feloniously or fraudulently obtained, are concealed or lodged in any House, Outhouse, Building, Yard or other place, whether the same be in the occupation of any person who shall have taken out, or shall have been bound to take out, any licence under and by virtue of this Act, or in the occupation of any other person or persons whatsoever, it shall be lawful for any Constable or other Peace-Officer, upon warrant duly issued by any Justice of the Peace, to make search {86} {1}<sup>399</sup> for such goods or valuables in any such Building, Yard or place, at all seasonable hours in the day time, as also in the night if thereto specially authorized in and by such warrant, and moreover, in case of necessity, to enter into and upon the premises, and therein make search for such goods or valuables by force, and for that purpose to break open doors, locks and packages, if thereto specially authorized in and by such warrant as aforesaid: and if, upon such search, any such goods or articles as aforesaid be found, to seize and detain or carry off and secure the same, and the same to convey before the same or any other Justice, according to the said Warrant, together with all such persons in whose possession such goods or articles shall be found to be, or who, knowing the same to be stolen or otherwise feloniously or fraudulently obtained, shall appear to be privy to their being so concealed or lodged, to the end that and untill such goods, articles or persons respectively shall be dealt with and disposed of in due course of law.

[150\_249]

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<sup>398</sup> See p. 292 below.

<sup>399</sup> See p. 293 below.

§ 35 (§ 4). Powers to Police Surveyors for inspecting Stock and Books of Licenced Purchasers.

§ 35 (§ 4). And be it further enacted, that it shall and may be lawful to and for every Surveyor, so appointed as aforesaid, at all seasonable times to enter into and upon any and every Shop, Warehouse, Stall, Shed, Yard, or other place of trade or business, in the occupation of every person licenced as a Purchaser of Second-hand Household Goods, a Wholesale Purchaser of Rags and Cordage for sale to Paper-makers, a Retail Purchaser of Rags and Cordage for sale to Paper-makers, a Purchaser of Second-hand Apparel, Piece-Goods and Remnants for sale, a Walking Purchaser of Second-hand Apparel, Piece-Goods and Remnants for sale, a Wholesale Purchaser of Second-hand Metals for sale, a Retail Purchaser of Second-hand Metals for sale, a Purchaser of Second-hand Metals of persons in general for working up, a Purchaser of Second-hand Building-Materials for sale, a Keeper of Draught Carts for Second-hand goods purchased for sale, a Keeper of Hand-Carts for Second-hand goods purchased for sale, or a Seller of Forfeited Pledges, and to view and inspect the Stock {87} {1}<sup>400</sup> then being in or about every such Shop or other place of trade or business, avoiding as much as may be to give any disturbance to the same, as also at all seasonable times to search into and examine the contents of any and every pack or bundle which any and every such Walking Purchaser of Second-hand Apparel, Made-up Piece-goods and Remnants, shall have about his or her person or otherwise in his or her possession when going to and fro, or being at any House or place in the exercise of such his or her occupation, or [150\_250] otherwise; as also to inspect, and take or cause to be taken extracts or copies from, any and every Book, which, in pursuance to any regulation made by the said Commissioners, shall have been kept by any and every such licenced Purchaser under and by virtue of this Act.

[150\_251]

§ 36 (§ 5). Penalty for falshood and forgery touching licences.

§ 36 (§ 5). And be it further enacted, that every person who, on application made by him or her for any such licence, shall give in any false name, or suppress any part of his or her true name, or who, in any such licence inscription as aforesaid, shall exhibit or wilfully suffer to be exhibited any false name, or suppress or wilfully suffer to be suppressed any part of his or her true name, or shall exhibit or wilfully suffer to be exhibited any such licence inscription as aforesaid, in manner aforesaid, without being licenced as a dealer of the class indicated by such inscription, shall forfeit any sum not less than {^^^}, nor more

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<sup>400</sup> See p. 294 below.

than {^^^}; [150\_252] and every person who shall be concerned in fraudulently counterfeiting or causing to be counterfeited any such licence, or in knowingly and wilfully making or causing or suffering to be made any fraudulent alteration in any such licence, or in uttering or exhibiting any such forged or fraudulently altered licence, knowing the same to be forged or fraudulently altered, or in uttering or exhibiting as granted to him or herself (or to any other person, as the case may be) any licence granted to any different person, or in uttering or exhibiting as still in force any expired licence, knowing the same to be expired, shall for the first offence forfeit any sum not less than, {^^^} nor more than {^^^}, on being convicted thereof before any Justice or Justices of the Peace; and for every second offence, committed after conviction of and for any such first offence, shall be deemed and adjudged a felon, and shall suffer the pains of felony. **{88} {1}**<sup>401</sup>

[150\_253]

**§ 37 (§ 6).** And be it further enacted, that if any person, being duly required by summons or warrant to be examined or to give evidence on any information or other proceeding grounded on this Act, shall, without reasonable cause or excuse, refuse or fail to obey such summons or warrant, or refuse or wilfully forbear to make just answer to any such lawful question as shall thereupon be demanded of him or her, or if any person shall be concerned in causing, or inducing or endeavouring to cause or induce, any person so summoned or convened to make default in any such manner as aforesaid, or in inducing or endeavouring to induce any person to keep out of the way to avoid being so summoned or convened, or in keeping or endeavouring to keep any person out of the way to prevent him or her from being so summoned or convened, or in any other manner, without force or violence, in wilfully preventing or obstructing or endeavouring to prevent or obstruct the due execution of this Act, then and in every such case every person so offending, and being convicted thereof before any Justice or Justices of the Peace, shall forfeit and pay any sum not less than {^^^}, nor more than {^^^}; [150\_254] And if any person shall be concerned in preventing or obstructing or endeavouring to prevent or obstruct by force or violence the execution of this Act in manner abovementioned or otherwise, then and in such case every person so offending shall either on conviction in manner as aforesaid suffer as aforesaid, or if found guilty on indictment may be transported for any term not exceeding 7 years; **{89}**

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<sup>401</sup> See pp. 294–5 below.

§ 37 (§ 6). Penalties for obstructing the execution of this Act, by keeping back evidence or otherwise—with and without force.

{1}<sup>402</sup> and it shall be lawful for any person or persons whatsoever to apprehend every person so offending by force and violence, {90} {2}<sup>403</sup> and either convey him or her forthwith before a Justice of the Peace, or deliver him or her into the charge of a Constable or other Peace-Officer, who in such case shall forthwith convey him or her before a Justice of [the] Peace, by whom such offender shall thereupon be dealt with according to law.

[150\_255]

§ 38 (§7).  
Proceedings may be  
before a Justice.—  
Form of  
Conviction.—Mode  
of Proceeding.—  
Power of Mitigation.

§ 38 (§ 7). And be it further enacted, that in every case in which information shall be given of any offence committed against this Act, as also in every other case in which any judiciary proceeding shall require to be carried on under and by virtue of the same, (except in as far as any special provision to the contrary is herein above made) all such proceedings shall be carried on, and the matter thereof heard and determined, by and before any one of his Majesty's Justices of the Peace acting in and for the County or other place of separate jurisdiction in which the ground for such proceedings shall arise: and in case of conviction, such Justice may cause the instrument or order thereof to be drawn up according to the Form contained and described in the Schedule marked {^^^} and hereunto annexed,<sup>404</sup> or according to any other form of words to the same effect; and for the levying or causing to be paid every such sum {91} {1}<sup>405</sup> as any person shall be adjudged to pay, under the name of a penalty, or of costs, or on any other account whatsoever, it shall and may be lawful for such Justice to proceed either by Distress and Sale alone, at one or more times, or, in default of payment, by committing the party in the first instance to any Common Jail (or else, in case of conviction for any such offence, to any House of Correction) within [150\_256] the jurisdiction of such Justice, for any length of time not exceeding {twelve} weeks, determinable upon the payment of the money so to be levied, or by distress and sale and such imprisonment as aforesaid successively or at the same time, as the case shall require; and moreover, in lieu of the whole of any such penalty, such Justice may at his discretion committ such Offender to any such prison as aforesaid for any time certain not exceeding {six} weeks, and likewise, by such ways and means as aforesaid, cause him or her to pay any sum not greater than the half of such penalty as aforesaid; and it shall be lawful to and for such Justice (if at any time it shall in his judgment appear necessary to the

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<sup>402</sup> See pp. 295–6 below.

<sup>403</sup> See p. 298 below.

<sup>404</sup> For Bentham's proposed Schedules to the Bill see p. 66 n. above.

<sup>405</sup> See p. 299 below.

preventing of any such supposed Offender from withdrawing his or her person or effects out of the reach of justice) to cause him or her to be apprehended and brought before the same or any other Justice to answer to such information as shall have been given of such offence, and him or her to committ to such prison as aforesaid, untill the matter of such information shall have been heard and determined, unless and untill such party shall enter into a Recognizance before such Justice, with one or two sufficient Sureties, in a sufficient sum to be appointed by such Justice, conditioned for the party's appearing from time to time, and abiding and submitting to the determination of the same or any other Justice or Justices touching the matter of such information, as aforesaid; Provided always, [150\_257] that upon and after any such conviction or other adjudication, it shall be lawful to such Justice, upon the party's entering into such Recognizance as aforesaid, to respite either the taking of such Distress, or the sale thereof, for such time as to the said Justice in his discretion shall seem meet; Provided also, that if, in the case of any such offence, it should appear to such Justice that the same was the result of mistake or accident, unaccompanied by any wilful default or negligence on the part of any such Offender, it shall be lawful to and for such Justice to dismiss such information or acquitt such Offender altogether; or if such offence should appear to have been the result of negligence or culpable inattention, but unaccompanied with any consciousness or intention of offending, then and in such case to mitigate and reduce any such penalty {92} {2}<sup>406</sup> in such manner as to such Justice in his discretion shall seem meet.

[150\_258]

§ 39 (§ 8).  
Application of penalties—half to the Police Fund—half among those who have contributed to the conviction.—  
Witness not rendered incompetent by expectation of reward.

§ 39 (§ 8). And be it further enacted, that every forfeiture or penalty which shall be levied under and by virtue of this Act shall, if the conviction shall have taken place any where within the said London Police District, be paid, according to the appointment of the said Commissioners, either to the said Commissioners or to their Receiver, or to such Police Surveyor as aforesaid, acting in and for such Sub-District in which such conviction shall have taken place; or if any where without the said London Police District, then and in such case to the Police Surveyor of such Country District; and the same when paid shall, as to one moiety thereof, be remitted by such Surveyor to the said Board at such time or times, and in such manner, as the amount of the said licence-Duties is herein above directed to be

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<sup>406</sup> See p. 305 below.

remitted, and shall be carried to and made part of the said Police Fund; and as to the other moiety, the same shall be retained or paid over, as the case may be, and either be applied to the use of the Informer alone, or be distributed between or amongst the Informer and such other person or persons, if any, as shall have contributed to the conviction of the Offender by information, search, seizure, arrest, evidence, or assistance therein or thereunto respectively given, or otherwise, in such shares and proportions as shall in each case have been determined by the Justice, Justices or Commissioners, as the case may be, by and before whom such Offender shall have been convicted, subject to such general regulations, if any, as shall from time to time have been made in that behalf by the said Board; Provided always, that no Informer or other person shall be deemed incompetent to give evidence touching any offence committed or supposed to be committed [150\_259] against this Act, by reason of his or her being intitled to or having any expectation of any such share as aforesaid in any such forfeiture or penalty as aforesaid, {93} {1}<sup>407</sup> or to or of any other reward for any other service by which he or she shall have contributed or endeavoured to contribute to the execution of this Act.

[150\_260]

**§ 40 (§ 9).** And be it further enacted, that all such judicial proceedings as shall be carried on as aforesaid in and concerning matters arising within the said London Police District, may be carried on either by or before any one or more Justices of the Peace as aforesaid or by or before the said Commissioners of the Board of Police; and for the hearing and determining all such matters so arising, the said Commissioners shall and may possess and exercise the same power and authority within the said District, as under the laws in being are possessed and exercised by the Commissioners of Excise {94} {1}<sup>408</sup> within the London District of the Excise;<sup>409</sup> and in case any person shall conceive himself aggrieved by any conviction, order or warrant of commitment, or distress, made by the said Commissioners, it shall be lawful to and for every such person to appeal to such Commissioners of appeal as shall have been duly appointed for hearing and determining appeals in matters heard and determined by the Commissioners of Excise:<sup>410</sup> and the

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<sup>407</sup> See p. 306 below.

<sup>408</sup> See p. 309 below.

<sup>409</sup> For the judicial remit of the Commissioners of Excise in the London metropolitan area, see p. 77 n. above.

<sup>410</sup> The Excise Act of 1660 (12 Car. II, c. 23, § 31) and the Statute of Tenures of 1660 (12 Car. II, c. 24, § 45) had both prescribed that appeals from the judgements of Commissioners of Excise in the London

proceedings in every such appeal shall be carried on in like manner as the proceedings in Appeals to the General or Quarter Sessions of the peace are herein appointed to be carried on as [hereinafter mentioned].<sup>411</sup>

[150\_261]

§ 41 (§ 10). Abstract of the Laws &c. to be printed on the face of the Licence.

§ 41 (§ 10). And to the end that among the persons so to be licenced and regulated as aforesaid, no one may offend through ignorance or pretended ignorance of the Law, Be it [further] enacted, that at the first time of each person's taking out a licence under and by virtue of this Act, and oftener, if need be, the said Commissioners shall (for a reasonable price by them to be fixed) deliver or cause to be delivered to such person a sheet of paper containing, on the same side thereof, a duplicate or attested Copy of such licence, together with an Abstract of all such Parliamentary and other regulations then in force as shall relate to the particular occupation in respect of which such licence shall have been taken out: {95}^{1}<sup>412</sup> observing in and by every such Abstract to furnish to each person the regulations in which he [or she] is concerned, unencumbered, as far as conveniently may be, by any regulations in which he [or she] is not concerned: and the said Commissioners may moreover require and order that such copy as aforesaid shall be kept constantly hung up and exhibited behind the Shop Door or Doors, or in some other conspicuous situation or situations in the Shop, Warehouse or other place of trade or occupation of the person so receiving the same, in such manner that the same shall be and continue in the view of all persons having dealings with such licenced person in the way of sale or otherwise; and the said Commissioners are also hereby authorized and required, from time to time, to take all such further means, if any, as shall be requisite for conveying to the knowledge of all such parties as aforesaid sufficient notice of, and information relative to, all such laws and regulations in which they are or shall be respectively concerned.

[150\_262]

§ 42 (§ 11). Appeal to Sessions from Justices.—No *Certiorari*.

§ 42 (§ 11). Provided always, and be it further enacted, that if any person shall conceive him or herself to be aggrieved by any such conviction or commitment by and before any Justice or Justices of the Peace as aforesaid, it shall be lawful to and for every

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metropolitan area should be heard by the 'Commissioners for Appeals and regulating of this Duty'. The first Commissioners of Appeal in Excise were appointed in 1661.

<sup>411</sup> MS 'aforesaid' is a slip: see § 42, p. 192 below.

<sup>412</sup> See p. 316 below.

such person to appeal to the next General or Quarter Sessions of the peace for the place where the offence for which he or she was convicted was supposed to have been committed; and the Justices in such Sessions shall thereupon proceed in a summary way to the hearing and determination of such appeal, and shall make such order touching the matter thereof and touching the costs, as well of such appeal as of the conviction appealed from, as they in their discretion shall think fit; and such determination shall be final, nor shall the proceedings upon any such information be removed either before or after appeal by any writ of *certiorari*<sup>413</sup> or otherwise into any other Court; Provided nevertheless, that notice of the intention to appeal shall be given at the time of the conviction, or within {^^^} days afterwards, unless it shall appear that the same was grounded on some matter of fact not brought to light till afterwards; {96} {1}<sup>414</sup> and if, then or at any time thereafter, such appellant shall enter into a recognizance with sufficient security, to the satisfaction of the Justice or Justices before whom such conviction shall have taken place, for the prosecuting such appeal and abiding by such judgment or order as shall be pronounced or made thereon, then and in such case the execution of such original order of conviction, or of so much thereof as shall have remained unexecuted, shall be staid.

[150\_263]

§43 (§ 12). Board may order prosecutions for Perjury committed before itself or a Justice.

§ 43 (§ 12). And be it further enacted, that if in the course of any examination taken or other evidence given on occasion of any application for any license, or any other proceeding under and by virtue of this Act, or on the occasion of any information for any offence alledged to have been committed against the same, or in the course of any other examination grounded on this Act, it shall appear to the said Commissioners, or to any two or more Justices of the Peace, or to any one such Justice, as the case may be, that any wilful perjury hath by any person been committed, it shall and may be lawful to and for the said Commissioners of their own authority, if such proceeding were had before them the said Commissioners, or otherwise upon a certificate given by any such Justice, or two or more Justices, as the case may be, certifying that in the opinion of such Justice or Justices there is reasonable cause why such person should be prosecuted for the same (which said certificate may be according to the Form exhibited in the Schedule marked {^^^} and

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<sup>413</sup> For writs of *certiorari* see p. 22 n. above.

<sup>414</sup> See p. 316 below.

hereto annexed),<sup>415</sup> to order a prosecution to be instituted against any and every such person so suspected of perjury as aforesaid; and in case of any such Order so made, the Judge or Judges before whom the trial on such prosecution shall be had, shall, on the production of such Order, ‘assign to the party injured, or other person undertaking such prosecution, Counsel, {97} {1}<sup>416</sup> who shall and are hereby required to do their duty without any fee for the same; and every such prosecution shall be carried on without payment of any tax or duty, and without payment of any fees in Court, or to any Officer of the [150\_264] Court who might otherwise claim or demand the same’:<sup>c</sup> and all or any farther expences attending such prosecution and not remitted as aforesaid, may be defray’d by order of the said Commissioners out of the said Police Fund. {98} {2}<sup>417</sup>

<sup>c</sup> 23 G. 2. c. 11. § 3.<sup>418</sup>

[150\_265]

§ 44 (§ 13). ‘And whereas, by an Act made and passed in the twenty-third Year of the reign of his present Majesty<sup>d</sup> .^.^ divers regulations are made for the more effectual prevention of vexatious suits {99} {1}<sup>419</sup> against Officers of Excise’;<sup>420</sup> And whereas, by an Act made and passed in the twenty-fourth year of the reign of his said Majesty,<sup>e</sup> the benefit of the said regulations is declared to be extended to the Officers of the Customs;<sup>421</sup> Be it [further] enacted, that .^.^ every Clause and regulation in the said first mentioned Act concerning any Action to be brought against any Officer of the Excise, or any person acting by his order *or* in his aid, {100} {2}<sup>422</sup> for any thing done in the execution or by reason of his office, shall be extended, *mutatis mutandis*, to every Action which shall be

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<sup>415</sup> For Bentham’s proposed Schedules to the Bill see p. 66 n. above.

<sup>416</sup> See p. 317 below.

<sup>417</sup> See p. 317 below.

<sup>418</sup> i.e. the Prosecutions for Perjury Act of 1750. There are minor inaccuracies in the rendering of the passage.

<sup>419</sup> See p. 318 below.

<sup>420</sup> Bentham’s quotation is taken from the Smuggling Act of 1751 (24 Geo. III, sess. 2, c. 47, § 35). There are minor inaccuracies in the rendering of the passage.

<sup>421</sup> The remainder of this Section consists in a further quotation from the Smuggling Act of 1751 (§ 35) in which Bentham has replaced references to ‘Officers of the Customs’ with references to the Commissioners and Officers of the Board of Police. There are minor inaccuracies and omissions in the rendering of the passage.

<sup>422</sup> See p. 319 below.

§ 44 (§ 13).  
Protection to  
Officers against  
vexatious suits, as in  
the Excise and  
Customs.

brought against any Commissioner, Surveyor, or other Officer of or subordinate to the said Board of Police, or against any person acting by his Order, or in his aid, for any thing done in execution or by reason of his Office, in as full and ample manner as if such Officers of the said Board of Police had throughout been named, along with the said Officers of Excise, and included in the said Act.

<sup>d</sup> 23 G. 3. c. 70.<sup>423</sup>

<sup>e</sup> 24 G. 3. c. 47.<sup>424</sup>

[150\_266]

Part VI. Gazette  
and Calendar  
&c.<sup>425</sup>

§ 45 (§ 1). *Police Gazette* to be published by the Board—free of stamps and postage—and furnished *gratis* to Justices and Licenced persons.—Penalties for malicious information, and for anonymous malicious information.

§ 45 (§ 1). And whereas it might contribute in an especial degree to the bringing of offenders to justice, if a channel of appropriate intelligence {101} {1}<sup>426</sup> were established, in such sort that, in and by means thereof information of predatory and other offences might immediately, and without expence, be received from persons aggrieved and others, and convey'd in the same manner to all persons throughout this United Kingdom to whom, by means of their respective Offices, professions, trades, occupations, or otherwise, opportunity might occur of contributing to the discovery or apprehending of the Offender, Be it further enacted, that it shall and may be lawful to and for the said Commissioners, and they are hereby authorized and required, so soon as conveniently may be, to cause to be printed and published on such day or days of the week as they shall from time to time think fit {102} {2}<sup>427</sup> a paper of appropriate intelligence, to be stiled the *Police Gazette*, in which shall be inserted free of all Stamp-Duties {103} {3}<sup>428</sup> and circulated free of all duty

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<sup>423</sup> i.e. the Excise Act of 1783.

<sup>424</sup> i.e. the Smuggling Act of 1784 (*recte* 24 Geo. III., sess. 2, c. 47).

<sup>425</sup> This title is taken from the corresponding marginal contents sheet at UC clviii. 10. The majority of the text sheets for Part VI of the Bill bear the marginal subheading 'Miscellanea': for further details see the Editorial Introduction, p. 000 above.

<sup>426</sup> See p. 319 below.

<sup>427</sup> See p. 330 below.

<sup>428</sup> See p. 330 below. In the margin, Bentham has noted at this point: '{3} {103} Why post-free, see Note to § 47.' § 47, pp. 198–9 below, contains no note-markers, and Bentham perhaps had had in mind note {111} to § 52, esp. pp. 361–2 below.

or other charge of postage {104} {4}<sup>429</sup> all such intelligence, and such intelligence only, as in the judgment of them the said Commissioners shall be, in the nature thereof, subservient and contributory to the detecting and bringing to Justice persons guilty of offences against any of the Laws or Statutes of these his Majesty's realms; which said *Police Gazette* shall be printed at some place within the said London Police District, as also at such other place or places, if any, as the said Commissioners in their discretion shall appoint, regard being 150-267a] had to the number of copies requisite to be printed and the speed which it may be necessary and practicable to use in the circulation of the same; and the said *Police Gazette* shall be furnished *gratis* to every such Country Police Commissioner or Country Police Magistrate as aforesaid, as also to every one of his Majesty's Justices of the Peace who, having 'sued out his Majesty's Writ or Commission of *Dedimus potestatem*',<sup>430</sup> shall signify to the said Commissioners his desire to be supplied with the said *Gazette*, and to all Members of Corporations possessing the authority of a Justice of the Peace in virtue of their respective Offices; as also to every person belonging to any of the several Classes of persons required to take out licences under and by virtue of this Act, or to such of them as to the said Commissioners it shall from time to time seem meet to fix upon for that purpose; as also to every person who under any law in being shall take out any licence for retailing Ale,<sup>431</sup> Wine, Sweets,<sup>432</sup> Spirituous liquors,<sup>433</sup> or any other fermented liquors, Tea, Coffee,<sup>434</sup> or any other liquor to be drunk at the house of such licenced person; and the said

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<sup>429</sup> See p. 332 below.

<sup>430</sup> See p. 80 n. above.

<sup>431</sup> For licences for retailing beer see p. 135 n. above.

<sup>432</sup> The Stamp Act of 1711 (9 Ann. c. 23, § 23) imposed a stamp-duty of 4s. on licences to sell wine, which was increased and divided into three bands according to whether the holder also held a spirit-retailer's licence, a beer-retailer's licence, or neither, by the National Debt Act of 1757 (30 Geo. II, c. 19, § 1). All these duties were repealed by the Retail of Liquors Act of 1790 (30 Geo. III, c. 38), which introduced (§6) licences for retailing British made wines and sweets (wines to which fruit or sugars had been added), which carried a stamp-duty of £2. 4s., and foreign wines, which carried a stamp-duty ranging from £2. 4s. in cases where the licensee held a spirit-retailer's licence, to £5. 4s. in cases where they held neither a spirit-retailer's nor a beer-retailer's licence.

<sup>433</sup> Licences for the retailing of spirits having been first required by the Spirit Duties Act of 1729 (2 Geo. II, c. 17), the Retail of Liquors Act of 1790 (30 Geo. III, c. 38, §6) had most recently set the stamp-duty on licences for retailing spirituous liquors at rates ranging from £4. 14s. where the premises were rated at less than £15 a year, to £7. 2s. where the house was rated at £50 or more a year.

<sup>434</sup> The Duties on Malt etc. Act of 1780 (20 Geo. III, c. 35, § 13) introduced licences carrying a stamp-duty of 5s. for 'trading in, selling or vending Coffee, Tea, or Chocolate, or either of them'.

*Police Gazette* shall be sold to all other persons at one penny each number, or some such other low price, to be from time to time fixed by the said Commissioners; and the expences of the printing and publishing of the said *Gazette* shall be borne by and charged upon, and the receipts on account thereof ‘carried to and made part of’,<sup>435</sup> the said Police Fund; and every person who maliciously, and with intent to create trouble, alarm or other suffering in the minds of persons in general, or any undue trouble, alarm, loss, disgrace or other injury to any person or persons in particular, [150\_267b] shall cause or attempt to cause any false information to be received by the said Commissioners, knowing the same to be false, or without having any probable cause for believing or supposing the same to be true, shall forfeit and pay any sum not exceeding £10, recoverable as any other of the penalties of this Act are made recoverable, over and above all such penalties or damages as such offender may already be liable to by law; and if any person with any such malicious intent as aforesaid shall cause or attempt to cause any such false information as aforesaid to be received as aforesaid, knowing the same to be false, or without having any probable cause for believing the same to be true, and in so doing shall omit to sign or otherwise declare his or her true name, {105} {5}<sup>436</sup> or his or her place of abode, so described as that he or she may with ordinary diligence be found thereby, or shall subscribe, use or declare any false or fictitious name or abode, or use any other device, for the purpose of preventing its being known that he or she was the person, or causing it to be believed that any other person was the person, or one of the persons, by whom such information was so communicated or attempted to be communicated, every such person so offending and being convicted thereof on indictment, shall be punished by fine and imprisonment, and may moreover be set in the Pillory for such number of times, and for such lengths of time, and in such place or places, as the Court in which such offender shall have been convicted shall appoint.

[150\_268]

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<sup>435</sup> See p. 161 & n. above.

<sup>436</sup> See p. 332 below.

§ 46 (§ 2). Expence of supplying Publicans and other Licenced persons with the *Police Gazette*, defrayable by additional Licence-Duties.

§ 46 (§ 2). And be it further enacted, that towards the defraying such part of the expence of and concerning the said *Police Gazette* as shall be occasioned by the furnishing thereof to the several classes of licenced persons in that behalf abovementioned, it shall and may be lawful to and for the said Commissioners of Police from time to time, at their discretion, to add any such sums as shall appear to them to be sufficient for the said purpose, to the amount of the several licence-duties {106} {1}<sup>437</sup> herein before made payable by the several classes of persons required to be licenced under and by virtue of this Act, in such proportion, in the instance of each such Class, as to them the said Commissioners, in their discretion, shall seem meet, provided that the amount of such additional duty shall not in the instance of any one such class exceed the sum of {5<sup>s</sup>} in any one year; and it shall moreover be lawful to and for the Commissioners of Excise, by order from the Lord High Treasurer or Commissioners of the Treasury, at the instance of the said Commissioners of Police, to add to the duties annually payable on each Excise licence for the retailing of Beer, Ale and other exciseable liquors made from grain fermented and not distilled,<sup>438</sup> any sum not exceeding {2<sup>s</sup>: 6<sup>d</sup>} in any one year, and to the duties payable on each Excise licence for retailing British made Wines or Sweets, to be drunk in the House of the person taking out the same,<sup>439</sup> any sum [150\_269] not exceeding {2<sup>s</sup>: 6<sup>d</sup>}: and to the duties payable on each Excise licence for retailing distilled Spirituous liquors or strong waters,<sup>440</sup> any sum not exceeding {2<sup>s</sup>: 6<sup>d</sup>}: and to the duties payable on each Excise licence for retailing Foreign Wines,<sup>441</sup> any sum not exceeding {2<sup>s</sup>: 6<sup>d</sup>}; and every provision contained in every law made or to be made in relation to licence-duties payable in respect of any of the exciseable liquors aforesaid shall be in force, (so far as the same are respectively applicable) in relation to every such additional duty as, in virtue of the powers last above given, shall be added to such respective duties under and by virtue of this Act;<sup>f</sup> Provided always, that a separate account shall be kept by the said Commissioners of Excise of the produce of all such additional duties as shall have been so imposed; and such produce shall be carried either to the Fund called the Consolidated Fund, or to the said Police Fund, as the Lord High Treasurer or Commissioners of the Treasury shall from time to time think fit.

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<sup>437</sup> See p. 332 below.

<sup>438</sup> See p. 135 n. above.

<sup>439</sup> See p. 195 n. above.

<sup>440</sup> See pp. 195–6 n. above.

<sup>441</sup> See p. 195 n. above.

[150\_270]

§ 47 (§ 3). Ministers of Congregations—Post-Masters—and Town-Magistrates shall publish Notices &c. transmitted to them from the Board.—Penalties for neglect—and for defacing &c. Notices when stuck up.

§ 47 (§ 3). And be it further enacted, that for the circulating of any number or numbers of the said *Police Gazette*, or of any intelligence proper to be inserted in the same, in any particular Parish or Parishes, place or places, in which the circulation of such intelligence shall appear to afford any special prospect of contributing to bring any offender to justice, it shall be lawful for the said Commissioners, and for any person or persons acting by their authority, from time to time to cause to be transmitted to any resident Ministers, Church-wardens, Chapel-wardens or Parish Clerks of any such Parishes or Places respectively, as well throughout that part of Great Britain called England as throughout that part of Great Britain called Scotland, any requisite number of Copies, Extracts or Abstracts of or from any number or numbers of the said *Police Gazette*, with proper Instructions for the fixing the same or causing the same to be fixed upon a principal door or some other conspicuous part or parts of the Church or Chapel of each such Parish or Place; as also to any Ministers, Priests, Rabbis, or other persons concerned in the management of the affairs of any Chapels, Synagogues, Meetings or other places of religious worship respectively, belonging to Congregations of persons dissenting from the Churches of England and Scotland respectively, with instructions for fixing such papers in like manner upon such places; as also to the Postmasters of any Post Towns; as also to any resident Mayors, Bailiffs, Aldermen, Chief Burgesses, Recorders, Town Clerks or other Magistrates or persons concerned in the management [150\_271] of the affairs of any Towns Corporate respectively, with instructions for fixing such papers against the Post Houses, Town Halls or Market places of such Towns; and if need be, for causing the matter of such papers to be publicly cried within the same; specifying in each case during what length of time such paper, after having been fixed, shall continue unremoved and undefaced; and in the Instructions inserted in any such Paper sent out for the purpose of being made public in any Church or other place of worship, whether used by persons conforming to or dissenting from the rites of the Church of England or the Church of

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<sup>442</sup> i.e. the Retail of Liquors Act of 1790, § 19, which prescribed that all existing regulations and duties concerning Foreign or British wine or spirits ‘in force immediately before the passing of this Act .^.^ and not being expressly altered .^.^ by this Act .^.^ shall be and continue in full Force .^.^ as if all .^.^ had been expressly inserted and re-enacted in this Act’.

Scotland respectively, it shall be lawful to the said Commissioners, at their discretion, in the case of wilful murder, arson, burglary or robbery accompanied with wounding, or any other atrocious crime, to cause to be inserted proper directions for the reading of such Paper or any part thereof by the Minister, Clerk or any other proper person in each such place of worship, in or near the middle of the service performed therein, or at such other time at which the congregation thereof may be reasonably expected to be fully assembled; and if any person, by whom or at whose house any such paper shall have been so transmitted and received as aforesaid, shall wilfully or through negligence omit to fulfill any such reasonable instruction as shall therein be given for such purpose as aforesaid, or if, before the expiration of the length of time mentioned in such Paper as the length of time for and during which it is intended that the same shall continue in the place where the same shall have been fixed, any person shall be concerned in pulling down, concealing or defacing such Paper or any material part thereof, or causing the same to be pulled down, concealed or defaced, every such person so offending shall forfeit and pay any sum not exceeding {40<sup>s</sup>}, nor less than {5<sup>s</sup>}.

[150\_272]

§ 48 (§ 4). *Calendar of Delinquency* to be annually published.—  
Materials for it to be furnished to the Board by Judges &c. and Justices.

§ 48 (§ 4). And whereas it might, by the blessing of providence, be a means of promoting well-grounded, substantial and gradual amendments and improvements in the penal branch of the Law of these his Majesty's Realms, and of exciting and keeping up a due spirit of zeal and vigilance on the part of all persons concerned, by Office or otherwise, in the execution of the same, if the numbers of the several offences known or suspected to have been committed, under each head of delinquency, in each year, in the several parts of this his Majesty's Realm of Great-Britain, together with the result of each act of delinquency in respect of punishment or impunity, were annually collected, digested, and exhibited to view, Be it further enacted, that it shall and may be lawful to and for the said Commissioners, and they are hereby authorized and required, so soon after the end of every Year as conveniently may be, to prepare and frame, or cause to be prepared and framed, and to present to his Majesty and both Houses of Parliament, a Report or Reports containing a Table or set of Tables to be named and stiled *The Calendar of Delinquency*, {107} {1}<sup>443</sup> in and by which shall be delineated and exhibited the General State of the Nation for such year as touching the matters and things aforesaid, under the set of heads

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<sup>443</sup> See p. 333 below.

contained in or indicated by Schedule {^^^} annexed to this Act,<sup>444</sup> or under such other or further heads as in the judgment of the said Commissioners shall from time to time appear best adapted to the said purpose; [150\_273] And for the purpose of obtaining the several documents or materials requisite for the composition of the said *Calendar of Delinquency*, the said Commissioners of Police are hereby authorized and required, so soon as conveniently may be, and so from time to time as there shall be occasion, to frame or cause to be framed and transmitt or cause to be transmitted to the Registering Clerk or Clerks, or other proper Officer or Officers, of every Court exercising criminal jurisdiction, or having cognizance of any penal action, or possessing the authority of inflicting Ecclesiastical censure, in any part of Great Britain, a competent number of blank forms or schemes for Returns to be made from time to time of the several proceedings had, and of the several instruments issued or signed in, by, or before each such Court, in virtue of such its jurisdiction, cognizance or authority as aforesaid; which said blank forms or schemes may respectively contain such heads as are exhibited in the Schedules marked F. 1, F. 2,<sup>445</sup> and so forth, and herewith annexed, or any such other or further heads as in the judgment of the said Commissioners shall from time to time appear best adapted to the aforesaid purpose; and such blank forms or schemes shall respectively be accompanied with any such reasonable Instructions touching the filling up thereof as the said Commissioners shall think fit; and every such Clerk or other Officer shall, within such reasonable time as shall have been limited by the said Commissioners, return every such blank form or scheme duly filled up, according to such Instructions; and ‘all Judges and Justices in the respective Courts aforesaid are hereby authorized and required, at the request of the said Commissioners, to make all such Orders, and do all such other matters and things’<sup>s</sup> as shall be requisite and necessary to the due and compleat filling up and returning of the said blank forms or schemes when so transmitted as aforesaid; and [150\_274] every such Clerk or other proper Officer who shall neglect, or without reasonable and sufficient excuse omitt, to fill up in any particular or to return according to such instructions, within such reasonable compass of time as shall have been therein limited, any such blank form when so transmitted as aforesaid, shall, for every such offence, forfeit and pay the sum of {£10}, to be recovered with costs of suit by Action in the Court of King’s Bench at Westminster, in which no Essoign, Privilege, or Protection, nor more than one Impar lance, shall be

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<sup>444</sup> For Bentham’s proposed Schedules to the Bill see p. 66 n. above.

<sup>445</sup> For Bentham’s proposed Schedules to the Bill see p. 66 n. above.

allowed,<sup>446</sup> or in the Court of Exchequer at Edinburgh, as the case may be, by him that will sue; one moiety thereof, together with costs of suit, to be paid immediately after the receipt thereof by the Officer receiving the same, to such Informer for his own use, the other moiety, within one week after the receipt thereof in England, and within three weeks after the receipt thereof in Scotland, to the said Receiver General of the said Police Fund, to be by him carried to and made part of the same; [150\_275] and the said Commissioners shall in like manner frame and from time to time, and as often as there shall be occasion, transmitt or cause to be transmitted to and for the use of every one of his Majesty's Justices of the Peace, who, by having sued out his Majesty's Writ or Commission of *Dedimus Potestatem*,<sup>447</sup> shall have intitled himself to act in the execution of the said Office, a set of blank forms or schemes in competent number, exhibiting a daily Calendar or Register of all proceedings had by and before such Justice on every information laid before him touching and concerning any offence for which the offender may be convicted, either before any one such Justice or before any two or more such Justices out of General Sessions, under any Statute then in force; as also another set of blank forms or schemes exhibiting a daily Calendar or Register of all proceedings had by and before such Justice, either singly or in conjunction with any other number of Justices out of General Sessions, touching and concerning all felonies and other Offences in respect of which the power of convicting shall not have been given to any such Justice or Justices; And every such Justice, to whom any such blank form or scheme shall have been transmitted as aforesaid, is hereby directed and required, by the General or Penny Post, as the case may be, or by some other safe conveyance, to return the same, properly filled up, as soon as conveniently may be, after the proceeding, of which such form or scheme is designed to give account, shall have been had, according to such reasonable requests and Instructions as shall from time to time have [150\_276] been transmitted to him in that behalf by the said Board; and in particular, so often as it shall happen to such Justice to make out any Warrant for the commitment of any person to any Jail or other place of lawful confinement, or for the discharge of any person from such Jail or place of confinement, or for the making Distress and Sale on the goods of any person, or for making search in any House or Place for any person, or for any article or articles therein supposed to be contained, and as often as it shall happen to such Justice to take any Recognizance from any person on any occasion,

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<sup>446</sup> For essoins and imparlances see p. 166 n. above.

<sup>447</sup> See p. 80 n. above.

whether civil or criminal, whatsoever, such Justice is hereby directed and required to cause a memorandum thereof and of the cause thereof, and other particulars relative thereto, according to such form as shall have been transmitted to him as aforesaid for that purpose, to be returned, {108} {2}<sup>448</sup> by the filling up and transmitting of such blank form or otherwise, by the then next post if possible, or at the latest within one week thereof; and every such Justice shall, upon letter of request by him transmitted to the said Commissioners, be intitled to receive *gratis* and free of postage from them the said Commissioners a Copy of the said *Police Gazette*, as also of the said *Calendar of Delinquency*, as often as the same shall respectively be made public, as also of all such other printed papers as shall from time to time have been made public by authority of the said Board; such alone excepted, if any, as the Lord High Treasurer, or Commissioners of the Treasury for the time being, shall have forbidden to be so circulated, in consideration of the expence {109} {3}<sup>449</sup> or otherwise.

§ [150\_273] Taken from Stamp Act, 5 W. c. 21. § 12.<sup>450</sup>

[150\_277]

§ 49 (§ 5). And be it further enacted, that the said Commissioners shall from time to time prepare or cause to be prepared, and transmitt or cause to be transmitted, by the Post or some other equally convenient conveyance, to the Keeper of every Jail and other place of lawful confinement within this United Kingdom (such places included as are or then shall be in use for the confinement of the insane) a competent number of Blank Forms or Schemes with instructions for the filling them up respectively in such manner as to exhibit a memorandum of and concerning the receipt of each person who shall have been received into custody in each such Jail or other place of confinement, together with the date and cause of the commitment of such person, and any other proper particulars relative to such person or such commitment; as also another set of Blank Forms or Schemes for exhibiting in like manner a memorandum of and concerning the departure of each such person

<sup>448</sup> See p. 348 below.

<sup>449</sup> See p. 349 below.

<sup>450</sup> i.e. the Stamps Act of 1694 (*recte* 5 & 6 Will. & Mar., c. 21, § 12), which is, in fact worded as follows: 'the Judges in the several Courts, and such others to whom it may appertain, at the Request or Requests of the said Commissioners, .^.^ shall make such Orders in the respective Courts, and do such other Matters and Things .^.^ as shall be lawfully and reasonably required in that Behalf'.

§ 49 (§ 5). Further materials for the *Calendar of Delinquency*.—Returns from Jails.—Penalties for neglect.

respectively who shall have departed out of such custody, together with the date of such departure, and the cause or manner thereof, whether the same happened by death, escape, discharge, or otherwise, and any other proper particulars relative thereunto; as also another set of Blank Forms or Schemes, with proper and sufficient Instructions for the filling up the same, in such manner as that the same shall exhibit, each of them, a Register or Calendar of all persons who shall have been so received into, and of all persons who shall have so departed out of, such custody in the course of each Yearly, quarterly, monthly or other such proper and convenient period [150\_278] as shall from time to time have been appointed for that purpose by the said Commissioners, and of all persons remaining in such custody at the end of each such period so appointed; and every such Jailor or Keeper, to whom any such set of Blank Forms or Schemes with such Instructions as aforesaid for the framing any such memorandums of receipts and departures respectively as aforesaid shall have been transmitted, from or by authority of the said Commissioners, shall, by the next post after each such receipt or departure shall respectively have taken place, transmit or return to the said Board a proper and sufficient memorandum of and concerning such receipt or departure respectively, expressed by the filling up of some such blank form or scheme as aforesaid, or in some other equally proper and sufficient mode; and every such Jailor or Keeper, to whom any such Blank Form or Scheme with such instructions as aforesaid for the framing of any such periodical Register or Calendar shall have been transmitted as aforesaid, shall, within such reasonable time, after the expiration of each such period, as shall have been appointed or limited by the said Commissioners, transmit or return to the said Board, by the Post or otherwise, [150\_279] a paper, expressive of such Register or Calendar, by the filling up of the heads contained in such Blank Form or Scheme so framed for that purpose, or in some other equally proper and sufficient mode, according to such Instructions as shall have been so transmitted to him as aforesaid in relation thereunto; And every such Jailor or Keeper as aforesaid, who, having received from the said Commissioners as aforesaid any such Blank Form or Scheme with instructions thereunto relating as aforesaid, shall wilfully or through negligence omit to make any such return as shall be required in and by any such Instructions, shall forfeit and pay any sum not exceeding {10<sup>s</sup>} nor less than {1<sup>s</sup>} for every day during which such omission shall have continued; and every such Jailor or Keeper as aforesaid who, in and by any such return so made by him as aforesaid, shall wilfully or through negligence omit to make true and perfect answer to any such lawful and reasonable question, or to comply with any such lawful and reasonable requisition, as shall be contained in any such

Instructions relative thereto, or shall wilfully or through negligence make any false answer to any such question, shall forfeit and pay for every such Offence any sum not exceeding {£5} nor less than {5<sup>s</sup>}.

[150\_280]

§ 50 (§ 6). Further materials.—Returns from Constables.

§ 50 (6). And be it further enacted, that every Constable or other such Peace-Officer, and every other person to whom any Warrant, Summons, Order or other precept or authority in writing shall have been delivered by any Justice or Justices of the Peace, to the end that such Warrant or other authority may be executed by such Constable or other person, shall by the then next post, or so soon as conveniently may be, transmitt or cause to be transmitted by the Post (or otherwise according to such appointment as from time to time shall be made in that behalf by the said Commissioners) a true copy of every such Warrant or other authority; such Warrants or authorities excepted as the said Commissioners shall have thought fit to except; with a signature expressive of the name and abode of such Constable, together with a figure or figures expressive of some number, whereby the copy of each such warrant or other authority may be distinguished from every other, the series of such numbers commencing with the first of such copies so transmitted by each such Constable or other person, and continuing to the end of the Year of our Lord in which such transmission shall be made by the same person; and each such Constable or other person, so soon as he shall have executed, or in part executed, such Warrant or other authority, according to the nature of the business therein required to be done, shall [150\_281] moreover transmitt or cause to be transmitted in manner aforesaid a paper or papers containing a memorandum or statement of the business so done and executed, as, for example, the arresting of the body of some person, the producing of the same before some Justice, the conveying of the same to some Jail, the making search in any House for any person or any goods, the arresting of any person thereupon, or seizing any goods, and producing him, her, or them before any Justice as aforesaid, the making Distress on the goods of any person, the making sale of the goods of any person in consequence of any such Distress, and so forth, in such convenient form and according to such reasonable Instructions as from time to time shall be framed and made public by the said Commissioners; and in regard to such business as any such Constable or other person shall not have been able to execute, or shall not have executed notwithstanding such warrant or authority, every such Constable or other person shall from time to time give notice and make return thereof, and in case of non-execution as aforesaid, then also of the cause or

causes of such non-execution, at such yearly, quarterly, monthly or other proper periods, and shall repeat the same for such reasonable number of successive periods in each year, as the said Commissioners shall from time to time have appointed and made public as aforesaid; or, in lieu of a copy at length of such Warrant or authority in each instance, every such Constable or other person shall transmit or cause to be transmitted as aforesaid, according to such reasonable instructions, if any, as shall from time to time have been given in that behalf and made public by the said Commissioners, an Abstract of the contents of such Warrant or authority, under such heads as shall be contained in a blank form or scheme, or any convenient number of blank forms or schemes, to be provided and duly transmitted by the said [150\_282] Commissioners; and for the due making of such returns and fulfillment of such Instructions as aforesaid, all Justices of the Peace are hereby required at all convenient times to give all proper and needful aid, assistance and advice to every such Constable or other person as aforesaid; Provided always, that for the transmission of any such Return as aforesaid, no such Constable or other such person shall be obliged to travel any further than to the Post Town nearest to his abode, nor to any such Post Town oftener than once in every week, if such Post Town be more than one Mile distant from such his abode; And every such Constable or other person, who, having received any such warrant or other authority as aforesaid, shall, for two whole weeks after the receipt thereof, have omitted to transmit to the said Commissioners the Copy or Abstract thereof as aforesaid, as also every such Constable or other person, who, having received any such warrant or authority, shall have omitted to make return of or concerning the execution or non-execution thereof, as aforesaid, at the next periodical time so appointed for the making of such Returns as aforesaid, shall forfeit and pay any sum not exceeding {10<sup>s</sup>} nor less than {1<sup>s</sup>} for every such Copy or Abstract so omitted to be returned, and for every Return so omitted to be made of or concerning such execution or non-execution, with the cause of such non-execution, as aforesaid.

[150\_283]

§ 51 (§ 7). Names of Delinquents not to be divulged—except as excepted.

§ 51 (§ 7). Provided always, and be it further enacted, that it shall not be lawful for the said Commissioners to cause or wilfully suffer to be made public in and by the said *Calendar of delinquency*, or by any other ways and means, the name of any person so convicted of, under prosecution for, or suspected of, any offence under the rank of Felony, except persons convicted of Forgery, Perjury or Conspiracy, and persons absconding from justice by reason of any offence, for the special purpose of causing him or her to be

amenable thereunto, unless by a special Order of the Board made in relation to each such person taken singly, or unless a special Order for such publication shall have formed part of or been added to the judgment or Order by which such person shall have been convicted; and the said Commissioners are hereby authorized and required to take such course for the purpose of preventing such divulgence as is hereby prohibited, as in their judgments shall seem most effectual and best adapted to the said purpose.

[150\_284]

§ 52 (§ 8).  
Correspondence to  
and from the Board  
exempted from  
Postage.—Provision  
against Abuses.

§ 52 (§ 8). And whereas {110} {1}<sup>451</sup> it will be necessary for the said Commissioners in the execution of their said office to send Letters and Instruments to, and receive Letters and Instruments from, persons resident in every part of this United Kingdom; And whereas it would not be just that either the said Commissioners or any other persons to whom any such letters shall be sent for the benefit of the public service should be put to any expence thereby, nor would it be productive of any benefit to his Majesty's Revenue if, for defraying the expence of such correspondence, money were to be transferred from one of his Majesty's Boards or Offices to another; And whereas, in establishing the exemptions necessary to the making provision in this behalf for the public service, it is proper and expedient to impose such restrictions as may be sufficient to prevent individuals from deriving any private advantage from the same, Be it further enacted, that from and after the day on which the appointment of the said Commissioners shall be notified in the *London Gazette*, and 'so long as the Revenue arising in the General Letter Office, or Post-Office, or Office of Postmaster General shall continue to be made part of the Aggregate Fund',<sup>h</sup> every letter and packet not exceeding the weight of {^^} ounces (or other such weight as shall from to time have been appointed in this behalf by the Lord High Treasurer or Commissioners of the Treasury) and superscribed and directed to the Commissioners of Police or to the Board of Police, London, or superscribed and directed by some person appointed for that purpose by the said Commissioners, with an endorsement either in the hand writing of the same or any other person so appointed, or by a stamp engraved in imitation of the same, and in both cases accompanied with the name of such person together with the words 'From the Board of Police Revenue—*On his Majesty's Service*', shall be conveyed either by the Carriage called the General Post or by the Carriage called the Penny Post, as the case may be, and shall pass to and be delivered at the Office or

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<sup>451</sup> See p. 354 below.

Offices of the said Commissioners to any person or persons appointed by the said Commissioners, or to the person to whom such letter or packet shall be directed as aforesaid by the authority of the said Commissioners, as the case may be, free from all duty or other charge on account of postage; {111} {2}<sup>452</sup> [150\_285] Provided always, that no letter or packet directed or endorsed as aforesaid by authority of the said Commissioners shall contain or inclose any other letter or packet directed otherwise than as aforesaid, nor shall any letter directed to the said Commissioners or the said Board be opened but at a Board held by the said Commissioners, or by some person appointed for that purpose by the said Commissioners, in the presence of some other person also appointed by the said Commissioners, the contents thereof being read aloud in both cases; and if in any letter or packet so sent there be contained any written or printed paper or other article whatsoever directed to or intended for any one of the said Commissioners or their officers, or any other person whatsoever, the same shall not be delivered or communicated to any such person, but shall thereupon become the property of his Majesty and as such shall, if the person by whom the same was sent be unknown, remain under the custody and at the disposal of the said Board; but if such person be known, then the said Commissioners may cause the same to be returned to such person by the Post, but under an additional cover not directed in such manner as to be free of postage; and every person who, for the purpose of causing any letter or packet to pass free of postage, shall presume to direct the same as from the said Board otherwise than as aforesaid, or who shall deliver or communicate to any individual any letter or packet directed to and received by the said Board as aforesaid, shall suffer as in and by the Act of the fourth Year of the reign of his present Majesty for the prevention of frauds and abuses in relation to the duty of Postage is appointed in case of any of the frauds or abuses therein mentioned:<sup>453</sup> and every person who, for the sake of causing any such letter or packet to pass free of postage or for any other unlawful purpose, shall counterfeit the handwriting of any person so appointed to direct letters and packets by authority of the said Commissioners as aforesaid, or any stamp made in imitation of such handwriting, shall suffer in such manner as is appointed in case of the counterfeiting of the hand writing of any person in and by the said Act.

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<sup>452</sup> See p. 355 below.

<sup>453</sup> i.e. the Postage Act of 1763 (4 Geo. III, c. 24).

<sup>h</sup> [150\_284] 23 G. 3. c. 69; 34 G. 3. c. 17: Penny; 22 G. 3. c. 70; 4 G. 3. c. 24: Principal Act; 9 G. 3. c. 35: Exemption Act; 35 G. 3. c. 53.<sup>454</sup>

[150\_286]

§ 53 (§ 9). Board to make Reports to Parliament—stating proceedings—and suggesting improvements.

The words between the inverted Commas are copied from the first of the three Acts of the present reign for appointing Commissioners for the suggestion of improvements, viz: 20<sup>th</sup> G. 3. c. 54.<sup>455</sup>

§ 53 (§ 9). And be it further enacted, that the said Commissioners, so soon as they shall have collected the information sought for by the Returns aforesaid, or sooner if need be, shall *‘from time to time, at their discretion, or as often as they shall be thereunto required, give an account of their proceedings, in writing under their hands and seals, to the King’s Most Excellent Majesty, and to both Houses of Parliament’*,<sup>i</sup> {112} {1}<sup>456</sup> and shall moreover from time to time *‘suggest all such regulations’* as in their judgment shall appear best calculated for augmenting the efficacy, {113} {2}<sup>457</sup> or, without prejudice to the efficacy, diminishing the severity, of the penal branch of the Law, or any part or parts thereof, and for diminishing, without prejudice to the efficacy of the law or to the security of the unoffending, the expence (whether to individuals or to the public) incident to the execution of the same.

<sup>i</sup> 20 G. 3. c. 54: Account,<sup>458</sup> 25 G. 3. c. 19: Fees,<sup>459</sup> 26 G. 3. c. 87: Crown Lands.<sup>460</sup>

<sup>454</sup> i.e. the Postage Acts of 1763 (4 Geo. III, c. 24, § 1) 1763 (4 Geo. III, c. 24, § 1) 1782 (22 Geo. III, c. 70, § 1), 1783 (23 Geo. III, c. 69, § 1) and 1795 (35 Geo. III, c. 53), the Penny Post Act of 1794 (34 Geo. III, c. 17, § 8), and the Customs etc. Act of 1769 (9 Geo. III, c. 35). The quoted phrase does not in fact appear in the final two statutes listed in Bentham’s note.

<sup>455</sup> This passage from ‘Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations’, p. 362 below, is reproduced as a marginal content at this point in accordance with Bentham’s instruction at p. 362 n. below.

<sup>456</sup> See p. 362 below.

<sup>457</sup> See p. 363 below.

<sup>458</sup> i.e. the Audit of Public Accounts Act of 1780 (20 Geo. III, c. 54, § 5), which prescribed that ‘the said Commissioners shall, .^.^ give an Account of their Proceedings, in Writing under their Hands and Seals .^.^ to the King’s most Excellent Majesty, and to both Houses of Parliament .^.^ and shall in like Manner report to his Majesty, and to both Houses of Parliament, such Orders, Rules, and Regulations as in their Judgement shall appear fit and expedient to be established’.

<sup>459</sup> i.e. the Inquiry into Fees, Public Offices Act of 1785 (25 Geo. III, c. 19, § 1), which prescribed that ‘the said Commissioners shall .^.^ report and certify their Proceedings, in Writing under the Hands and Seals of them .^.^ to the King in Council .^.^ adding .^.^ such Observations as shall occur to them, and such Plans,

[150\_287]

§ 54 (§ 10). Business of the Hawkers and Hackney Coach Offices transferred to the Board of Police.

§ 54 (§ 10). And whereas the business of the several Offices established for the licensing of ‘*Hawkers, Pedlars and Petty Chapmen*’,<sup>j</sup> and for the ‘*licensing and regulating Hackney Coaches and Chairs*’<sup>k</sup> respectively, under divers Statutes now in force might be transacted with more economy and to better advantage if the functions of the said Offices were to be placed in the same hands with the several functions committed as aforesaid to the said Board of Police, Be it further enacted, that so soon as the said Commissioners of Police, having been duly nominated and appointed in virtue of this Act, shall have given notice by Advertisement in the *London Gazette* of their being in readiness to transact the business of the said Offices, the authorities and functions of the present Commissioners [150\_288] for the licencing of Hawkers, Pedlars and Petty Chapmen, the Commissioners for the licencing and regulating of Hackney Coaches and Chairs in the Cities of London and Westminster and the vicinity thereof,<sup>461</sup> with their respective subordinate Officers and Clerks, shall cease and determine, and the said Commissioners of Police shall thereupon be, and are hereby declared to be, in virtue of their respective Offices, Commissioners for the licencing of Hawkers, Pedlars and Petty Chapmen, and Commissioners for the licencing and regulating of Hackney Coaches and Chairs within the limits aforesaid, under all such laws as now are or hereafter shall be in force touching the said several matters and things respectively, and without any separate Commissions granted to them or any of them for any of the said respective purposes.

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either for Correction and Improvement .^.^ as may appear to them proper to be adopted for the Time to come’.

<sup>460</sup> i.e. the Crown Lands Revenues, etc. Act of 1786 (26 Geo. III, c. 87, § 1), which prescribed that ‘the said Commissioners shall .^.^ within fourteen Days after the Commencement of every Session of Parliament .^.^ certify and report in Writing, under their Hands and Seals, unto the King’s Majesty and both Houses of Parliament, what Progress they shall have made in the Execution of .^.^ this Act, together with such Observations as shall occur to them, and suggest such Plans, Rules, Regulations, Means, and Methods, for .^.^ the future Management and Improvement of the said landed Estates and Possessions .^.^ as the said Commissioners shall think .^.^ most productive and advantageous to his Majesty and the Publick.’

<sup>461</sup> The following passage, which appears in the text at this point, has been cancelled by Bentham: ‘and the Superintendent or Superintendents of Aliens’. He has repeated the cancellation a few lines below in listing the additional titles and powers of the Commissioners of Police.

<sup>j</sup> 29 G. 3. c. 26. § 1.<sup>462</sup>

<sup>k</sup> 26 G. 3. c. 72. § 1.<sup>463</sup>

[150\_289]

§ 55 (§ 11).  
Allowance to  
Officers losing their  
employment.

§ 55 (§ 11). And whereas the said several ‘Commissioners [and] Officers’ will by such consolidation as aforesaid ‘be deprived of their employments, and of the Salaries and Emoluments arising therefrom’, Be it further enacted, ‘that it shall and may be lawful for his Majesty, by warrant under his Royal sign manual, to direct, during pleasure, the said Commissioners<sup>1</sup> of Police to pay to such Commissioners, as also to such Officers respectively whose employments shall so have been suppressed as aforesaid, without their being appointed to the like employments under the said Commissioners of Police or otherwise to employments of equal value, ‘such yearly allowance’ out of the said several branches of Revenue in the collection of which they shall respectively have been employed ‘as his Majesty shall judge fit, so as no allowance to any Commissioner [or] Officer shall exceed the yearly amount of the Salary and Emoluments of which he will by virtue of this Act have been deprived, and so as the whole of such allowance do not exceed the sum of {^^^} pounds.’

<sup>1</sup> 38 G. 3. c. 89. § 141: *Salt*.<sup>464</sup>

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<sup>462</sup> The Hawkers and Pedlars Commission (see p. 85 & n. above) had most recently had its terms of reference and scale of duties revised by the Duties on Hawkers, etc. Act of 1789 (29 Geo. III, c. 26).

<sup>463</sup> The Hackney Coaches Commission (see p. 85 & n. above) had most recently had its table of fares revised by the Hackney Coaches Act of 1786 (26 Geo. III, c. 72, § 1).

<sup>464</sup> See p. 85 & n. above.

[157-013]

APPENDIX to 'A Bill for the establishment of a Board of Police,  
and for the suppression of divers Offices'.

TABLE OF PRECEDENTS (TO ACCOMPANY PART II. BOARD)  
SHEWING THE PROVISION MADE BY STATUTE LAW RESPECTING THE  
CONSTITUTION OF THE SEVERAL BOARDS OF REVENUE

[For this Appendix please see the companion PDF file]

[150\_429]

Notes to the Police Bill:  
containing  
Reasons, Precedents, and other Elucidations.  
Feb<sup>y</sup> 1799

{1}<sup>465</sup> page 148.<sup>466</sup> *Title*.

The objects that appear to have been aimed at in the framing of *Titles* to Bills are:—1. the giving a name whereby, when passed into a Law, the Act may be distinguished from other Acts, and referred to in succeeding Acts. 2. The affording a general indication of the contents, to avoid the inconvenience that has some times been observed to result, where, a provision being buried in a quantity of matter to which it bears little or no relation, the very existence of a provision to that effect may come to be forgotten and unknown, and even where the existence of it is known, a man may not know where to find it. 3. To operate in recommendation of the Bill, by the indication of the species of utility expected to result from it.

For the first of these purposes, the words ‘*An act for the establishment of a System of Police*’ would be sufficient; for the second, it may perhaps be thought fit to add ‘*and for the suppression of divers Offices*’: especially as the indication of this part of the business of the Act may be attended in some degree with the other effect of contributing to recommend the Bill to the favour of the House.

[150\_430]

The quantity of room occupied by the Titles of Acts, when referred to in the usual way by their Titles in other Acts, is an enormous inconvenience:—and, should this Bill pass into a Law, the occasions for referring to it in future Acts seem not likely to be unfrequent. Usage apart, the thing to be desired seems to be—that every Act, at least every Act the contents of which are in any degree multifarious, should have, as it were, *two* titles, one for mere reference, the other for the indication of the topics touched upon in it. To the former purpose, nothing can be better adapted than the extempore titles by which Bills are denominated in the common Newspapers. These, short as they are, never fail to give some general intimation of the contents,<sup>467</sup> which would not be done by a mere indication of the

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<sup>465</sup> The bold numerals in braces refer to the note-makers presented in the same way in ‘A Bill for the establishment of a Board of Police’, pp. 148–210 above.

<sup>466</sup> Bentham’s page references to his draft of the Bill have been amended to accord with the pagination of the present volume.

<sup>467</sup> For the use of short titles in the press see, for instance, the references to the ‘Sedition Bill’, which became the Seditious Meetings Act of 1796 (36 Geo. III, c. 8), in the *Morning Chronicle*, 5 December 1795, 16 March 1796; *Lloyd’s Evening Post*, 25–7 November 1795; and the *True Briton*, 15 December 1795.

numbers expressive of the Year and the place occupied by the Act in question in the series of the Acts of that Year, nor even with the help of the recent improvement, by which the month and day of the passing of the Act are added;<sup>468</sup> besides that mere numbers are extremely liable to error, for want of that check which is afforded by the import of the context in other cases.

With these observations, how much of the title here proposed shall be suffered to stand, and whether any thing more shall be added to it, is submitted to those to whom it belongs to judge.

[150\_431]

[{2} General Preamble]<sup>469</sup> p. 149. {*Amendment and improvement*}.<sup>470</sup>

Precedents for reporting opinions and plans &c.

1. By 20 Geo. 3. c. 54,<sup>471</sup> Commissioners are appointed for examining into the Public Accounts: and the individuals are named by the Act.

By § 1. .^.^ they are constituted Commissioners for &c., and for considering and reporting by ‘what means and methods the public accounts may in future be passed, and the Accountants compelled to pay the Balances or Monies due from them in a more expeditious, more effectual and less expensive manner’.

§ 5. ‘The said Commissioners shall from time to time .^.^ report to his Majesty, and

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<sup>468</sup> The Acts of Parliament (Commencement) Act of 1793 (33 Geo. III, c. 13) provided that Acts of Parliament were to come into force on the day on which they received Royal Assent, this date being endorsed on the enrolled copy of the Act, and printed at the head of published copies. Acts had previously been deemed to have come into force on the first day of the parliamentary session in which they were passed.

<sup>469</sup> MS ‘Observations on Part I. Licence-Duties. § 1 {1}’ is a slip.

<sup>470</sup> The words in braces do not in fact appear in the ‘General Preamble’ at UC cl. 180 (p. 149 above), because Bentham deleted the following passage and accompanying note-marker in which they appear, before recasting the phrase and adding a new note marker relating to the same point as expressed in different words: ‘devising, reporting to his Majesty in Parliament and proposing and carrying into execution and effect, and from time to time marking out for further amendment and improvement {1} all such measures’.

<sup>471</sup> i.e. the Audit of Public Accounts Act of 1780. There are minor inaccuracies in the rendering of passages from the Act.

to both Houses of Parliament .^.^ what defects they may have observed—and whether the said defects arise from &c.—and shall .^.^ report .^.^ such rules, orders and regulations, as in their judgments shall appear fit and expedient to be established, in order that the duties .^.^ may hereafter be received, issued, expended and accounted for, in the manner the most expeditious, most effectual, and most advantageous to the Public.’

And in the title it is stated that they are to ‘report .^.^ what defects there are in the present mode of receiving, collecting, issuing, and accounting for public money: and in what more expeditious and effectual, and less expensive manner, the said services can in future be regulated and carried on for the benefit of the Public’.

[150\_432]

2. By 25 Geo. 3. c. 19<sup>472</sup>. § 1, Commissioners are appointed for Enquiry into Fees of Office .^.^ ‘Adding at the same time’ (it is said), ‘such Observations as shall occur to them, and such Plans, either for Correction and Improvement, or for abolishing or regulating any of the said Fees—or for carrying into execution the general purposes of this Act, as may appear to them proper to be adopted for the time to come .^.^.’<sup>473</sup>

N.B. These Commissioners were not precluded from sitting in the House of Commons. One of them, M<sup>r</sup>, now Sir Francis Baring,<sup>474</sup> was a Member at the time.

3. By 26 Geo. 3. c. 87.<sup>475</sup> Commissioners are appointed for Enquiry into the Crown Lands. In § 1, the words are, ‘And suggest such Plans, Rules, Regulations, Means and Methods, for the Disposal and Alienation or for the future Management and Improvement of the said landed Estates and Possessions, and for the Protection, Increase and Supply of Timber in the said Forests, Chases, and other Lands of the Crown, for the Use of the Royal Navy, or for redressing any Abuses in the Management of the said Landed Estates, and the Collection and due answering of the Revenues of the same, or other small Branches of

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<sup>472</sup> i.e. the Inquiry into Fees, Public Offices Act of 1785.

<sup>473</sup> Bentham has cancelled the following paragraph.

<sup>474</sup> Sir Francis Baring (1740–1810), merchant and merchant banker, MP for Grampound 1784–90, Chipping Wycombe 1794–6, 1802–6, and Calne 1796–1802, who had been created a Baronet in 1793, was appointed one of three Commissioners for making Enquiry into the Fees, Gratuities, Perquisites and Emoluments of Public Offices at the inception of the Commission in 1785 and served until it lapsed in 1789.

<sup>475</sup> i.e. the Crown Lands Revenues, etc. Act of 1786.

Revenue as aforesaid, as the said Commissioners shall think best calculated for rendering the said landed Estates and Possessions of the Crown and the Revenues arising therefrom and other small Branches thereof, most productive and advantageous to his Majesty and the Publick.’

By § 24, the Commissioners are declared not disqualified from sitting in the House of Commons.

[150\_433]

4. In the preceding Year, by 25 Geo. 3. c. 52,<sup>476</sup> the Commission still existing was established for the auditing of the Public Accounts. No such authority as that of reporting opinions was included in this commission: the reason evidently is, that power was therein given to the Commissioners themselves, adequate to the doing every thing which the end in view required to be done.

These Commissioners are the only set of the four who are precluded from sitting in the House of Commons.<sup>477</sup>

For the Clause corresponding to this part of the preamble, see § {^^^}.<sup>478</sup>

Objection to this clause. Too great a power to be given to a *permanent* body of men like this: it makes them a *fourth Estate*.<sup>479</sup>

Answer.—No power at all.—What is thus required to be done by them is no more than may be done by any body, and is done by every body that pleases. No *power*, but a *duty* without power. The Commissioners are not to *bring in Bills*. It is made their more especial duty to give opinions and suggest measures, only because their situation is such as

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<sup>476</sup> i.e. the Audit of Public Accounts Act of 1785.

<sup>477</sup> The Act (§ 25) precluded any Commissioner appointed under the Act from being elected to, or sitting in, the House of Commons.

<sup>478</sup> See § 53 of ‘A Bill for the establishment of a Board of Police’, p. 208 above.

<sup>479</sup> Parliament was traditionally regarded as being composed of three estates: the Lords Spiritual, the Lords Temporal, and the Commons. A ‘fourth estate’ referred to any rival body with pretensions to power without proper constitutional authority. The charge of creating such an estate had been brought successively against both Fox’s India Bill in 1783 and Pitt’s India Act in 1784: see *Parliamentary History* (1783–5) xxiv. 348–9, 397, 406, 1131.

to give them a better view than can be possessed by any body else, of the matters of fact proper to serve as grounds for such measures.—What is every body’s business being nobody’s business,<sup>480</sup> in this department as in any other, there is a great advantage in having a particular set of men, responsible, in point of character at least, for whatever remains amiss, and thereby having a special and constant inducement to exert their endeavours in devising means for ratifying defects, and carrying improvement to its highest pitch.

[150\_431]

### Part I. *Licence-Duties*

[150\_434]

{3} {1}<sup>481</sup> § 1. page 150. {*London Police District*}.

As to the extent here proposed to be given to the London Police District, the indications afforded by abstract utility, precedent being laid out of the question, can not be expected to be very determinate. In one point of view, the more extensive the better, because the more extensive it is, the more compleatly it will embrace the great field of depredation, and the great market for the fruits of depredation, viz: the Metropolis, and such part of the surrounding country, as may be regarded as being readily accessible to, and lying within the beat of, the London Thieves. Whatever may be regarded as the extent of this ideal district, there will be an evident advantage in subjecting the whole of it to the inspection of one and the same set of eyes:—and as the Metropolis and its vicinity is the great and principal theatre of the dishonest branch of the trade in second-hand goods, so is it of the honest branch: insomuch that within this expanse the scale of dealing may be regarded as being susceptible of greater extent than in the distant parts of the Country, or even any provincial Town: whence (as observed [below])<sup>482</sup> the reason for encreasing the rate of duty within the compass of this circle: and for the describing of it, the *radius* taken from

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<sup>480</sup> See p. 42 n. above.

<sup>481</sup> Bentham provided two numbers to identify each note, the first referring to the consecutive numeration of the notes as a whole, and the second to a discrete numeration for each section. Inconsistencies and inaccuracies in his numeration have been silently corrected.

<sup>482</sup> MS ‘as already observed’: see p. 220 below.

the distance travelled by the Penny Post seems not too great.<sup>483</sup> On the other hand, a consideration the tendency of which is to set limits to the extension of this circle, is—that the distance ought not to be so great, as to raise to an oppressive pitch the trouble and expence of journeys, to Candidates for the licences and persons whose testimony may be [150\_435] recurred to for their characters: but on this head it is to be observed, that as, between the Metropolis, and the instance of any place situate at a given distance from it, the occasions of passing to and fro are more frequent than between any other two places at an equal distance, so are the facilities.

This being considered, possibly for the sake of regularity and simplicity, it may be thought adviseable to include within this *Home* District, the whole of the County of Middlesex, no part of which is above 17 miles or thereabouts from London (reckoning from the place from which the miles are counted),<sup>484</sup> and that only in the three projecting corners towards Colnbrook, Harefield and South Mims: or if this should appear too great a distance, the list of the Parishes in the London District might at any rate be so far extended as to take in the broken remainders, if any such there should prove to be, of every licencing Division, which upon the other plan of division would be so far cut into as to be reduced to a portion of territory so small as not to be worth forming into a Division by itself.

[150\_436]

As to the mode of demarcation, to say—for *such a number of miles round a given point* ('five miles round *Temple Bar*', for example, as in the Act 24 G. 3. Sess. 2. c. 27. §[8]<sup>485</sup>, which appoints the limits within which Carts are to be registered)<sup>486</sup> would not so

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<sup>483</sup> i.e. a radius of 10 miles from the General Post Office in Lombard Street: see p. 150 n. above.

<sup>484</sup> There was no generally agreed single point from which distances from London were measured, but Bentham may have had in mind either the 'Standard', a former conduit head in Cornhill, used by John Ogilby (1600–76), cartographer, in *Britannia, Volume the First: or, an Illustration of the Kingdom of England and Dominion of Wales: By a Geographical and Historical Description of the Principal Roads thereof*, London, 1675, in its later editions, and in many derivative works, or the General Post Office in Lombard St, used by, for instance, John Cary (c. 1754–1835), in *Cary's New Itinerary; or, an Accurate Delineation of the Great Roads, Both Direct and Cross, throughout England and Wales; With many of the principal Roads in Scotland*, London, 1798.

<sup>485</sup> MS '7'.

<sup>486</sup> See the Hackney Coaches Act of 1784, § 8: 'no Person or Persons whatsoever shall drive any Cart, Car, Dray, or other such Carriage, within the said Cities of *London* or *Westminster* .^.^ the Borough of

well answer the purpose, for want of pre-established limits running in the direction of the circumference of a circle. The boundaries of Parishes (how irregular soever the boundary line) are generally, if not universally, determined with a degree of precision sufficient for every legal purpose. Precision is necessary under this head not only with reference to questions of *jurisdiction*, but for the sake of determining without litigation whether this or that man shall be liable to pay the *London* or only the *Country Duties*, and in what Houses the London Surveyors, and in what the Country Surveyors, are to exercise the several powers here given to that Office. In referring to the District of the Penny Post, it was necessary to speak of the *present time*: since, as far as *law* is concerned, the limits of that establishment have no description more determinate than what is given to them by the first Post-Office Act, 9 A. c. 10. § 6: viz: ‘*ten miles from the General Letter Office in London*’: and whatever fixation they have received has been given to them solely by the authority of the Postmaster General, by which same authority (by 34 G. 3. c. 17. § 6) they have been declared to be variable any time,<sup>487</sup> and may come hereafter to be varied for reasons which would not apply to the business of the Police. The existing list of the places included in that District will either serve without alteration for the list of places included in the proposed London Police District, or, if it does not give the names of the Parishes in every instance with sufficient precision for the present purpose, it will at any rate afford a sufficient clew to the discovery of those names.

[150\_437]

In the case of the Excise, though the words employ’d by the Act {12 C. 2. c. 24. § 46}<sup>488</sup> in the description of the District within which the Head Office shall be situated are ‘*in the City of London or within ten miles thereof*’ (a circle without a center), those by which, in the same Statute {§ 48}, the limits are marked out with a view to local authority and jurisdiction, are expressive of the same plan of demarcation as that which is *here* proposed to be adopted—‘*All parts of the Cities of London and Westminster, with the Borough of Southwark, and the several Suburbs thereof*’.

It is, perhaps, no uncommon case for the same house to be part in one parish and part

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Southwark .^.^ or five miles of *Temple-bar* .^.^ except the owner of such Cart .^.^ shall have entered his Name and Place of Abode with the Commissioners for licensing Hackney Coaches’.

<sup>487</sup> For the Post Office (Revenue) Act of 1711 and the Penny Post Act of 1794 see p. 150 n. above.

<sup>488</sup> i.e. the Statute of Tenures of 1660.

in another: but the boundaries of the two Parishes are not the less determinate; and the case is provided for in a subsequent clause. See further Note {15} to the word {*thereabouts*}.<sup>489</sup>

It is an obvious question—why make the rate of duty double in the London District? but the answer is little less obvious: viz: because in and in the neighbourhood of the Metropolis, the *field for dealings* of the sort in question, and thence *the scale of dealing*, is so much more extensive than even in the largest country towns. *The Royal Dock Yards* afford an equally obvious exception to the general [150\_438] rule: and it is on this account that they are here proposed to be charged (as will be seen presently)<sup>490</sup> with the London Duties. The practice of making a distinction between the Metropolis and the country, in regard to the rate of licence-duty, is indeed not universal, but it has many precedents: upon turning to the annexed Table<sup>a</sup> it will be found that in *seven or eight* instances, out of about *two or three and forty*, the distinction is observed.

<sup>a</sup> Appendix {A}.<sup>491</sup>

As to the rate of duty, see further Note {14} under the word {Dockyards}.<sup>492</sup> and, concerning the judicial cognizance in matters arising within the Police District, see Note {94} to § {40}.<sup>493</sup>

[150\_439]

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<sup>489</sup> See p. 232 below.

<sup>490</sup> See pp. 231–2 below.

<sup>491</sup> No examples of the differences between Town and Country rates of duty are in fact provided in ‘Police Bill. Table of Precedents’ (for which see the companion PDF file), although in a related brouillon at UC cvii. 190–1, headed ‘Police Bill Precedents’, Bentham listed forty-one professions which required licences by statute, and noted a distinction in the rate of licence-duty between London and the rest of the country in five cases, namely Auctioneers (20s. in London and 5s. elsewhere, by 17 Geo. III, c. 50, § 1), Watch-makers and dealers (2s. 6d. in London and 1s. elsewhere, by 37 Geo. III, c. 108, § 26), Hatters (40s. in London and 5s. elsewhere, by 24 Geo. III, sess. 2, c. 51, § 1), Tanners (£5 in London and £2 10s. elsewhere, by 24 Geo. III, sess. 2, c. 41, § 1), and Tobacco and Snuff dealers (5s. in London and Edinbrugh and 2s. 6d. elsewhere, by 29 Geo. III, c. 68, § 70). A notable omission are the differential duties payable on pawnbrokers’ licences, for which see p. 95 n. above.

<sup>492</sup> See pp. 231–2 below.

<sup>493</sup> See pp. 309–16 below.

{4} {2} § 1. page 151. {*Districts or Divisions*}.

The Divisions here adopted are the Divisions into which the several Counties are already cast for the purpose of the business of granting licences to Public Houses, as will be seen below. They are termed *Divisions* as being already known by that name: they are termed Districts with a view to the purposes of this Act, and that the common appellative thus given to them, may match with the appellative *London Police District*; in which case the word *Division* could not be employ'd, that District including a considerable number and variety of Public House licensing Divisions, and not being exactly commensurate, perhaps, with any number of them.

[150\_440]

{5} {3} § 1. p. 151. {*Class the first*}.

The finding a stock of expressions for this numerous and diversified assemblage of classes appeared to be a task of no small difficulty and delicacy. Two modes of delineation, upon two different plans, seemed requisite in the instance of each class: viz: a description at large, by which the individuals meant to be comprized in the class might be determined with certainty; and an abridged denomination, by which, for the purpose of the *inscription*, as well as upon all other occasions, they might be spoken of in a short way, certainty being given to the import of this abridged denomination by reference to the description at large.

The plan here pursued of ranging under heads the several masses of regulation applicable in common to all the classes is an abridgment of the plan pursued at first, and has for its object the saving of repetitions, in a Bill which at the best must be more voluminous than could be wished. If this should be rejected, under the notion of its not being sufficiently conformable to the usual wordiness of the Parliamentary stile, the adding throughout such surplusage as may be deemed necessary to the production of the requisite degree of conformity, would be a sort of mechanical process, of great facility as far as concerns skill and intelligence, but which would require such a quantity of time and labour, as I hope it will not be necessary for one to bestow upon it.

[150\_441]

{6} {4} § 1. p. 151. {*Seeking his .^^. living by Purchasing*}.

'*Purchasing*' must be the word, not *dealing*, which includes *selling* as well as purchasing. *Purchasing*, and not *selling*, is the act from whence the *mischiefe* arises, which it is endeavoured to prevent: and it is only by means of the word *purchasing* that the line of distinction can be marked out between the *Wholesale* and the *Retail* Dealer, two classes which the Bill in two instances (viz: Rags and Metals) proposes to subject to different rates of duty: for the petty dealer in this way, however minute his *purchases*, will deal by wholesale in his *sales*: nor can the wholesale dealer be a wholesale dealer in his purchases, if those purchases are made of a retail-dealer, unless the retail-dealer deals by wholesale in his sales. What is more, *purchasing* is the only act, and not *selling*, that, in the branch of trade in question, can be taken for the subject of a licence, and then only, where the purchase is made for the purpose of sale: for the seller is in this case the individual who, in the case of a purchase made by an honest purchaser, has used the goods as long as they were of use to him, and who has no *living* to gain by the selling of them, since he does not sell them for *more* than they cost him, but always for a great deal *less*: he is the party *on whose account*, not *from whom*, apprehensions are entertained; the party *to* whom, not *against* whom, the protection of the law is meant to be afforded.

All this together forms a sort of a puzzle: but a single observation presents the *key* to it. In the branch of trade in question, viz: that which is occupied in the collection of *second-hand* goods, the course taken by the article, in passing through the hands of the sort of dealer regarded as the *Retail* dealer, is the direct *reverse* of that which it takes in the case of *new* goods. New goods he *purchases* by *wholesale*, viz: of the wholesale dealer, and *sells* in *retail*, viz: to the consumer. Second-hand goods and refuse articles he *purchases* in *retail*, (viz: of the consumer who throws them out) and *sells* by *wholesale*, viz: to the wholesale dealer.

Under the word '*purchase*', barter, (it is presumed) can not but be deemed to be included: no need, therefore, of inserting the word *barter*. Had the word been *buying*, it might possibly have made a difference.

[150\_442]

Another point attendant with some difficulty is framing the description of the act of dealing in such manner as to protect against the penalties persons engaging in any transaction of the sort in question by accident only, (i:e: by the inducement of some casual

opportunity, and not by habit) and yet at the same time to include all those on whose part the habit really exists. When a man engages in any branch of business which he means to trust to as a settled dependence, he is naturally led to enquire what branches of the law there are that have a particular application to that branch of business: if he does not, the fault as well as the risk is his own, and any act of delinquency, though the result of ignorance, may not unjustly be imputed to him as an act of culpable negligence; but where the transaction is the result of a casual opportunity or two, the demand for enquiry does not exist, nor consequently the imputation of negligence. A law which does not make provision for this distinction subjects itself to the imputation of operating as a snare.

The words '*seeking his living*' are sufficiently expressive of a *habit*: but under these words the question still recurs, what single act or number of acts shall be deemed sufficient evidence of such habit? In an *open* shop, kept manifestly for the purpose (signs of which can never be wanting in a shop), a single act of *purchase* or *sale* (as the case may be) *would* be looked upon as constituting this sufficient evidence. Accordingly these words were at one time inserted: but they were struck out under the apprehension that in that case a man, who was himself not privy to any particular instance of dishonest practice, might be supplied by a dishonest *middle-man* or *factor*, who might contrive to procure the article from thieves or their receivers without keeping any open shop or generally known warehouse. There seems, therefore, no remedy, but that the determination what shall be regarded as sufficient evidence of the *habit* must rest in each instance, where there is no open shop, upon the particular circumstance of the case. In general, a single act may be deemed sufficient evidence *primâ facie*: so as to throw upon the defendant the obligation of shewing, if he can, that the act was *casual* only, and not habitual, on his part.

[150\_443]

{7} {5} § 1. Class 4<sup>th</sup>. p. 152. {*Remnants*}.

In London there are a multitude of shops which deal principally, if not exclusively, in *remnants*. If they were not included in the licence-system, they would afford secure marts for new piece-goods stolen from manufacturer or dealer.

{8} {6} § 1. Class 5<sup>th</sup>. p. 152. {*Badge*}.

Precedents of Badges worn, or required to be worn, whether by law or custom.

1. Paupers.<sup>494</sup>
2. Chimney Sweepers.<sup>495</sup>
3. Watermen.<sup>496</sup>
4. Firemen.<sup>497</sup>

In the case of the Chimney Sweepers, it is for the benefit of the individual wearing the badge that it is required to be worn.<sup>498</sup> In the case of Paupers, as *here*, it is rather the benefit of the public than that of the individual that it is the object in view. In the case of

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<sup>494</sup> The Relief of the Poor Act of 1697 (8 & 9 Will. III, c. 30, § 2) required any person in receipt of poor relief to wear ‘upon the Shoulder of the Right Sleeve of the uppermost Garment .^.^ such Badge or Mark as is herein-after mentioned and expressed; that is to say, A large Roman P, together with the first Letter of the Name of the Parish .^.^ whereof such poor Person is an Inhabitant, cut either in red or blue Cloth’. The provision was initially enforced in many parishes, but by the time of Bentham’s writing had largely fallen into desuetude.

<sup>495</sup> The Chimney Sweepers Act of 1788 (28 Geo. III, c. 48, § 7) required every apprentice sweep to be provided with a leather cap, bearing a brass plate marked with the name and place of abode of his master or mistress, ‘which he shall wear when out upon his Duty’.

<sup>496</sup> For the arm-badges worn by licensed members of the Company of Watermen and Lightermen, see p. 72 n. above.

<sup>497</sup> Members of fire brigades (privately maintained by insurance companies) were often provided with a distinctive livery, including a large metal badge embossed with the company’s emblem and the individual fireman’s number, worn on the upper left coat-sleeve.

<sup>498</sup> The Chimney Sweepers Act of 1788 had been prompted in large measure by the maltreatment of children apprenticed to Chimney Sweeps by Parish Officers, by the risks to which the apprentices were exposed, and by the suspicion that very young children were being apprenticed. The badge was intended to offer protection by identifying the master with whom or about whom concerns might be raised. That the expedient had proved ineffective was attested by David Porter (1746/7–1819), chimney sweep, property developer, and social reformer, in *Considerations on the present state of Chimney-Sweepers, with some observations on the Act of Parliament intended for their regulation and relief; with proposals for their further relief*, London, 1792, p. 23, comparing the condition of apprentices before and after the passage of the Act: ‘I know of no other difference than that the boy had not then a label on his cap, and he has one now; but unfortunately it is often the name of a person who may be found one day at the west end of the town, the next day at the east end, and a third day in the country: the penalties of the act can very little affect a person who is seldom two days together in the same jurisdiction, and need not be at that time in the same county.’

Firemen, the use of the distinction is to engage confidence; in the present case, rather to excite diffidence. In the case of the few Watermen by whom it is worn, it is worn as a distinction of the honorary kind. This latter instance, it is presumed, may be sufficient to justify the provision against the imputation of reflecting ignominy on the persons thus distinguished.

[150\_444]

{9} {7} § 1. page 153. {*Gold and Silver*}.

See the next Note.

{10} {8} § 1. page 153. {*Class 9<sup>th</sup>—Every Goldsmith &c.*}

Among the businesses included in this class, there are several that may occasion no inconsiderable difficulty: that of the Gold and Silversmith more particularly, and which, therefore, may here serve for an example. On the one hand, these pretious metals being, by reason of the smallness of their bulk in proportion to their value, still more exposed to depredation than any other, there are no occupations from which depredation, and that in its most alarming shape—burglary, derives so copious an assistance, nor consequently in regard to which the demand for the proposed system of controul is more considerable: on the other hand, there is none which contains so many men of so much opulence, and so clearly superior to all suspicion of such sinister practices. To these it might be apt to appear not only an hardship but an indignity to be subject to the controul of a license, and to be dependent for the very faculty of continuing their business on the discretion of a Board, composed of persons in their estimation of less respectability than themselves, and really so in as far as respectability depends on opulence. Their being subject to these unpleasant circumstances will, however, always depend upon themselves: since, by confining their purchases, in respect of the subject-matter of the purchase, to bullion, or, in respect of the persons purchased of, to licenced purchasers, they can never be under any difficulty about obtaining a [150\_445] supply. Plate sold for melting down has its fixed price, below which an honest dealer will not attempt to get it. This price is neither considerably below nor considerably above the price of Bullion. Therefore, although amongst other effects of the proposed Licence system, were that of confining the purchases of these manufacturers to

Bullion, the disadvantage to them, if any, could hardly be worth regarding. The probability seems to be, that were the system to be established, each class of workers in metals would divide itself, as it were, into two ranks: a superior, who, shrinking from the trouble and apprehended discredit, would recede from the purchase of second-hand goods: and an inferior class, who, for the sake of whatever little advantage were to be made, being content to submit to this trouble and discredit, would act, as it were, as factors for the superior class. From this division of labour there seems little reason to apprehend that any disadvantage should ensue in this any more than in other instances; but if there *were* any disadvantage, pressing as it would do upon the rank best able to bear the pressure, and with the most perfect equality upon the individuals of that rank, it would be borne ultimately—not by them—but by the consumer, and take place in the shape of some minute and imperceptible rise in the price of the manufactured article.

[150\_446]

To an unprejudiced third person who takes time to reflect, it will hardly appear as an event seriously to be apprehended, that a manufacturer of this or any other class, on whose character there were no stain, should experience from the majority of this or any other Board the refusal of a licence. The occupier of a first rate *Tavern* or *Inn* is, in point of pecuniary consideration, little if at all inferior, to the most opulent Gold and Silversmith. The danger to which the Goldsmith would stand exposed is no greater than that to which the Great Tavern and Innkeeper has always been exposed, without injury or complaint. It is in fact not so great: for supposing (what is scarce supposable) that a majority of such a Board should be so far led astray by criminal enmity and malice as to concur in expelling from his business an individual without reproach, especially an individual of the degree of respectability supposed, there would at any rate be an authority superior to the Board, (*viz*: the Treasury or Secretary of State to whose orders it would be subject) by whom, in a case thus extraordinary, a complaint could hardly fail to be entertained; whereas, were the great Tavern-keeper to experience the refusal [of] a licence from the Justices, there is no superior authority from which the Justices could receive an order to grant the licence.<sup>499</sup>

[150\_447]

The greatest care has been taken to exempt from the obligation of a licence every

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<sup>499</sup> For the discretionary nature of the grant of ale-house licences see pp. 34 n. and 117 n. above.

mode of purchasing that is not liable to be abused to the purpose of the criminal traffic which it is the object of the proposed system to suppress. It is in this view that, at Auctions, purchases are (by § 2)<sup>500</sup> allowed to be made by Dealers as well as others, without subjecting the purchaser to the obligation of taking out a licence. In the same view, by the same section, second-hand articles in this as in every other branch of the trade in metals are allowed to be purchased without licence, when taken no otherwise than in exchange for other articles, new or second-hand, belonging to the same branch of trade. It is in this latter way that the greater part of the second-hand plate purchased for melting is thought to be obtained. If this mode of purchasing were not exempted, the capital Gold and Silversmiths would certainly be obliged either to take out licences under the proposed Act, or else to submit to a considerable change in the present mode of carrying on their trade. But so long as this mode *is* exempted, the abstaining from purchasing of persons at large, who want merely to sell and not to buy, will be a very trifling sacrifice, so long as bullion is to be had, from licenced purchasers of the old material, to any amount.

[150\_448]

If this be not enough, another security, a peculiar privilege, might be granted to all Goldsmiths, which is not possessed by any, even the highest, class of Publicans. The Wardens, or Master and Wardens, of the Company by whom licences are at present granted to their brethren of the trade,<sup>501</sup> might under the proposed new system be called in to sit as Assessors, in all instances in which the conduct of a person of this class came in question before the Board, and on these occasions might even be allowed a voice equal to that of any Member of the Board. This same protection and privilege might even be extended to such other of the workers in metal, such as *Braziers* and *Pewterers*, as have brethren in the trade among the London Companies. The Master and Wardens of these Companies respectively might sit in like manner as Judges in questions relative to their

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<sup>500</sup> See p. 156 above.

<sup>501</sup> The Worshipful Company of Goldsmiths, a livery company or trade guild established in the twelfth century, was granted a Royal Charter in 1327. Within the bounds of the City of London only liverymen (that is full members) of the Company were licensed to trade in gold, and later in silver and jewellery. Similar privileges were possessed by the Worshipful Company of Armourers and Brasiers (established as the Armourers' Guild in 1322 and granted Royal Charters in 1453 and in 1708, when brass workers were given equal status with armourers and the Company name changed accordingly), and the Worshipful Company of Pewterers (in existence by 1348 and granted a Royal Charter in 1474).

respective brethren in trade throughout the London District. But a compromise introductive of so much complication will hardly be thought fit to be resorted to but in the event of its appearing necessary for the purpose of softening down a serious resistance. This or almost any compromise would, however, be better than to continue to sit still, and see the manufacture of *white broth* (the name current among Thieves and their Receivers for stolen silver in a state of fusion) go on, as at present, almost without controul.

[150\_449]

Goldsmiths and Silversmiths, under the name of *Dealers in Plate*, and Refiners of Gold and Silver, under the name of *Refiners*, are already subjected (it should be remembered) to a Licence-Duty (viz: £5, by 31 G. 2. c. 32, and 32 G. 2. c. 24)<sup>502</sup> under the management of the Excise: though not to any such discretionary power as is attached to the proposed Licence-Duties.

[150\_450]

If Gold and Silver are retained in the Bill, the great disparity in value as between these metals compared with others, as likewise as between these metals compared with one another, will render it necessary to fix the wholesale quantity at different weights in these two instances. Provision for these differences is accordingly made in the text.<sup>503</sup>

Possibly it might be deemed advisable to make a separate *class* of purchasers *for sale*, for the purchasers of these pretious metals. But it seems probable, that there are not at present any purchasers for old gold or silver in small quantities, but those who either sell them as second-hand in the same form as purchased, or melt them down, to be sold in the form of bullion, or made again into new plate—in other words, none but what are Gold and Silversmiths by trade, not dealing in old metals of any other kind: because, while there are Gold and Silversmiths keeping open shop as such, it does not seem likely that any person who has either Gold or Silver to dispose of, should think of addressing himself to an old-

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<sup>502</sup> The Plate (Duty on Dealer's Licence) Act of 1758 (31 Geo. II, c. 32) required all traders in gold or silver plate to take out a licence at an annual fee of £2. The Plate (Duty on Dealer's Licence) Act of 1759 (32 Geo. II, c. 24) exempted those trading only in small quantities from this requirement, but raised the licence fee for others to £5 and extended the definition of traders to include pawnbrokers and refiners of gold or silver.

<sup>503</sup> Bentham had envisaged prescribing different weight limits for gold, silver, and other metals, but left blanks for the respective figures: see p. 153 above. The following paragraph has been cancelled by Bentham.

iron-purchasing shop, or any other shop the trade of which consists in the purchase of second-hand metals of the inferior kinds, unless in the case of a thief who addresses himself to some such mean shop with the keeper of which he is connected, and in whom he chooses to repose his confidence, in preference to a regular and reputable Gold and Silversmith, by whom he might be questioned and his malpractices brought to light.

[150\_451]

{11} {9} § 1. p. 154. {*Class the tenth*}.

In the *Times* of Monday 15<sup>th</sup> Oct. 1798 there is an account of an examination of a Masterman and his Servant for stealing Bricks:<sup>504</sup> and particular instances could be referred to of entire Houses carried off in this way in a short time. If an article of so little value in proportion to bulk affords a subject matter for depredation to persons of this condition in life, in how much greater a degree must the temptation be in the instance of such articles as stone and marble slabs and chimney-pieces? N.B. This does not seem to be a class from which any thing like opposition is to be apprehended.

An additional reason for bringing the controul of the Licencing system to bear upon the Receiver in this case is—that, owing to an unhappy conceit about things *fixed to the freehold*, and savouring of the realty, the thief himself is, in many instances, not punishable as for a crime.<sup>505</sup>

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<sup>504</sup> *The Times*, 15 October 1798, p. 2, reported that a master bricklayer and his servant (neither named) had been examined at Bow Street magistrates court on 13 October 1798 on a charge of having stolen a large quantity of bricks. The servant was discharged, as he had believed the bricks to be his master's property, while the master elected to be 'handed over to the naval service' in preference to facing a criminal trial.

<sup>505</sup> Fixtures within a freehold were treated as real, rather than personal, estate, meaning that their unauthorized removal fell outside the terms of legislation against larceny. The Theft Act of 1731 (4 Geo. II, c. 32) and the Criminal Law Act of 1781 (21 Geo. III, c. 68) proscribed the theft of several types of metal fixture, but left other fixtures unaccounted for. In September and December 1788, for instance, John Sennier or Senior was on these grounds twice acquitted at the Old Bailey of the theft of window casements from Middle Court and Barnard's Inn, London, respectively: see *R v. Senior* (1788), in Thomas Leach, *Cases in Crown Law, determined by the Twelve Judges, by the Court of King's Bench, and by Commissioners of Oyer and Terminer and General Gaol Delivery, from the Fourth Year of George the Second to the Twenty-Ninth Year of George the Third*, 3rd edn., London, 1789, pp. 434–5.

By the definition in the text, this class of dealers will (it is presumed) appear to be sufficiently discriminated from *non-dealers*, i.e: persons at large purchasing such articles for their own use.

[150\_452]

{12} {10} § 1. Class 11<sup>th</sup>, Carts. page 155. {*For every such Carriage*}.

In the present case, the class of persons principally in view are a class of Itinerant Purchasers of second-hand goods of all sorts, who travel up and down the Country for this purpose, and, in comparison of the stationary and shop-keeping Purchasers of such goods, are what *Hawkers* are in comparison of ordinary Shop-keepers. In all taxes upon trade, the thing to be wished is that the tax should run on in proportion to the extent of a man's trade, that is in proportion to his ability to bear the tax. In the case of license-duties, in most instances this can *not* be done: but in some it *may* be done, and this is of the number. In the existing cases of the licence-duties on Strong beer, Malt, and Tobacco and Snuff, this sort of proportion is already aimed at:<sup>506</sup> and in the case of Hawkers and Pedlars it is observed with a degree of accuracy equal to what is proposed in the present case, the Hawker who employs Horses paying, in addition to the fixed licence of £4, a duty to the same amount for every Horse. {29 G. 3. c. 26. § 3.}<sup>507</sup>

Whether an itinerant purchaser of this sort has or has not a settled place of trade, the [150\_453] proposed mode of taxing him at so much for each carriage seems equally unobjectionable. In the latter case, if he were not to be included in the way proposed, he would not be included at all: in the former case, every Cart he thus employs affords an indication of a proportionable extent of trade, and degree of ability to bear the tax.

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<sup>506</sup> The Duties on Certain Licences Act of 1784 (24 Geo. III, sess. 2, c. 41, § 1) required brewers of strong beer to take out licences, for fees which ranged from £1 10s. for a brewer whose annual production reached no more than 1,000 barrels, to £50 for one whose production exceeded 40,000 barrels. The same act and section also prescribed licences for maltsters, ranging from 5s. where annual production did not exceed 50 quarters, to £3 in cases where it exceeded 550 quarters. The Duties on Tobacco and Snuff Act of 1789 (29 Geo. III, c. 68, § 70) prescribed licences for manufacturers and dealers in these commodities, for fees ranging from £2 if the quantities concerned weighed no more than 20,000 lbs, to £20 for quantities in excess of 150,000 lbs.

[See p. 231 for n. 507]

Carts in general, occupied by persons residing within 5 miles of Temple Bar, are already subject to Registration {by 24 G. 3. sess. 2. c. 27. § 8},<sup>508</sup> and the Register is under the management of the Hackney Coach Office, one of the two Offices proposed to be merged in the proposed Board.<sup>509</sup> This general Register, and the particular Register that would be appropriated to the class of Carts here in question, would serve reciprocally as checks one to the other.

A compleat Register of Carts, Waggon, and other Carriages for the conveyance of luggage existing throughout the United Kingdom would be a necessary article in the inventory of the national stock designed for, or applicable to, the purposes of national defence: a topic already touched upon under the head of Gunpowder &c. in the *Preliminary Observations* accompanying this Draught.<sup>510</sup>

[150\_454]

**{13} {11}** § 1. page 155. {*More wheels than one*}.

By these words, *wheel-barrows* are exempted, and Hand-Waggon, existing, or which hereafter might otherwise be set up to evade the duty, included. Wheel-barrows might otherwise have been supposed to be included, being sometimes *drawn*, as well as pushed.

The observations made, as above, in relation to the case of Draught Carts, seem equally applicable to that of Hand-Carts.

[150\_455]

**{14} {12}** § 1. p. 155. {*Dock Yards*}.

In the neighbourhood of the Royal Dock Yards the demand for the sort of controul which it is the object of the Bill to establish is at least as considerable as in any part of the London

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<sup>507</sup> i.e. the Duty on Hawkers, etc. Act of 1789.

<sup>508</sup> i.e. the Hackney Coaches Act of 1784.

<sup>509</sup> See p. 209 above.

<sup>510</sup> i.e. 'Elucidations relative to the Police Revenue Bill': see pp. 109–110 above.

District. Whether the honest branch of this sort of traffick is or is not considerable in proportion to the numbers engaged in it, the dishonest is thought to be still more considerable: and if the effect of the double or London duty were to drive out of this branch of traffic a few of the existing honest stock of Dealers (supposing the existence of any such persons, which, however, may appear rather questionable), the effect would be rather beneficial than otherwise upon the whole, since by diminishing the competition it would make it the easier for those that remained in the trade to gain a livelihood without engaging in confederacies with thieves.

Though the London Duties are thus proposed to be extended to these Districts, this will not make any change in regard to the jurisdiction for the granting of the licences and taking cognizance of the behaviour of licensed persons, as well as of the offence of dealing without license. Though the distant Dock Yards with their respective neighbourhoods pay the London Duty, this will not give the authority of granting licences in these Districts, either to the Board, or to any set of persons other than those, by whom the authority would have been to be exercised, if the Country rate had been the rate payable in these as in other places.

As to the two *Home Dock Yards*, viz: *Deptford* and *Woolwich*, no special mention of them is necessary on this occasion, inasmuch as they are situated within the limits of the proposed London District.

[150\_456]

**{15} {13}** § 1. page 155. *{thereabouts}*.

The word *thereabouts*, instead of rendering the designation indeterminate, as might at first glance be supposed, is necessary to prevent it from being so. The space occupied by the sets of Parishes here indicated is in itself a determinate portion of space: but a space of *exactly five miles* round any such Dock Yard would not exactly agree with the space occupied by the total number of the several Parishes, which, in the whole or in any part of them respectively, are within five miles of such Dock Yard. Were it not, therefore, for the temperament applied by the word *thereabouts*, the two descriptions, being repugnant to each other, would thence be both of them indeterminate.

[150\_457]

**{16} {1}** § 2. page 156. *{At any public Auction}*.

In this case the reason for the controul does not hold good. Thieves &c. can not consign the fruits of their depredations to the Auctioneer: if they could, the Auctioneer (that is, the person from whom they would obtain the best price) is the person they would *always* consign them to, not the clandestine and criminal Receiver, who must receive high payment for the infamy and danger he exposes himself to, and from whom, in consequence, it is much if they can obtain the half, the third, or the fourth part of the best price.

The use of the provision requiring the Auction to be open to all bidders without distinction, is to prevent the criminal Receivers and their Thieves from sheltering themselves under the exemption, by setting up sham or private Auctions, nominally for the trade in general, but really for the criminal branch of the trade. *Close Auctions*, in which the *trade* only are admitted, are believed to be common enough in a variety of trades. The Booksellers trade, at any rate, is one example.

[150\_458]

**{17} {2}** § 2. p. 156. *{Pawnbroker}*.

It is for the sake of bringing *Pawnbrokers* under the controul of the discretionary licence system that the class of *Forfeited-Pledge-Sellers* is put upon the list: and by this expedient *Pawnbrokers* in general are in effect included, though under a different name. By a clause in the Statute of 29 G. 3. c. 57. § 12,<sup>511</sup> adopted in that of the 36 G. 3. c. 87. § 14,<sup>512</sup> articles pawned, for any sum above ten shillings and not exceeding £10, are to be sold by Auction: articles pawned for any sum not above 10<sup>s</sup> must, therefore, be sold by *hand*, or the business, so far as concerns articles not exceeding that value, can not be carried on, since a man who should lend money on such goods would have no means of recovering it. There is not any

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<sup>511</sup> The section in question of the Pawnbrokers Act of 1789 was itself a restatement of § 12 of the Pawnbrokers Act of 1787 (27 Geo. III. c. 37).

<sup>512</sup> i.e. the Pawnbrokers Act of 1796.

class of purchasers of second-hand goods in the instance of which the demand for the controul established by this system is stronger than in that of Pawnbrokers: no species of shop which affords so conspicuous and general a market for goods of all sorts, howsoever obtained. It were to be wished the direct way of including this class of dealers could be substituted to this indirect one: but this could not be effected, without overhauling the system of regulation established in the case of Pawnbrokers: an operation that would require a separate Bill, which should confine itself to that particular occupation.

**{18} {3}** § 2. page 156. {*Seller of forfeited Pledges*}.

Under the 32 G. 2. c. 24. § 4, a Pawnbroker can not sell such of his pledges as consist of plate, without taking out a Plate-sellers licence, duty £5.<sup>513</sup>

[150\_459]

**{19} {4}** § 2. p. 156. {*Bookseller*}.

Although Books like other articles are exposed to depredation, yet since, through unacquaintance with their contents and value, they are less exposed than perhaps any other class of articles, it may be questioned whether the advantage obtainable in point of security by the comprehending them in the Licence system would pay for the embarassment. But a stronger reason for the exemption, is the umbrage that might be taken at the idea of subjecting the trade in Books to licence: though in fact the true ground of the objection extends not to this case. It is in the case of *new* Books, individually taken, that the authority of the licencer would be justly formidable, not in the case of second-hand Books, and those taken collectively and without distinction. But still it might be apprehended, and not altogether without reason, that in the case of a Bookseller obnoxious to the Board on account of his publications, a refusal of licence might take place, under favour of the general discretion, without sufficient ground.<sup>514</sup>

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<sup>513</sup> See p. 228 n. above.

<sup>514</sup> A note on Auctioneers drafted for inclusion at this point, but which Bentham decided to reserve for an intended 'Arms Police Bill', is at UC cl. 459. For discussion of arms police see 'Elucidations relative to the

[150\_460]

{20} {5} § 2. page 156. {*Bonâ fide taken in .^^. exchange*}.

The reason for this exemption has been already stated:<sup>515</sup>—not to cramp the trade of the Gold and Silversmith, Plumber, Pewterer, &c. so as to render it impracticable for him to get his materials without subjecting himself to the controul of the proposed licencing system. The exemption will not weaken the efficiency of this controul with regard to the object it has in view. What thieves want is *money*, not goods. New plate would be no payment to a thief for old plate: a dozen of new pewter dishes for three or four dozen of old ones, &c.

[150\_461]

{21} {1} § 4. page 158. {*An attempt to evade this Act*}.

This is an evasion of the same kind as that which was deemed necessary to be obviated in the case of the Stamp Duty on Receipts.<sup>516</sup>

[150\_462]

{22} {1} § 5. page 158. {*At the inferior rates following*}.

Such, in the instance of some of these trades, is the connection between trade and trade, so thin, so indeterminate and even fugitive the partitions which divide them, that to avoid embarassment and danger, it will probably be deemed expedient at least, if not necessary, in many instances, for the same person to take out licences with relation to several of these trades.

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Police-Revenue-Bill', pp. 96–109 above, and for reference to the proposed 'Arms Police Bill' see 'Introductory Observations relative to the Board-of-Police Bill', p. 136 above.

<sup>515</sup> See pp. 225–8 above.

<sup>516</sup> The Stamp Act of 1795 (35 Geo. III, c. 55, § 9) imposed stamp duties on receipts, and included a provision rendering any person who issued a receipt 'in which a less Sum shall be expressed than the Sum actually paid or received', or otherwise worded the receipt 'with Intent to evade the said Duties or any of them', liable to a fine of £50.

A Furniture Broker, for example, i:e: a dealer whose purchases of second-hand goods comprehend not only Household goods but non-enumerated goods in general (i:e: all sorts of second-hand goods that are not here taken for the subject-matter of distinct licences), may find it rather difficult, perhaps, to carry on his business without taking out licences in respect of several, if not all, of the classes here enumerated. So likewise, among the enumerated classes, in the instance of the [150\_463] several classes of *piece-goods* here distinguished, there seems to be such a natural want of distinctness as between class and class, as may render it difficult for each person to avoid taking out several licences. When a man buys a lot of *old cloaths*, *Table Linnen* or *Houshold Linnen*, or perhaps the whole stock of all these sorts of articles which a House affords, upon the death or ruin of the possessor, he may find it fit to be applied, some part of it in its existing form, to the same or similar purposes, while other parts of it, being in a state of *rags*, shall be found incapable of being applied to use by any body but the Paper-maker. So again in the case of *Naval stores*: besides that the same article (Canvas or Bunting, for example) that is employ'd for naval purposes is also employ'd, and perhaps in every instance, for a variety of other purposes. It seems difficult, therefore, for a Purchaser of second-hand *piece-goods* or *spun* goods to avoid being a purchaser of rags, or other articles useless to every body but the Paper-maker, without subjecting himself to a good deal of risk as well as trouble in the discrimination: besides that an article, which is fit for use at the time of purchase, may, before it goes out of the hands of the purchaser, be found unfit for sale, under any other denomination than that of rags.

[150\_464]

{23} {1} § 6. p. 158. {*Place of Trade*}. Another cluster of topics calling for decision to obviate doubts. That which confines the effect of the licence to one place is taken from the following string of precedents—26 G. 2. c. 31. § 3, *Alehouse-Keepers*—25 G. 3. c. 49. § 4, *Coachmakers*—[36]<sup>517</sup> G. 3. c. 17. § 5, *Horse-dealers*.<sup>518</sup>—If the same person has

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<sup>517</sup> MS '35' is a slip.

<sup>518</sup> The Alehouses Act of 1753 (26 Geo. II, c. 31, § 3) and the Duties on Coachmakers' Licences, etc. Act of 1785 (25 Geo. III, c. 49, § 4) both authorized the trades in question to be carried out at the specified premises in respect of which licences were issued, and not elsewhere. The Duties on Horse Dealers' Licences Act of 1795 (36 Geo. III, c. 17, § 5) restricted the licensee to trading in a specified 'City, Town, or Place'.

more places of trade than one, each having the trade of a different neighbourhood, he may be supposed capable of paying in proportion upon the principle here pursued in the case of Carts. See Note {12}.<sup>519</sup>

{24} {2} § 6. p. 159. {*One hundred Yards*}.

A random quantity put by way of example. Several instances have fallen under my observation where a Tradesman, for want of room in one shop or warehouse, has had another on the opposite side of the Street. In this case, the reason above given for the repetition of the license-duty, viz: the having the benefit of different neighbourhoods, and thence of different sets of customers, does not hold good. Two Warehouses at a distance from one another are not more convenient, but less convenient, than a single one capable of holding the same quantity of goods.

{25} {3} § 6. p. 159. {*Partners*}.

The case of Partners presented itself on reflection as a case in which, if the requisite exception were not made, the letter of the law would run counter to the spirit. Provision has accordingly been made for it in some of the late precedents: viz: 25 G. 3. c. 48. § 8, *Pawnbrokers*—[25 G. 3. c. 49. § 4],<sup>520</sup> abovementioned, *Coachmakers*—[36]<sup>521</sup> G. 3. c. 17. § 5, abovementioned, *Horse-dealers*—37 G. 3. c. 108. § 29, *Watchmakers*.<sup>522</sup>

[150\_465]

{26} {4} § 6. p. 159. {*Servant*}.

I know of no precedent for this elucidation. To a lawyer, it might not appear necessary: but it may serve to obviate doubts among the classes of persons in question who are not

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<sup>519</sup> See pp. 230–1 above.

<sup>520</sup> MS ‘35 G. 3. c. 17, § 5’. Bentham has inadvertently cited the Duties on Horse Dealers’ Licences Act of 1795, the next entry on his list, in place of the Duties on Coachmakers’ Licences Act of 1796.

<sup>521</sup> MS ‘35’ is a slip.

<sup>522</sup> All four statutes prescribed that persons trading in partnership were only required to take out a single annual licence, while the two first (pawnbrokers and coachmakers) specified that the partners must be trading from the same premises.

Lawyers: especially as in the instance of so many of the classes it was deemed necessary to employ special words for including purchasing by ‘*commission*’ in the description of the mode of dealing which was to subject a man to be licenced.

## Part II. Board<sup>523</sup>

[150\_466]

{27} {1} § 7. page 160. {*It shall be lawful for his Majesty*}.

After the words, *his Majesty*, it is common, where, as here, powers are given to the Crown, to add *his Heirs and Successors*: but the addition, if unnecessary (which it appears to be), is worse than useless. It can not surely be necessary, consistently with the maxim *The King never dies*:<sup>524</sup> accordingly, where a provision relative to the Crown is meant to be confined to the King on the throne, words of restriction for that purpose, such as *for the time of his Majesty’s natural life*, never fail (it is believed) to be inserted. What renders the addition, if unnecessary, worse than useless is—not merely the surplusage, but the danger of ambiguity: for if the addition, being inserted on one occasion, is omitted on any other, there arises a ground for arguing, that where Heirs and Successors are not mentioned, they are not intended.

[150\_467]

{28} {2} § 7. page 160. {*In such number as to his Majesty may seem meet*}.

Fixing or limiting the number by Statute may be attended with inconvenience. It seems difficult to say before hand how much time the business of this new-created Office may come to occupy: if no division of the business is allowed, encrease in the number of the persons taking a part in it tends, it is true, rather to retard than to accelerate the progress of it; but, if the quantity of the business made it requisite, means might probably be found of making a division of that sort without inconvenience. These are matters of experience, and matters for experiment: and the latitude necessary for the making of such experiments

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<sup>523</sup> The heading is taken from the marginal heading on the corresponding text sheets.

<sup>524</sup> See Blackstone, *Commentaries on the Laws of England*, i. 189: ‘in our law the king is said never to die, in his political capacity’.

should not be withholden from the executive government.

{29} {3} § 7. page 160. { *What number less than the whole number* }.

If the total number be left to the Crown, so ought the number necessary to constitute a *quorum* for this or that or all purposes: because the larger the total number, the larger the *Quorum* may be. Giving this power to the Crown once for all may save a multitude of tedious repetitions in the Act, such as *the said Commissioners and any two of them—the said Commissioners and the major part of them*.

In the Tax Office, three out of the seven Commissioners form a *quorum*: as is stated in the 8<sup>th</sup> Report of the Committee of Finance, p. 3: and this not by Act of Parliament, nor by the tenor of the Commission, but by the ‘*practice of the Office*’.<sup>525</sup>

[150\_468]

{30} {4} § 7. page 160. { *For what days* }.

The proper proportion of the number of days of Attendance in the Year to that of the days of non-attendance will vary according to the quantity of business which presents itself to be done. This, therefore, is another point which should (it should seem) be left open to change. The practice of the different Boards in relation to this point appears to admitt of great diversity:—a diversity produced in good measure by the differences in regard to the number of days observed as Holydays. In the existing Hawkers and Pedlars Office, the whole business demands no greater space of time than what is comprized in the compass of about a fortnight in the month of June.<sup>526</sup>

Over and above what concerns the whole Board in common, there may be good

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<sup>525</sup> See ‘Eighth Report from the Select Committee on Finance, &c. Tax Office’, 19 July 1797, in *Commons Sessional Papers of the Eighteenth Century*, cviii. 203–73, at 205, where the phrase is in fact rendered ‘the practice of the Board’.

<sup>526</sup> The ‘Tenth Report from the Select Committee on Finance, &c. Hawkers and Pedlars’, 19 July 1797, in *Commons Sessional Papers of the Eighteenth Century*, cviii. 319–33, at 321, 330, reported that ‘The official Attendance of the Commissioners is very inconsiderable. The Holidays kept in the Office are Fifty-two’, and that all the Commissioners attend ‘Every Day in the Week in the Month of June’.

reason why it should be left to the discretion of the Executive Department to accept of different degrees of constancy in regard to attendance from different individuals. It may on these terms be able to obtain at less expence than ordinary, or without any expence, for particular purposes and on particular occasions, the assistance of particular persons whose whole time could not be to be purchased or to be spared.

**{31} {5}** § 7. page 160. {*During what hours*}.

Precedents—Excise. In 23 G. 2. c. 26. § 12 it is recited, that the Hours of attendance (viz: from 8 to 12 and from 2 to 5) appointed by the Statute 12 C. 2. c. 24, by which the Board of Excise was first constituted, ‘have been found very inconvenient, and attended with extraordinary expences to the persons charged with the payment of the duties’<sup>527</sup>—it accordingly appoints other hours, viz: from 8 to 2.—Convenience, in regard to this point, depending on manners and customs which are liable to continual change, the provision made in relation to it ought (it should seem) to be left equally open to change.

[150\_469]

**{32} {6}** § 7. page. 160. {*With such Salaries*}.

In every instance of a Board established by Act of Parliament, the quantum of the Salaries has been left to the discretion of the Crown.—See the annexed *Table of Precedents in regard to Boards*.<sup>528</sup>—The reasons seem too obvious to need mentioning.

**{33} {7}** § 7. page 160–1. {*Commissioners of Police*}.

For the purposes of reference, there will be a convenience in fixing in this way, in the Statute itself, the name by which the Commissioners appointed in virtue of it shall be distinguished. The occasions for mentioning them in future Statutes will probably be not unfrequent: and even in the present Bill, if an appropriate name be not allotted to them it may be difficult to introduce the mention of other *Boards*—other sets of Commissioners—

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<sup>527</sup> i.e. the Continuance of Acts, etc. Act of 1750 (23 Geo. II, c. 26, § 12), amending the Statute of Tenures of 1660 (12 Car. II, c. 24, § 12). There are minor inaccuracies in the rendering of the passage.

<sup>528</sup> See the companion PDF file.

without confusion.—A similar clause on purpose seems scarcely necessary for authorizing the use of the term *Board of Police*: since the instances in which the several sets of Commissioners are referred to in that way in the Statute Book are not unfrequent. The word *Board* will be necessary, were it only for the purpose of distinguishing the set of *Town Commissioners* from the single Commissioners—the Country Commissioners—herein after introduced.<sup>529</sup>

{34} {8} § 7. page 161. {*Shall be termed the Police Fund*}.

When mention comes to be made of this particular fund, whether for the purpose of being charged or for the purpose of receiving supplies, the inconvenience would be considerable, if it could no otherwise be designated, than by a vague and uncharacteristic circumlocution—such as—*the fund created for the purposes of this Act*.

[150\_470]

{35} {9} § 7. page 161. {*Shall hold their Office .^^. in .^^. the said District*}.

This provision, though scarcely necessary, is copied from the Act establishing the Excise—12 C. 2. c. 24. § [46].<sup>530</sup> See the Table of Precedents.<sup>531</sup>

Possibly it may be thought still more advisable to make no mention at all in the Bill of any of the above points relative to the Constitution of the Board—viz: Quorum number—Days and Hours of attendance—Salaries and Place of sitting: because in that case all these points would fall of themselves (it should seem) within the discretion of the Crown. One advantage, however, may arise from the mention of them in the Act—viz: that it will serve to direct the attention of the Executive power to the several points, and will appear to call for express regulations on the subject to be made by Order of Council, grounded on some determinate considerations: whereas otherwise the course taken with

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<sup>529</sup> See pp. 245–6 below.

<sup>530</sup> MS ‘§ 26’ is a slip.

<sup>531</sup> See the companion PDF file. The Statute of Tenures of 1660, § 46, prescribed that ‘One principal Head Office shall be erected and continued in the City of *London*, or within Ten Miles thereof’, and required the Excise Commissioners to ‘sit in some convenient Place in the City of *London*, or within Ten Miles thereof’.

regard to these several points might pass as it were *sub silentio*, and be the work, not so much of reflection as of chance.

The Crown being intrusted by the constitution itself with the power of stationing the Courts of Law (all but the Common Pleas) wherever it pleases, and even the two Houses of Parliament themselves,<sup>532</sup> it were strange indeed if there could be any danger in intrusting it with the power of conforming to the dictates of convenience, in the instance of a particular Board of Revenue or Police. The Stamp Office affords an instance of the inconvenience that may result from the tying the hands of the Crown in regard to a point so little exposed to abuse—tying them unawares and without any particular object in view. On the [150\_471] first establishment of the Stamp-Duties, a place was found for the Office for the collection of those Duties—it does not appear precisely where, nor is it worth enquiring. Whether the business was become too great for the building, or for what other reason, towards the latter end of Queen Ann’s reign, it was thought necessary to find out another building for it, upon which occasion it was, or upon some subsequent one, that it was thought proper to place it in Lincoln’s Inn, from whence it was removed a few years ago to the General Receptacle for Public Offices erected on the site of Somerset House.<sup>533</sup> But, upon turning to the original Stamp Act, 5 W. c. 21, it was found that, by a clause in that Statute (§ 7), the situation of the Stamp Office had been confined—not to a circle in which the Cities of London and Westminster were included, but to the two unconnected spots occupied by those Cities themselves: and Lincoln’s Inn (or the situation, if any, to which the Office was removed before it was set down in Lincoln’s Inn) not being in either of those Cities, it was found necessary to apply to Parliament to untie the knot, and accordingly, in the long and prolific Revenue Act of the 10<sup>th</sup> A. c. 19, a clause was inserted (§ 181) for no other purpose than that of completing the above circle, by throwing into it a

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<sup>532</sup> According to Clause 17 of *Magna Carta*, the ‘Great Charter’ of liberties conceded on 19 June 1215 by King John (1167–1216), King of England from 1199, and reissued with revisions in 1216, 1217, 1225, and 1297, common pleas were to be heard in some ‘fixed place’, afterwards fixed at Westminster Hall. In contrast, the Court of King’s Bench traditionally accompanied the monarch on his travels and had jurisdiction in the county in which it sat. Although the King’s Bench, other superior courts, and Houses of Parliament all subsequently acquired permanent homes, they were never under any legal obligation to sit there. See Blackstone, *Commentaries on the Laws of England*, i. 22–3.

<sup>533</sup> From its establishment in June 1694 the Stamp Office was, in fact, accommodated in Serle Court (later known as New Square), Lincoln’s Inn. In December 1787, it moved, like many public offices at this time, into the newly rebuilt Somerset House.

few of the adjacent Parishes, together with the Inns of Court.<sup>534</sup>

[150\_472]

{36} {10} § 7. p. 161.<sup>535</sup>

Judging from custom, here might appear to be a place for the appointment of an *Oath of Office*, to be taken by the Commissioners, with or without the same or another Oath for their Subordinates. But, to confess the truth, the sort of Oath called an Oath of office is in every instance that has happened to fall under my observation so pure a piece of oldwomanism—so perfect a chip in porridge—that I could not prevail upon myself to make use of it. Besides those profanations which are but too frequent on the part of individuals, there are two species of profanation (for such they have appeared to me) which are but too frequent on the part of the Legislator. The first and most abominable is the imposing an oath containing an asseveration such as (it is known ) is seldom or [n]ever true, or a promise such as (it is known) is seldom or [n]ever performed: of this kind are the Oaths called *Custom House Oaths*, and many others.<sup>536</sup> The other is the sort here in question: the putting into a man's mouth, under the name of an oath, a form of words which, amounting to nothing, can not bind a man to any thing. The habitual imposition of

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<sup>534</sup> The Stamps Act of 1694 (5 & 6 Will. & Mar., c. 21, § 7) had required the Stamp Commissioners to keep their head office 'in some convenient Place within the Cities of London or Westminster'. Lincoln's Inn was an extra-parochial area to the west of the City of London and so lay outside these limits. The Customs and Excise Act of 1712 (10 Ann., c. 19, § 181) therefore expanded the limits to include 'any Part of the four Inns of Court, or of the Parishes of Saint Andrew Holborn, Saint Clement Danes, Saint Paul Covent-Garden, or Saint Giles in the Fields, although the same be not within either of those Cities'. The Office was again placed in a legally dubious location in 1787, as Somerset House lay within the Liberty of the Duchy of Lancaster.

<sup>535</sup> Since Bentham is explaining the omission of a provision from the Bill, there is no corresponding quotation. See the corresponding marginal summary: 'Oath of office: why none needed.'

<sup>536</sup> According to Edmund Overal, a custom house oath (i.e. one sworn in connection with the import or export of goods) was habitually so casually treated as to have 'become a proverbial Expression, for a Thing not to be regarded'; while a similar disregard for the substance of matriculation oaths meant that 'there is not a Man in either of our Universities who is not forsworn': see *Memoirs of the Life and Writings of Mr. William Whiston*, 2 vols., London, 1749–50, ii. 411–13. See also [Henry Home, Lord Kames], *Loose Hints upon Education, chiefly concerning the Culture of the Heart*, Edinburgh, 1781, p. 362: 'custom-house oaths now a-days go for nothing. Not that the world grows more wicked, but because no person lays any stress upon them'.

Oaths known to be habitually false is certainly the most crying scandal of the time, and does most towards the bringing the obligation into contempt: but the continual practice [150\_473] of giving a man to mumble upon his entrance into office, as a matter of course, a form of words calling itself an oath, and promising to do what is right and proper, is such an instance of legislative indifference as, though not in so high a degree, has a tendency of the same kind.

What I mean by this is—not to reprobate Oaths of Office as a species of supposed obligation necessarily impotent, and incapable of being applied to any use. On the contrary, it appears to me [that]<sup>537</sup> in the instance of the office in question, as well as of every other office, it might, if constructed as it might and ought to be, be made of the highest use. But seeing before me nothing under this name but what is nugatory, I should deem it an act of imprudence to come forward on such an occasion with any thing that shall not be nugatory: it would be unusual—innovational—utopian: and, in proportion as it promised to be efficient if adopted, it would be in danger of appearing ridiculous when proposed. Unhappily for candour, veracity and moral honesty, the practice of feeding old and young with false oaths has been taken for one of the pillars of religion: and that of imposing trifling ones is too near of kin to it, not to have come in, tho' perhaps unperceived, for a corner of the same mantle.

It is going very far, if not too far, on so delicate a ground, to suggest, even in the most general terms, the complexion that an Oath must wear in order to be of use. It must not confine itself to generals, for then it is inefficacious—nor yet apply itself to such points of duty of the breach of which a man may be convicted by legal evidence, and for the purpose of legal punishment, for then it is superfluous: it should bear specifically upon particular points of duty, but upon such points the infraction of [which] [150\_474] is scarcely or not at all susceptible of being ascertained for the purposes of penal or coercive law, though at the same time not altogether unsusceptible of being ascertained for the purpose of exposing a man to the censure of the world at large. While thus employ'd, an oath of office may be regarded as a most useful and irreplaceable supplement to a set [of] penal regulations; it may serve at once as a guide to discretion, as a check upon private interest and affection, and as a buckler against external sollicitation. The following may serve as an example of the purposes to which it might be applied in the present instance.

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<sup>537</sup> MS 'than'.

Abjuration of personal interest and favour in the choice of subordinates—promise to have regard to active and intellectual fitness, as well as to moral innocence. Abjuration of ill will on the one hand, and personal tenderness and favour and external influence and sollicitation on the other, on questions relative to the punishment or dismissal of a subordinate. Abjuration of considerations of both kinds—personal favour as well as personal enmity—on questions relative to the granting or refusing licences.

At one time, attempts (though none of the happiest) appear to have been now and then made to give something like the particular sort of *bearing* here spoken of, to Oaths of Office: but, of late years, all such curious labour seems to have been given up; and when an Oath of office has been put in, it has been copied, *mutatis mutandis*, from an Oath of the nugatory cast, as a matter of course, and stuffed into the Act, to match with other surplusage.

Should an oath of the serviceable cast be at any time thought fit to be called for, for the use of the proposed Office, the responsibility will not be shrunk from, nor the trouble grudged: but at the present conjuncture, a production of that sort seems in danger of being premature: the business of the Board must be fully settled and marked out, before an Oath of office can be properly shaped to it.<sup>538</sup>

[150\_475]

{37} {11} § 7. page. 161. {.^.^ *Same Justices by whom .^.^ licences are .^.^ granted to Ale-house Keepers* }.

For granting the licences in the Country, out of the jurisdiction of the Board, no authority presented itself as capable of being put upon a par with that of the Country Magistrates, who, so much to the satisfaction as well [as] benefit of the Country, have so long been in possession of the exercise of similar authority in the case of the most numerous of all classes of dealers, that of Publicans: a class more numerous by a good deal, than all the

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<sup>538</sup> For an example of a judge's oath of office composed by Bentham see, for instance, 'Draught of a New Plan for the organisation of the Judicial Establishment in France: proposed as a Succedaneum to the Draught presented, for the same purpose, by the Committee of Constitution, to the National Assembly, December 21st, 1789', printed 1790, Tit. I. Of Courts of Justice in general, pp. 9–10 (Bowring, iv. 356–7).

classes hereby proposed to be added put together. And the territorial divisions within which they act have the advantage of being already established and known, as well to the law as in common parlance.

At the same time, a communication and concert between these Magistrates and the Central Board, and thereby a sort of tacit and virtual subordination on the part of these local and scattered authorities as towards the general central one, seemed an object of primary importance: to effect it, and at the same time in as quiet and unapparent a way as possible, the following expedient (as will be seen lower down)<sup>539</sup> has been pursued. The licence to be granted, (and thereby the power of determining whether it shall be granted to be exercised) by the Justices, as in regard to Ale houses: but the duty not to be paid to any body but the local Officer of the Board: whereby a demand is naturally created for his signature to the licence.—This will give occasion to the Officer (who will be responsible to the Board for the character and conduct of the party applying for a licence) to interfere, and, where the case appears to call for a refusal of the licence, to make representation accordingly to the Justices. If they conform to the representation, well and good: if not, this gives occasion for a correspondence between the Board and the Justices, and in case of any misbehaviour imputed to the Justices, a representation of it, in case of necessity, may be made by the Board to the Lord Lieutenant or the Chancellor, on whom the continuance of the authority of the Justices depends.<sup>540</sup> In the mean time, the Officer of the Board may be instructed not to receive the money, nor consequently sign the licence (which without such signature will not be valid) till the matter has been settled between the Board and the Justices.

It is obvious, that neither the Justices nor their Clerks could, as such, be conveniently made use of for the collection of this branch of the Revenue, nor accountable for the produce of it.

[150\_476]

{38} {12} § 7. page. 161. {.^.^} *The same discretion .^.^ as .^.^ in respect*

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<sup>539</sup> See p. 263 below.

<sup>540</sup> For the process of removing the commission from a Justice of the Peace see p. 349–50 n. below.

*of .^^. licences to Alehousekeepers .^^. }.*

For the necessity of a discretionary power in this case, and for the precedents relative thereto, see the paper of *Introductory Observations*.<sup>541</sup> See also what is said below on the subject of the several powers of regulation herein after following,<sup>542</sup> as also what is said in the *Introductory Observations* on the subject of the general utility of such powers.<sup>543</sup> The reference here given to the case of *Alehouse-licences*, answers the double purpose of *illustration* and *recommendation*, as in the instance of a subsequent clause investing the Board with judicial cognizance similar to that of the Board of Excise.<sup>544</sup>

[150\_478]

{39} {1} § 8. page 162. {*Appoint .^^. suspend or remove*}.

The powers of suspension and removal need not have been expressly given, since they are not given in the instance of any of the Revenue Boards, though I think I have seen other precedents (which however, I can not now recollect) where they are:<sup>545</sup> but a power of this sort in black and white may have its use with a view to the making a proper impression on the minds of the several Subordinates.

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<sup>541</sup> Bentham, in fact, discusses this issue in ‘Elucidations relative to the Police Revenue Bill’, pp. 116–18 above.

<sup>542</sup> See, for instance, pp. 276–92 and 337–9 below.

<sup>543</sup> Bentham, in fact, discusses this issue in ‘Elucidations relative to the Police Revenue Bill’, pp. 118–23 above.

<sup>544</sup> See pp. 190–1 above for the relevant section of the Bill and pp. 309–16 below for the corresponding note.

<sup>545</sup> The Stamps Act of 1694 (5 & 6 Will. & Mar., c. 21, § 11) had prescribed the dismissal of officers convicted of fraud, but made no mention of other circumstances, while no such statutory provision seems to have been made in respect of the officers of the other revenue boards (Excise, Taxes, and Customs). Elsewhere, statutory grants of powers of suspension and removal included the Erection of Lighthouses Act of 1776 (26 Geo. III, c. 101, § 5), which authorized the Commissioners of Northern Light Houses to appoint ‘and from Time to Time to remove’ the clerks, collectors, and other officers in their employ, and the West India Dock Act of 1799 (39 Geo. III, c. lxxix, §§ 78, 80), which authorized the Lord Mayor of London and the Directors of the West India Dock Company respectively to remove, suspend, or dismiss the Harbour Master and Dock Master of the West India Dock.

[150\_479]

{40} {2} § 8. page 162. {Receiver General .^.^ shall be appointed &c. .^.^ .  
by the .^.^ . Treasury, and not by the .^.^ . Police }.

As it can not be intended that the Commissioners of Police, or any of them, should derive any advantage from any monies lying in their hands, it will be a matter of personal relief, which is no more than due to them, thus to discharge them of all responsibility on that score, especially since, if they were all empowered to receive monies belonging to the Fund, some might come to be personally responsible for monies that others had received: and there seems a public use in making the Receiver altogether independent of the Commissioners, since if he were otherwise, it is a conceivable case that an influencing member or two of the Board might find means to derive an indirect advantage from monies improperly drawn out of, or continued in, the Receiver's hands. A recommendation given by the Committee of Finance<sup>b</sup> is—that the Receiver General of the existing Police [Offices]<sup>546</sup> shall likewise be Receiver General of the proposed Board: but, for the fulfilling of this recommendation, should it be thought fit, the Treasury Board is fully competent without any special authority from Parliament. So (it may indeed be observed) are they with respect to the appointment of a Receiver [General],<sup>547</sup> and of the keeping him independent of the Board of Police. For giving them *authority* so to do, no words in the Bill were accordingly necessary: but for the reason abovementioned, there may be a use in rendering it a matter of *obligation*: and for this purpose a clause in the Bill would be necessary.

<sup>b</sup> 28<sup>th</sup> Report, p. |^^^|. <sup>548</sup>

[150\_477]

{41} {3} § 8. page 163. {Principal Secretary of State }.

Revenue being among the objects of the Bill, and the collection of Revenue among the

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<sup>546</sup> MS 'Officers'.

<sup>547</sup> MS 'generally'.

<sup>548</sup> See 'Twenty-Eighth Report from the Select Committee on Finance', in *Commons Sessional Papers of the Eighteenth Century*, cxii. 31.

functions of the Board, its subjection to the Orders of the Chief Board of Revenue was a matter of course. But Police being the principal object, and the main use of the Board being to serve as an instrument in the hands of the Officer responsible in chief for the state of the Country in relation to matters of Police, it seems still more necessary that the Board should be subject to his Orders: at the same time that if it were not expressly made so, and room thus expressly made for the exercise of this second authority, the other might have the appearance of being exclusive of it. The subjection to different superiors for different purposes does not appear pregnant with any real difficulty: since in case of any doubts or differences respecting the boundaries between the two Officers, the Council Board,<sup>549</sup> it is presumed, will be deemed the competent authority for the settling of all such doubts. In case of disagreement and contention, it would be equally improper and unnecessary to say any thing of the course which such an affair would take: the differences here spoken of are mere differences of opinion on the nature of the respective Offices abstractedly considered: but whether there were or were not any thing of contention in the case, the Council Board, it is conceived, would be the competent, and the only competent, authority for the solution of all doubts.

[150\_711]

{42} {1} § 9. page 163. {*Country Commissioner of Police or Country Police Magistrate*}.

The use of the proposed appointment of a Commissioner of Police or Police Magistrate for each licencing Division is to provide for the discharge of the two following functions: 1. the nomination of the Officers hereinafter mentioned who are to collect the licence-Duties and inspect the conduct of the *Licentiates* (if so they may be termed) in the Country Districts; 2. the keeping up a more regular Correspondence with the Board than a Country Magistrate, taken at random, would be always disposed to burthen himself with. As the patronage thus exercised would be considerable, the supposition is that there are few Licencing Divisions, if any, but what will afford some one fit person at least, who, in consideration of the patronage, with or without the marks of honour, if any, which it may be thought fit to annex to it, will be willing to undertake the trouble.

Two questions here present themselves—1. Why give the patronage to the Country

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<sup>549</sup> i.e. the Privy Council.

Gentleman in this way, rather than give it to, or rather suffer it to rest, in the usual way, with Administration? 2. Among the Magistrates of each Division, why give it to a single individual rather than to the body at large? To the two questions taken together, the answer may be as follows. [150\_712] 1. To a local authority rather than to the Treasury, the Secretary of State's Office, or the proposed Board (in which latter case the nomination, though formally in the Board, would be substantially in one or other of the two superior authorities), to a local rather than to a distant central authority, because it is only by local vicinity and personal acquaintance that any sufficient judgment can be formed of the personal qualifications of candidates. 2. To a single member selected from the body of licencing Magistrates, rather than to the whole body, that there may be a determinate and conspicuously situated individual responsible in each instance (responsible to the public at least in point of reputation) for the propriety of the choice, and that, in a case where pecuniary emolument is not intended to be allowed, there may be a mass of patronage collected in one hand, of sufficient magnitude to afford an adequate recompense, and that too more apposite, as well as more economical, than a pecuniary one, for the burthen of the Office. 3. To an authority distinct from and in a manner unconnected with the *Board* for again another reason, viz: that the power of placing and the power of displacing may rest in different hands. If *neither* power were in the Board—neither that of selecting such subordinates as seemed likely in their judgment to prove fit for the situation, nor that of ridding the service of one whose unfitness for it had been made known to them by experience—they would stand chargeable with mischiefs which they had no power to prevent, and with disorders which it would be out of their power to remedy. If *both* powers were in the Board, the danger would be that, in case of unfitness on the part of the subordinate, the particular Member, to whose recommendation he had been indebted for his appointment from the Board, would (by the motives, whatever they were, that gave birth to the recommendation, reinforced by sentiments of sympathy and commiseration) be induced to continue his protection and support to the subordinate, notwithstanding his unfitness; and the other Members, rather than give offence to a colleague in whose company they were destined to pass so large a portion of their lives, [150\_713] would be apt to yield to his importunity, and suffer the unfit person, notwithstanding his unfitness, to continue unremoved. Were both powers in the hands of the Country Gentleman, the difficulty of getting rid of an unfit officer would be apt to be still greater. Resting on himself, and on himself alone, the task of taking away with one hand the bread a man had been giving with the other, would naturally be a most irksome as well as invidious task: a

task too irksome to be encountered, under any necessity less urgent than what would be produced by some notorious and specific instance of criminality on the part of the subordinate. The individual—the Country Gentleman—might, it is true, be less apt to make an improper nomination, than the public body—the Board: but having made such a nomination, it would, generally speaking, be still more difficult for him, than for the Board, to repair the mischief of it.

A Board is a screen: and so thick a screen, that not only good desert of every kind, but ill desert of every degree short of specific and flagrant criminality, may be equally hid from every eye to which it is opposed. The right use of this screen consists in opposing it to every eye the scrutiny of which would be prejudicial, removing it out of the way of every eye situated in a position where the inspection exercised by it promises to be beneficial, to the public service. This [150\_714] screen is out of its proper place, in as far as the part borne in any official proceeding by any of the Members of the official body is hidden in any respect from the approving or condemning eye of their superiors in Office, or from the still superior<sup>550</sup> eye of the public at large; it is in its place, in as far as, in a case that requires dismissal or any other act attended with unpleasant consequences to the individual acted upon, it serves to afford them a necessary shelter against the still keener and vindictive aspect of the sufferer himself, as well as of the individuals connected with him by private ties. In the exercise of a power of *placing*,<sup>551</sup> a man needs no such screen for his protection against individual ill-will,<sup>552</sup> because no ill will, (except what is accidental, and what every man is ready enough to run the risk of) attends the exercise of it: the power of *displacing does* require a screen, because so much ill will, and nothing but ill will, attends the exercise of it.

[150\_715]

Under an arrangement such as that proposed, such is the use made of this screen, that the chance of getting rid of an unfit hand seems to be brought to its *maximum*: the Members of the Board, having no private intercourse, unless by mere accident, with their public correspondent, the Country Commissioner or Country Police Magistrate, are in a situation to engage without any particular reluctance in the task of applying the necessary

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<sup>550</sup> MS alt. 'paramount'.

<sup>551</sup> MS alt. '*nomination*'.

remedy to any error he may have fallen into, or any misadventure he may have met with, in the exercise of his powers of patronage: and even he himself, having the Board in its capacity of a screen to set before him, may not be ill disposed to whisper to it his wishes of seeing the service rid of an individual whose performances have disappointed expectations, and brought discredit upon his choice, but whose dismissal, had it been known to depend altogether upon himself, he would never have mustered resolution enough to sign with his own hand.

[150\_480]

{43} {2} § 9. page 163. {*Shall be distinguished .^^. by any .^^. title .^^. or mark of honour .^^.*}.

To determine with propriety and success, whether *any* title or other mark of honour, and if any *what*, shall be annexed to this new Office, and again whether, if determined to be annexed to it, any mention shall be made of it in the *Act*, and if in the *Act*, whether again in the *Bill* on its first presentment—all these are points, that require such an acquaintance with the public pulse, as none but those who, being seated at the source of its motions are by office in the constant habit of feeling it, can be warranted in attributing to themselves. These are among the topics on which all argument is out of place, and on which feeling, and feeling alone, is competent to decide. In the incurious temper of former times, a weed, a garter, any bauble stamped by a royal hand, would serve to give currency to a draught of honour payable to Bearer:<sup>553</sup> but under the jealous and scrutinizing eye of the present day, the hand must be rather a bold one that shall attempt to enrich the mint of honour with a new die. Unhappily, the partitions by which the *honourable* is divided from the *ridiculous* seem to be every day growing thinner and more brittle: yet within these few years, one of the three Kingdoms having fortunately remained thus long unknighthed, an honour denominated from a Saint, real or imaginary, of the Romish Calendar, has stood its ground

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<sup>552</sup> MS alt. ‘displeasure’.

<sup>553</sup> Bentham’s allusions are to the two senior orders of chivalry in Great Britain: the Order of the Thistle, associated with Scotland, and founded in 1687 by James II (1633–1701), King of England, Ireland, and Scotland from 1685 to 1688, and the Order of the Garter, associated with England, and founded in 1348 by Edward III (1312–77), King of England from 1327.

against the shafts of ridicule.<sup>554</sup>

[150\_481]

When, as a means of saving the expence and jealousy attendant on pecuniary situations, the provision for a remuneration of the honorary kind was put into the hands of the Draughtsman, looking out for a protection against the sort of attack, known to schools and thence to Senators by the name of *quizzing*, his first idea was to place it under the guardianship of an Act of Parliament, by a *non-obstante*<sup>555</sup> reference to the Statute of precedency, the 31<sup>st</sup> of Henry the 8<sup>th</sup>. Upon turning to the Act, the gradation was found unfortunately not to extend low enough, being confined to Parliament.<sup>556</sup> Out of these walls, whatever gradations may be found to exist, rest on no other basis than that of prerogative. Not that the Prerogative ranks are less determinate or less fixed, perhaps, than the Parliamentary ones: only, in as much as they are not the work of Parliament, they can not with so much propriety be specifically referred to in an Act of Parliament.

Supposing rank to be given, perhaps as proper a place as any would be at the head of ‘*worship*’ and at the tail of ‘*dignity*’:<sup>c</sup> above *Colonels*, *Serjeants-at-Law* and *Doctors* on the one hand, and below *Knights* on the other: whether a rank which, like that of *Colonel*, may vanish with the office, could, in this stage of the gradation, be placed with perfect propriety above a rank which, like that of *Knighthood*, produces a change of name and is indelible, would be a question to be considered.

<sup>c</sup> 2. *Instit.* 668.<sup>557</sup>

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<sup>554</sup> The Order of St Patrick, an order of chivalry associated with Ireland, had been founded in 1783 by George III (1738–1820), King of Great Britain and Ireland from 1760, as a means of gaining political support in the Irish Parliament and as a counterpart to the Orders of the Garter and the Thistle. It took its name from the fifth-century Romano-British missionary said to have brought Christianity to Ireland.

<sup>555</sup> i.e. a clause authorizing certain actions, notwithstanding (‘*non obstante*’) other legislation to the contrary.

<sup>556</sup> The House of Lords Precedence Act of 1539 (31 Hen. VIII, c. 10) had established an order of precedence for those attending Parliament, beginning with the King, his children, his Vicegerent (i.e. Thomas Cromwell (c.1485–1540), Lord Privy Seal from 1536), and the Archbishops of Canterbury and York, and descending through the bishops, the great officers of state, and the several ranks of the peerage as far as barons.

<sup>557</sup> See Sir Edward Coke, *The Second Part of the Institutes Of the Lawes of England*, London, 1642, pp. 666–8, which, in a discussion of the Statute of Additions of 1413 (1 Hen. V, c. 5), distinguishes between degrees of ‘*dignity*’ (including baronet and knight) and those of ‘*worship*’ (including esquire, gentleman, and yeoman).

[150\_482]

Failing the Statute Book, the connection, which any such honour as is proposed would have with an office of desirable authority as well as indisputable utility, would be its best preservation against ridicule; and every step added to the gradation, supposing it but to stand, has the collateral use of being an additional barrier against anarchy, the raging pestilence of the times. In this point of view, the replenishing the exhausted order of the *Marquisate* was a happy thought:<sup>558</sup> and it would be but so much the better if, in this inclement season, Britain, like *Russia* and *Tuscany*, would bear its *Grand-Dukes*, and like Austria, its *Arch-Dukes*.

[150\_483]

{44} {1} § 10. page 165. {*Submitt to pay*}.

The limit of this power of imposing a fine upon subordinates was taken from a Bill found among the papers of the late M<sup>r</sup> Serjeant Adair, with the date of 1785 upon it, and corrections in his own hand.<sup>559</sup> The fine there appointed was a limited sum: viz: not more than £10:<sup>560</sup> but the same reasons which suggested the propriety of leaving room for any

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<sup>558</sup> At the accession of George III in 1760, there were only five extant marquessates. In 1761 George III created the Marquessate of Kildare in the peerage of Ireland, and between 1784 and 1799 a further ten in the peerage of Great Britain and seven in that of Ireland. Among the former was that granted to Bentham's patron William Petty (1737–1805), second Earl of Shelburne, created first Marquess of Lansdowne in 1784.

<sup>559</sup> See 'A Bill for the further prevention of Crimes, and for the more easy *bringing* Offenders to punishment within the Cities of London and Westminster, the Borough of Southwark, and parts adjacent thereto' at UC cl. 3–76. A spencer headed by Bentham, '1785. Reeves and Macdonald's? Lond:<sup>n</sup> Police Bill. Found among Serj<sup>t</sup> Adair's papers', is at UC cl. 2. John Reeves (1752–1829), barrister and writer, Chief Justice of Newfoundland 1791–2, Receiver of Public Offices under the Justice of Peace, the Metropolis Act of 1792–9, Superintendent of Aliens 1803–14, had drafted a London and Westminster Police Bill which had been introduced into the House of Commons on 27 June 1785 by Sir Archibald Macdonald (1747–1826), first baronet, judge and politician, Solicitor-General 1784–8, Attorney-General 1788–92, Chief Baron of the Exchequer 1793–1813. In the face of opposition from the City of London and fears of the threat posed to the local administration of justice by a centrally organized and controlled police force, the Bill was withdrawn: see *Parliamentary History* (1785–6) xxv. 900–13. For Adair see p. 137 n. above.

<sup>560</sup> Reeves and Macdonald's Bill prescribed that 'any Constable, Headborough, Beadle, Watchman, or patrol, or other ministerial Officer of the peace' proved guilty before a Justice of 'any Misbehaviour, negligence, or

one degree of punishment inferior to that of loss of office, seemed to recommend the leaving room for every intermediate degree. Where only one degree of punishment is capable of being inflicted, and *that* such a degree as, in most instances of misconduct that are likely to occur, is likely to be generally regarded as excessive, a general impunity, and thence a general habit of negligence, is the natural result. In most, if not all, the existing Offices, reprimand and suspension are the only intermediate degrees in practice, betwixt dismissal and entire impunity. But suspension, if the servant's labour be worth any thing, punishes the Master—that is, punishes the party injured—along with, or rather instead of, the offending Servant: along with him, if a suspension of salary accompanies the suspension of service; instead of him, if it does not, which latter, it is believed, is commonly, if not universally, the [150\_484] case. As to reprimand, whatever may be its effect upon persons of a certain rank in the scale of office, among the inferior ranks it is not itself a punishment, so much as a threat of punishment: and, in cases where the punishment threatened is regarded as too great for the offence, this or any other denuntiation of it is like the *in terrorem* clauses in a Will, which, when once understood to come under that denomination, lose their terrific quality altogether. Under a system such as this, a family of small children, an inoffensive character, or a powerful protector, will give a man a license, as it were, for every negligence, and for every species of misbehaviour, short of bribe-taking, embezzlement or peculation. The natural consequence of this want of apposite gradation in punishments, is, in the first place, a long series of transgressions, each of them, perhaps, slight enough, taken by itself, but by which, taking them together, and adding the force of example to the account, the prejudice suffered by the service is by no means inconsiderable, and when, under the shelter of impunity, the habit of transgression has grown up to such a height as to be no longer tolerable, then at last comes dismissal, by which the individual is ruined. By a fine of 10<sup>s</sup>, 20 or 40<sup>s</sup>, imposed in time—imposed upon a first transgression—the conduct of the same man might, perhaps, have been kept for ever after within the path of duty.

[150\_485]

The use of the provision requiring the petition of the delinquent as a condition to the

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omission respecting any matter or thing required by this Act, or by any other Act of parliament', should 'forfeit any sum that such Justice or Justices in their discretion shall think fit, not exceeding ten pounds': see UC cl. 53.

exercise of the power of fining him is, to make it apparent that though the punishment thus applied may at its *maximum* amount to any thing *less* than deprivation, it can in no case amount to any thing *more*: under which restriction, the punishment being optional, it seems impossible that the power of punishment thus added can be productive of any additional hardship.

Another good effect may occasionally be deduced from the latitude of discretion thus allowed, and which could not so well have been produced by any express provision in the Bill. A course which (especially in the exercise of powers of the nature of those in question) delinquency on the part of the Officer (such an Officer as the proposed Collector of Duties and Inspector or Surveyor of licensed occupations, with the powers of a Constable) may be apt to take as any other, is that of producing some little damage or inconvenience, some petty oppression to the prejudice of the individual subjected to the exercise of such power. To give to the Board or to any such permanent authority, in express terms, the power of awarding damages in this or any other case, though it were at the expence of its own [150\_486] subordinate, would not look well in an Act of Parliament: it would carry the appearance of a violation of legal principles—of an encroachment upon the province of a Jury. Yet in an indirect way, under favour of the *direct* power of *fining*, the *virtual* power of *awarding damages* in such a case might be exercised, to the great advantage of all parties—(the public, the individual injured, and the official injurer)—in the same way and upon the same principles as the same sort of power is exercised to so much advantage by the Court of King’s Bench, when it is recommended to a delinquent to talk with the prosecutor, and to go before the Master.<sup>561</sup>

[150\_487]

{45} {1} § 11. page 165. {*Every such Surveyor .^.^ shall possess .^.^ the authority .^.^ of a Constable .^.^*}.

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<sup>561</sup> In the Court of King’s Bench, in order to avoid protracted proceedings, a case might be directed to ‘go before the Master’, i.e. the Master of the Crown Office, the official who oversaw the court’s bureaucracy, who would review the evidence and attempt to broker a settlement, generally advising the defendant to pay the prosecutor’s costs and damages or to make some other form of compensation. See, for instance, William Hands, *Solicitor’s Practice on the Crown Side of the Court of King’s Bench*, London, 1803, pp. 15–17.

The service of the Surveyor[s] being destined to purposes of Police as well as Revenue, the reason for, or rather the necessity of, investing them with the authority of Constables is obvious enough. Under the Excise and Customs, in the cases where powers of search, seizure or arrest are given to the local Revenue Officer, it is common enough to require the presence of the Parish Officer, the Constable, as a warrant for the exercise of the power, and as a safeguard against the abuse of it.<sup>562</sup> But in the present case, the Officer of the Revenue is himself an inhabitant of the neighbourhood, and appointed not by the Crown, but by a Country Gentleman also an inhabitant of the neighbourhood. His Office too is of itself sufficient to give him a degree of respectability not only equal but superior to what can be generally looked for on the part of a Parish Constable: and in virtue of his subjection to the Board, as well as to his Patron to whom he is indebted for his appointment, he is more under command than the ordinary Constable, and under stricter discipline. As to his Constablewick's extending over the whole County, the reason of this provision is stamped upon the face of it, and it has the Police Office Act {32 G. 3. c. [^^^]} for a precedent.<sup>563</sup>

[150\_488]

{46} {2} § 11. page 165. {*Oath .^^. of such .^^. tenor as the .^^. Board .^^. shall from time to time appoint*}.

If, according to the principles above laid down {Note 36}<sup>564</sup> in relation to Oaths of Office, it shall be determined that the Oath in this case, as in others, shall be *particular*, and shaped to the particular temptations that may come to be contended with, the proposed power of varying it from time to time will be necessary, since the temptations will arise out of the duties, and the duties will be likely from time to time to undergo alteration, by

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<sup>562</sup> For the vesting of such powers in local revenue officers see, for instance, the Customs Act of 1662 (13 & 14 Car. II, c. 11, § 5), the Adulteration of Tea and Coffee Act of 1724 (11 Geo I, c. 30, § 1), and the Smuggling Act of 1779 (19 Geo. III, c. 69, §§ 8–10). For the requirement that night searches be attended by a Constable see the Adutleration of Tea and Coffee Act of 1779 (11 Geo I, c. 30, § 2).

<sup>563</sup> The Justice of Peace, the Metropolis Act of 1792 (32 Geo. III, c. 53, § 15) had empowered the Justices holding office under it to appoint 'fit and able men to act as Constables .^^. within the said Counties of *Middlesex* and *Surrey* respectively'.

<sup>564</sup> See pp. 243–5 above.

increase or otherwise, nor will the temptations themselves be fully apparent, antecedently to experience. The framing of an Oath to be taken by a subordinate Officer of this rank is a power, which, considering the hands in which it is lodged, does not appear to stand much in danger of being abused: since in case of any eccentric or otherwise improper exercise of this power, there would be the Treasury Board or Secretary of State, and still higher the Council Board,<sup>565</sup> to correct it. The power of framing an Oath (I mean of the kind here in question—the promissory kind) is in effect a power of making laws, having for their sanction the united influences of honour and religion. Accordingly, in the case of an Oath of Office to be taken by the principals in office—the Commissioners—the tenor of the Oath is, in several of the precedents applying to the present case, prescribed by Parliament (see the Table of Precedents):<sup>566</sup> and in the creation of a new Office, this, it is believed, is in general the present practice. But in *those* cases the reason for such nicety is much stronger than in the present: since *there*, in case of any impropriety in the exercise of the power, the mischief could not be remedied but by Parliament: whereas in the present case the remedy is much nearer at hand, so that the power may be given with less reserve: and where the object and purport of the Oath is specified and pointedly expressed, the power of framing it is scarce attended with any of that danger which might be supposed, from the abstract description of it above mentioned.

[150\_489]

{47} {3} § 11. page 166. { *With or without Distress and Sale* }.

The precedents of powers given to Justices, to levy money upon public [account]<sup>567</sup> or for other civil purposes, are sufficiently numerous and extensive—Poor Rates, Tithes, &c. &c.<sup>568</sup> In some instances, the Acts have proceeded by requiring the accountant to account

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<sup>565</sup> i.e. the Privy Council.

<sup>566</sup> See the companion PDF file.

<sup>567</sup> MS ‘accountants’.

<sup>568</sup> The Poor Relief Act of 1601 (43 Eliz., c. 2, § 1) had empowered the Overseers of the Poor, officers of the parish, with the consent of two or more Justices of the Peace, to raise money for poor relief by the taxation of every inhabitant according to their ability. The Act (§ 3) also provided that, where a parish was unable to raise sufficient funds for the relief of its own poor, Justices might levy a rate on other parishes in the same county to meet the need. Justices had no authority to levy general tithes, but under the Recovery of Small

before a Justice under penalty, the payment of which penalty must, if enforced at all, be enforced, as the debt is here proposed to be enforced, by imprisonment or distress and sale. But if these means are to be employ'd, the most simple, the mildest and at the same time the most efficient, course, is surely to employ them in the first instance, for the levying of the debt as well as ascertaining the amount of it, instead of employing them for levying a penalty over and above the debt, leaving the debt itself to be ascertained and recovered by a suit in Chancery or the Exchequer. Summary procedure, whatever appearance of severity it may wear upon the face of it, is milder in effect, milder beyond comparison, than the regular of which it takes the place: the object to which it is directed is commonly the benefit of the public service: but mercy to the individual against whom it appears to be pointed is in every case without any exception the result: the effect of it being to save him from a pecuniary burthen (viz: the costs of suit in regular procedure), a burthen of such magnitude that a small fraction of it, if imposed under the name of a fine, would be regarded as excessive.

[150\_490]

With the option here given, the Magistrate will resort to the one mode or the other, imprisonment or distress, according to the exigency of the case. If the stock of accessible property appear likely to be sufficient, he will naturally resort to that course<sup>569</sup> in preference, as being the more certain and direct: in the other case, he will employ imprisonment in the first instance. The effect of the words '*with or without imprisonment*' is, it must be confessed, that of operating, in case of necessity, as a warrant for the employment of both of them together, which hitherto, it is believed, has not commonly been allowed. Yet when a man has really received public money for the public use, it seems difficult to find a reason why there should be any way left open for him to waste or pocket it: which, however, without a provision to the effect proposed, he will find himself at liberty to do, if, after he has placed out of the reach of justice the whole of his accessible property, or has left only such part of it accessible to the distress as will be sufficient to cover but a part of the debt, distress and sale should be the mode pitched upon in the first instance: for then, how small soever the part levied in that mode, he must go quit for the

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Tithes Act of 1696 (7 & 8 Will. III, c. 6, §§ 2–3) they were empowered to summon persons for the non-payment of small tithes (i.e. those pertaining to the vicar of a parish) and to distrain goods to secure payment.

<sup>569</sup> i.e. distress.

remainder. In a case where it is known that a man has distrainable property sufficient to cover the debt, and that that property has not been removed, nor can be removed, before the Officer of Justice will have time to seize it, this alone, and not imprisonment, is the mode that will naturally be employ'd: if it is known that [150\_491] he has no such property, or has taken measures for conveying it away out of the reach of justice, imprisonment alone, and not distress, will as naturally be the mode employ'd in such a case: but if, although he has some seizable property, he has not enough to cover the debt, or has taken measures for conveying away so much of it that what remains accessible to justice is not sufficient to cover the whole of the debt, it is then equally evident that neither mode is adequate to the purpose without the other. It is, in this case, as necessary to employ both processes together, as it is in the two other cases respectively to employ either: so often as the law refuses the faculty of employing them together, so far it gives a license to a dishonest man to triumph in his dishonesty. Under a clause to the effect proposed, when the Magistrate has recovered for the public so much of the debt as the accessible part of the defaulter's property will produce, if he has other property not susceptible of being seized, and the aversion to a continuance of the imprisonment is strong enough to induce him to make restitution of that remainder, the public in that case will recover it: if, having it in his power to make restitution, he at first refuses it, he lies in prison till he comes to a better temper, and whatever may be the hardship he suffers during that time, being no [150\_492] more than he chooses to suffer, rather than do justice, it can afford no just cause of regret to any body: if he really has not the sum requisite at his command, there seems very little danger of his being made to suffer a longer imprisonment than what it would be proper he should suffer in the way of commutation, to prevent his being a gainer by his iniquity upon the whole. Suppose the most unfavourable case possible, suppose malice and corruption on the part of the Magistrate, no man is likely to suffer from the hands of the most adverse and tyrannical Magistrate in this summary mode, what in the regular mode a man is exposed to suffer at the hands of the mildest and most upright Judge. The enmity of the most adverse Magistrate may in time be satiated, and even before that time the superior Court, if it appears to them that the man has suffered enough, may give him relief: but in the regular mode, if, in default of property capable of being taken in execution, it be in satisfaction for a debt due to the Crown (that is to the public) that a man is committed to prison, in that case he lies all his life long as a matter of course, bating the chance of an Act

of Insolvency, which may or may not extend to his case.<sup>570</sup>

[150\_493]

Mean time, if the principle of *prompt remittance*, (for example weekly remittance) be adhered to, a principle for which other branches of the Revenue afford a precedent, and for which the mode recently established at the Post Office affords universal feasibility and facility,<sup>571</sup> such deficiencies are not likely (it should seem) to be otherwise than very rare: but the more efficient and uneludible the mode of procedure provided for repairing any such deficiencies, in the event of their taking place, is seen to be, so much the rarer still are they likely to be.

### Part III: *Licencing*

[150\_494]

{48} {1} § 13. page 167. {*First day of September*}.

To tally with the licencing time for licences granted by Justices, viz: (as will be seen presently) the time at which the meetings for Alehouse Licences are holden at present.

{49} {2} § 13. page 167. {*Of the said September*}.

The words between inverted commas are copied from the Alehouse licensing Act, 26 G. 2.

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<sup>570</sup> Although the Bankrupts Act of 1705 (6 Ann., c. 22, § 2) made discharge from bankruptcy and from prison in default of complete repayment of creditors available to mercantile debtors, on condition that four-fifths of their creditors by number and value agreed, the earlier Bankrupts Acts of 1570 (13 Eliz. I, c. 7, § 1) and 1732 (5 Geo. II, c. 30, § 23) had respectively limited bankruptcy proceedings to debtors seeking their living by 'Buying and Selling' and to debtors owing a minimum of £100, thereby leaving many detained debtors excluded from the possibility of such an agreed discharge. In order to alleviate the resulting distress, Acts for the relief of insolvent debtors were periodically passed in the eighteenth century, the most recent in 1795 (35 Geo. III, c. 68). According to Blackstone, *Commentaries on the Laws of England*, ii. 484, such Acts prescribed that 'all persons whatever, who are either in too low a way of dealing to become bankrupts, or not being in a mercantile state of life are not included within the laws of bankruptcy, are discharged from all suits and imprisonment, upon delivering up all their estate and effects to their creditors upon oath'.

<sup>571</sup> Bentham perhaps had in mind the system of sending money by post by means of money orders introduced in 1792. The Money Order Office was initially run as a private venture by the Clerks of the Road, albeit closely linked to the Post Office.

c. 31. § 4.

{50} {3} § 13. page 167. {*Major part of the said Commissioners*}.

If any of the Commissioners happen to dissent from the grant of the licence, it seems very proper that such dissent should be entered in the minutes of the Board (a regulation which may be made by the Executive authority, especially under the powers here given, without being inserted in the Act): but the manner of signature should not be such as that any such act of dissent should appear on the face of the license, or in any other manner be known to the party to whom a license is granted notwithstanding such dissent: on this account, if the requisite number sign, it is made sufficient: if it should not become usual for a licence to be signed by any greater number than the least number necessary for its validity, those who *dissent* will, by that means, not be distinguishable from those who agree. Another expedient for concealing *dissents* might be, that of the Secretary's signing in the name of the Board. This is another of the instances spoken of on a former occasion (see Note {42} to § 9),<sup>572</sup> in which the making a Board serve as a screen to its Members is for the interest of the public service.

[150\_495]

{51} {1} § 14. page 167. {*Laws now in being*}.

These laws being so well known and ascertained, it seemed unnecessary to refer to them by their *titles*; and as there are more of them than one, such reference, with the requisite recitals, would have taken up a great deal of room to little purpose.

{52} {2} § 14. page 168. {*Untill the whole thereof be dispatched*}.

This agrees with the time allowed, by the Ale-house licencing Acts, for the licencing of Ale-houses: but a further latitude is allowed here, on occasions and for reasons that will be

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<sup>572</sup> See pp. 249–52 above.

seen below—§ 16.<sup>573</sup>

[150\_496]

**{53} {3}** § 14. page 168. *{Receipt signed by such Officer}*.

The object of this provision, by which the concurrence of the local Officer of the Board all over the kingdom is made necessary to the validity of the licence, is—to give the Board, through the channel of such their Officer, a sort of virtual controul, though, for decorum's sake, not display'd as such, over the discretion committed to the local Magistrates. The use of this controul is to give time and opportunity to the Board to make known to the Magistrates any such matter of fact operating as an objection to the character of the person applying for a licence as may have failed to reach the ear of the local Magistrates, for want of that universality of intelligence which will be the peculiar endowment of the Board. The necessity of the Surveyor's signature to the license gives him, without the parade of an express provision, the faculty of being heard at the Meetings held for licencing: and the Magistrates, having this witness to the correctness of their proceedings, will naturally be the more upon their guard against the sollicitations of indolence, false humanity, or personal influence.

[150\_497]

**{54} {1}** § 15. page 168. *{Twenty days}*.

See the next article.

**{55} {2}** § 15. page 168. *{Thirty days}*.

The use of the difference here proposed with regard to the time of notice, is that at the farthest part of England, over and above the time appointed in the District where the Board sits, there may be time for a correspondence on the subject between the Board and their local Officer within the sphere of whose authority the residence of the Candidate is

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<sup>573</sup> See § 16 of 'A Bill for the establishment of a Board of Police', p. 169 above, and notes **{57}** to **{59}**, pp. 268–70 below.

included.

[150\_498]

{56} {3} § 15. page 168. {.^.^ they .^.^ examine the party applying for such licence }.

Two securities, or supposed securities, for good behaviour, which are employ'd in the case of Ale houses, are omitted (it may be observed) in the present case: the *Certificate of character* and the *Recognizance*.—On enquiring into the effect produced by the Certificate, it is stated to be this: viz: the adding to the licence-duty received by government a tax of half-a-guinea, received and pocketed by the Parish Beadle. The Candidate for a license makes his application to the Beadle, gives him the half-guinea (which it seems is the standing fee),<sup>574</sup> and for this half-guinea the Beadle procures the requisite number of signatures to the Certificate. The case of a man's coming into a neighbourhood in which he is unknown and taking out his licence for a house in that neighbourhood, is the case under favour of which the custom appears to have grown up. Going into a new neighbourhood, a man may be a very honest man, without being known as such to any three or four, which is the number of reputable Housholders whose hands the Act requires to the Certificate.<sup>575</sup> The place a man *has* lived in, not the place he is *about* to live in, presents itself as the natural place to look to for his character. If the latter place be the only one of the two that has an interest in the correctness of the information, the former is the only one [150\_499] from whence there can be any generally existing faculty of obtaining it. This being considered, if the species of security were worth preserving, a considerable degree of modification would be found requisite before it could be render'd adequate to the purpose. But the business of attestation, especially attestation by *joint* signature, having in this instance degenerated, as it is so apt to do, into what is called *matter of form*, (that is the idea of responsibility in the way of reputation, the only species

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<sup>574</sup> Bentham's informant was probably Colquhoun, who reported, in *Observations and Facts relative to Public Houses in the City of London and its environs*, London, 1794, p. 20 & n.: 'it is the general practice of every publican who wants a licence to apply to the beadle of the parish to get his certificate signed, who generally receives a handsome fee in case of success', and indicated that the fee ranged from '2s. 6d. to 5s. on each transfer of a licence .^.^ and a much larger sum for a new house'.

<sup>575</sup> See p. 66 n. above.

of responsibility that was ever attached to it, having been worn off from it) the security may be considered as being now too rotten to be repaired: and the quantity of legislative provision which would be necessary in any attempt of that sort has been found, upon trial, to be so full of complication, that the best course that could be taken seemed to be the giving it up altogether. In the course of his lawful occupation, and without any imputation upon a man's character, he may have lived an unsettled life for several years preceding the time of his forming a plan for making a settlement of this kind; residing for a short time at each of a considerable number of places. From which of all these places shall the certificate in this case be required? All these diversities might be found to require provision to be made for them in the body of the Statute, over and above what would come to be made in those *Forms of Notice*, which might be discharged into the *Schedule*.

[150\_500]

As to the other supposed security, viz: the *Recognizance*, it is partly nugatory in itself, partly rendered inefficient by a management which might have been foreseen and provided against. So far as the *Principal* alone is concerned, it is a contrivance for obtaining by force of law, a forced consent to a penalty, which, being fixed and the same in the case of every transgression, has infinity to one against its propriety in each instance that occurs: at the same time that, without any such consent, it is equally in the power of the law to subject a man in each case of transgression to a penalty adapted in quality as well as quantity to the nature of the case. In as far as the *Surety* is concerned, the efficacy of this expedient stands, it is true, upon very different grounds. *Here* we see a friend appointed Guardian, and by mutual consent, to the probity of his friend, bound in this way to the vigilant execution of the trust, by the tie of personal interest—by a penalty to which, by means of this arrangement, he stands subjected—a penalty to which, without some such arrangement, he could not have been subjected. But the penalty is a trifle—£10 a year<sup>576</sup>—and the same trifle in the instance of every degree of opulence: in the case of the Hedge Ale house at £3 a year rent, and in the case of the Inn or Tavern at £300. This trifle too amounts to nothing: for Principals join hands, and each becomes Surety for the other.

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<sup>576</sup> The Alehouses Act of 1753 (26 Geo. II, c. 31, § 1), obliged the recipient of an alehouse licence to enter into a recognizance 'for the Maintenance of good Order and Rule' in the sum of £10, which might be provided by 'two sufficient Sureties, each in the Sum of five Pounds, or one sufficient Surety in the Sum of ten Pounds'.

[150\_501]

The mode of procedure in cases of recognizance—the *Estreat*, followed by the *Scire facias*<sup>577</sup>—would of itself be sufficient to empty the security of the greatest part of its efficiency, if not the whole. The factitious delays, which have taken such general root in the regular branch of procedure, have been improved upon in the case of recognizances: and in the present instance, if, instead of the King to whom the penalty is given, the prosecutor were to receive to his own use the amount of it when thus levied, he would, in case of success, find himself out of pocket, to perhaps ten times the amount of it. As to the Defendants—the Principal and the Surety or Sureties—it would be mercy to them if, in case of forfeiture of the Recognizance, for any act of delinquency, they could be made to pay the penalty of the Recognizance (supposing it to be paid) in the same summary and comparatively unexpensive mode as that in which the Principal is made to pay the particular penalty appropriated and adapted to the particular offence.

Securities thus rotten, are worse than useless:—inefficient with a face of efficiency, they obstruct the look-out for efficient ones.

The personal examination resorted to by the Bill, and substituted to these mock securities, professes little, but provides for every thing. Were even a *certificate* to be employ'd, it would be good—not to say indispensable—for the purpose of giving responsibility, and thence veracity, to the certificate. But without it, it is still better: for, besides encreasing the chances in favour of veracity, it saves the extortion above spoken of, saves paper, and saves journies on the part of Sureties.

[150\_502]

It is attended with no additional trouble or vexation: for, upon the present plan, the personal attendance is exacted, though no use is made of it.<sup>578</sup> Without qualms or scruples,

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<sup>577</sup> If the conditions of a recognizance taken by a Justice of the Peace were broken, its terms might be enforced by means of an estreat (extract) of the relevant court record sent to the Exchequer, and by a writ of *scire facias* (i.e. 'let [the person] know') sent to the Sheriff, directing him to require the party in question to show cause why the acknowledged conditional debt should not now be collected.

<sup>578</sup> Bentham may have had in mind the apparent presumption in the Alehouse Act of 1753 (26 Geo. II, c. 31, § 1) that persons seeking licences should attend the magistrates' licensing meetings, as indicated by the provision that licences might be granted 'in case the Person applying for such Licence shall be hindered

the law examines every man about the business of every *other*, how trifling soever the concern:<sup>579</sup>—can any reason be given, why it should have less scruple to examine him about his *own* business? Provision too is here added, where occasion requires, for calling in the testimony of other witnesses. Without occasion, such testimony does not seem to be much in danger of being called for: it would consume the time of the Board, and the case does not present any circumstance as calculated to give the Members any interest in promoting the unnecessary consumption of such time. The examination of a witness or two for the purpose of ascertaining beforehand, whether, in case of a man's receiving a licence, he seems likely to convert his shop into a nursery of thieves, may save the examination of many a witness on prosecutions that might otherwise come to be instituted, for Offences which, under favour of such encouragement, might otherwise have come to be committed by such thieves. It calls for none of that sort of evidence which, by a rule more remarkable for tenderness than for consistency or wisdom, is put to silence by the Common Law under the name of *self-convicting* evidence.<sup>580</sup> If asked—*did you, or did you not, receive such and such goods from such a person—or did you, or did you not, know the goods to have been stolen, or the bringer to be a thief?*—silence will then, as now, be the resource of the examinant, and so long as he thus keeps silence, he can not, on such examination, be convicted of felony for the receiving of those goods. But it will rest with the Board or with the Country Magistrates (and why should it not?) to judge whether, after refusing to ask such questions, the man be a fit person to be intrusted with a licence for the purchasing of such goods.

[150\_503]

{57} {1} § 16. page 169. {*Provided always*}.

In the case of Alehouses, Bye-licences, after having been allowed by a Statute of the 2<sup>d</sup> of George the 2<sup>d</sup> (c. 28), were taken away by a Statute of the 26<sup>th</sup> of the same reign {c. 31. §

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through Sickness or Infirmity, or any other reasonable Cause' from attending in person. He quotes this provision directly in note {62} at p. 271 below.

<sup>579</sup> Bentham may have had in mind the element of compulsion in the Common Law treatment of witnesses, who, according to Blackstone, *Commentaries on the Laws of England*, iii. 369, were compellable by a writ of *subpoena testificandum* to appear and testify on pain of forfeiting £100 to the Crown.

<sup>580</sup> See the legal maxim *nemo tenetur se ipsum accusare*, i.e. 'no-one is compelled to accuse himself'.

4.)<sup>581</sup> ‘*Experience*’ (it is stated in the general and uninformative language usual upon these occasions) had given its testimony in disfavour of the practice.<sup>582</sup> The particular inconvenience experienced, if I understand the matter right, was *this*: viz: that at these *bye-times* particular *parties* used to be formed, by persons disposed to patronize the Candidate, and, the motives for opposing not being so strong as the motives for supporting the candidate, licences were by this means apt to be granted in cases where they ought to have been refused: whereas, by confining the whole quantity of business of this sort to one *general* time of meeting, a full and *unpacked* attendance would naturally be procured, and a more impartial attention by that means given to each case: and where a person, how unworthy soever, has once got possession of a licence, it will be by no means so easy to get the *renewal* of it *refused*, even at a full and unpacked meeting, as it would have been to have got it refused in the *first* instance. But this reason, it is evident, applies not to the case of the *Board*, an assembly constantly sitting, and (bating accidental absences) composed of the same persons at all times; and these, by reason of the extensiveness of their jurisdiction, very little exposed to the seductions of private influence. In the Country, among the local Magistrates, the reasons above supposed [150\_504] to apply to the case of *Alehouses*, (under which denomination all Houses of *public entertainment* are comprized) must, if it be the true one, apply in a certain degree, to the case of the several occupations proposed to be licenced under *this* Act: whether in a sufficient degree to prescribe the rejection of this expedient of Bye-licences, is a question I shall beg leave to refer to those to whom it belongs to judge. A circumstance that makes a great difference in favour of Bye-licences in

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<sup>581</sup> Contrary to Bentham’s assertion, the Unlawful Games Act of 1729 (2 Geo. II, c. 28, § 11), noting that ‘many Inconveniencies have arisen from Persons being licensed to keep .^.^ Alehouses, by Justices of the Peace, who living remote from the Places of Abode of such Persons, may not be truly informed as to the .^.^ Characters of the Persons applying for Licences’, had prescribed that the granting of alehouse licences or licences to retail brandy and spirits should take place only at particular General Sessions of the Justices for each Division, ‘to be holden, for that Purpose, on the first Day of *September* yearly, or within twenty Days after, or at any other General Meeting of the said Justices’. The Alehouses Act of 1753 (26 Geo. II, c. 31, § 4) further restricted this provision by prescribing that such licences might be granted only at the September Sessions (the so-called ‘brewster sessions’), although § 3 of the Act prescribed that in case an existing licence-holder should die or ‘remove from an Alehouse, it shall be lawful for the Person succeeding to such House to keep on the said Alehouse during the Residue of the Term of such Licence’, provided that within thirty days they obtained a Certificate of good character ‘to be signed by some neighbouring Justice’.

<sup>582</sup> The Alehouses Act of 1753 (§ 4) noted that the relevant provision of the Unlawful Games Act of 1729 (§ 11) ‘has been found by Experience not to have the Effect intended’.

the present case, is the indirect controul possessed by the Board, as above mentioned<sup>583</sup>—a safeguard altogether wanting in the case of Alehouses. Another difference is the danger of an overstock in the number of such places: an inconvenience distinct from any that may result from badness of character, and which, though it exists to a high degree in the case of Alehouses, seems to have no place in the instance of any of the occupations comprized in the present Bill.—The inconvenience resulting from the want of such Bye-licences is that of a man’s continuing, as far as to the amount of nearly a whole twelvemonth, debarred from the faculty of betaking himself to the occupation which appears to him the most eligible for him: a middle course might be the appointing several times in the year, but all of them fixt times, suppose quarterly, for Bye-licences, i:e: licences to be granted [to]<sup>584</sup> persons never as yet licenced: reserving the present general time in the case of Alehouses, viz: from the first to the twentieth of September, for the business of *renewal*. This, accordingly, is the course adopted in the provision in the text, the idea of which was taken from the clause in the latest Ale-house-licencing Act {32 G. 3. c. 59. §§ 1, 2.}<sup>585</sup>

[150\_505]

{58} {2} § 16. page 169. {*At the request of the said Commissioners*}.

The more frequently the opportunity of obtaining a licence can *with propriety* be made to recurr, the more convenient for the individual, and the more advantageous to the Revenue. The *propriety* of such frequency will depend upon the probability of a full and unpacked meeting, and *that* will depend on the quantity of business usually transacted in each Division. The Board, by means of the universality of its survey, will easily be able to learn, to a sufficient degree of nicety for the purpose, this proportional quantity of business in each local District. Without this assistance, sets of Justices, whose survey, in point of place, is confined within their own respective spheres, would not be so well able to adjust this proportion of themselves.

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<sup>583</sup> See note {53} to § 14, p. 263 above.

<sup>584</sup> MS ‘by’.

<sup>585</sup> See § 16 of ‘A Bill for the Establishment of a Board of Police’, pp. 169 above, where Bentham quotes extensively from § 2 of this Act.

{59} {3} § 16. page 169. {*Except Middlesex and Surry*}.

The greater latitude allowed in the instance of these two counties is copied from the last Alehouse-licencing Act {32 G. 3. c. 59. §§ 1 and 2}. The extraordinary quantity of Justice business in these two populous Counties bordering on the Metropolis, seems to indicate the principle on which the distinction is founded in that instance. But the principle would be applied to greater advantage, if differences (as in the Draught)<sup>586</sup> were allowed to exist not only as between *County* and *County*, but as between *Division* and *Division*. In the most populous County, such or such a Division may afford very little business: in the least populous County, a great deal.

{60} {4} § 16. page 169. {*Nor .^^. be renewed .^^. at any other than such general time*}.

To the case of *renewal*, the reasons for *augmenting* the frequency of the Meetings for the business do not extend: those for *restraining* that frequency apply with undiminished force; besides others that might be adduced.

[150\_506]

{61} {1} § 17. page 170. {*Same instrument shall be made use of*}.

Making the same instrument serve year after year will be attended with several conveniences. 1. It will be productive of a considerable saving in the article of paper: 19 parts, perhaps, out of 20, or some such matter upon an average; a single paper serving instead of one for every year of each person's life: and the object will be so much the more material, if the provision exhibited below, for making the instrument of recognizance the vehicle of legal information,<sup>587</sup> should be adopted. 2. The length of the period during which the grant of the licence has continued to receive its periodical confirmation will operate of itself as a sort of testimony of good behaviour, stronger and stronger in proportion to the number of the Years. 3. It will be more convenient to the individual to have this testimony comprized within the compass of a single instrument than to be obliged

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<sup>586</sup> See § 16 of 'A Bill for the Establishment of a Board of Police', pp. 169 above.

<sup>587</sup> See note {95} to § 41, p. 316 below.

to incumber himself with the preservation of a multitude of such instruments.

[150\_507]

{62} {2} § 17. page 170. {*Personal attendance .^^. may .^^. be dispensed with*}.

By the Alehouse-licencing Act {26 G. 2. c. 31. § 1}, it is provided that ‘in case the person applying for such licence shall be hindered through sickness or infirmity, or any other reasonable cause, to be allowed by the said Justices of the Peace, to attend in person at the meetings of the same Justices for the granting the said Licences, that then it shall and may be lawful for them to grant such licence, upon two sufficient Sureties’, each in twice the sum that would have been sufficient in case of such personal attendance.<sup>588</sup> The use of this quotation is to shew that the exempting the persons in question as far as may be from the inconvenience of personal attendance has not been regarded as an object too minute for the attention of the legislature. In the present Draught, the accommodation proposed is greater, and not liable to any objection I can see.

[150\_508]

{63} {1} § 18. page 170. {*Upon decease .^^. keep open such House*}.

As far as concerns the case of Death, the idea of this provision was taken from the latest Ale-house-Licencing Act (32 G. 3. c. 59. § 1), but the principle of the clause for a discretionary allowance is taken singly, rejecting the option of a formal licence not to be granted but on paying the duty afresh, which seemed an unnecessary hardship on a family already afflicted with the loss of its Head. As to the allowance of a moderate time (say 30 days) for carrying on the business before such allowance is obtained, it is an indulgence from which no danger seemed likely to arise. It should be considered, that persons under such affliction are not immediately in a fit state to go about the business of solliciting a licence, nor, if they were, would it be in their power immediately to command a meeting of

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<sup>588</sup> i.e. each surety was required to enter into a recognizance in the sum of £10. There are minor inaccuracies in the rendering of the passage.

Justices. To shut up the shop &c., especially for an uncertain time, might be productive of fatal consequence to the trade of it: yet this must be done, or the party must remain exposed to the penalties, where no such provision is made as is here proposed.

In the above and other licencing Acts, provision is made for the case of a person coming in in the life-time of the person licenced: which (unless in the case of his taking a *partner*, for which provision is already made) can only happen in the case of the last-mentioned person's quitting business. But with regard to [150\_509] the reason for requiring a licence to be taken out, this case does not appear to differ from that already provided for, of a person's taking out a licence for the first time. Whatever be the conditions required, a person thus coming in will not have the less time and opportunity for complying with them for his being already in possession of a licence for some other occupation, or for some other place.

{64} {2} § 18. page 171. {*No person coming into possession .^^. by .^^. Bankruptcy &c. shall be liable to any penalty, for &c.* }.

I know of no precedent of a provision to this effect: though there are cases enough in which there is as much demand for it as here. Whether the insertion of it be necessary, and, if necessary, worth while, rests for the decision of those to whom it belongs to judge.

Though it should be a case where *purchasing* should be the only mode of dealing in which the obligation of obtaining a licence attaches, and though purchasing is not strictly necessary to the disposal of the stock, yet it may be necessary to the keeping up of the trade of the shop &c. for the benefit of those who are to resume it after the demands of the law are satisfied.

[150\_510]

{65} {1} § 19. page 171. {*Examination of .^^. persons living out of the Jurisdiction* }.

This expedient for supplying those gaps in evidence which are the result of a multitude of jurisdictions, each of them confined in point of place, would be a very efficient check upon the admission of persons quitting places where they had lost their characters, for others

where they meant to merit a similar loss: besides that evidence in *favour* of a man's character may as well happen to be confined to a different and distant County, as evidence in *disfavour* of it. And a provision to this effect would be powerfully assistant to, as well as be assisted by, the provision proposed below for empowering the Board to institute prosecutions for Perjury in cases in which it is concerned.<sup>589</sup> It is for want of such means of general intercommunication, that the jurisdiction of local Justices so frequently proves *lame*, and inadequate to the purpose: not only to the purpose of punishing the guilty, but to that of protecting the innocent against undue punishment. *Opening the Post* for such purposes would be attended with benefits unspeakable.

[150\_511]

{66} {1} § 21. page 173. {No .^^. appointment of Surveyor .^^. valid, unless made fourteen Days .^^. before &c. }.

The object of this and the preceding Section is to make provision against all contingencies, and save the system from finding itself paralysed in any part of the country by any want of co-operation on the part of the existing local authorities. It does not seem much to be apprehended, that the distinction and patronage held out by the Bill should, in any County licensing-Division or in any Town Corporate, be in want of suitable hands to accept it: but probabilities are not to be trusted to alone where certainties can be obtained. Not disinclination only, but even inattention and accident may be sufficient to produce here and there a chasm in the Official establishment: the residuum of that fund of power, which, according to precedent, would be lodged without any defalcation in the hands of the proposed Board, is of course the fund to be resorted to for the filling up of all such casual gaps: and the worst that can happen is—that this Board, like the other Revenue Boards, should have the nomination of its own Officers, and have those Officers for its correspondents. As to aversion to the system, if any thing of that sort were to be apprehended, the resource here provided would operate not so much in the way of supply as in the way of prevention in regard to any deficiencies from such a cause. If, by a simple forbearance to appoint Surveyors in any Division, it were in the power of [150\_512] any set of Magistrates to shut the door against the system in that division, a forbearance of that

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<sup>589</sup> See note {98} to § 43, pp. 318 below.

sort might naturally be expected on the part of any set of Magistrates to whom, from whatever cause, it might happen to present itself in an unfavourable point of view: but, the establishment of the system being ensured in every such Division, and the only point to be decided upon, by Gentlemen in any part of the Country, being—whether the patronage offered to them shall be accepted or refused, the determination does not seem to be any where much exposed to doubt.

The plan being that, for the above purpose, any casual gap that may take place in that part of the system of appointments which is proposed to be executed by the Borough Magistrates shall be filled up by the County Magistrates, and again, any gap that may take place in their system of appointments may be filled up by the Board, it becomes necessary to appoint a period somewhat earlier for the first set of operations than for the second: and to prevent default, the clause of nullity in case of such default is a sort of expedient that comes in as a matter of course in the texture of the Statute: but if, by any accident, a wish which in any District has been formed respecting the nomination of a Police Magistrate for that District, should fail of having operated so as to have produced the wished for nomination within the time appointed by the Act, [150\_513] effect may at any time be given to any such wish by pitching upon the same person in the nomination made afterwards by the Board.

[150\_514]

{67} {1} § 22. page 174. {*There shall be paid .^.^ to the .^.^ Clerk .^.^ as his .^.^ fee*}.

A shilling appears to be as common a statutable Clerk's fee as any, where, as here, the operation to be performed for it is of a nature to be attended with little or no trouble.<sup>590</sup> In the Country Districts, where the Clerk's time of attendance is, for the present purpose, the same as that for the purpose of the Alehouse Licencing business, and where the operation

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<sup>590</sup> See, for instance, 'Table of Fees to be taken by the Clerks to his Majesty's Justice of the Peace for the County of Middlesex, made, settled, approved, ratified, and confirmed, pursuant to the Statutes in such Case made and provided', printed by the Middlesex Quarter sessions in 1790, where nineteen of the forty fees listed, including warrant for discharge from gaol, certificate of legal settlement, and swearing of Constables and Headboroughs, amounted to 1s.

of giving notices will be performed, as in that business, by the Constables, without any separate care being requisite on his part, this *minimum* will, it is supposed, be sufficient. In the Towns Corporate, where an extra time of licencing is proposed to be appointed for the special purposes of this Act, and the charge of giving the requisite notices is imposed upon the Clerk, an additional 6<sup>d</sup>, 1<sup>s</sup>, or 1<sup>s</sup> 6<sup>d</sup>, according to the magnitude of the Town in question compared with the multitude of the licences, will, it is apprehended, be no more than reasonable.

The provision for this purpose, trifling as the object may appear, could not, consistently with precedent, or even with abstract utility, be omitted. If positive law did not fill up the blank with a moderate fee, rapacity, seconded by opportunity, would fill it up with an immoderate one. In the Horse-slaughtering-licence Act {26 G. 3. c. 71}, the Statute—by which duty is imposed to the use of the public—being silent on that head, the Clerk of the Peace in a certain District levies to his own use a duty of 13<sup>s</sup>: 4<sup>d</sup>.<sup>591</sup> that is to say 3<sup>s</sup>: 4<sup>d</sup>, or 33 per Cent, more than the amount of the Duty proposed to be levied to the public use in the case of some of the occupations which it is here proposed to licence.

[150\_515]

{68} {1} § 23. p. 174 {*Impressed*<sup>592</sup> by stamps or otherwise }.

Hitherto, without any exceptions that I recollect, in the several instances of licence-duties, the sums expressive of the amount of the duty have been impressed by *stamps*. One reason why a latitude is proposed to be given for departing from that practice in the present instance is—that the number of different sums, resulting from the Bye-licences, grantable for fractions of the year, with proportionable rates of duty, might come to be so great as to render that mode an uneconomical one. Under an authority such as that which is here given, the Commissioners would adopt or reject it in such manner and degree as they found most advantageous upon the whole. No danger of any kind can, it is conceived, result from the latitude thus proposed to be given in that respect. Powers for varying the stamps from time to time, are given in the original Stamp Act of the 5<sup>th</sup> of W. 3<sup>d</sup> (as stated in the *Preliminary*

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<sup>591</sup> The Knackers Act of 1786 (26 Geo. III, c. 71, § 1) required knackers' yards to be licensed by Justices at Quarter Sessions, but did not specify a licence fee. Bentham's 'certain District' has not been identified.

<sup>592</sup> In the Bill, Bentham used the word 'expressed'.

*Observations*) and in subsequent Acts.<sup>593</sup> Another reason (though it may perhaps appear a fanciful one) is that, if too much stress were laid upon the stamps (which, in the nature of the case, are a merely *accidental* concomitant of the business)—if, for example, it were peremptorily required that stamps should be employ'd (a requisition from which no advantage could, it is conceived, result), it might cause the institution of the Board to be regarded, perhaps, by the Stamp-Office, as a sort of encroachment upon their province.

#### Part IV: Regulations

[150\_516]

{69} {1} § 24. page 174. {*No licence .^^. shall empower any person to purchase .^^. Second-hand Metals .^^. as a Walking Purchaser .^^. unless with some Cart .^^. .*}

The reason for not permitting purchases of second-hand articles to be made (except in the case of Old Cloaths &c.) by Itinerant Purchasers, unless they come with Carts, is that in the instance of the Old Cloathsmen themselves this branch of petty traffic is found to be much and easily abused to the purpose of encouraging Depredation. They go from house to house, partly for the purpose, partly on the pretence, of purchasing old Cloaths; and under that pretence (asking no questions) they hold out a temptation to dishonest Household Servants, Apprentices, and other Females to sell any thing in the House they can lay their hands on. The reason why the purchase of Old Cloaths &c. is excepted from the prohibition notwithstanding, is—that this branch of trade is so firmly established, and such multitudes of people have no other livelyhood, that the including it in the prohibition might be attended with a degree of hardship such as would outweigh the benefit: but the purchasing of other things along with Old Cloaths, being nothing near so general, nor at all common, unless in this dishonest way, such collateral purchases may be prohibited without

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<sup>593</sup> Bentham does not in fact comment on this point in ‘Elucidations relative to the Police Revenue Bill’, but does discuss the powers of regulation given to the Commissioners of Stamps by the Stamps Act of 1694 (5 & 6 Will. & Mar., c. 21, § 12) and powers of regulation granted to various Boards by subsequent Acts: see pp. 119–21 above. The Stamps Act of 1694 (§ 7) provided that ‘the said Marks or Stamps, or any of them, shall or may be altered or renewed from Time to Time, as Their Majesties, Their Heirs or Successors, shall think fit, so as publick Notification thereof be given by Proclamation’, and this provision was repeated by, for instance, the Stamp Act of 1711 (9 Ann., c. 23, § 33).

sensible hardship or considerable inconvenience. The reason of the exception in favour of purchases made with Carts is—that, where a vehicle thus conspicuous is employ'd, nothing can well be convey'd out of the house in this way without its being known to the Master or Mistress and the family in general: whereas a foot-traveller, coming in the manner [150\_517] of an Old Cloathsman without any such conspicuous accompaniment, might easily slip into a Kitchen or Back Yard and receive things from a servant &c. without coming under the Master's notice.

If the hardship could but be got rid of, it presents itself as an obvious improvement, that the business of the Walking Old Cloathsman should be prohibited altogether: and the hardship, it should seem, might be got rid of, if the persons deriving at present their livelihood from such a business had sufficient warning and time given them (suppose three, four, or any greater number of years) to withdraw from it and betake themselves to another. Whatever reasons there are that, in the case of the selling of new goods, plead for the throwing discouragements in the way of the travelling branch of *that* trade (viz: the Hawkers and Pedlars), plead with great additional force for the discouraging and (under the above temperament) suppressing the pedlaring branch of the trade of purchasing second-hand goods. If Hawkers and Pedlars commonly so called are apt to be guilty of a species of fraud by selling defective goods for more than they are fairly worth, what they sell are at least their *own* goods: but what the pedlaring purchasers of second-hand goods are at least equally apt to be guilty of is—the lending assistance to *theft*, by purchasing from servants or other inmates goods that are not the property of the person by whom they are thus sold. Sum for sum, the mischief of fraud is much inferior to that of theft: because nobody conceives any great alarm from the contemplation, or even observation, of a loss to which he can not but be subjected but through some failure on his own part in point of vigilance or prudence.

[150\_518]

{70} {1} § 25. page 175. {*No person .^^. shall exercise .^^. his .^^. occupation at .^^. hours other than &c.*}

The use of the proposed restrictions with regard to *Hours* is that no one may come with goods to dispose of at any of these shops, without his *person's* being exposed to

observation. The degree of publicity thus secured will operate as a check upon the Books which, in a following Section, are required to be kept by those classes of dealers:<sup>594</sup> viz: upon the entries made under the heads designed to exhibit the name, and abode &c., of the seller. As the persons of reputed thieves &c. will be generally known to the Officers of the Board (the Surveyors), when any such person is seen to enter any of the shops in question, especially if he is seen to have goods with him at his going in, and none at his coming out, of the house, *then* will be a time to call for the books of the purchaser, and observe whether his name be set down in the list of persons of whom purchases are made.

{71} {2} § 25. page 176. {*Such other Hours as shall .^^. have been prescribed .^^. by the .^^. Commissioners*}.

The object is, to confine the dealings in question to *day light*, as near as may be, without prejudice to the fair exercise of the trade. In this case, if the latitude allowed be *too* great, the purpose may not be answered: if *not great enough*, injury may be done to the trade. To make the hour of shutting up shop in the evening coincide all along with the departure of the light, will require a scale of some length, the composition of which will be a task more suitable to a subordinate authority, such as that of the proposed Board, than to Parliament. Differences also may be found in this particular as between trade and trade; some requiring or admitting later hours than others. Were an inflexible line to be drawn under this head for all cases, [150\_519] (such as it would be if drawn by Parliament alone) much inconvenience and hardship might be the result.

{72} {3} § 25. page 176. {*Nor .^^. purchase .^^. from any child .^^. .*}

The exclusion proposed to be given to children promises to be a very strong and efficient, and at the same time a perfectly unexceptionable, check, to the practices against which the system is directed. Supposing the goods to be the property of the child itself, there can be no harm in preventing their being disposed of without the participation of the Parents. But in by far the greater number of cases where goods are brought to shops of this kind by young children, the goods are either stolen from the parent, the master or the employer of the child, or they are goods stolen &c. by the parent &c., and which, for his own

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<sup>594</sup> See note {76} to § 27, pp. 282–3 below.

convenience or security, he sends the child with, to the shop. By this clause, if adopted, many a child will be saved from being made an habitual accomplice in its parent's crimes.

Precedent. By a clause in the Pawnbrokers' Act of the 36. G. 3. c. 87. § 17 (taken from the Act of the 29 G. 3. c. 57. § 15), it is provided, amongst other things, that no Pawnbroker shall 'purchase, or receive, or take, any goods or chattels in pledge, of or from any person .^^. who shall appear to be under the age of twelve years, or to be intoxicated with liquor; .^^. nor buy any goods or chattels in the course of his trade or business, before .^^. eight .^^. in the forenoon or after .^^. seven .^^. in the evening, throughout the Year .^^.'

[150\_520]

{73} {1} § 26. page 176. {^^. For the more ^^. effectually exhibiting to view the ^^. inscriptions .^^.}

The *end in view* in the appointment of inscriptions is—that they may present themselves to the senses, and be apprehensible by the understanding of all persons, in whose instance it may be of use towards the observance or execution of the law that they shall be remarked and understood. In general, the larger the characters, the more conspicuous: but the larger, the more expensive, and the size will be liable, at any rate, to be limited in some degree by the quantity of matter to be exhibited, compared with the room there may be in each particular case for their reception. On the *tilt* of a Cart or Waggon, in which the word *Wooll* (as by certain Statutes) is to be inscribed,<sup>595</sup> you might have each letter two foot long: while on a *badge*, which a person is to carry on his shoulder or his head (as in the case of the Chimney-Sweeper Boys),<sup>596</sup> the letters can scarcely be ¼ of an inch in length. This is

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<sup>595</sup> Contrary to Bentham's assertion, there was no statutory requirement for the word 'Wool' to be inscribed on waggons, although the Highways and Turnpike Roads Act of 1753 (26 Geo. II, c. 30, § 15) stipulated that any waggon, wain, or cart travelling for hire on a turnpike road was to have the owner's name and place of abode 'written or painted in large legible Letters upon the Tilt or other conspicuous Place', and the Highways and Turnpike Roads Act of 1755 (28 Geo. II, c. 17, § 14) that any such vehicle with a narrow wheel gauge was to bear in addition the words 'Common Stage Waggon' or 'Common Stage Cart'. These provisions were restated and elaborated by the Turnpike Roads Acts of 1767 (7 Geo. III, c. 40, § 18) and 1773 (13 Geo. III, c. 84, § 68).

<sup>596</sup> See p. 224 n. above.

among the sort of regulations which may be much better exhibited by *patterns* than by descriptive words. A Board, always sitting and easily accessible, such as the proposed Board of Police, might have the advantage of expressing its meaning with the utmost precision by patterns, and where the inscriptions were of a moveable kind, might even provide the inscriptions themselves. Nothing of this sort can well be done by Parliament. In the case of Stamps, the power of varying the form of the stamp is committed to the executive government {5 W. 3. c. 21}.<sup>597</sup> In the case of the sort of Inscriptions in question, the reasons in favour of this power are stronger than in that case, in proportion to the number of the diversities of which this latter case is susceptible.

[150\_521]

{74} {2} § 26. page 176. {*Or else to furnish*}.

Over the Doors of mean Houses, to save the expence of good painter's work, I have frequently observed inscriptions of this sort, so small and ill-scrawled as to be scarcely legible. The type of *a Play-House Bill* would be quite large enough for the purpose, and the inscription might thus be executed much cheaper than by painting, and might, therefore, be given *gratis* to persons in poor circumstances. On this plan, all or any number of doors and inlets might have, each of them, its inscription, with scarce any addition to the expence. An inscription on the principal Door, or any number short of the whole number of Doors, would not, in the sort of occupations in question, come up to the purpose. The honest part of the business would pass through the public Doors that had the inscription, the dishonest part, through the unscribed and private Doors. The use of this multiplicity of inscriptions is to expose, to the view and vigilance of Surveyors, &c., Back Doors which otherwise might be purposely kept secret.

{75} {3} § 26. page 176. {*A distinctive number*}.

The number of the *House*, and the number on the *Register*, will serve as checks to one another. In the Register, the last number will exhibit at all times, without summing up, the total number of licenced persons in each class. To this purpose, each Number should, as it

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<sup>597</sup> i.e. the Stamps Act of 1694 (5 & 6 Will. & Mar., c. 21, § 7): see note {68} to § 23, pp. 275–6 above.

became vacant, receive a mark in the margin, and no new N<sup>os</sup> should be added till the prior vacant ones are filled up. Printed Papers will remain legible for Years if not purposely defaced: and where there exists an *intention* to deface, neither painter's nor any other work can stand it.—The Stamp, as well as the Number, will serve as a check against forgery of the inscriptions.

Most of the clauses relative to inscriptions of this sort content themselves with requiring that they shall be '*put up*':<sup>598</sup> so that a man, after having *once* put up his inscription, may take it down again or deface it, or at least suffer it to be taken down again or defaced, without replacing or repairing it, and yet without incurring any penalty: the words '*keep constantly exhibited*' (the words employ'd in § 1)<sup>599</sup> are designed to obviate this defect.

[150\_522]

#### Precedents<sup>600</sup>

1. By the Bumboat Act (2 G. 3. c. 28. § 4), Power is given to the Master and Wardens of the Waterman's Company<sup>601</sup> 'from time to time, to make such Orders, Rules

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<sup>598</sup> See, for instance, the Turnpike Roads Act of 1773 (13 Geo. III, c. 84, § 4), the Relief of the Poor Act of 1782 (22 Geo. III, c. 83, § 34). Some statutes did, however, make provision for the permanent display of such notices: the Manufacture of Sail Cloth Act of 1736 (9 Geo. II, c. 37, § 8) prescribed that an abstract of the Act be 'put up or affixed, and there to continue from Time to Time so put up and affixed, in some publick Part or Place of the Loft, Shop, Warehouse, or Workhouse where [the sailmaker's] Trade is carried on'; the Smuggling Act of 1781 (21 Geo. III, c. 39, § 4) prescribed that copies of the act be 'put up, and continued on some conspicuous Part of every British Ship or Vessel .^.^ and that wherever the said printed Clauses shall be damaged, defaced, or destroyed, the Master .^.^ shall cause the same to be immediately replaced'; and the Navy Act of 1786 (26 Geo. III, c. 63, § 9) prescribed that commanders of Royal Navy ships should cause abstracts of the act 'to be hung up and affixed to the most publick Place of such Ship or Vessel, and shall cause the same to be constantly kept and renewed'.

<sup>599</sup> See p. 151 above.

<sup>600</sup> Only a single precedent is supplied by Bentham. On a brouillon at UC cvii. 190 headed 'Police Bill Precedents', Bentham noted: 'Inscription. Starch-maker. 3 inches in length: 24 G. 3. sess. 2. c. 48. § 3 and 4. Taxed Carts 35 Geo. 3. c. 109: 1 inch in length.' The provisions relating to the size of the letters constituting the signs to be painted over the 'outward Door' of the Starch-maker's premises and on the back or side of carts liable to duty are contained in the Duties on Starch and Soap Act of 1784 (24 Geo. III, sess. 2, c. 48, § 3) and the Carriage Duties Act of 1795 (35 Geo. III, c. 109, § 4) respectively.

<sup>601</sup> There are minor inaccuracies in the rendering of the following passage.

and Regulations as they shall think requisite and proper for the ascertaining the Part<sup>602</sup> or Parts of such Boat on which the said number and the Names and place or places of abode of the owner or owners thereof shall be marked, and in what manner and of what dimensions the figure or figures and Letters, composing such number, and names and place or places of abode, shall be made, and how the same shall be from time to time renewed and kept fair and legible .^.^.’

[150\_523]

{76} {1} § 27. page 177. {.^.^. *Commissioners* .^.^. *to frame Forms of Account—Books* .^.^.^. }

Against the obligation of keeping the sort of Books in question, the trouble of the task may be regarded as forming a considerable objection: but upon a closer inspection, the objection will, it is presumed, be found to vanish. Either a man would have kept the Books, and made the entries in question, of his own accord, and without any such obligation, or he would not: in the first case, trouble does not exist by the supposition: in the other, the trouble will find an ample compensation in the benefit it will be attended with to the individual himself, and his connections, over and above the public benefit, to the attainment of which the proposed obligation is directed. Not to speak of persons at large, when a man is concerned in trade, he owes it to himself and family to keep Books—he owes it, by a still stronger tie, to his creditors: and the more particular and instructive these Books are, the better for all parties. To the account of the proposed obligation may, therefore, be set down on the profit side the collateral utility it possesses with reference to individual security, in the character of a preservative against mismanagement and Bankruptcy, and the frauds which are so apt to attach upon that distressful state. If this collateral private benefit should be regarded as affording sufficient compensation for the trouble, the public benefit, by the contemplation of which the obligation was suggested, may be regarded as neat profit. There [150\_524] may be some heads, it is true, under which, with a view to the public purpose, the entries may come to be rendered more copious and particular than, for the purpose of private economy and good management, the individual would have found any use in making them. But the difference can hardly be of

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<sup>602</sup> The remainder of the paragraph is in the hand of a copyist.

any great magnitude, and a compensation for it is—that the heads containing the plan or scheme of Book-keeping will have been furnished to the individual by government, that is by the proposed Board, without any trouble of his bestowed on the framing of it, and with little or no addition (for little or none would be necessary) to his expence. The great difference in point of real trouble and reluctance is—not between the keeping Books under a greater number of heads and keeping them under a less number of heads—but between the keeping of books and not keeping of Books at all. For a man’s own sake and that of his private connections, no degree of coercion that shall be necessary to induce him to keep books can well be regarded as excessive: and when once a man is brought to take upon himself this trouble, the addition of such heads as may be necessary for the public purpose in question (heads ready framed for him and put into his hands) will, if they are properly framed, be made so as not to be productive of any sensible inconvenience.

As to precedent, how ample the sanction is which the proposed obligation has received on that ground, has already been stated in the paper of *Preliminary Observations*.<sup>603</sup>

[150\_525]

After all, it may not be necessary that the obligation should be imposed on *all* the licenced trades, nor, in the first instance, even upon *any* of them. The power to this effect is among the powers which it will rest with the Board, under the direction of their Official superiors, to employ or not, one after the other, according to the degree of the demand remaining in each instance, as denoted by the indications afforded by the proposed *Calendar of Delinquency*, concerning which see the *Observations* on the Section relative to that head.<sup>604</sup>

[150\_526]

{77} {2} § 27. page 177. {*Manner of his coming by the article*}.

This is one of those heads, which, to be applied to practice, would require a multitude of

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<sup>603</sup> See ‘Elucidations relative to the Police Revenue Bill’, pp. 119–20 above.

<sup>604</sup> See pp. 333–47 below.

subdivisions and explanations, such as might be framed to very good purpose by a permanent Board, especially with the help of experience, but which, if sufficiently precise and ample for the purpose, would run into a length of detail far too minute for an Act of Parliament. A string of questions would require to be framed, branching out into other questions corresponding to the several variations of which the answers to the first string of questions would be susceptible:—a part, and but a part, of the business would be, the framing a compleat list of the several events admitted by the law in the character of *efficient causes of title* with reference to the several sorts of things in question. A question that here occurs is—why, then, admitt so complex a head of enquiry?—The answer is—that, in point of *utility*, it is really necessary, and in point of *precedent*, it is a head of enquiry that has been prescribed in the Statute Book on a variety of occasions.<sup>605</sup> The occasion of taking *examinations* under this head occurs frequently to Magistrates, whose superiority of intelligence may be supposed capable of conducting them through the business without instructions from any other quarter. But where the person by whom the examination is to be taken is a low Shop-keeper, unless he has some such instructions for his guidance, he will oftentimes be really puzzled and perplexed by the answers he receives, or will still more frequently pretend to be so, if dishonest. The thing needful to [150\_527] be done is—to frame a compleat list of answers such as among them shall express every efficient cause of title that the case admitts of (a list that would be found to come into a shorter compass than might at first glance be supposed): this done, any answer comprized in such list may be accepted and entered under the head in question: at the same time, a refusal to fix upon one or other of the list of answers must be taken as equivalent to a refusal to give any answer: without this, an unmeaning and uninstructive answer will be the answer constantly and purposely *given*, by all dishonest venders, and as readily *accepted* by all dishonest purchasers.

The description of a person's *abode* is a topic susceptible of diversifications and perplexities such as it would require a little dissertation to clear up:—another task, as well suited to the proposed Board, as it would be unsuitable to Parliament: and till these perplexities *are* cleared up, the answer given by a dishonest seller will be sure to be pregnant with some evasion, which an honest purchaser will frequently be unable to see through, and which a dishonest purchaser will take care not to appear to see through, so

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<sup>605</sup> For discussion of the statutory prescription and revision of the details required to be recorded by

long as the not seeing through them can not be imputed to him as an offence.

[150\_528]

**{78} {1}** § 28. page 179. {*Person knowingly .^.^ giving any false account of himself shall forfeit*}.

If no penalty be inflicted on a person giving a false account of himself, the account given by a dishonest venter will be, of course, a false one; by which means the only class of persons against whom the provision is levelled will elude the force of it: and if means such as the above be not taken for fixing upon each person the account he gives of himself, it will be difficult to convict a man under this clause: but by means of the signature here proposed, nothing can be more easy.

It would, with a view to Police, be a very beneficial law if the bare act of a man's changing his name, without proper authority, were made penal: since any such change can scarcely be ever directed to any other than a bad purpose; nor can it well be necessary to any good one.<sup>606</sup> Giving an answer in any respect false to the enquiry prescribed by any of the *heads* which have respect to the party's name would be an instance of such an offence, as far as persons thus circumstanced are concerned. A regulation extending to all persons, in all circumstances, would be highly useful, it is conceived, and perfectly unexceptionable, but would add to the bulk and break the unity of the present Bill.

**{79} {2}** § 28. page 179. {*Suffer him to depart*}.

Precedent—By the Stolen Metal Act (29 G. [2].<sup>607</sup> c. 30. § 5),<sup>608</sup> 'if it should appear .^.^ that there was reasonable cause to suspect such Lead &c. to be unlawfully come by and that the person .^.^ to whom such Lead &c. was so brought or offered, did not (having it

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pawnbrokers see 'Elucidations relative to the Police Revenue Bill', pp. 121–2 above.

<sup>606</sup> Bentham had made a similar observation in 1782 in 'Indirect Legislation' at UC lxii. 193: 'The changing of one's name, accompanied with the change of abode, and without any known reason openly assigned, is as reasonable a presumption as can well take place, of delinquency either perpetrated or designed.'

<sup>607</sup> MS '3'.

<sup>608</sup> i.e. the Stealing of Lead, etc. Act of 1756.

in his power so to do) apprehend secure and carry before a Justice of the Peace as aforesaid, the person .^.^ who so brought or offered the same, .^.^ then the person .^.^ to whom such Lead &c. was so brought or offered shall be .^.^ adjudged guilty of a misdemeanour.’ To judge whether a man has refused to give answer to questions so simple as those which concern his name, abode, &c., is a task much easier, than to judge whether the goods he offers to sale were or were not ‘*unlawfully come by*’: the power of arresting is, therefore, less strong, and the obligation less burthensome, in the present case than in that in which it has already received the sanction of Parliament.

[150\_529]

{80} {1} § 29. page 180. {*For what .^.^ time .^.^ articles .^.^ shall .^.^ remain .^.^ without .^.^ alteration*}.

In the *Instructions*,<sup>609</sup> a particular time was proposed to be fixed by the Bill itself, as the time during which no alteration should be made in the appearance of the goods: and the provision in the Horse-slaughtering Licence Act abovementioned (26. G. 3. c. 71), forbidding the taking the hair off from the skin of an animal when flay’d,<sup>610</sup> is an instance of a provision established by the legislature itself, and directed to the same end: but if, instead of imposing the restraint by the Statute itself, power of imposing it according to circumstances be given to the *Board*, the efficiency of the provision may thus be increased on the one hand, while it is kept clear from producing vexation on the other hand. That there are some sorts of goods that may be kept any such definite time unaltered without inconvenience is unquestionable: but that would probably be found to be too much to say of all sorts of second-hand goods without exception, and in all circumstances. The Board might enter without difficulty into all these distinctions, and administer a prompt remedy to any inconvenience it may happen to have given birth to, by any regulations on this head: but all this is far *beneath*, and thence *beyond*, the power of the legislature. Inefficient or

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<sup>609</sup> Presumably a reference to a brief for Bentham’s guidance written by Colquhoun, but now missing.

<sup>610</sup> No such provision is contained in the Knackers Act of 1786, and Bentham probably had in mind the requirement for giving six hours notice before slaughter, for which see p. 73 n. above. The Act also (§ 9) noted that evidence of illegal slaughter was often destroyed and prescribed that slaughterers who should treat hides with lime ‘or any other corrosive matter, or destroy or bury any Hide or Hides, Skin or Skins’ were to be deemed guilty of a misdemeanour.

vexatious, or both together, such will be apt to be the fate of any regulation relative to such a subject, if flowing from so high a source.

{81} {2} § 29. page 180. {.^.^ *What proportion of the purchase-money .^.^ shall be reserved .^.^.*}

The advantages derivable from a provision to this effect are obvious: but neither does it seem altogether free from objections, which, however, are done away by committing the business to the discretion of the Board. Where urgent distress is the cause of sale, the hardship resulting from the suspension of relief is obvious, especially in a situation where there are no Pawnbrokers: a Class of persons, of whom but a small number, in proportion to population, are found elsewhere than in and about the Metropolis: and, in case of collusion between a Receiver and a Thief, the provision seems liable to be evaded, by encreasing the price nominally demanded in such manner that the proportion allowed to be paid down shall be equal to the price really required. By details such as the Board could give, this objection might perhaps be obviated.

[150\_530]

{82} {1} § 30. page 181–2. {.^.^ *Council .^.^ to ordain .^.^ what .^.^ marks .^.^ shall .^.^ be .^.^ thereupon*}.

In the *Instructions*,<sup>611</sup> it seems to be assumed, that, excepting such masses as are melted down by thieves or their receivers, no masses of metal in an unfashioned state are found without certain distinctive marks. That a practice of this sort is general at least, I take for granted from this assumption: but before it can be proper to inflict penalties on persons having masses of metal in their possession without such marks, several points (it should seem) will require to be ascertained, some of which at least appear dubious—viz:

1. Whether at present the practice in question is not only general, but *universal*, without any exception, in the instance of every sort of metal and metallic mixture, among all honest dealers?

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<sup>611</sup> See p. 286 n. above.

2. Whether the mode of marking, in all this immense variety of instances, is uniform, or though not precisely the same in all these cases, yet in all of them of such a nature as to be already sufficiently adapted to the intended purpose?—Before I took upon me to draw a clause by which Parliament would do the business of itself, without further lights, it would be my wish to see all the several marks that are in use for metals in their unfashioned state. Iron imported from abroad affords (I have reason to think)<sup>612</sup> one instance at least of a mass of metal which exhibits itself in this state without any manufacturer's name.

3. Whether, if the prohibition in question were to be made *absolute* by the Act of Parliament itself, it might not happen, that a man who had never had in his possession any bar or ingot &c. but what had been marked, might yet have rendered himself liable to the penalties of the Act, by having cut off for use, from the entire bar or ingot, a portion not bearing the mark or any part of it, if sufficient time were not allowed for the working up of all such unmarked portions as may have thus been separated from the part which bears the mark?

[150\_531]

Under the apprehension that the answer to the two first of the above three questions would be found to be in the negative, and that to the third in the affirmative, the provisions of the Bill have been framed accordingly.

The advantage immediately sought for by the licencing system would not be the only advantage derivable from an uniform system of marking for all such goods as are the produce of human skill and art. It would operate as a *preventitive of frauds*, by goods suppositious in *specie* or bad in quality, and at the same time as a *bounty* upon extraordinary skill and merit, a bounty of a sort naturally proportioning itself to the *degree* of merit. In the former of these views, marks have already been prescribed by Statute in a variety of instances:<sup>613</sup> in the latter way little, if any thing, appears as yet to have been done.

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<sup>612</sup> In June 1794 Bentham had bought a considerable quantity of iron, intended for the panopticon prison, from John Booth & Co. of Sheffield: see Bentham to Evan Nepean, 18 June 1794, Bentham to the Marquess of Lansdowne, 26 June 1794, and Bentham to Samuel Bentham, 5 October 1796, *The Correspondence of Jeremy Bentham*, volume v. ed. A.T. Milne, London, 1981 (CW), pp. 47, 49, 278. There is no evidence, however, that the iron had been imported.

<sup>613</sup> Legislation requiring goods to be marked systematically with reliable indications of provenance and quality ranged from the Plate (Offences) Act of 1739 (12 Geo. II, c. 26, § 5), which prescribed hallmarks for

The thing requisite would be—to afford a man protection for this particular branch of reputation (the reputation resulting from the having ascribed to him all his own works and none but his own works) by considering it as being, *legally* speaking, a species of forgery (morally speaking, it is already) for any one man to counterfeit the mark which any other man employs for the purpose of distinguishing his works. But, for this purpose, a system of marking would require to be devised, diversified according to those various capacities in respect of the receiving of such marks, which result from the qualities, forms, and magnitudes of the different classes of goods.

[150\_532]

To a first glance, the vexation and expence attendant on the operation of making the proposed marks may, perhaps, present itself as constituting a mass of inconvenience more than equivalent to any benefit derivable from this clause. But, to judge by what has been already done by Parliament in the case of Paper, the objection drawn from this topic will hardly be regarded as conclusive. By the Paper-Hanging Import-Duty Act ([32]<sup>614</sup> G. 3. c. 54. § 1) every piece of coloured Paper imported into Great Britain, though it should be of *less* than  $\frac{1}{2}$  a yard in length, is to be stamped at one end; and if it be of that length or more, at *both* ends. The rate of duty on such paper so imported is (by the New Table of Import Duties 27 G. 3. c. 13) 75 per Cent *ad valorem*: three-quarters of the value.<sup>615</sup> The trouble of putting two stamps is, therefore, thought not too great for the securing of a payment which may not amount to above a penny or three halfpence. The smallest mass, ever imported in the way of merchandize, of the least valuable species of metal, viz: iron, can not but be worth a great many times as much as many a one of these pieces of paper.

The difficulty and trouble of impressing a mark upon a substance so much harder than paper, and from which every mark which (like that on paper) were to be merely superficial would be apt to undergo so speedy an obliteration from the mere action of the atmosphere, may, in the case of iron, present itself as another ground of objection in relation to the present purpose. [150\_533] But, in the instance of iron, three several marks

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gold and silver wares, to the Metal Button Act of 1796 (36 Geo. III, c. 60, § 2) and the Sale of Butter Act of 1796 (36 Geo. III, c. 86, §§ 2–3).

<sup>614</sup> MS ‘34’.

<sup>615</sup> The Customs and Excise Act of 1787 (27 Geo. III, c. 13, Table D) imposed an import duty of 75% on ‘Painted Paper or Paper Hangings for Rooms’.

were {by 23 G. 2. c. 29. § 13}<sup>616</sup> required to be made, by authority of the Commissioners of the Customs, in the length of every bar imported from the Colonies, and this to no other purpose than the ascertaining either its having been imported *from* one of those Colonies in contradistinction to any other place, or its having been imported *into* the port of London in contradistinction to other British ports. The difference between an article's having and not having been stolen seems a point of rather more importance, and rather better worth the trouble of ascertaining, than either of these two. But if, in the instance of iron—of all metals the hardest, the most difficult to stamp, and the most apt to lose by mere lapse of time any stamp that has been impressed upon it—the trouble of stamping each piece three times over is a trouble not too great to be grudged, for the effecting of the proposed purpose, much less can it be so in the instance of any other metal. The clause, by which the operation of stamping was thus prescribed, was repealed, it is true, within about seven years after it was past (viz: by 30 G. 2. c. 16. § 4).<sup>617</sup> But that it was not any such consideration as that of the trouble of the operation that gave birth to the repeal, appears from the words of the Act itself: it was not because it had ever been too troublesome, but because it would 'for the future be unnecessary'—the object which it was intended to help accomplish, viz: the confining the importation of the article to the Port of London, being, by the preceding clauses in that same Statute, given up.

[150\_534]

From the operation of marking, as thus proposed, three very distinguishable benefits would be derived in the first instance: 1. the affording a security against *degradation* (which on the present occasion is the main object); 2. the affording a security against *fraud* in respect of the quality, by making each manufacturer or mine-worker responsible for his own works; 3. the affording an inexhaustible, though unexpensive, fund of *encouragement for improvements* in regard to the quality, by securing to each manufacturer or mine-worker a property in the commercial reputation derivable from the excellence of his works. 4. To these benefits might be added at any time, and without any addition either of

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<sup>616</sup> The Iron Act of 1750 (23 Geo. II, c. 29, § 13) authorized the duty-free import of iron wrought into bars from the American colonies into the Port of London, on condition that the bars were stamped 'in three different Parts of every such Bar .^^. two of the said Marks or Stamps at the Distance of one Yard from each End of such Bar, and the other of them at or near the Middle thereof'.

<sup>617</sup> The Importation Act of 1757 (30 Geo. II, c. 16, § 1) extended the duty-free import of American bar-iron to all parts of Great Britain, and (§ 4) abolished the requirement for it to be stamped.

vexation or expence, the benefit of *securing the collection* of any *future duties*, which it might be thought fit to impose either upon the importation, the exportation, or the re-exportation of the article. Not to mention that of helping to ascertain the country from whence the article came in case of importation, supposing that to be (what it has in so many instances been thought to be) a point worth the attention of the legislature.

[150\_535]

{83} {1} § 31. page 183. {.^.^ *Purchaser shall .^^. make .^^. an assay .^^. and .^^. entry of the result*}.

The names in question are indicative of certain *proportions* as between the two metals (*Tin* and *Lead*) of which Pewter is composed: and these proportions (it is understood) afford a presumption more or less conclusive with regard to the species of ware into which the metal had been formed. When a quantity of Pewter is brought for sale, it may by this means be *known* (for example), or at least *conjectured*, whether in its fashioned state it had existed in the shape of *Alehouse-Pots*.<sup>618</sup> This *datum* would serve as a *clue*, to the enquiry respecting the manner in which the goods had been obtained; and, where coupled with the indications deducible from the other heads of enquiry respecting *name*, *occupation* and *abode*, would contribute to the rendering this species of depredation too dangerous to be practiced.

Although the licencing system were not to receive so great an extent as to include all persons having occasion to melt any kind of metals, yet *Pewterers* at any rate might (it should seem) be included without any great objection, and ought to be, for the purpose of restricting *their* purchases either to licenced dealers, or to such persons at large as would submit to the enquiries contained in the species of Account-Books herein prescribed.

[150\_536]

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<sup>618</sup> On 11 February 1796 a group of licensed victuallers in London petitioned the House of Commons to seek legislative aid in reducing their losses by the theft of pewter pots, while on 26 February 1796, in evidence to the committee to which the petition was referred, William Brown, publican, estimated the annual value of such losses at £100,000: see *Commons Journals* (1795–6) li. 380–1, 440. Colquhoun, *Treatise on the Police of the Metropolis*, p. 42 & n., dismissing this figure as an exaggeration, estimates the annual loss at 500 tons, and its value at £55,000.

A consideration that leads me to doubt whether a provision to any such effect as this would continue for any considerable length of time to retain its efficacy, is that of the extreme fusibility of both these metals. Let the proportion of three part of lead to one of tin be indicative, for example, of an Ale-house Pot. *Lead* and *Tin* are both fusible with so small a degree of heat when separate (and with a still smaller when in mixture), and Lead at least so *cheap* and so easily procurable (especially, in the way of depredation, by cutting off pieces of leaden roofs or water pipes in the night-time), that by so simple an operation as the throwing in a piece of lead into the *ladle* or *fire-shovel* in which the pewter was melted, the indication might be destroy'd at any time and by any body. If, at present, the herd of thieves are not possessed of so simple an article of knowledge, it is because, under the existing order of things, there is no demand for it: but under the proposed order of things, necessity, it is presumed, would not be long in teaching it them.

### Part V. Procedure

[150\_537]

{84} {1} § 33. page 184. {*Proof of such reasonable cause .^^. to the satisfaction of any Justice .^^.*}

Otherwise thus—*Upon reasonable cause proved upon Oath for suspecting.*—In several Acts (the 22 G. 3. c. 58. § 2 for one) in which a clause to this purport occurs, the phrase is turned in the following manner, viz: Any .^^. Justice .^^., ‘*on complaint made before him upon oath that there is reasonable cause*’.<sup>619</sup> The difference is a very material one: in the form of words *here* employ'd, the judgment, *whether there be such reasonable cause or not*, is committed, as it ought to be, to the Magistrate: in the other form, it is (through inadvertence doubtless) left to the witness: since an averment on his part in general terms, *that there is such reasonable cause*, is, if made before proper authority, and upon oath, sufficient to satisfy the Act.

{85} {2} § 33. p. 185. {*In the act of being removed*}.

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<sup>619</sup> The Criminal Law Act of 1782 (22 Geo. III, c. 58, § 2) authorized any Justice of the Peace to grant a search warrant, ‘upon Complaint made before him upon Oath, that there is Reason to suspect that stolen Goods are knowingly concealed’ in any house or other place.

I do not recollect any particular precedent exactly in point for this addition: but the propriety of it will hardly be objected to. The principle is sanctioned by the Statute of 11 G. 2. c. 19, which gives the power of following goods carried off to be prevent their being distrained.<sup>620</sup> The relation of *place* did not seem to present any additional source of clearness or precision. In some instances, a parcel of goods might be *close to* the spot in question, and yet it might be matter of doubt whether they were in the act of being removed thither or from thence: in other instances, they might be several miles off, and their destination might notwithstanding be beyond doubt.

[150\_538]

{86} {1} § 34. page 185. {.^.^ *Goods stolen* .^.^ *warrant* .^.^ *to make search*}.

In general, search can not be made by warrant for stolen goods, unless there be a deposition upon oath, against a particular person, charging him with felony committed in respect of such goods.<sup>621</sup> By the Stolen-Metal Acts, (29 G. 2. c. 30. § 2; and 22 G. 3. c. 58. § 2) this condition is dispensed with in the instance of goods of that particular description.<sup>622</sup> but if the dispensation is proper in the instance of that particular class of goods, it can hardly be otherwise than proper in the instance of any other class of goods. The clause to this purpose, though thus general in respect to *persons*, yet appeared to have so intimate a connection with the system which it is the object of the present Bill to institute, and in particular with the matter of the last preceding clause, that (in conformity

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<sup>620</sup> The Distress for Rent Act of 1738 (11 Geo. II, c. 19) gave landlords various powers to distrain goods in lieu of unpaid rent, including (§ 1) a right to seize goods or chattels which the tenant should ‘fraudulently or clandestinely convey away, or carry off or from such Premises .^.^ wherever the same shall be found’.

<sup>621</sup> Sir Edward Coke, *The Fourth Part of the Institutes of the Laws of England: concerning The Jurisdiction of Courts*, London, 1644, Ch. 31, p. 176, had stated that a Justice of the Peace ‘cannot make a warrant upon a bare surmise to break any mans house to search for a Felon, or for stoln goods’. The question of the grounds on which a warrant might be granted is further discussed in Burn, *Justice of the Peace*, ii. 383–5.

<sup>622</sup> The Stealing of Lead, etc. Act of 1756 (29 Geo. II, c. 30, § 2) authorized a justice to issue a search warrant ‘upon Complaint made to him upon Oath by any credible Persons, that there is Cause to suspect’ that stolen metal was concealed in any house or other place. The scope of the Criminal Law Act of 1782 (22 Geo. III, c. 58, § 2) was not limited to stolen metals, but rather, as noted above (p. 292 n.), gave Justices powers to issue a search warrant in respect of stolen goods of any type.

to the *Instructions*)<sup>623</sup> I have inserted it without scruple.

[150\_539]

{87} {1} § 35. page 186. {.^.^ *Lawful .^.^ for every Surveyor .^.^ to inspect the Stock .^.^ in such Shop &c.* }.

A power to this effect can not, it is conceived, consistently be refused. It is a natural and almost a necessary accompaniment to the power for prescribing forms of Book-keeping. It would be to little purpose that Books should be kept, if somebody on the spot had not the power to look into them: it would be to little purpose that Books should be looked into, without the power of comparing the entries made in them with the stock of which they speak. A power to this effect runs through the whole fabrick of the Excise Laws: it is the main basis of that system.<sup>624</sup> Upon almost all the occupations covered by that system, it inflicts a pressure as burthensome as it is unhappily indispensable. In those cases, the Officer must be, almost without ceasing, upon the spot: and manufacturing processes, many of them involving valuable and dear-bought secrets, must be perpetually embarrassed by his presence. In the present case, the power of making an occasional visit, and even in most instances the bare *faculty*, without its passing into *act*, will be adequate to the purpose. In those cases, what is exposed to view is what a man would not willingly expose to the view of any one: operations—processes—raw materials not yet in a state for sale. In the present case, nothing is exposed to the view of the Officer, but what it is the wish and the endeavour of the Dealer (supposing him not dishonest) to expose to the view of every one: articles which he has bought for sale, and which he can not take his chance for selling, but in proportion as they are exposed to view.

[150\_540]

{88} {1} § 36. page 187. {.^.^ *Counterfeiting &c. any .^.^ licence, .^.^*

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<sup>623</sup> See p. 286 n. above.

<sup>624</sup> Excise officers had been granted powers of entry and inspection under, for example, the Excise Acts of 1724 (10 Geo. I, c. 10, § 12) and 1781 (21 Geo. III, c. 55, § 6).

*second offence .^^. felony. }*

It seems<sup>625</sup> necessary, were it only for the sake of regularity, that a clause should be provided for the prohibition of those modifications of the crime of forgery which have for their subject matter the instrument of licence, though, under the contradiction given to them by the Register in the custody of the Board, there seems little likely-hood of their being frequently, if ever, attempted to be committed: and in regard to those which have the *inscription* for their subject-matter, the case seems much the same. Falshoods having for their subject-matter the party's own name are much less improbable: since, in the case of a bad character, a change of name and abode is the natural resource.

Pecuniary Forfeiture sounds milder than corporal punishment, and, being made recoverable in the summary mode, will be more efficacious than a severer punishment, not inflictible but in the regular mode of procedure: yet, for the sake of appearance and conformity to precedents, it seemed necessary in case of forgery to appoint felonious punishment, at any rate for a second offence. In some instances I have observed of forgery for similar purposes, the penalty has been pecuniary only, and that a *fixed* one.<sup>626</sup> The amount of it, it is true, appeared considerable: but the profit, capable of being made by incurring it, appeared still more considerable.—A penalty inferior to the profit of the offence, constitutes—not a prohibition, but a licence.<sup>627</sup> In the list here given of the modifications of the *crimen falsi*,<sup>628</sup> a degree of plentitude, and, in the description of the condition in which a second offence shall receive an aggravated punishment, a degree of caution, may perhaps be remarked, rather beyond what is commonly to be found. Should any of these attempts at improvement be disapproved of, on the score of novelty, it will be

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<sup>625</sup> Bentham has deleted these two words, but the sense requires their retention.

<sup>626</sup> Bentham may have had in mind statutory penalties for displaying misleading or fraudulent signs, as imposed by, for instance, the Hat Duties Act of 1784 (24 Geo. III, sess. 2, c. 51, § 6): ‘if any Person or Persons shall cause the words *Dealer in Hats* to be affixed or put in the Front of his .^^. shop .^^. without being licensed, he .^^. shall, for every Offence, forfeit the Sum of fifty Pounds’.

<sup>627</sup> See Bentham's first Rule of Proportion between Punishments and Offences and his comment on it in *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart, London, 1970 (CW), Ch. XIV, p. 166: ‘*The value of the punishment must not be less in any case than what is sufficient to outweigh the profit of the offence.*

‘If it be, the offence .^^. will be sure to be committed notwithstanding: the whole lot of punishment will be thrown away: it will be altogether *inefficacious*.’

<sup>628</sup> i.e. forgery.

easy to strike them out.

[150\_541]

The interpretation here given of the words ‘*second offence*’, is no other than what, without any such explanation, would be sure to be put upon them in a Court of Law: but, it being a very strained one, and such as a man who were not a lawyer would hardly suspect them to be capable of (exhibiting rather the provision which it were to be *wished* the legislature had made, than any which it actually *has* made), it seemed to be that sort of explanation which, if approved of by the legislature, ought to be given by the legislature itself.

[150\_542]

{89} {1} § 37. page 187–8. {*Person .^^. obstructing .^^. by force .^^. transported for .^^. seven years*}.

The Receivers of stolen goods, against whom the licencing system is levelled, will naturally have gangs of thieves at their command, disposed and prepared, whenever an opportunity occurs for giving them notice, to oppose every obstruction that can be opposed, to the execution of such a Law: a result the more probable, inasmuch as among these Receivers are persons known to be in opulent circumstances. If, in an unlicensed house, a search is attempted to be made for goods requiring a license, or if, in a criminal Receiving house, licenced or unlicensed, a search is attempted to be made for stolen goods, some of the gang will be keeping the informer and his company at bay, while others are employ’d in carrying off or secreting the obnoxious articles. Vagabonds and common Malefactors, without property, honest lively-hood, or local attachment, might even be engaged to seize the person of an active Officer of the Board and keep him in confinement for the sake of enabling their associates to carry on a particular enterprize for a certain length of time without interruption, if no punishment, heavier than that for a common misdemeanour, were to be seen hanging over their heads.

[150\_543]

If it were not for the formidable sound of the word *felony*, it might be better to make

it *felony* at once (meaning *single* felony), on account of the advantages attending the mesne process in case of felony in comparison of that in case of a misdemeanour:<sup>629</sup> advantages too numerous and various to be here repeated, and which could not all of them be extended to the misdemeanours created by this Act (though some of them are), without a detail too particular and voluminous to be endured. Setting aside these advantages, the only very material difference between the effect of a conviction of felony and conviction as for a transportable offence, without felony, as here, consists in the sweeping forfeiture which attaches to felony, but which is so easily eluded, where there is property to render it worth while, that the difference in point of terror may be reckoned as nothing.

By the 9 G. 2. c. 35. § 28,<sup>630</sup> not only ‘wounding or beating’, but ‘forcibly hindering, opposing, or obstructing’ an ‘Officer of the Customs or Excise .^.^ on board a ship .^.^ or boat within the limits of any of the Ports’, is made punishable by transportation (without felony) as above. This is *without felony*: but by § 10 of the same Act, persons assembling ‘with offensive arms or weapons .^.^ in order to be aiding and assisting in the clandestine running, landing, or carrying away prohibited or uncustomed goods’, or ‘to rescue the same after seizure’, or ‘to watch for proper opportunities for that purpose’, if ‘assembled to the number of three or more .^.^ in any town or village adjacent to the sea’, are to be ‘adjudged guilty of felony’ as well as transported for seven years *certain*.<sup>631</sup>

[150\_544]

The above quoted provisions for strengthening the hands of justice form part of a numerous and confused heap of provisions of the same tendency, established by Statutes upon Statutes in the case of offences against the Laws of Excise and Customs, among which are several more that would require to be applied to the Offences against the present Bill, were it not for the voluminousness and perplexity that would be the result.<sup>632</sup> The

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<sup>629</sup> The procedural rules for dealing with felonies were different from those for misdemeanours, and generally less complex,: see, for instance, Blackstone, *Commentaries on the Laws of England*, iv. 313–16.

<sup>630</sup> i.e. the Offences against Customs and Excise Laws Act of 1736.

<sup>631</sup> The phrase ‘in any town or village adjacent to the sea’ does not appear in the Act, although the preamble to § 10 does allude to ‘divers dissolute and disorderly Persons [who] frequently appear in great Gangs near the Sea Coasts’.

<sup>632</sup> In the margin, Bentham has noted at this point: ‘The option of Transportation (inflictible of course no otherwise than by regular procedure) is allowed for atrocious cases: that of a pecuniary penalty, with the

present is a case in which the demand for provisions of this tendency seems to be little, if at all, inferior to what it is in the case of those other branches of the Revenue Laws: for if, on the one hand, the mass of property to contend with in the hands of the *Master-Malefactors* is not here so great, on the other hand, the characters of the *underlings* are in *this* case still more profligate and desperate than in *those*: and it seems hardly to be expected, that so considerable a branch of trade as that in question (I mean the trade in stolen goods) should be given up altogether without a struggle. As to *felony*, in the existing state of the laws in that behalf, it is so variegated and undefinable a composition, and, taking procedure into the account, has so many good as well as bad points about it, when compared with the punishment for a misdemeanour, that while it continues upon this footing, a man who pays due attention to the consequences of the Bills he draws, must find himself continually at a loss whether to employ it or put it aside. One great task for the Board might be—to suggest the means of reducing all this confusion to order, all this absurdity to reason.

[150\_545]

{90} {2} § 37. page 188. {*Lawful for any person .^.^ to apprehend .^.^ every person so offending by force and violence*}.

If the offence of forcible obstruction were to be made felony, the power of arrest here created *by* special words would devolve upon persons in general, *ex vi termini*,<sup>633</sup> *without* special words.<sup>634</sup> But then, on the other hand, how few are there, besides lawyers, that would know as much?

At any rate there could be no objection (it is supposed) to the making the punishment

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portion of imprisonment succedaneous to it, for cases where transportation would be excessive, or the trouble and expence of regular procedure would prove a bar to prosecution.’ The Offences against Customs and Excise Laws Act of 1736, §§ 29 and 30 respectively, imposed fines of £100 on persons who obstructed customs or excise officers in their attempts to search vessels, and on tavern and alehouse keepers who knowingly harboured persons against whom proceedings had been issued for excise offences.

<sup>633</sup> i.e. ‘from the force of the term’.

<sup>634</sup> See Blackstone, *Commentaries on the Laws of England*, iv. 289: ‘Any private person .^.^ that is present when any felony is committed, is bound by the law to arrest the felon; on pain of fine and imprisonment, if he escapes through the negligence of the standers by.’

for a *second* offence felony, with transportation for seven years certain: in which case, the longest term of transportation for a first offence might be reduced to three years.

[150\_546]

{91} {1} § 38. page 188. {*And for levying every such sum &c. &c.* }.

Two points here required to be provided for—the punishment itself, and the means to be employ'd for producing submission to the punishment. The punishment here provided is of a *mixt* nature: and such it must be, if it is to meet every man's case. Pecuniary punishment alone will not suffice. It will not reach the indigent: it will not always reach even the opulent with effect, where it fails of out-weighing the profit of the offence: a failure which can not be avoided, where, the offence being habitual, the profit of it is unlimited, at the same time that the penalty can not be otherwise than limited;<sup>635</sup> as where summary procedure is employ'd, in which case a pecuniary penalty beyond £20, or some such limited amount, would hardly be allowed to pass. Imprisonment alone would not perfectly answer the purpose; in case of a venial transgression, it would be too severe upon a man who were able and willing to submit to pecuniary punishment: and it would afford no means of remuneration—no means of engaging those services, without which the best law is no better than a dead letter.

The mode most commonly employ'd is indeed a sort of aggregate of the two, but without *mixture*. Distress and sale, in the first instance; imprisonment, in default of sufficient distrainable matter, but not otherwise. The imprisonment being a *succedaneum* only, not an accompaniment, to the Distress and Sale, so that they can not be employ'd together, nor is there so much as an option between the two, the combination, such as it is, fails in a multitude of instances of being adequate to its intended purpose. It seems to have been either determined, or at least generally understood, that a warrant of distress must first be issued (although it should be known that there is nothing to distrain), and that warrant returned, before a warrant of commitment can be issued. By this means, neither

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<sup>635</sup> See *An Introduction to the Principles of Morals and Legislation* (CW), Ch. XIV, p. 170: 'To make sure of giving the value of the punishment the superiority over that of the offence, it may be necessary .^.^ to take account of the profit not only of the *individual* offence to which the punishment is to be annexed, but also of such *other* offences of the *same sort* as the offender is likely to have already committed without detection.'

punishment reaches a man who is *not* a Housekeeper; nor yet a man who *is* a Housekeeper, unless the loss of the money happens to be a less inconvenience than that of [150\_547] removing his goods out of the way. In case of Distress by a Landlord, there are powers for following the goods:<sup>636</sup> in case of Distress by a Justice, there is no such power.

As imprisonment, in default of distrainable matter, will not come up to the purpose, so neither will the option of either punishment to the exclusion of the other. Suppose it known, that the offender has wherewithal to bear the pecuniary punishment: suppose again that, in such case, pecuniary punishment, being in itself preferable, is accordingly appointed by the Magistrate in preference, and a warrant of distress issued accordingly. Yet, notwithstanding the solvency of the party, this course will frequently prove inadequate to the production of the intended effect: for the Offender, being conscious of delinquency, and expecting conviction, has taken care previously to secure his goods by sale, loan, deposit or removal.

Imprisonment alone (as we have seen) is not suited to every man's case, nor indeed completely adequate to any man's case. Pecuniary punishment, so called, amounts in fact, where payment is no otherwise to be enforced than by distress and sale, to nothing but the inconvenience of removing a man's goods: an inconvenience which, in the case of one who is neither a Shop-keeper nor a House-keeper, is next to nothing.

[150\_548]

To meet every man's case, the option must, therefore, be a *triple* one: embracing not only the two simple modes of punishment, pecuniary and corporal, taken separately, but also a *composition* of the two: and in as far as pecuniary punishment comes to be employ'd, so far, in default of sufficient distrainable matter, and though it be in addition to *penal* imprisonment, *compulsory* imprisonment must be employ'd: i.e: imprisonment employ'd for the purpose of compelling payment, and thence determinable at any time by payment—imprisonment employ'd for the same purpose as, in regular procedure, it is employ'd for recovery of a debt, but not, (as in that case) for a time otherwise unlimited.

There can be nothing of undue severity in such an option: nor is it more exposed to any well grounded imputation of severity, than any of the other imperfect modes. If neither

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<sup>636</sup> i.e. under the Distress for Rent Act of 1738: see p. 293 n. above.

of the two punishments taken singly be excessive, neither can the half of each added together be excessive. The quantum of the compound mass being limited, the extending the choice as between ingredient and ingredient, is not adding to that quantum: because in as far as one ingredient is employ'd, another is left out.

Considerate tenderness, not inordinate severity, is the natural result of the latitude of discretion here proposed to be allowed: where such discretion is allowed, inordinate severity will at least always be avoidable: in the opposite case, it will sometimes be unavoidable.

[150\_549]

Impunity, and *that* in circumstances affording rather an encrease than a diminution in the demand for punishment, is the natural and frequent result of the prevailing inadequate and inconsiderate practice: no good reason can be assigned, why a *non-housekeeper* should be less exposed to punishment than a *house-keeper*, a *batchelor* than a *married man*.

It is evident that, in the case of a pecuniary punishment, if one only of the two modes of compelling payment (Distress and Imprisonment) is allowed, the latter is much preferable; because if Distress alone be allowed, a man who has nothing to distrain, that is one who is not a House-keeper, enjoys a compleat impunity, not being so much as laid under the obligation of shifting his quarters; an inconvenience from which, where imprisonment is the mode of compulsion employ'd, he is not exempted.

[150\_550]

As to *precedent*, the two masses of delinquency, which seem to come nearest to those here proposed to be created, are those which regard the Ale house-licencing system, (under the 5 G. 3. c. 46. §§ 22, 23) and those which regard the Hawker-licencing system (under 29 G. 3. c. 26. §§ 23, 24).<sup>637</sup> Under the former Act, the resource of Distress and Sale

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<sup>637</sup> The Stamp Act of 1765 (5 Geo. III, c. 46, §§ 22–3) imposed a rising scale of fines on unlicensed retailers of ale and beer, with a penalty of imprisonment if the fine was not paid within fourteen days of the first conviction, seven days of the second conviction, or three days of the third conviction, and gave Justices summary powers to determine such cases. The Duty on Hawkers, etc. Act of 1789 (29 Geo. III, c. 26, §§ 23–4) required Justices, in cases where a fine of up to £20 imposed on an unlicensed hawker remained unpaid, to imprison the offender for a term of up to three months, pending the recovery of the money through distraint and sale of the individual's goods, unless the individual entered into a recognizance set by the Justice, and

is omitted altogether: in default of payment, imprisonment is employ'd as a means of enforcing it, but the offender has fourteen days given him to run away. Under the latter Act, in default of immediate payment, distress and imprisonment are both provided for the purpose of securing it, and not only the *power* of employing them is *given* to the Magistrate, but the *obligation* of employing them both together is *imposed* upon him.

[150\_551]

The course chalked out by that Act may be regarded as constituting no inconsiderable improvement in the system of summary procedure: and the precedent it affords, being so closely in point to the cases to be provided for in the present Bill, eases the draughtsman of no small share of the burthen under which he would otherwise have had to labour. In the general run of penal Statutes, without any exception that at this moment I am aware of, the provision made for the enforcement of the law falls short of the mark: in this alone it reaches the mark. The fault, if it has any, consists in its going beyond the mark: imposing *obligation*, where *power* would have been sufficient: obliging the Magistrate to employ imprisonment and distress and sale together, in all instances without distinction, those consequently included, in which one of the two compulsive processes would be adequate to the purpose. The persons to be *dealt* with in the capacity of Offenders are in *that* case (it may be said) so particularly circumstanced, that measures of less cogency would hardly have sufficed. It being the characteristic of a Hawker to be always upon the move, he would be off, or his goods would be off, or both would be off together, if provision for laying hold of both together in the first instance were not made. The remark is so far just that in many cases, perhaps in most, it will probably happen that the union of both measures will be necessary: but so long as [150\_552] there will be any cases in which it is *not* necessary, power on the part of the Magistrate, simple power without obligation, is preferable to power clogged with obligation. Perhaps the apprehension was, lest, if the Magistrate were left free, the Offender, through carelessness or false tenderness on the part of the Magistrate, should slip through his fingers. But (besides that the danger of this hypothetical mischief does not seem so great as to warrant the introduction of the other, which is an unavoidable one) on looking farther into the Act,

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supported by two sureties, to appear to answer the charge. The same Act (§ 12) imposed fines of £100 for forging a licence and (§ 13) £40 for making use of a licence granted to another person or lending a licence for such a purpose.

it will be found that this same course of unmitigable severity applies to other cases in which there is no such demand for it: applying to classes of eventual delinquents who can scarce fail either of possessing distrainable property, or of being personally forthcoming: viz: (under § 15) Parish Constables.<sup>638</sup> This particular case might (it is true) have been provided for by a clause on purpose: but such a clause, for the sake of obviating a mischief comparatively improbable, and therefore slight, would have introduced such a degree of complication as might be deemed a greater mischief. In a Statute embracing, as most Statutes necessarily do, a variety of offences and a variety of classes of persons, there would be no end of framing separate courses of procedure, inflexible in each instance, under the notion of making them fit to each man's case. But what is impossible for the Legislator to do, may be made easy for the Judge to do, if the legislator will but give him leave. Hence the advantage of working by *powers* rather than by *obligations*: a principle the utility of which is held up to view on more occasions than one in the course of the present pages.<sup>639</sup>

[150\_553]

Imprisonment, it must all along be observed, requires to be employ'd, and is accordingly employ'd, in two very distinct capacities:—as a punishment of itself, and as an instrument of compulsion applied for the purpose of causing a man to do or suffer something, and, amongst other things, to undergo some other punishment, and in particular a pecuniary one. For the first purpose it is always fixt, if not by the legislator, at any rate by the Judge: for the second purpose it can not be fixed either by the one or the other, but (whether it always ought to be or no) it is always capable of being limited: limited to a time certain, but determinable by the act of making payment, or by the doing or suffering whatever else is to be done or suffered.

In the case of the present Bill, the demand for the latitude of discretion here

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<sup>638</sup> The Duty on Hawkers, etc. Act of 1789 (§ 15) imposed a fine of £10 on any 'Constable, Headborough, or Tithingman, or other Officer or Officers of the Peace' who refused or neglected to assist in the detention or conviction of an unlicensed hawker. The fine, if unpaid, was made recoverable (§ 23) through the same processes of imprisonment and distraint and sale which were applied in the case of unlicensed hawkers.

<sup>639</sup> See, for instance, pp. 242–3, 257–8, 279–80, 286–7, above and pp. 337–9 below, and also 'Elucidations relative to the Police Revenue Bill', pp. 116–23 above.

contended for is still stronger than in that:<sup>640</sup> because though, among the classes of eventual offenders embraced by the present Bill, there are some still more irresponsible and *slippery* (if the term may be allowed) (Old Cloathsmen, for instance) than any operated upon by that Act: yet there are others, and those numerous and various, (Goldsmiths and Coppersmiths, for instance) beyond measure *more responsible*.

Besides the mixture of punishments and compulsive processes thus accounted for, another novelty or two may be observed: the power of repeating Distress and Sale, and the power for respiting both processes. The former meets the case of a man's having effects in different places, or coming into his hands at different times, as also that where Distress eventually insufficient has been taken through the fear of taking an excessive one: and bears analogy in some respects to the *alias* and *pluries* of regular procedure:<sup>641</sup> the other operates in favour of the defendant, and avails itself, for that purpose, of the excellent expedient of the Recognizance, provided for the opposite purpose by the abovementioned Act.<sup>642</sup>—it is the *jus parcendi* grafted upon the *jus coercendi*.<sup>643</sup>

[150\_554]

Specifying, as is done in the text on more occasions than one, the object which a Magistrate shall have in view in the exercise of the powers intrusted to him, is a practice which not only serves as a *guide*, but operates powerfully as a *check*: and thus enables the legislature, for the benefit of the public or the individual, to give powers of such magnitude as it might otherwise be scarcely safe to give. In case of abuse of the power, it answers the purpose not only of pointing the censure of the public at large upon the offender, but even of widening and clearing the ground on which *legal* censure may attach: for the more clearly the object above spoken of is defined, the more easy is it for the Court of King's Bench (which, in granting or refusing an information, governs itself principally, if not exclusively, by the consideration of motives and intentions) to pronounce whether, in doing as he did, the Magistrate complained of had or had not really in view the object

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<sup>640</sup> i.e. in the case of the Duty on Hawkers, etc. Act of 1789.

<sup>641</sup> An *alias* was a second writ of attachment, ordering the seizure of a person or thing, issued when the first had proved ineffectual; a *pluries* was a third such writ, issued when the first two had proved ineffectual.

<sup>642</sup> i.e. the Duties on Hawkers etc. Act of 1789, § 23: see p. 303 n. above.

<sup>643</sup> i.e. the right of forbearing grafted upon the right of coercing. These Latin terms were not in common use, although Hugo Grotius had used *ius coercendi* in reference to a parent's right to correct or chastise a child: see *De jure belli ac pacis* (first published at Paris in 1625), Bk. II, Ch. V, § 4.

prescribed to him by the Act. Thus, suppose information laid against a Goldsmith of known opulence and respectability for purchasing without a licence; and, through malice suppose, a warrant granted; and the Goldsmith brought under custody to answer for an offence against a Law not extending (as he thought) to his case:—or, suppose him again committed the instant after conviction, and at the same time a warrant of Distress and Sale issued and acted upon before he had had time to get a draught paid by his Banker for the money. Without words of direction such as those given in the Bill, the proceeding might be excused on the ground of excess of zeal, or want of understanding: but under those words, the malice would stand self-betrayed; the proceeding being so palpably unnecessary to the only purpose assigned as constituting a sufficient ground for it.

[150\_555]

{92} {2} § 38. page 189 { .^^. if .^^. mistake or accident .^^. acquit; if negligence &c. .^^. mitigate and reduce .^^. } }

Under the Excise Laws, or at least under the original and fundamental Law of that class (12 C. 2. c. 24. § 46) the power of mitigation is established indeed, but under great restrictions. Whatever circumstances may plead in favour of the Offender, costs must be given against him, together with not less than double the value of the duty which ought to have been paid.<sup>644</sup> This strictness is perhaps no more than what, in cases of that sort, and at that time of day, was necessary: but in the present case, and under the circumstances of alleviation to which the application of the power of mitigation is here confined, there will be no objection, it is presumed, to its being co-extensive (as it is here proposed to be) with the penalty.—In the present state of the Laws, in respect of method and expression, the involving, in the *words* of a penal law, a case not involved in the spirit of it, is an incident so natural and so frequent, that, without a door of some latitude left open for the protestation of innocence, it would be apt but too often to share the fate of guilt.

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<sup>644</sup> The Statute of Tenures of 1660 (12 Car. II, c. 24, § 46) allowed Justices, and Commissioners and Sub-Commissioners of the excise, the discretionary authority to ‘mitigate, compound, or lessen’ fines and penalties for excise violations, provided that ‘by such Mitigation the same be not made less than Double the Value of the Duty of Excise, which should or ought to have been paid, besides the reasonable Costs and Charges of such Officer or Officers or others as were employed therein’.

To the words ‘*dismiss the information*’, I have prefixed the words ‘*acquit the offender*’,<sup>645</sup> which, if in any such case the Magistrate commits any thing to writing upon the subject, will leave it at his option to make use of the one or the other phrase as he thinks fit. Whether the one or the other be employ’d may, perhaps, not be in every case a matter of entire indifference, since it is not a necessary consequence, that, because one information has been dismissed, no other information can be received, even for the same act. Witness the case of an indictment preferred after a former indictment quashed.<sup>646</sup> But this seems to be one of those points which, in the case of summary procedure, have hardly as yet attracted notice.

[150\_556]

{93} {1} § 39. page 190. {*No person .^^. incompetent .^^. by having .^^. share .^^. in any such forfeiture*}.

It is much to be wished, this proviso may be suffered to stand, though the reason of it is such as does not apply to this more than to other cases of procedure under Law. It is a deplorable thing that the Common Law, that is the Judges, should in former times have set up this rule in contradiction to the declared will of Parliament as well as the necessity of the case. Parliament, seeing that evidence is not to be obtained, nor consequently the law executed, without reward, offers a reward for a man’s evidence.<sup>647</sup> seeing this, Judges in

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<sup>645</sup> See p. 189 above, where ‘acquit such offender’ in fact follows ‘dismiss such information’.

<sup>646</sup> Bentham may have in mind cases where an indictment was dismissed on grounds of defects which could be eliminated in a new indictment in relation to the same act or offence. See Gude, *The Practice of the Crown Side of the Court of King's Bench*, 2 vols., London, 1828, i. 71: ‘Where an indictment is void for insufficiency, or if the trial is in a wrong county, and the party thus gets an acquittal, another indictment may be preferred for the same offence, whereby the insufficiency may be cured. 4 Rep. 40. H. P. C. 244.’ Gude’s references are to Coke, *The Fourth Part of the Reports of Sir Edward Coke Kt. The King’s Attoreney General*, London, 1727, p. 40, and Sir Matthew Hale, *Historia Placitorum Coronæ. The History of the Pleas of the Crown*, 2 vols., London, 1736, ii. 244, respectively.

<sup>647</sup> Under many penal statutes, informers were permitted to receive a share in any financial penalty resulting from a successful prosecution: the Hunting of Deer Act of 1661 (13 Car. II, c. 10), for instance, allowed them one half of the fine imposed for the unlawful wounding or killing of deer; the Conventicles Act of 1670 (22 Car. II, c. 1, § 1) allowed them up to one third of the fine imposed on illicit religious assemblies; the Gin Act of 1751 (24 Geo. II, c. 40, §§ 15–16, 29) allowed them one half of the fine imposed for the distillation, sale,

former days took upon them to say—and, therefore, Judges at present can do no otherwise than say—that if he is to receive the reward, his evidence shall not be heard.<sup>648</sup> The logic is this—if, in order to earn five pound, a man will speak the truth, to earn the same money he will committ perjury. It were much better logic to say—if, to gain five pound, a man will sell a horse of his own, to gain the same money he will steal one. Perjury has this to distinguish it from all other crimes, that, if committed at all, it must be committed in the face of a Judge, who is upon the watch to detect it. Perjury on either side in civil cases, perjury on the Defendant’s side in penal cases, are yet unhappily but too common. Perjury against the Defendant in penal cases is perhaps of all crimes the most rare. It is that at which Nature revolts with greatest abhorrence, and which Art shrinks from as most difficult. The Thief-takers, *MacDaniel* and *Egan*, who were hanged for taking away the life of *Coleman*, for the sake of the reward, preferred as the surest, safest, and least irksome course, the engaging him in the commission of a robbery, to the swearing upon him a robbery he had not committed.<sup>649</sup> The conduct of the judicial authority on this subject is as inconsistent with itself, as with public utility and common sense: for, while they shut the door in this way against a witness without reproach, they leave it open to a malefactor, who, in and by the very evidence by which he intitles himself to the reward, acknowledges

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or distribution of illegal spirits; and the Hawkers Act of 1785 (25 Geo. III, c. 78, § 17) allowed them one half of the fine on unlicensed hawkers, pedlars, and petty chapmen.

<sup>648</sup> Under Common Law, informers were debarred from being competent witnesses because of their pecuniary interest in the outcome of the case: see *R. v. Cobbold* (1713), reported in Lord Chief Baron Gilbert, *Cases in Law and Equity: Argued, Debated and Adjudged in the King’s Bench and Chancery, in the Twelfth and Thirteenth Years of Queen Anne, During the Time of Lord Chief Justice Parker*, London, 1760, pp. 111–14. Lord Chief Baron Gilbert, *The Law of Evidence* (first published at Dublin in 1754), 4 vols., London, 1791–6, i. 245–50, argued that ‘in general, there are Exceptions to the Rule not admitting an interested Witness’, to prevent the law being rendered ineffectual by the impossibility of proof.

<sup>649</sup> Bentham has misreclected some of the details of this notorious affair. Stephen McDaniel and James Eagan were central figures in a gang of ‘thief-takers’, who duped relative innocents into carrying out highway robberies, only to inform on them in order to claim the statutory rewards. McDaniel and Eagan, along with John Berry and James Salmon, were convicted in February 1756 of the murder of Peter Kelly and John Ellis, who had been hanged on their evidence. Judgment was respited, however, and all four were sentenced, on a lesser charge of conspiracy, to seven years’ imprisonment and to be pilloried twice. Eagan and Salmon both died from injuries received during their pillorying by an irate mob. Bentham’s ‘Coleman’ appears to be a slip for the separate case of Joshua Kidden, similarly hanged on the evidence of McDaniel, Berry, and Mary Jones, all three of whom three were convicted in June 1756 of his murder, but were eventually discharged. Berry subsequently died in Newgate Prison, while McDaniel’s fate is uncertain.

himself to have been a felon.<sup>650</sup> If professional prejudice will not endure this clause, the shift which is practiced in other similar cases, must continue to be practiced in this:—the real *informer*, the only person in whose way it has fallen to know what passed, must provide a man of straw to take upon himself that name.

Precedents.—By the General Highway Act (13 G. 3. c. 78. § [68]),<sup>651</sup> the ‘Surveyor .^.^ shall be deemed, in all cases a competent witness, .^.^ notwithstanding his Salary may arise in part from the forfeitures and penalties’. Precedents of competency restored to Parishioners in particular cases, where a share of the penalty, as usual, has been given to the poor of the Parish, that is to the rich and others who stand charged with the maintenance of the Poor,<sup>652</sup> are too numerous to need or to bear quotation. A man’s share in such penalty may, it is true, not amount to the tenth part of a farthing; but it may amount to the whole—the Parish of Ewhurst in Hampshire is, or was, in the occupation of one hand.<sup>653</sup>

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<sup>650</sup> Bentham is probably alluding to the practice of turning King’s Evidence, in which an accomplice to a crime who testified against his associates might receive in exchange a pardon or some other form of leniency. The practice was given statutory legitimacy and encouragement in the context of specific offences by, for instance, the Apprehension of Highwaymen Act of 1693 (4 Will. & Mar., c. 8, § 5), the Offences against Customs or Excise Act of 1746 (19 Geo. II, c. 34, §§ 10–11), and the Bumboat Act of 1762 (2 Geo. III, c. 28, § 14). Stephen McDaniel had begun his criminal career as a highwayman who turned King’s Evidence; while Kelly and Ellis were recruited and directed in undertaking their robbery by Thomas Blee, who later gave evidence against his co-conspirators in the McDaniel gang.

<sup>651</sup> MS ‘69’.

<sup>652</sup> The poor rate had become in practice a local tax on the rental value of occupied land, albeit systems for the assessment of that value varied widely. The Poor Relief Act of 1691 (3 Will. & Mar., c. 11, § 12) had established that in actions to recover monies peculated by fraudulent parish officials, ‘the Evidence of Parishioners .^.^ shall be taken and admitted’, while the Imitation of Tea Act of 1767 (17 Geo. III, c. 29, §§ 6–7), having prescribed that one half of all forfeitures made under the Act were to go to the poor of the parish, went on to order that ‘the Evidence of the Inhabitants of the Parish or Place where the Offence was committed shall be taken and allowed’. Nevertheless, it was argued that since the payers of the poor rate benefited from the subsidization of the rate by forfeitures for offences proscribed by particular statutes, such as by the Vagrant Act of 1744 (17 Geo. II, c. 5, §§ 5, 22), such rate-payers were debarred from acting as witnesses in suits giving rise to such forfeitures.

<sup>653</sup> The Ewhurst estate, which included the manor and much of the land comprising this small parish, had been purchased in around 1763 by Robert Mackreth (c. 1725–1819), who, having risen from humble origins, and amassed a considerable fortune through usury and speculation, sat in Parliament as MP for Castle Rising

[150\_557]

{94} {1} § 40. page 190 {.^.^ *Commissioners shall .^.^ possess .^.^ the same power .^.^ as .^.^ the Commissioners of Excise .^.^.*}

To judge from precedent, it seems to be an established principle of the system of discretionary licencing, that, on the one hand, the function of granting or refusing the licence, on the other, that of taking judicial cognizance of offences having respect to the licence, (including the breach of regulations made for the direction of the conduct of persons having licences and the offence of acting without licence) should be reposed in the same hands. Thus in the great system of this kind which pervades the whole kingdom, the Public-House-licencing system, the Justices throughout the Country, in each Division marked out for the purpose, grant or refuse the licence, and the same Magistrates sit in judgment on informations of offences respecting licences, as above.

In the case of the Hackney Coach-keepers of the Metropolis and its neighbourhood, the power of granting the licences and that of taking cognizance of offences respecting the licences, extend over the same places and the same persons, and both powers are in like manner reposed in the same hands, viz: those of a set of Commissioners appointed specially for that purpose.

[150\_558]

The foundation, in point of reason, for this union of functions, seems to have been a notion that, for exercising a discretion of so much latitude to the best advantage, some sort of personal acquaintance is necessary, or at least desirable, and that the general deportment of each licentiate ought to be an object of general indeed, but unremitting, attention on the part of the licensors.

In the case of the other Office recommended to be consolidated with the proposed Board (viz: the Hawker's and Pedlar's Office), this union (it may be observed, on the other

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(1774–84) and Ashburton (1784–1802), and was knighted in 1795. As a young man, Bentham had been on friendly terms with Mackreth and had visited Ewhurst: see Bowring, x. 48–50.

hand) has no place.<sup>654</sup> But in this latter case it is opposed by physical obstacles which do not extend to those other cases. Publicans are fixed, each of them, to a single House: the locomotion of the Coach-Drivers in question is confined within a comparatively narrow district:<sup>655</sup> but it is the characteristic property of the Hawker to roam over the whole country, and in this case it would have been attended with too much hardship as well as difficulty to bring an offender to London from Cumberland or Cornwall, at all times of the Year and upon every instance of delinquency or alledged delinquency, to receive his doom from the Commissioners from whom he had received his licence: and so in case of persons accused of hawking without licence.

[150\_559]

Within the City liberties, no person can be invested with the powers of a Justice of the Peace by the Crown, without an Act of Parliament.<sup>656</sup> Practically speaking, it may be added, nor with an Act of Parliament. It was the attempt to do this, amongst other things, by the Police Bill of 1785, that contributed, perhaps, more than every thing else put together, to the opposition by which that Bill was laid upon the shelf.<sup>657</sup> But what is impracticable under one name may become not only practicable, but easy, under another. To have made provision for the appointing in and for those antient and almost sacred

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<sup>654</sup> Under the Duty on Hawkers, etc. Act of 1789 (29 Geo. III, c. 26), licences for hawkers, pedlars, and petty chapmen were granted by the Hawkers and Pedlars Commissioners (§§ 2, 5–6), while the power of demanding to see such licences was given to ‘any person or persons authorised or appointed .^.^ by the Commissioners .^.^ or .^.^ by any Justice of the Peace, Mayor, Constable, or other Officer of the Peace of any County, Riding, Division, Town Corporate, Borough, or place, where [the licensee] shall so trade, or by any Officer of the Customs or Excise’ (§ 11). Under § 14 of the Act, persons trading without a licence, or refusing to produce it, might be brought before ‘some one of his Majesty’s Justices of the Peace of the County or Place where such Offence or Offences shall be committed’.

<sup>655</sup> i.e. within the environs of London, since the Hackney Coaches etc. Act of 1694 (5 & 6 Will & Mar., c. 22, § 1) and the Stamp Act of 1711 (9 Ann., c. 23, § 1) regulated the licensing of Hackney coaches within the ‘the Cities of London and Westminster and the Suburbs thereof and within all .^.^ Places comprized within the Weekly Bills of Mortality’.

<sup>656</sup> In the City of London and its liberties, under letters patent of George II dated 25 August 1741, ‘the mayor, recorder, and all the aldermen’ were constituted Justices *ex officio*, and sat daily in rotation: these arrangements were in contrast to those pertaining throughout most of the country, where Justices were named for each county in commissions of the peace periodically granted by the Crown. See *The Historical Charters and Constitutional Documents of the City of London*, ed. W. de G. Birch, 2nd edn., London, 1887, pp. 290–4.

<sup>657</sup> See p. 254 n. above.

liberties, and by any authority other than the existing and old-established authority, a set of Officers under the name of *Justices of the Peace*, and with *all* the various powers of Justices of the Peace, would have been repugnant to the Chartered rights of the City, and without any support from precedent. The appointing of a set of Commissioners for granting licences, and giving to the same Commissioners judicial authority *quoad hoc*,<sup>658</sup> confined to this limited and narrow branch of delinquency, is no such violation of chartered rights, and is supported (as we have seen) by more precedents than one.<sup>659</sup>

The reference given in the text of the Bill to the case of the Excise is accordingly given—not for the purpose of *explanation* (for the truth is there is nothing for it to explain) but for the purpose of *recommendation*: that this part of the plan may be seen to have precedent for its sanction, and shew[?] as if *copied* rather than *contrived*.

[150\_560]

As far as concerns the Hackney Coach business, the new Board, if (as proposed) it should be made to swallow up that branch of existing business, will, as far as the correspondent heads of delinquency are concerned, succeed of course to a branch of judicial authority already stretching over that jealous ground: and while it is taking cognizance of that old class of Offences, why not (it may well be asked) of these new ones likewise?

[150\_561]

In the case of the Board of Excise, an union of very nearly, though not precisely, the same nature may be observed. To the trust of receiving the duties there in question, is added the power of taking cognizance of a class of offences, composed, as in the cases above-mentioned, of acts tending to the evasion of those duties.<sup>660</sup> This union runs throughout: but what concerns the function of granting of licences, does not, (it is true) quadrate with the present case. In the Excise system, this function comes in incidentally

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<sup>658</sup> i.e. ‘to this extent’.

<sup>659</sup> For the judicial competence in London of the Commissioners of Excise see p. 77 n. above.

<sup>660</sup> The Statute of Tenures (12 Car. II, c. 24, §§ 30, 37), for instance, imposed fines and other penalties on brewers, innkeepers, alehouse-keepers, victuallers, and other retailers who failed to make ‘due and perticuler Entryes’ of the beer and beverages that they brewed or sold, or who ‘wittingly and willingly [made] a false Entry’ in order to avoid paying duties.

only, and in a few scattered instances, the object under that system being *Revenue* solely, and not *Police*:<sup>661</sup> and, as to any discretionary power with regard to the granting of the licence—or any authority for the inspection of the conduct of the *licentiate*—scarce an instance, if any, is to be found of it.

In the case of the Excise, the reasons for the junction of powers that obtains in that case is not difficult to divine: and though not precisely the same as in the present instance, neither is it altogether different. The Excise system having been, at its commencement in particular, as generally unpopular as it was and is unhappily indispensable, the carrying it into execution and effect was not thought fit to be entirely trusted *every where*, nor indeed at its commencement *any where*, to the established local Magistracy. Even in the Country jurisdictions, where the Justices of the Peace are at the nomination of the Crown, it was not, at that period, trusted to them exclusively, but provision was made for committing it to Sub-Commissioners, to be appointed by the Head Commissioners sitting in the District of the Metropolis.<sup>662</sup> The necessary confidence [150\_562] having happily established itself, either these Sub-Commissioners were never established, or the practice of appointing them has long since ceased. But the judicial Authority, given to the Commissioners over the London District, still keeps its seat: and very proper it seems to be that it should: for, were it not for this, in the City of London, the Justices, not being in the nomination of the Crown,

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<sup>661</sup> Under the Gin Act of 1743 (16 Geo. II, c. 8, § 8), for instance, licences for the retail of spirits were to be issued ‘within the Limits of the Weekly Bills of Mortality .^.^ under the Hands and Seals of two or more of his Majesty’s Commissioners for the Duty of Excise for the Time being’; in the City of Edinburgh ‘under the Hands and Seals of two or more of his Majesty’s Commissioners of Excise in *Scotland*’; and elsewhere ‘under the respective Hands and Seals of the several Collectors and Supervisors of Excise within their respective Collections and Districts’. The Gin Act of 1751 (24 Geo. II, c. 40, § 10) authorized ‘the Commissioners of Excise, and Justices of the Peace, within their respective Jurisdictions, .^.^ to grant their Warrant to any of the Peace Officers, or other Parish Officers .^.^ to enter and search the House, Lodgings, Shop, Warehouse, Cellars, and other Places where [the illicit sale of spirits] shall be sworn to have been committed’.

<sup>662</sup> The Statute of Tenures (12 Car. II, c. 24, § 48), for instance, placed the metropolitan area (‘all parts of the Cittyes of London and Westminster with the Borough of Southwarke and the severall Suburbs thereof, and Parishes within the weekely Bills of Mortality’) under the direct authority of the Head Office of the Excise, but also made provision for ‘such and soe many subordinate Commissioners and Sub-Commissioners and other Officers and Ministers’, appointed by the Crown, to be given similar responsibilities in ‘all and every other the Countyes Cittyes Townes and places within this Kingdome of England Dominion of Wales and Port of Berwicke’.

in times of popular ferment—such as those of *Wilkes and Liberty*<sup>663</sup>—such as many now living have seen already, and may be doomed to see again—the governing body of the City might, under the favour of a monopoly of this power, render itself a sort of fourth estate,<sup>664</sup> and by cutting off this vast branch of the Supply, erect itself, every now and then, into a second House of Commons.

In the present instance, the reason for this union of powers in the London District can hardly be said to be quite so strong, it is true, as in the case of the Excise; but reason, and reason of the same kind, is not wanting, and it seems strong enough to be conclusive.

[150\_563]

In point of precedent, nothing can be better grounded. The above are not the only instances, by a great number, in which the legislature has, for financial purposes, thought fit to give to Commissioners, to be nominated by the Crown, and not by any of the City authorities, judicial powers of the same kind to be exercised within the City territories. In the 9<sup>th</sup> of Anne, (the same year in which the duties on London Hackney Coaches and Chairs were established, and provision made for the appointment of Commissioners for the management of those duties, with special judicial cognizance given to them by special words)<sup>665</sup> by a prior Act of that Year (viz. ch. 11, the other being ch. 23), duties had been established for the first time on Leather; and, for the management of those duties, power had been given for the appointment of a set of Commissioners, distinct in themselves, though invested with powers—judicial powers included—given to them by reference to

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<sup>663</sup> The cry of ‘Wilkes and liberty!’ was first raised at Westminster Hall on 6 May 1763 by supporters of John Wilkes (1725–1797), MP for Aylesbury 1757–64 and Middlesex 1768–69, 1774–90, in celebration of his release, on the grounds of parliamentary privilege, from a charge of seditious libel for his involvement in the publication of the notorious number 45 of his journal the *North Briton*. Over the following decade the slogan was adopted more widely by his adherents and admirers in London and the provinces, and taken up on other occasions of political agitation or confrontation, such as the so-called ‘Massacre of St George’s Fields’ in May 1768.

<sup>664</sup> For the ‘fourth estate’ see p. 216 n. above.

<sup>665</sup> The Stamp Act of 1711 (9 Ann., c. 23), for which see p. 162 n. above, had, in addition to giving the Hackney Coaches Commissioners powers to grant and revoke licences for Hackney coaches and chairmen, provided (§ 13) that ‘all the Offences against this Act or any thing therein contained . . . shall be heard and determined in a summary way by the said Commissioners, or any three or more of them’, although more serious disputes (§ 22) were to be determined by Justices of the Peace or Quarter Sessions.

those possessed by the Commissioners of Excise.<sup>666</sup>

In the next year (10 Anne) four more sets of duties (viz: on Sope, on Starch, on Paper, and on Printed Piece-goods) are established by one and the same Act (ch. 19), and for the management of those respective duties, powers given for the appointment of so many distinct sets of Commissioners, each of them invested with the same judicial authority given in the same way, by reference to the Excise.<sup>667</sup>

In that same year, by another Act (ch. 26), another duty (viz: on Gilt and Silver Wire) and, with the same authority, given in the same way, another set of Commissioners.<sup>668</sup>

In the 6<sup>th</sup> Year of the next reign (George 1<sup>st</sup>) another duty, viz. that on Plate, (by 6 G. c. 11) with the same authority, given in the same way, to another set of Commissioners.<sup>669</sup>

In the 10<sup>th</sup> Year of the same reign, another set of duties, viz: on Coffee, Tea and Chocolate, (by 10 G. I. c.10) with the same authority, given in the same way, to another set of Commissioners.<sup>670</sup>

[150\_564]

Seven at the least, is thus the number of different Boards, over and above those at present in existence, to whom, in virtue of the powers abovementioned, the Crown might have given, and for any thing that appears might now and at any time hereafter give, the same judicial authority, as that which is possessed and exercised by the Board of Excise.

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<sup>666</sup> The Taxation Act of 1711 (9 Ann., c. 11, § 13) established a body of commissioners to oversee the collection of duties on dressed hides and skins and on vellum and parchment, and (§ 38) provided that these commissioners should ‘have and exercise the same Jurisdiction Power and Authority and shall and may adjudge determine mitigate and order in all Cases and Matters’ relating to such duties ‘as the Commissioners of Excise upon Beer Ale and other Liquors’ might exercise within their area of responsibility.

<sup>667</sup> The Taxation Act of 1712 (10 Ann., c. 19, §§ 27, 62, 93) gave the same judicial powers possessed by the Excise Commissioners to those responsible for the collection of duties on soap, paper, and printed or patterned silks, calicoes, linens, and stuffs respectively. Duties on starch, and Commissioners responsible for their collection, were in fact introduced by the separate Customs and Excise Act of 1712 (10 Ann., c. 26, § 9), with judicial powers being granted under § 30.

<sup>668</sup> i.e. the Customs and Excise Act of 1712 (10 Ann., c. 26, § 48), with judicial powers being granted under § 65.

<sup>669</sup> i.e. the Plate Duty Act of 1720 (6 Geo. I, c. 11, § 6), with judicial powers being granted under § 21.

<sup>670</sup> i.e. the Excise Act of 1724 (§ 7), with judicial powers being granted under § 42.

As it has happened, the functions of all these several projected Boards have severally been committed to, and are now exercised by, the Excise: that set of Commissioners ready made, being as capable of receiving the several appointments as any other set that could have been made: and it was by the nominating of them for that purpose in each successive instance that the several distinct powers happened eventually to be executed. But that the Commissioners of Excise, and they only, were the set of Commissioners in contemplation in each instance can not consistently be supposed: in those Acts they are not named, at the same time that in other Acts by which other duties [were imposed], the management of which was really and decidedly intended to be committed to them, they accordingly are named: these are—8 Ann. ch. 9, (imposing the first of the existing duties on Candles), and 9 Ann. ch. 12, imposing the first of the existing duties on Hops.<sup>671</sup> In all seven instances, therefore, it was in contemplation to establish so many different Boards, each of them, amongst other powers, invested *quoad hoc* with the authority of a set of Justices of the Peace, extending over the City Liberties: it was in contemplation to have so many different Boards, or the practice that had been established of giving the authority to the Excise at once, in and by the Act, where it was meant that the Excise should have it, would not have been departed from. [150\_565] Admitting the propriety of such a junction, another expedient might present itself for the moment as capable of producing nearly the same effect, and that without calling in the aid of Parliament, and consequently without exposing the system to any opposition on this ground on the part of the City authorities in Parliament: an expedient so simple as that of putting the Commissioners into the Commission of the Peace for the several Counties into which the proposed London Police District extends. In this way, it is true, the portion of *territory* left out of the jurisdiction of the Board would comparatively be inconsiderable: but the portion of *population* left out would be about one

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<sup>671</sup> All six of the statutes previously listed, which imposed duties on eight classes of commodity, notionally established new bodies of commissioners (naming the Excise Commissioners only as the model for their judicial powers), but in practice the responsibilities in question were assigned to the existing Excise Commission. The Taxation Act of 1710 (8 Ann., c. 9) assigned responsibility for collecting duties on imported candles to the Customs Commissioners for England and Scotland respectively (§ 4); those on candles manufactured in Britain to the Excise Commissioners for England and Scotland respectively (§ 5); and those on candlemaking apprentices to the Commissioners of Stamp Duties (§ 33). The Taxation Act of 1711 (9 Ann., c. 12) assigned responsibility for collecting duties on imported hops to the Customs Commissioners for England and Scotland respectively (§ 4), and those on home-grown hops to the Excise Commissioners for England and Scotland respectively (§ 5).

half: and that half the portion that affords the greatest demand for the exercise of the powers proposed to be created by the Act.

[150\_566]

{95} {1} § 41. page 191. {*Commissioners shall deliver to such person an Abstract of such regulations as relate to the occupation &c.* }.

By the General Highway Act (13 G. 3. c. 78. § 70) Justices are to deliver two copies of a printed Abstract of the Act to every Surveyor, one for his own use, the other for that of the Parish, to be fixed on the Church door or other public place; for each of which copies 6<sup>d</sup> is to be paid to the Justices' Clerk. Other precedents might be quoted where, as here, instructions relative to the law are required to be printed on the same paper with some law instrument to which they relate: but as these precedents, though the number of them is by no means inconsiderable, lie scattered up and down the Statute Book, it is presumed there will be no need of collecting them in support of a provision so obviously useful and unobjectionable.<sup>672</sup>

[150\_567]

{96} {1} § 42. page 192. {*Notice of appeal shall be given at the time, unless grounded on some fact not brought to light till afterwards.* }

This exception is new; but being not only reasonable, but in favour of the accused, it may, perhaps, be allowed to pass. The case will not often happen: but were it ever to happen, it would be a sad thing, if it were necessary that a defendant should continue to suffer after his innocence has been brought to light.

The malefactors against whom the Bill is levelled, being many of them opulent, will, it is natural to suppose, be apt to be troublesome with their Appeals:—but if the power of conviction is given to a single Magistrate, the remedy by Appeal can hardly be refused: nor

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<sup>672</sup> See, for instance, the Driving of Cattle, Metropolis Act of 1781 (21 Geo. III, c. 67, § 8), the County Elections Act of 1788 (28 Geo. III, c. 36, § 1), and the Slave Trade Act of 1789 (29 Geo. III, c. 66, § 20).

is it to be supposed that where the party is really guilty, the conviction will not be affirmed: and the costs allowed will, it is supposed, be equal or nearly equal to the costs actually incurred: if not, provision might hereafter be made, without recourse to Parliament, for reimbursing the difference to the Informer (who, it is supposed, will almost always be the local Officer of the Board) out of the share of the Police Fund.<sup>673</sup>

[150\_568]

{97} {1} § 43. page 193. {*The Judge .^^. shall assign, to the person undertaking such prosecution, Counsel .^^.^.*}

What follows in the Bill in inverted commas is copied *verbatim* from the Statute 23 G. 2. c. 11. § 3,<sup>674</sup> which empowers Judges of Assize, *Nisi Prius* and *Gaol Delivery* &c. to order prosecutions in this way for perjuries committed on trials before themselves. The expression might have been mended: but to afford a short answer against any objection, it was thought as well to copy it as it stands. The demand for a provision to this effect seems not to be less in the present case than in *that*: especially as the persons whom the Officers of the Board will have to contend with are persons of the same stamp as those who come for trial before the *Judges of Gaol Delivery* abovementioned. In the attempts made, by the malefactors against whom the Bill is levelled, to save themselves from conviction, perjury, of course, will not be stuck at: and if some such provision as this were not made to check it, it would be apt to form itself into a system.

{98} {2} § 43. page 193. {*Further expences .^^. shall be defray'd .^^. out of the Police Fund*}.

The provision made by the existing Statute comprizes nothing but Counsel's Fees, Fees of the Officers of the Court, and Stamp Duties on the Law Proceedings.<sup>675</sup> it does not extend

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<sup>673</sup> The following passage, which appears at this point, has been crossed through by Bentham: '*Quere* which would be most eligible in point of efficiency?—a *single* Magistrate subject to Appeal, or *two or more* without Appeal? In some places it might be some time, perhaps, before two could be got to meet.'

<sup>674</sup> i.e. the Prosecutions for Perjury Act of 1750, § 3.

<sup>675</sup> The Prosecutions for Perjury Act of 1750 (§ 3), quoted by Bentham in § 43 of 'A Bill for the establishment of a Board of Police', pp. 192–3 above, had stipulated that Counsel assigned by Justices to

to the Sollicitor's Bill, nor to expences of witnesses. It might possibly be worth while for the Board to have for one of their Surveyors in every County or thereabouts a *Sollicitor*, who should be rather better paid than the rest, and upon occasion give advice and direction to the rest.

[150\_569]

The power here proposed to be given for ordering Prosecutions in this particular case, a case growing naturally out of the system of powers created by the Bill, may be regarded as a sort of step towards the establishment of the general power of ordering prosecutions, as recommended by the Committee of Finance:<sup>d</sup> a power which seemed not to be exclusively enough connected with the main object of the Bill to be attempted to be established on the present occasion, now that the Board itself is as yet but a candidate for existence.

<sup>d</sup> 28<sup>th</sup> Report. p. 31.<sup>676</sup>

[150\_570]

{99} {1} § 44. page 193. { *Whereas by an Act .^.^ regulations are made for .^.^ prevention of vexatious suits* }.

The title of this first-mentioned Act (23 G. 3. c. 70) being very long, the recital of it (it was

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parties injured by perjury of witnesses were 'required to do their Duty without any Fee, Gratuity or Reward, for the same: And every such Prosecution .^.^ shall be carried on without Payment of any Tax or Duty, and without Payment of any Fees in Court, or to any Officer of the Court, who might otherwise claim or demand the same'.

<sup>676</sup> The Select Committee on Finance did not propose the institution of such a power, but rather described 'the power which it is proposed [by Colquhoun] to give to the Attorney General, of appointing Counsel for the Crown, with moderate salaries, to conduct all criminal Prosecutions' as among proposals 'which appear to deserve the attentive Consideration of this House'; and advised that such consideration be delayed until after the establishment of the Board of Police: see 'Twenty-Eighth Report from the Select Committee on Finance', in *Commons Sessional Papers of the Eighteenth Century*, cxii. 32–3. For Colquhoun's proposal see *ibid.*, 51, and *Treatise on the Police of the Metropolis*, pp. 29, 231, 434. Bentham had recommended the institution of a public prosecutor in 1782, in 'Indirect Legislation', UC lxxxvii. 188: 'All this difficulty would be got rid of by the simple institution of a public prosecutor, a magistrate of high rank and character who should conduct the prosecution and take upon him the expence.'

thought) might be spared:<sup>677</sup> especially as it is sufficiently identified by the next-mentioned Act which refers to it (24 G. 3. c. 47).<sup>678</sup>

The heads of these regulations are—Officers and their assistants not to be sued for any thing done in execution of their Office, till after a month’s notice, particularizing the cause of action &c.—they may then tender amends, which, if sufficient, shall intitle them to costs, or may afterwards pay it into Court.—No evidence to be produced of any other cause of action than what is contained in the notice.—Limitation of Actions.—General Issue.—Treble costs.—Claimers of goods seized, to prove payment of the Duties.—Penalty for obstructing Officers, £100.<sup>679</sup>

{100} {2} § 44. page 193. {*Or in his aid*}.

The words of this clause are, with very little variation, transcribed from the words of 24 G. 3. c. 47.<sup>680</sup> The only material variation is—the substitution of the word ‘*or*’ in this passage to the word *and*. A stranger, seeing an Officer of the Revenue hard-pressed by a Smuggler or other Malefactor, may, without any order from him, and even without his knowledge, step in to his assistance: it would evidently be not only hard upon the individual, but prejudicial to the service, if this public-spirited stranger were to stand excluded from the protection extended by the Act to persons who are paid by the public for their assistance.

[150\_571]

## Part VI. *Gazette and Calendar*

{101} {1} § 45. page 194 {*.^.^ a channel of appropriate intelligence*}.

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<sup>677</sup> i.e. the Excise Act of 1783. The full title reads: ‘An Act for the more effectual preventing the illegal Importation of foreign Spirits, and for putting a Stop to the private Distillation of *British*-made Spirituous Liquors; for explaining such Part of the Act, imposing a Duty upon Male Servants, as relates to the Right of Appeal from the Justices of the Peace; to amend and rectify a Mistake in an Act of the last Session of Parliament, with respect to the Removal of Tea from one Part of this Kingdom to other Parts thereof; and for preventing vexatious Actions against Officers of Excise acting in pursuance of the Authority given by Excise Statutes.’

<sup>678</sup> i.e. the Smuggling Act of 1784, where the long title of the Excise Act of 1783 act is repeated in § 35.

<sup>679</sup> Bentham has loosely paraphrased the contents of §§ 30–6 of the Excise Act of 1783.

<sup>680</sup> i.e. the Smuggling Act of 1784 (§ 35).

In addition to the use stated in general terms in the text, it may not be amiss to subjoin a brief intimation of a few particular as well as collateral uses, which might either be derived from it or would result from it of course—

1. Against Escapes and Desertion, the *Police Gazette* might be made to afford a preservative of peculiar efficacy. *Profiles* are advertised as taken at so low a price as 2<sup>s</sup> 6<sup>d</sup> apiece: a machine for taking them, at a guinea.<sup>681</sup> of course, in the wholesale way they might be afforded a great deal cheaper. If taken on wood, at the time of commitment or inlistment, a portrait of this kind might be inserted into, and worked off with, the verbal description of the fugitive as given in the *Police Gazette*, without any addition to the expence.

Among seafaring men and others, there is a custom, not unfrequent, of *tattooing* the name of the person upon his arm, or some such part of the body usually kept covered, but at any time uncoverable without offence to decency. The mark is made in such a manner as to be absolutely indelible. The writer of this has seen a mark of this sort upon the arm of an Admiral made when he was a Midshipman.<sup>682</sup> Were the receiving a mark of this sort made a condition of inlistment, the act of harbouring any inlisted person bearing such a mark, especially after the appearance of his *description* with his *profile* in the *Police* [150\_572] *Gazette*, might be made penal without scruple. The near and natural connections of the fugitive, so long as they were not exempt from search, might, without prejudice to justice, be exempt from punishment; all others might be punished without mercy. In that case,

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<sup>681</sup> ‘Profiles’ or ‘shades’ (later known as ‘silhouettes’) were a form of relatively cheap portraiture increasingly popular in the late eighteenth century. Various mechanical aids to assist in taking them existed, generally variants of the camera obscura, the pantograph, or a combination of the two. Abraham Jones regularly advertised ‘Perfect Likenesses taken in miniature profile’ at 2s. 6d., and his ‘new-invented Reflecting Mirrors .^.^ for taking Likenesses in Profile or full Face’ at £1 1s. See, for instance, the *Morning Post*, 25 March 1794, p. 4, and the *Morning Chronicle*, 18 December 1798, p. 4.

<sup>682</sup> Bentham may have had in mind John Blankett (d. 1801), naval officer, successively First-Lieutenant (1778); Commander (1779); Captain (1780); and Rear-Admiral (1799), whom he had known since 1778: see *The Correspondence of Jeremy Bentham*, vol. ii, ed. T.L.S. Sprigge, London, 1968 (CW), p. 193. However, in 1782 in ‘Indirect Legislation’ (UC lxxxvii. 189), Bentham had referred to a similar mark on an acquaintance who could not have been Blankett: ‘Having a friend in the Navy, who now bears one of the first titles in that profession, I took notice years ago of a mark he had on his wrist. It consisted of his name at length, exhibited in characters of a deep blue. It had been imprinted in his childhood, and he was then verging to old age.’

Desertion without detection being evidently impossible, it never would be attempted. In the Navy, the Army and the Militia, *Double enlistment* as well as desertion would thus be at an end.<sup>683</sup> What a scene of misery, and fraud and profusion would thus be closed! This practice, as an idle one, is familiar; it is only as a useful one, that it is new. In consideration of the utility, would the novelty be enduring? The question may at least be pardoned:— the answer will be given by the proper judges.

[150\_573]

2. Another use of the *Police Gazette*, is the furnishing a stock, and that a complete as well as authentic one, of materials for several of the aggregate heads comprized in the proposed *Calendar of Delinquency*: viz: 1. Offences known or suspected to have been committed: 2. Offences of which the authors are known or suspected: 3. Amount of pecuniary loss (in cases where property is affected) produced by the several offences:— lists the completion of which will, by the help of the *Police Gazette*, be a mere work of common arithmetic, to the due composition of which any and every body that pleases may act as a witness and a check. Concerning the *Calendar of Delinquency*, and the uses of it, see the Note on the section relative to that head.<sup>684</sup>

[150\_574]

3. By means of the provisions of the next section but one (§ 47)<sup>685</sup> Government will open to itself a channel through which, without committing itself, it will be able to address itself at any time to the various classes of Non-conformists: all of whom, for the general purposes of Police, that is for the common security of themselves and their fellow subjects, will naturally be disposed to receive the *Gazette* without repugnance when thus sent to them on the particular occasions and for the particular purposes specified in the Bill: and repugnance on the ground of principle being out of the question, the moderate penalty provided in the Bill will be sufficient to secure the communication against any inattention

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<sup>683</sup> In times of manpower shortage, bounties of several guineas were offered to encourage enlistment in the army. Bentham is referring to the practice of claiming a second bounty by enlisting, deserting, and re-enlisting in a different regiment. He had made a similar argument in 'Indirect Legislation': see UC lxxxvii. 145.

<sup>684</sup> See note {107} to § 48, pp. 333–47 below.

<sup>685</sup> See pp. 198–9 above.

capable of resulting from mere negligence. From the occasion of transmitting the papers in question to those several congregations, an exact and constant acquaintance with the numbers and situations of them will be obtained without the appearance of being sought, and the attention of the local Surveyors of the Board will be pointed to the numbers and department of the individuals of whom these congregations are respectively composed. In the case of Catholics, the instrument termed, in the language of the French Monarchical and Ecclesiastical jurisprudence, a *Monitoire* (an exhortation in which the force of the religious sanction is employ'd in engaging individuals to come forward to the assistance of justice by the disclosure of any particulars they may happen to be acquainted with in relation to any particular crime supposed to have been committed)<sup>686</sup> might, perhaps, by these means, be employ'd upon occasion to good effect, and be made [150\_575] to render even to this Protestant Government that sort of service which it has frequently been made to render in so eminent a degree in the Catholic Countries in which the use of it has been established. And when, for purposes not exposed to repugnance or suspicion, this sort of channel of communication has once been established in the several assemblies, and the minds of the members have become familiarized with the use of it, it will be easy, if on any occasion it should become desirable, to make use of it for the purpose of conveying any impressions which it may be wished to produce with a view to the execution of justice or the preservation of the public peace.

[150\_576]

4. Over and above the direct uses of the *Police Gazette*, as already exhibited, another use, (which though but collateral, and not proper to be mentioned in the Bill, may be found still more important, perhaps, than even the direct one) is—the capacity of being employ'd as an instrument for the propagation and maintenance of social dispositions and affections, and for the preservation of tranquillity, harmony and loyalty among the great body of the people. The species of intelligence or *news*, to the circulation of which it is proposed to be appropriated (consisting of notices of acts of delinquency committed, accompanied with a

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<sup>686</sup> In *ancien régime* France, a *lettre monitoire* was a type of injunction, originating in ecclesiastical law in the sixteenth century and incorporated into secular law by the Criminal Ordinance of 1670 (tit. 7), whereby the clergy of a diocese, at the request of the civil judicial authorities or parties to a criminal lawsuit, could order any of their parishioners with relevant knowledge to testify to the facts of a case, on pain of excommunication.

display of the punishments and perils to which the authors stand exposed) is of itself, in every line of it, a perpetual lesson of morality and of submission to the laws: and by the turn that, under able and suitable management, might be given to it, this *natural* aptitude to the conveyance of wholesome instruction might be abundantly improved. But besides this, though precluded from the circulation of every thing *else* that can bear the name of *news*, it need not be, nor ought it to be, expressly precluded (and if not *expressly*, it will not be regarded as *virtually* precluded) from administering useful instruction and exhortation of the moral, and, upon occasion, the political cast, in whatever forms may from time to time present themselves as best adapted to the purpose. Something in this [150\_577] way would pass as a matter of course, and even of necessity, rather than choice: for the quantity of matter expressive of the current stock of *intelligence* or *news* would, in its nature, be liable to perpetual inequalities: inequalities of this kind are what all newspapers are in the habit of supplying, for the purpose of exhibiting on each day of publication a paper of a uniform size, and thus giving a pennyworth for every penny.—This collateral part would, therefore, pass not as a novelty, nor as directed to any special end, but as coming in as a matter of course, in conformity to the custom of the trade.

[150\_578]

Partly in virtue of its direct uses, partly in virtue of this collateral one, the *Police Gazette* would be a perpetual instrument of good order in the hand of Government: and a more efficient, and at the same time a more gentle, one (keeping multitudes from harm, and doing harm [to] no one) lies not within the sphere of possibility, nor even of imagination.

[150\_579]

The ground work—the standing ground work—of it, is composed of the events of the day:—in a word, of *news*: of all species of information the most generally and strongly interesting: and of that species of news which—with reference to the understanding and affections of the classes of persons principally in view—that is of the most numerous classes of society—is of all species of news the most interesting. The occasional superstructure, the *didactic* part, will have at any rate the circumstance of *contiguity*, to cement the idea of it in the mind with the idea of the other part, and thus obtain for it a portion of the same favour: and by grafting it upon the other, as the moral is upon the fable,

the sermon upon the text—or (to come nearer) the *observation* part in a newspaper upon the intelligence part which gives occasion to it—the association will be rendered still more intimate and indissoluble.

[150\_580]

As to degree of circulation, the extent of it would, to a degree altogether adequate to its object, be altogether at the command of government. What may be termed the *natural* or *free* circulation is out of the reach of calculation: as far as price is concerned, the difference between a penny, or some such matter, and sixpence, is the advantage it would have in this respect over every other newspaper.<sup>687</sup> But the *factitious* or *forced* [circulation]<sup>688</sup> would (setting day against day) be perhaps not inferior to that of all the other Newspapers put together: it would certainly be many times as great as that of all the demographical papers put together: for this taint, it is believed, is happily as yet confined, or nearly so, to the Daily papers, of which the circulation is almost confined to the near neighbourhood of the Metropolis: it manifests itself in a much less degree in the every-other-day papers: and in a still less degree, if at all, in the weekly papers, of which, taking the Kingdom through, the circulation (on any given day at least) is greater than that of all the London papers put together. Licenced Public-Houses in the Kingdom, say 50,000:<sup>689</sup> Houses that may come to be licensed under the proposed system, if carried to its full extent, perhaps as many more: total 100,000, the amount of the factitious and certain circulation.

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<sup>687</sup> Almost every newspaper (for instance the *Morning Chronicle*, the *Morning Herald*, *The Times*, *The Star*, *The Sun*, the *Oracle and Daily Advertiser*, and the *General Evening Post*) was sold at 6d. a copy. The *Hue and Cry*, and *Police Gazette*, first published (as the *Quarterly Pursuit*) in 1772, by Sir John Fielding (1721–1780), Justice of the Peace for Middlesex at Bow Street from 1754, was distributed free until 1793, when it was announced that it would henceforth be sold ‘at the usual Price of other Newspapers’: see *The Sun*, 23 November 1793.

<sup>688</sup> MS ‘calculation’, contradicts the evident sense of the passage.

<sup>689</sup> This figure appears to be an informed guess. An anonymous writer in 1772 estimated ‘that the Number of common Brewers, Masters of Inns, and Alehouses in the Kingdom is now more than 40,000’: see *A View of Real Grievances, With Remedies Proposed for redressing them; Humbly submitted to the Consideration of the Legislature*, London, 1772, p. 29. Colquhoun reported that in 1793 there were 5,620 licensed ale-houses in the City of London, the Bills of Mortality, and Middlesex, and, making allowance for those in adjacent parts of Kent and Essex, suggested a total of ‘about six thousand public-houses in London and its environs’: see *Observations and Facts relative to Public Houses*, pp. 1–2.

[150\_581]

Convey'd to every house of public entertainment—to every place of public meeting for the lower classes without exception, the *Police Gazette* would find its way into the hands, and furnish no small part of the entertainment, of the 500,000 fighting men who have been computed to constitute the population of the Friendly Societies.<sup>690</sup> Five hundred thousand forms, therefore, a part—and but a part—of the audience to which the sort of *sermon* in question would be preached weekly and as much oftener as was thought fit, addressed to ears the attentiveness of which would not be subject to those causes of failure which affect the efficacy of other sermons. Not a nook nor a cranny in which this antidote would not be sure to meet whatever poisons of the moral or political kind either actually are or ever can be administered: and beyond that, the antidote would preoccupy and preserve thousands and thousands of minds, in places into which the poison (especially considering the price to which it has lately been raised)<sup>691</sup> can never hope to penetrate.

[150\_582]

The effect produced by a publication of any kind upon the body of the people will be in proportion to the number of persons into whose hands it finds its way, and to the magnitude of the interest which each man takes in it:—it will be in the joint ratio of both these two quantities. Euclid<sup>692</sup> never advanced a proposition more irrefragable. In the instance of the *Police Gazette*, the magnitude of this effect lies, therefore, altogether at the command of government. The interest a man will take in the contents is secured by the nature of things: the number of hands into which the paper will find its way is in the inverse ratio of the price, which will be fixed by government. This much with regard to the

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<sup>690</sup> The source of this estimate for the membership of Friendly Societies has not been traced, although Colquhoun, *Treatise on the Police of the Metropolis*, p. 154, had estimated the number of members of Friendly Societies living in the neighbourhood of London at 70,000.

<sup>691</sup> The Stamp Act of 1797 (37 Geo. III, c. 90, § 2) laid an additional stamp duty on newspapers of 1½d., representing an increase of 75% on the previous duty of 2d. per sheet or half-sheet, since almost all newspapers were produced on a half-sheet of paper which, folded in half, made them four pages long.

<sup>692</sup> Euclid (fl. 300 BC), Greek mathematician, author of the *Elements* in thirteen books, which, in its modern published editions, was conventionally structured as a series of propositions (or enunciations), each accompanied by a more detailed demonstration, by which the proposition was proved. See, for instance, *The Elements of Euclid, viz. the first six books, together with the eleventh and twelfth*, ed. Robert Simson, Glasgow, 1756.

free branch of the circulation: but the factitious branch, to the amount that has been seen, is still more absolutely at the command of government.

[150\_583]

Victories at this moment keep the people in good humour:<sup>693</sup> at the moment and for the moment, in spite of the endless prospect of unprecedented and ever increasing burthens. But one of these days peace will come: and then, at any rate (to say nothing of sinister accidents), there will be an end of victories. Then recommence the attacks upon the vitals of the constitution with redoubled fury, then, when there is nothing to create a diversion in favour of internal quiet. The tide of national ill-humour, of which at this moment so large a portion finds vent by discharging itself upon the foreign enemy, being then pent up within the Country, will return into the old channel, and, if some such means as what are proposed be not employ'd to stem it, will recoil upon government with unexampled pressure.

[150\_584]

The policy of the Alien Act is sound and necessary, as far as it goes:<sup>694</sup> it is the result of a necessity not likely to be extinguished even by the return of peace. It is a part, indeed, but no more than a part, of what is necessary to be done in pursuance of the same principle. The French may be the most conspicuous, but they are by no means the most determined, nor the most formidable, enemies of national repose: the most formidable enemies by far which the country has are in her own bosom. Of these the country can not be cleared by any power or by any industry: all that can be done—all that can be so much as attempted—is to guard the minds of the susceptible and thoughtless multitude against the poisons which it is their incessant endeavour to disseminate. Against dangers of this kind (the source of every other) the force of arms and hands is unavailing: for combating pens or tongues, pens or tongues are weapons altogether indispensable.—Of armies there may be

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<sup>693</sup> Bentham presumably had in mind recent British martial successes in the Mediterranean, including the Battle of the Nile (1–3 August 1798) and the Capture of Minorca (16 November 1798).

<sup>694</sup> The Aliens Act of 1793 (33 Geo. III, c. 4), which was intended to give the British authorities a degree of control over refugees from revolutionary France, required aliens arriving at British ports to register their personal details and to obtain passports before proceeding elsewhere, and restricted their right to import or possess weapons. The Act was of temporary duration, but was renewed annually over the next four years, and further amended by two Acts in 1798 (38 Geo. III, cc. 50, 77).

no want—*sed quis custodiet ipsos Custodes?*<sup>695</sup> Employ'd with the advantage here proposed—furnished with an all-pervading and inimitable vehicle for their productions—a few able pens—a few of those very pens which, for want of that advantage, are labouring with a degree of effect altogether inadequate—might save more than as many regiments.

[150\_585]

That, among the Reviews, the ablest pens and those which find the greatest number of readers are indefatigable in the cause of national destruction has already been remarked. But there is a single Magazine, the influence of which may rival that of all the others put together. Though not yet three years old, the number of copies printed of it every month amount already to five thousand.<sup>696</sup> Rich beyond example in every branch of information as well as entertainment, it leaves all other publications of the same class far behind. But an object it never loses sight of is—to represent the government of the Country as a nuisance ripe for extirpation: and from this passion, objects in their own nature the most remote from politics are made to receive a tinge. Chemistry, Mechanics, Astronomy, Music—every thing is tainted with this venom: Biography, of which there is a constant abundance, of course is full of it. By its *immediate* influence, this publication will seldom, (it is true) descend to so low a level as that of the great mass of the people, for whose reading the *Police Gazette* is principally designed: but the minds of those to whom they look up and on whom they depend—their Masters and Employers—will, if it goes on as it has begun, be in a fair way to be formed by it.

The Sedition Act may be regarded as a second *Magna Charta*,<sup>697</sup> preserving against attacks still more destructive that security which the first had formed. (I say *security*: for as

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<sup>695</sup> See Juvenal, *Saturae*, vi. 347–8: 'But who will guard the guards themselves?' The phrase is now considered to be a later interpolation.

<sup>696</sup> i.e. the *Monthly Magazine*, founded by Richard Phillips (1767–1840), author and publisher, edited by John Aikin (1747–1822), physician and writer, and with contributors including John Wolcot (alias 'Peter Pindar') (c. 1738–1819), Capel Lofft (1751–1824), and William Fordyce Mavor (1758–1837). The first number appeared in February 1796, and by 1797 the magazine was reported to have a circulation of 5,000: see Philip Luckombe, *The Tablet of Memory; shewing every Memorable Event in History, from the Earliest Period to the Year 1800*, 10th edn., London, 1800, p. 121.

<sup>697</sup> The Seditious Meetings Act of 1795 (36 Geo. III, c. 8) proscribed the holding of public meetings of over fifty persons for political purposes, unless publicized in advance and authorized by Justices of the Peace. For *Magna Carta* see p. 242 n. above.

to *liberty*, the word is so replete with ambiguity and poison as to be scarce fit for use:—it is as if arsenic were sold at the Grocer’s under the same name with Sugar.) The Sedition Act has silenced the mob of inflammatory tongues: but howsoever necessary, and, when considered apart from prejudice, exempt from real danger, it can not be denied to have been a measure of the strongest and most alarming kind. Excellent as far as it goes, it goes after all but half way. To pens [150\_586] of the same complexion, the defence it provides does not extend; nor could it receive any such extension, without introducing a licencing system for the press: a measure the bare mention of which would, perhaps, be scarce endured among some of the warmest advocates for the other. To shut up the Court of public opinion altogether would be among the most unpopular, not to say the most dangerous, of all attempts: but the simple faculty of being heard is a privilege which no government whatever can, with the least colour of reason, be censured for securing to itself: even if this were the known object of the *Police Gazette*, which it is not proposed to be.— Laying out of the question altogether the press-licencing system, between the Sedition Act and the proposed *Police Gazette*, the difference in point of roughness of operation is as great, as between the strongest *drastic*, and the most gentle alterative.

[150\_587]

If this instrument be not employ’d—all the wit of man can not devise, nor all the efforts of man produce, an equivalent for it. In the shape of a series of Essays, published on the ordinary footing, without other support than its own merits, all the talents in the kingdom or in the world put together could not produce a composition, the circulation of which would amount to more than a few hundreds, or at the utmost a very few thousands, and that but momentary, depending not only upon the ability of the Conductors, but upon the taste and humour of the times. Spectators, Tatlers, Guardians, Freeholders—none of that class of writings—not even the most popular, was ever able to maintain its ground as a periodical composition for more than a very few years:<sup>698</sup> nor have any of these ingenious

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<sup>698</sup> *The Tatler* was a literary, society, and politically Whiggish thrice-weekly periodical founded by Richard Steele (c. 1672–1729), writer and politician, which ran from April 1709 to January 1711. A prominent contributor was Joseph Addison (1672–1719), writer and politician, and in March 1711 Addison and Steele jointly launched *The Spectator* as a daily publication, which ran until December 1712. In March 1713 Steele began a new daily journal *The Guardian*, which ran until October 1713. Addison revived the *Spectator* as a thrice-weekly publication in June 1714, after which it ran until December 1714. He afterwards established *The Free-Holder*, which ran twice weekly from December 1715 to June 1716.

and polished productions descended low enough for the present purpose. Neither wit nor wisdom can act where it is not: to act every where, a paper must be present every where: but present every where neither paper nor any thing else can be, without those wings, which it is here proposed to construct, and which can not be constructed by any other hand than that of Government. No paper bearing a name of party on its title-page—though it were the party of the country—No paper which aimed avowedly at this object, can act in pursuit of it with nearly equal advantage and effect. Hanging out such a sign, it presupposes on the part of its customers the presence of those very dispositions the absence of which is the cause that produces the demand for it. Addressing itself to none but those whose affections are already engaged, and deeply engaged, on the same side, it gives warning to those on the other side to shut their doors against it, and to those who are neutral or indifferent, to put themselves upon their guard against its influence.

[150\_588]

All instruments, that for their efficiency depend principally upon the nicety of the workmanship, are essentially incompetent to such a purpose. Worthy by its importance of occupying the ablest hands the country produces or can be made to produce, the instrument presented by the *Police Gazette* possesses the peculiar advantage of being incapable of being altogether spoilt, even by the clumsiest. Dependent within certain bounds, as every work of art must be, upon the hands that frame it, it is beyond all comparison less dependent than any other. Composed of materials always new, and endowed with attractions of which the power is inherent and indestructible, it may be superior or inferior to itself, but, at the very lowest, it will be superior to all others put together.

For supplying this additional and perpetual sheet-anchor to the Vessel of the State, the institution of the proposed Board presents such an opportunity, as if now permitted to slip away unimproved, may never be to be recalled.

[150\_589]

The Bible, (it may be said) is what the people *ought* to read:—there is their best preservative. Be it so:—but is the conclusion just, that because they *ought*, therefore they will *read* it? and that nothing should be done in aid of this preservative? Were this reasoning just, then ought all penal laws to be abolished, since a man ought to live honestly although there were no such laws. No:—the just, and only just, conclusion is—then let no

expedient be left unemploy'd, which can contribute to engage a man to read his Bible. In a Newspaper (who does not know it?) a man will read, and read throughout, what he would not so much as look at elsewhere.—Many a man, who would loath or scorn to read his Bible *in* his Bible, might be made to read it in the *Police Gazette*. In his Bible, a man can *not* be made to read the *Police Gazette*: but in the *Police Gazette*, he *might* be made to read his Bible. The sacred Book itself will not be deprived by it of a single reader:—on the contrary, it may be made to acquire them by thousands.

[150\_590]

{102} {2} § 45. page 194. {*Police Gazette* .^^. on such .^^. days as they shall .^^. think fit}.<sup>699</sup>

For the *Ordinary Police Gazette*, once a week, it is supposed, may be found to suffice. On extraordinary occasions, such as the breaking out of a case of Murder or other atrocious crime, in which quick and wide-spread promulgation is necessary, an *Extraordinary Police Gazette* may issue, and the circulation of it may be confined to such tracts of country as present a particular prospect of affording information or assistance towards the bringing of the criminal or criminals in that particular instance to justice. It is by this means, it is conceived, that the conflicting interests of Police and Finance—of promptitude and frugality—may be reconciled to the best advantage.

[150\_591]

{103} {3} § 45. page 195. {*Police Gazette* .^^. free of Stamp-Duties }.

The Stamp-Duties concerned are—1. the duty payable for each copy of the paper: 2. the duty payable for each advertisement, and which is the same whatever be the number of the copies. In regard to the first of these branches of revenue, the exemption will be no sacrifice: the publication in question being one which would not exist at all without the proposed measure, and which, being precluded from receiving any other kind of news, will

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<sup>699</sup> In 'A Bill for the establishment of a Board of Police', p. 194 above, Bentham's reference to the *Police Gazette* followed, rather than preceded as here, the reference to the days on which it was to be published.

not in any degree diminish the demand for any of the publications from which this branch of revenue is extracted. With regard [150\_592] to the other branch, it must indeed be confessed, that among the articles proposed to be inserted *gratis* in the *Police Gazette* are some that at present pay a stamp-duty in the shape of advertisements: and that thus much of the amount of that duty would accordingly be to be sacrificed. But surely there can not be a sacrifice the demand for which is of a more urgent nature. To impose a duty, and a duty which in a multitude of cases must operate as a prohibition, upon a branch of information necessary to the execution of penal justice, is to nip justice in the bud. To offer immense rewards for information of this kind with one hand, while, for the gain of a few shillings, those who would afford it, and be glad to afford it, without reward, are driven away with the other, would be an inconsistency no less preposterous in a financial point of view than with a view to Police.

At present, the demand for information is thus taxed, and, by being taxed, prohibited, and prevented from appearing: but preventing the appearance of the demand for information is preventing the appearance of the information itself. By preventing a man whose goods have been stolen from making it universally known that they have been stolen, and that such an one is suspected of being the thief, the tax prevents him from hearing where the goods may be found again, or where the thief may be apprehended.

In some instances, it may be matter of consideration, how to draw the line, between such information or enquiry as comes under the reason of the exemption, and such as does not. Take, for example, Notice of, that is Enquiry after, *things lost* (matter for one advertisement):—information of *things found* (matter for another advertisement): where the loss is observed, it may not be known, or so much as open to conjecture, whether the loss has or has not criminal depredation for its cause. In such case, any one of a variety of expedients [150\_593] that would present themselves upon investigation, might be employ'd for reconciling the interests of Finance with those of Police. The present stamp-duty might be received, subject to an engagement to return it, in the event of the article's proving to have been stolen &c., and the thief, or supposed thief &c., convicted or prosecuted: or the thing, before it were returned to the owner by the finder, might be deposited with the Officer of the Board, and a premium paid to government in the name of *salvage*. Whatever the loss amounted to that would be incurred in this way, might easily be reckoned up: and surely a year's loss submitted to for the purpose of ascertaining the amount of it—a year's loss of this very confined branch of the Stamp-duties—need not be

grudged: and the amount of it might afterwards be imposed upon other classes of advertisements not necessary, like this, to the purposes of justice.

If articles of this dubious kind were even made to pay to their full amount, still the advantage of having them circulated in a paper that went every where, instead of a paper limited in its circulation, as a common newspaper is at present, would be of no small use. It would be a hardship (it may be said) upon the present Newspapers, by taking from them so much of their custom: but what would the amount of it be, in comparison of that which, partly for purposes of revenue, partly, perhaps, with views of police, (I mean for the sake of narrowing the circulation of these institutes of sedition, and rendering them less accessible to the lower and more inflammable classes) has been inflicted without scruple by so enormous an enhancement as the duty payable per copy has experienced?<sup>700</sup>

[150\_594]

{104} {4} § 45. page 195. {*Police Gazette .^^. free of .^^. postage*}.

Why post-free, see Note to [§] 47.<sup>701</sup>

{105} {5} § 45. page 196. {*If any person .^^. shall omitt to sign .^^. his .^^. name*}.

On the subject of anonymous information, considered in itself, as well as with reference to the proposed Board, a paper will be added, if desired.<sup>702</sup>

[150\_595]

{106} {1} § 46. page 197. {*Lawful .^^. to add to the amount .^^. of the*

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<sup>700</sup> See p. 325 n. above.

<sup>701</sup> MS 'p.'. There is no note to § 47, but see note {111} to § 52, esp. pp. 361–2 below.

<sup>702</sup> See 'Appendix to Notes on the Police Bill: containing Reasons, Precedents, and other Elucidations. Anonymous Information', pp. 364–79 below.

*several licence-Duties* }.

Whether this mode of supply towards the expence of the *Police Gazette* shall be adopted—and if so, whether to this or what other amount, must be left to the proper judges—and this section will stand or be struck out accordingly.

[150\_596]

{107} {1} § 48. page 199. { *Commissioners .^^. to .^^. frame a .^^. Calendar of Delinquency* }.

As *Finance* has its annual Budget, so (it is conceived) ought *Police*. The proposed *Calendar of Delinquency* would be the main article in the Budget of Police. It is by an instrument of this nature, and by this alone, that any explicit index or measure can be afforded, of the demand for improvement in this line at the outset, or progressively of the result, favourable or unfavourable, of such exertions as from time to time may come to have been made in that view.

National progress, in point of wealth and population, has of late, though comparatively but of late, been thought worthy of being registered and attended to.<sup>703</sup> It seems almost time that the state of the nation in respect of internal security and morality, should likewise be thought worthy of being collected and attended to, with at least equal care. The demand for exertion in this new line is neither less urgent, nor the benefits derivable from it more questionable, than in the other. To remove a portion of wealth and labour into this or that channel out of all the rest is, in but too many instances, the sole occupation of the exertions bestowed by government upon the augmentation of the national stock of industry, and the expence and vexation attending the removal, the sole fruit. Such are the obstacles opposed [150\_597] to the efforts of government in the line of political

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<sup>703</sup> In 1796 John Rickman (1771–1840), statistician and civil servant, circulated among Members of Parliament an influential memorandum, ‘Thoughts on the Utility and Facility of a General Enumeration of the People of the British Empire’, which led in December 1800 to the passage of the Census Act (41 Geo. III, c. 15). For estimates of the progress in national wealth see, for instance, George Rose, *A Brief Examination into the Increase of the Revenue, Commerce, and Navigation, of Great Britain, since the conclusion of the Peace in 1783*, London, 1792, and Rose, *A Brief Examination into the Increase of the Revenue, Commerce, and Manufactures, of Great Britain, from 1792 to 1799*, London, 1799.

economy by the nature of things: but the nature of things will not be found to oppose any such obstacle to efforts from the same quarter in the line of penal law. In this latter instance, nothing can be clearer than the results that may be afforded, nothing more conclusive than the inferences. Capital can not be given to one branch of industry without being taken from another: but reductions may be made in the number of offences of any one class committed within the Year, without any addition made to the number of any other. By the number of offences under each head of delinquency for a given precedent period compared with the number of offences for a subsequent period of equal length, (distance between period and period such as shall afford time for the experiment) the degree of efficiency of a supposed remedy may be exhibited in figures: and as to such part of the inconvenience of it as consists of expence (for no measure of government whatever, not even the most unexceptionable, can ever be altogether free from inconvenience), the inconvenience of the remedy may be exhibited in figures likewise. This expence and the vexation together (for no measure of the coercive kind—that is no measure at all but those which consist in the simple removal of coercion already applied—can be unattended with vexation) will give the exact price which the public pays in each instance for the benefit of the measure.

[150\_598]

In a word, the *Calendar of delinquency* will be, to penal legislation, what the *thermometer* is to Chemistry: and by the attentive observation and practical application of it, the improvement in the *moral art*, may come to rival the progress made, and continually making, by the *natural science*. So much additional fuel consumed, so many degrees of additional heat, as indicated by the *thermometer*: so much money or punishment expended, so many units subtracted from the sum total of offences as indicated by the *Calendar of Delinquency*.

[150\_599]

This, like other contributions to the science of political arithmetic, and not less than any of them, is that sort of acquisition that, from the very nature of [it], promises to be generally acceptable to persons of all parties and descriptions:—a perpetual fund of information, generally interesting and perpetually new. Independently of its utility, it promises amusement, and each individual will reckon upon making his own use of it. Men in office and men out of office, the speculative and the active, the industrious and the idle—some with one view, some with another—all agree in their appetite for facts.

In the Metropolis and its vicinity, the Calendars or *Bills*, as they are called, of *mortality*, the lists of deaths with their supposed causes, have for a century and more been collected and published, and use has been made of them in a variety of ways.<sup>704</sup> In the present instance, the connection between science and art, between theory and practice, is surely rather more intimate than in that: effects are rather more obedient to the power of human causes: *sin* in every line is but too difficult to prevent, but in no line quite so difficult as *death*.

[150\_600]

Affording a practical test as well as index of the utility of any new measure to which it may be thought fit to apply it, another effect of the *Calendar of Delinquency* will be, the operating as a check to crude and half-considered projects in the line of political improvement, as the practice of keeping regular books operates as a check to similar enterprizes in the line of private industry. By holding up to view the idea of profit and loss in perpetual conjunction, by the continual calls it gives to the Statesman to look at both sides of the account, it opposes a powerful corrective to those partial views in which profit alone is taken account of, and loss turned aside from, as if it were not worth thinking of. Abstractedly considered, it is easy enough to devise measures that in one shape or other would be serviceable in the way of Police. But will the advantage in each case afford sufficient payment for the vexation and expence? On that question depends the eligibility of each measure: and to that question it is only from the *Calendar of Delinquency* that a substantial and perfectly satisfactory answer can be deduced.

Let the question—shall a National Watch or *Maréchaussée* for the guarding of the Roads all over the country be instituted?—serve as an example. Proceeding upon the

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<sup>704</sup> The Bills of Mortality were weekly returns and annual summaries, issued regularly from 1592 onwards, of the numbers of baptisms and burials, with ages and causes of death, that had taken place in the City of London, Westminster, and Southwark, and a number of surrounding parishes. The Bills were frequently used by demographers, although their limitations (for instance in their recording only burials in Anglican parish churchyards and burial grounds, rather than all deaths, and in their geographical bounds having been greatly exceeded by the the expansion of metropolitan London) were repeatedly acknowledged. See, for instance, William Maitland, *The History of London, from its Foundation by the Romans, to the Present Time*, London, 1739, pp. 533–8, and Richard Price, ‘Observations on the expectations of lives, the increase of mankind, the influence of great towns on population, and particularly the state of London with respect to healthfulness and number of inhabitants’, *Philosophical Transactions of the Royal Society of London*, vol. lix (1769), 89–125.

ground [of] theory and analogy, without attending to figures, if a Parish Watch be necessary, so should a City or Metropolitan watch—and if a City or Metropolitan Watch, so should a National. But a National Watch or *Maréchaussée* will not cost less (say for argument sake) than £40,000 a year. Turning, then, to the *Calendar of Delinquency*, let £20,000 a year and no more appear to have been the amount of the property lost by highway robbery, within the same space of time: and, to clear the case from complication, let the year be a year of peace. On the face of this account, the evidence given by the *Calendar of Delinquency* in relation to the supposed project of a National *Maréchaussée* will not present itself as operating very strongly in recommendation of the measure.

[150\_601] But further still, in cases of this kind, it is scarcely in the nature of any measure whatever, to compass its end to a degree of absolute perfection: say, then, that the effect of such an establishment would be—(or say that it has been)—not to put an end to highway Robberies altogether—for that would be next to a miracle—but to reduce the loss from £20,000 a year to £10,000, or £5,000: that is to strike off £10,000 or £15,000 from the amount of it. On this further view, the indication presented by this channel of investigation appears still less favourable to the supposed measure. On the other hand, neither is highway robbery the only head of delinquency against which the establishment in question would operate as a preservative, (though it is certainly by far the most considerable head) nor, in the case of highway robbery, does the sum total of the pecuniary loss constitute the sum total of the mischief of the offence: for the general apprehension in the neighbourhood of a road on which robberies are frequent, and the restraint on travelling which, to a certain degree, will be the result of such apprehension, remain to be added to the account.<sup>705</sup> These *items*, unfortunately, are not to be had in figures. And hence, but hence only, arise those incommensurable quantities by the amount of which the conclusions deducible from this source of information will fall short, in point of certainty and precision, of those which rest in their whole extent on the basis of mathematical demonstration.<sup>e</sup>

<sup>e</sup> [150\_602] Might not the employment of the military for this purpose be a means of striking off the greatest part of the expence? Would not a force of this description be more under command, as well as more effective, than any civil force? Would not the subordination as between the component members be more decided, the discipline more strict, and thence the security against

<sup>705</sup> See *An Introduction to the Principles of Morals and Legislation* (CW), Ch. XII, pp. 143–57, at 144–7.

abuse of power, as well as any other species of misconduct, more entire?  
Would not the service they were thus employ'd in against the internal enemies have the additional good effect of forming and keeping up the habits of activity, intrepidity and subordination, and thus keep them in [a] state of constant preparation for service against foreign enemies? Have the aversions that have been entertained against the employment of the existing stock of military force (a measure very different from the encrease of it) any better foundation than that of a superficial prejudice—incapable of standing the test of reason?—Are not this and all other prejudices of the same cast upon the wane? These are topics which it is sufficient thus to glance at—the discussion of them belongs not to the present purpose.

[150\_603]

An example afforded by a former head may answer the double purpose of illustrating the use of the proposed *Calendar of Delinquency*, and that of displaying still further the conveniency of a practice already recommended and exemplified, viz: that of operating by the creation of powers rather than by regulations ready made<sup>706</sup>—working by a light and handy engine (so to speak), viz: the *Board*, rather than by the great complicated and unwieldy mechanism of Parliament: an advantage, let it never be forgotten, still more conspicuous with reference to the interests of the individual subjected to the power in question than to those of the public at large, for whose benefit it is more particularly designed. Two or more powers being supposed to be created by Parliament, all conspiring to the same end, let that one of them all be first selected and acted upon, which promises to be attended with least vexation to the party, whose liberty is abridged by the exercise of it: this being tried by itself for a year or two, let the *Calendar of Delinquency* be consulted to discover its effects in practice: it being remembered at the same time that the greater the effect and success of the regulation thus pitched upon as least burthensome, the less the demand is that remains for that other, or those others, that are more burthensome. By this means it may happen that the greatest part of the burthen, which, were it not for the sort of attention in question, would [150\_604] have been laid on, as it were, in one heap, and in the first instance, may thus be saved. Thus, call the number of delinquencies of a given class occurring throughout the Kingdom in the compass of a given Year 200: and a single

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<sup>706</sup> See, for instance, pp. 279–80, 286–7 above.

one out of a cluster of regulations, for the establishment of which powers are created, being established in the first instance, let the number of similar delinquencies in the course of the next Year have sunk to 100. Such being the effect, the utmost force that can be acquired by the accumulation of the most burthensome regulations that can be imagined can produce no greater effect, all of it together, than what shall be equal to the effect produced by the single one in question, and that one the least burthensome: it can not even produce so much: for as *moral* action, how well soever conducted, can never, in point of regularity of effect, be brought to be upon a par with *mechanical* action, the utmost that can be done, by the most consummate wisdom employ'd on such a ground, is to diminish the current of Delinquency in each channel—it can never dry it up altogether.

In the ordinary way of proceeding, all manner of regulations that present themselves as capable, each of them, of contributing any thing towards lessening the frequency of the Offence, are brought forward together, and laid upon the shoulders of the subject in one lump: if the Bill, pregnant with [150\_605] with all these burthens, passes, the load thus laid upon the shoulders of the subject is by this means greater than would have been necessary; but an opposite inconvenience which may also happen is—that Parliament takes fright at the magnitude of the burthen, and the whole measure, with every advantage that had been expected from it, falls to the ground.

[150\_606]

The *Calendar of Delinquency* can not be considered as an object altogether new or indifferent to the eye of the legislature. Attempts towards the construction of such a Register—attempts, though partial and unconnected—are visible in various parts of the Statute Book.<sup>707</sup> The instances in which *Convictions* (i:e: Records of Conviction) issued by

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<sup>707</sup> Bentham may have had in mind the efforts of Sir John Fielding to compile a systematic register of offenders throughout the metropolitan district, and, from 1772, across the whole country: see John Fielding, *Extracts from such of the Penal Laws, as Particularly relate to the Peace and Good Order of this Metropolis: with Observations for the better Execution of some, and on the Defects of others*, London, 1768, p. v, and *Calendar of Home Office Papers of the Reign of George III: 1773–1775*, ed. R.A. Roberts, London, 1899, p. 11. An unrelated register of persons indicted for criminal offences in the County of Middlesex and City of London, and held in Newgate Prison, was maintained by the Sheriff of London from 1791 until September 1793, when it was taken over by the Home Office on the initiative of Henry Dundas (1742–1811), first Viscount Melville, Home Secretary 1791–4, Secretary for War 1794–1801, First Lord of the Admiralty 1804–5. The function of the register was described in 1797 as being, ‘To note each Commitment and

Justices out of General Sessions, have been required to be transmitted to the General Sessions, and there preserved (*filed* is the term employ'd), are too scattered to be easily collected, and too well known to be worth collecting.<sup>708</sup>

By the last Hawker's Act (29 G. 3. c. 43) (an Act quoted in the course of these Notes as affording a useful precedent on more occasions than one),<sup>709</sup> every Justice before whom any person has been convicted under that Act is (by § 28) required to transmit to the Commissioners divers particulars relative to the conviction, under the several heads following; viz:—1. Name of the convicted person.—2. Day when convicted.—3. Offence whereof convicted.—4. Sum paid on account of the conviction: and the Convictions are required to be classed according to the Counties &c. in which they have taken place. To this head of correspondence, the Commissioners of Police, as representatives of the Commissioners of Hawkers, will succeed of course.

[150\_607]

The practice of requiring Convictions to be transmitted and filed, as above, would naturally have been more frequent, not to say universal, if there had been any common repository into which they could have been received, and in which they could have been preserved, for general use. From the receiving them at the Courts of Quarter Session in the several Counties, distributed as they are by that means among more than fifty different Repositories, and thus scattered all over the kingdom, the collection thus made of them can answer very little purpose: so little, that upon the face of the business, the attention paid to these requisitions does not seem likely to be very general among Magistrates. The case would be very different in this respect, under a Central Board, charged with the special duty of completing the list of these documents from all quarters, and responsible to Parliament and to the public for whatever deficiencies may be found in it.

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Conviction, for the Purpose of distinguishing between old and new Offenders; to shew the Increase or Decrease of the several Descriptions of Felons': see 'Sixteenth Report from the Select Committee on Finance, &c. Secretaries of State', 19 July 1797, Appendix M, in *Commons Sessional Papers of the Eighteenth Century*, cix. 137. Neither of these registers, however, had any statutory basis.

<sup>708</sup> See, for instance, the Customs etc. Act of 1769 (9 Geo. III, c. 41, § 9), the Game (England) Act of 1773 (13 Geo. III, c. 55, § 6), the Woollen etc., Manufactures (Bedfordshire) Act of 1785 (25 Geo. III, c. 40, § 30) and the Duty on Hair Powder Act of 1795 (35 Geo. III, c. 49, § 3).

<sup>709</sup> See pp. 230–1, 233–4, and 301–3 above.

Of the practicability of a Register of this sort, could any doubt be entertained of it, other exemplifications are not wanting. The Tables of Convictions printed by the Committee of Finance, for offences arising out of the business of the Hackney Coach office<sup>f</sup> (one of the Offices proposed to be merged in the proposed Board of Police) may be referred to in this view.

<sup>f</sup> 11<sup>th</sup> Report.<sup>710</sup>

[150\_608]

By the 31 Geo. 3. c. 46. § 8,<sup>711</sup> Returns are required to be made by Jailers. But this provision, though good as far as it goes, does not come up altogether to the present purpose. It extends not to prisoners committed on mesne process. The Returns it prescribes are to be made at no other time than the first day of each Assizes: that is, nowhere more than twice in the Year, and in some places only once. The persons to be comprized in them are such only as compose the existing stock of prisoners of the above description on each particular day. No account of intermediate commitments or departures, between one Assize time and another: so that, even among prisoners committed on conviction, individuals in great numbers (by far the greater number of those committed for a few weeks or a few months) must, under this Act, escape notice. Each Jail may have lost nine-tenths of its inhabitants several times over by pestilences or escapes, and no indication of either misfortune be exhibited by these Returns. No such central authority as the proposed Board being then in existence, the persons to whom the Returns in question are required to be made, are the Clerks of Assize at the several Assizes.<sup>712</sup> A Clerk of Assize not being that sort of person who can naturally be expected to feel any great concern about such matters, the persons looked to in that view seem to have been the several Judges of Assize: but even from these great Magistrates, engrossed as their time is by other duties, no very constant or systematical attention to any such documents, or to any uses that may be derivable from them, seems reasonably to be expected.

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<sup>710</sup> i.e. ‘Eleventh Report from the Select Committee on Finance, &c. Hackney Coach Office’, 19 July 1797, Appendix C 4, in *Commons Sessional Papers of the Eighteenth Century*, cviii. 358), where for the year 1796 five convictions of Hackney coach owners and drivers for having exacted excessive fares are recorded.

<sup>711</sup> i.e. the Gaols Act of 1791, § 8.

<sup>712</sup> Clerks of Assize were senior administrative officers who oversaw the operation of the assize courts and maintained the records of the decisions given by judges on circuit.

[150\_609]

The following are (in substance) the heads expressive of the information demanded by this Act. 1. Cells, number. 2. Cells, size of each. 3. Prisoner's name. 4. Prisoner's Offence. 5. Court (in case of regular Procedure) in which the Prisoner was convicted. 6. Court—in the like case) sentence passed by it on the Prisoner, in consequence of such Conviction. 7. Justice or Justices (in the case of summary procedure) by whom the Prisoner was convicted. 8. Prisoner's Age. 9. Prisoner's 'bodily estate'. 10. Prisoner's behaviour.

The following are among the heads, some or all of which, on one account or other, the proposed Board might, perhaps, find reason to add to the above. 1. Prisoner's place of nativity. 2. Prisoner's condition in respect of marriage:—Batchelor or Spinster—Widower or Widow—Married Man or Woman. 3. Prisoner's Occupation at the time of Commitment. 4. Prisoner's occupations from birth down to that time. 5. Prisoner's place of abode (if any) at the time of Commitment. 6. Prisoner's places of abode from birth down to that time. 7. Prisoner's children (legitimate), number of them alive. 8. Prisoner's children, illegitimate (if any), number of them, if any, depending on him or her for subsistence. 9. Prisoner's child[ren], sex and age of each. 10. Prisoner's Child[ren], present occupation (if any) and prior occupations. 11. Prisoner's Child[ren]—present and prior places of abode.

[150\_610]

From the above additional heads, a variety of indications may be drawn, subservient in a variety of ways to the purposes of Police. Aliens, Irishmen, Scotchmen, Welchmen, North-Countrymen, West-countrymen, Londoners, Soldiers, Sailors, Militia-men, Vagrants, Gipsies, London and other regular-bred thieves, Suspected Coiners, Suspected Smugglers, would thus be distinguished. The degree in which licentiousness in respect of sexual intercourse is connected with other irregularities would also be observable, and the quantity of family suffering resulting from the delinquency of the father or mother would likewise be display'd. To indicate all the points of information derivable more or less immediately from these heads, with the uses to which these several points of information might be applied in practice, would almost require a volume.

Under favour of the latitude purposely given in the text, the Board would enlarge the number of heads in its blank forms, in proportion to the maturity of its experience and the enlargement of its views. How much better thus, than for Parliament to be tormented for a

fresh Act, every time an additional head came to be demanded, for a system of Book-keeping, for this or any other public purpose!

[150\_611]

If, in this country as in others, the concerns of the Poor should be considered as constituting a branch of the business of Police, the Returns obtained by Gilbert's Acts,<sup>§</sup> for two temporary and distinct periods of years, might be required from year to year, and be made transmissible to the Board of Police; and the substance of those Acts might be re-enacted for that purpose, with any additions that might be judged expedient. The almost universal compliance with the requisitions of that Act, even without the benefit of any such permanent and appropriate authority as that of the proposed Board for ensuring compliance, may serve, as an example to shew the practicability of obtaining the most extensive set of documents for an adequate public purpose: while the few instances of non-compliance may serve as indications of the still more perfect compliance obtainable by such an authority as that of the proposed Board.

§ 16 G. 3. c. 40; 26 G. 3. c. 56.<sup>713</sup>

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<sup>713</sup> Thomas Gilbert (c. 1720–98), land agent and poor law reformer, MP for Newcastle under Lyme 1763–8 and Lichfield 1768–94, was responsible for promoting both the Poor Act of 1776 (16 Geo. III, c. 40), which required overseers of the poor to submit to Parliament data on the operation of the poor laws for the year ending at Easter 1776, and the Poor Returns Act of 1786 (26 Geo. III, c. 56), which required the submission of similar (though not identical) data for the three years ending at Easter 1785. The enquiry of 1776 received returns from some 15,000 parishes or townships, and that of 1786 received returns from nearly 13,000 parishes or townships, leaving, in the latter case, only twenty-eight parishes or townships that submitted no returns, and twenty-two that submitted incomplete returns. See 'Abstracts of the Returns made by the Overseers of the Poor, in pursuance of An Act passed in the Sixteenth Year of His present Majesty's Reign, intituled, An Act for obliging the Overseers of the Poor, within the several Parishes and Places within that Part of Great Britain called England, to make Returns, upon Oath, to certain Questions specified in the Act, relative to the State of their Poor .^., 15 May 1777', in *Commons Sessional Papers of the Eighteenth Century*, xxxi. 107–349; 'Report from the Committee appointed to inspect and consider the returns made by the Overseers of the Poor, relative to the State of the Poor; and also, by the Ministers and Churchwardens, relative to Charitable Donations for the Benefit of Poor Persons; in pursuance of two acts, passed in the last session of Parliament, 23 May 1787', in *ibid.*, lx. 1–12, esp. 3, 11; and 'Abstract of the Returns made by the Overseers of the Poor, in pursuance of An Act, passed in the Twenty-sixth Year of his present Majesty's

Under Jonas Hanway's Act,<sup>h</sup> Accounts of the state of the Non-adult part of the London Poor are, or at least ought to be, kept under several very interesting heads, from Year to Year. No central Repository being *then* to be found, for collecting, arranging and publishing them, the utility derived from them, though considerable, is not what it might be.

<sup>h</sup> 7 G. 3. c. 39.<sup>714</sup>

[150\_612]

Fragments of the same kind—partial collections of documents similar to those of which the compleat collection is here proposed to be regularly formed and published—materials for the proposed *Calendar of Delinquency*—are not altogether wanting under the Scotch Law. By the [8<sup>th</sup>]<sup>715</sup> Anne ch. [16].<sup>716</sup> § 4,<sup>717</sup> inferior Judges and Magistrates are required to make up particular accounts of such criminal facts as are to be tried within their respective Circuits, containing the names and designation of the Offenders, the facts committed with the circumstances of time and place, and others that may serve to discover the truth; containing also the names and designations of the Witnesses, and titles of such *Writes*' (pieces of written evidence) 'as are to be made use of at the trials': which documents, after being authenticated by the signature of the Judges and Magistrates therein mentioned, or their Deputies or Clerks, are to be transmitted to the Lord Justice Clerk or his Deputies at Edinburgh, at least forty days before the holding of the respective Circuit Courts' at which the trials are to take place:—and the use, for which these documents are required, is declared to be—the serving as a ground for the several indictments in each instance.

This (it may occur) does not come up altogether to the present purpose: since the

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Reign, intituled, An Act for obliging Overseers of the Poor to make Returns upon Oath, to certain Questions specified therein, relative to the State of the Poor, 28 May 1787', in *ibid.*, 13–322.

<sup>714</sup> i.e. the Poor Act of 1767, passed at the instigation of Jonas Hanway (bap. 1712, d. 1786), merchant and philanthropist, and which made provision for the infant poor in parishes within the Bills of Mortality to be removed to rural districts. The Act (§§ 16–21 and Schedules A–E) required records and annual statistical abstracts to be compiled of deaths, discharges from the care of the parish, and apprenticeships.

<sup>715</sup> MS '16<sup>th</sup>'.

<sup>716</sup> MS '17.'

<sup>717</sup> i.e. the Circuit Courts (Scotland) Act of 1710, § 4. There are minor inaccuracies in the rendering of the following passage.

notion, under which the documents in question are regarded, is that of their being necessary to the rendering of justice, when the time comes, in each particular case, so that they are not designed to serve merely as memorials, shewing, with a view to collateral and distant purposes, what has been done and taken place, in so many past instances.

The following provision, however, is, as far as it goes, precisely in point. By the Act for the abolition of heritable jurisdictions,<sup>i</sup> no person ‘shall be committed .^.^ in order to trial for any assaults, Batteries and’ {or} ‘small crimes, without a warrant in writing, expressing the particular cause for which such person is imprisoned; which warrant [150\_613] or order shall be entered at large’ {by whom?} ‘in a Book to be kept for that purpose; and Extracts thereof’ {of what nature?—under what heads? of every such Warrant?—or of some only, and which? &c. &c.} ‘shall be transmitted’ {by whom?} ‘to the Sheriff or Stewart Court of the County or Stewartry in which such Order shall issue or be executed’ {which?} ‘there to remain on record.’

<sup>i</sup>[150\_612] 20 G. 2. c. 43. § 19.<sup>718</sup>

The end in view *here* was plainly that the existence of the documents in question might, when thus registered, operate by its notoriety as a sort of check upon the authority exercised [under]<sup>719</sup> the several warrants. But, in point of strength, what sort of a check can be afforded by either the written Book of Copies, or the written Book of Extracts, or both together—each lying on a single shelf—compared with what would be afforded by the printed and universally-circulated *Calendar of Delinquency*?

[150\_614]

In looking out for materials for the *Calendar of Delinquency*, the object has been to find out the several sorts of written, and consequently permanent, *instruments*, which, in the existing state of things, come to be framed and issued in the several lines of penal procedure—the several *occasions* on which they respectively come to be issued—and the several sorts of *persons* into whose hands they must have found their way: since whatever species of instrument must already, for the justification and security of any persons

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<sup>718</sup> The Heritable Jurisdictions (Scotland) Act of 1747 abolished the traditional judicial rights held by Scottish clan chieftains.

<sup>719</sup> MS ‘by’.

concerned, have been brought into existence, especially if for the same reason it must already have been presented, the transmission of a Copy or Abstract of such instrument is an operation that may be performed with little difficulty or trouble:—with much less than the framing of any new instrument.

In the regular branch of Procedure, such documents exist already in sufficient variety and abundance. In the summary branch of penal procedure, they [150\_615] may be comprized, mostly if not altogether, under five heads—viz: *Informations, Convictions, Recognizances, Summonses* and *Warrants*. In regard to *Informations, Convictions, and Recognizances*, there is but one public person in whose hands at any time the instrument is necessarily to be found—viz: the Magistrate by whom the memorandum or statement of the transaction, or chain of transactions, in question, is framed. In the case of a *Summons* or a *Warrant*—both of them instruments expressive of an act of the will—a command addressed by one person to one or more other persons, there are, at the least, *two* public persons, and in some instances *three*, in whose hands, at one time or other, the same instrument must have been lodged: the Magistrate by whom the command has been issued, and one or more subordinates, to whom it has been addressed:—in the case of a *summons*, the Magistrate who issues it, and the Constable who conveys it: in the case of most *Warrants*, the Magistrate who issues them, and the Constable by whom they are to be executed: in the case of a *Warrant of discharge* addressed to a Jailor, the Magistrate and the Jailor: in the case of a *Warrant of Commitment*, the Magistrate, the Constable and the Jailor. The greater the number of public persons thus concerned in the same transaction, so much the better for the present purpose: so many sets of Officers thus connected, so many checks, each to the other, with regard to the punctuality of the expected Returns, and so many securities against neglect on the part of any of them.

[150\_616]

To make the most effectual provision possible against deficiencies in the stock of materials requisite for composing the *Calendar of Delinquency*, virtual duplicates, or even triplicates, are necessary to be called for—documents either one or two of which might be useless, if the Return of any one were absolutely certain. That these virtual duplicates or triplicates may not be duplicates and triplicates in point of form and tenor as well as in substance, that is, that they may not be mere *repetitions*, one or two may be a literal Copy or Copies in each instance, the other or others an Abstract or Abstracts under heads: the

sort of person of whom the mere copy is required being the sort of person on whose part the degree of intelligence requisite to the filling up of an Abstract is with least certainty to be expected, viz: the Constable: for the difficulty of getting Blank Forms properly filled up by unlettered and unexperienced hands, has in practice been found greater than was expected: the sort of person from whom the Abstract is required being, for the opposite reason, the man of education, the Magistrate.

[150\_617]

If then, in the case of the Constable, Copies be required, punctuality of transmission will be more to be depended upon than if Abstracts were required. Making or filling up an *Abstract*, even a single Abstract, is work for the *head*; and if the Abstracts of a number of warrants at a time are to be entered on the same paper, each will be apt to delay the transmission of the rest. Taking a *Copy* is work only for the *hand*: and, there being no convenience to be gained by making any one such copy wait for any other, there will be no obstacle, but distance from the Post-House, to prevent their being sent off, each of them, by the very next post.

[150\_618]

The *natural* course of the business (though, not being the necessary course, it would hardly be proper to encumber the Bill with the mention of it)—the course which the business would be apt to run into of itself, seems to be—that the Justice, when he delivers a Warrant to the Constable, should, at the same time, deliver to him a duplicate, for him to transmitt forthwith to the Board, according to the provision in the text:<sup>720</sup> and, by using printed Forms on Papers of the same or correspondent size, with a direction to the Board ready printed on the back, the business may be conducted with great simplicity and regularity, and with very little trouble. As blank instruments of all kinds for the use of Justices of Peace are already an object of sale—as the Post-Office is already in the habit of taking charge of small sums of money on the account of individuals—and as the recent and useful establishment of the Paper Office has put into the hands of government the means of supplying itself with that necessary article upon economical terms,<sup>721</sup> the faculty of

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<sup>720</sup> See p. 201 above.

<sup>721</sup> The Stationery Office was established in April 1786 as a department of the Treasury, in order to supply paper, parchment, pens, sealing wax, and other items of stationery to all public offices.

obtaining from Government the supply requisite for this additional consumption at a reduced price (so it be not less than a little above the cost to Government) is an accommodation which, perhaps, it might not be unreasonable to afford to Magistrates—that is, to servants of the public, serving at their own expence.

Of *summonses*, it seems hardly worth while that copies or even abstracts should be required. An instrument of this class being neither necessary, in the character of a document, to the indicating the existence of a penal suit of the class in question, nor in all cases so much as necessary to either the commencement, the progress or the conclusion of it, the trouble of transmitting so voluminous an addition to the mass of necessary documents, will hardly be thought worth imposing, unless some special advantage, of adequate magnitude, should be pointed out as calling for it.

[150\_619]

It was proposed at one time, that the Returns made by Constables (the separate or *elementary* Returns at least, viz: the Copies of Warrants, if not the *aggregate* periodical Abstracts or Calendars) should be made to the Police Surveyor of the District, rather than to the Board.<sup>722</sup> The consideration in view in that case was principally the superior vicinity in point of place: but *vicinity* affords no reason except in as far [as] *facility of communication* is the result of it: and, by the medium of the post, communication even between one parish and another that is contiguous to it may be more easy through that circuitous channel than in a right line. The principal object at any rate is—that the Board itself should, from every District in the Kingdom, have communication of these documents: and when the Board has received the requisite set of documents from the Constable of any Parish in a given District, a Surveyor whose residence is in a distinct Parish of the same District will, in general, receive the set of documents in question through the medium of the Board, with less trouble and expence, although they should have travelled to London and back again from a distant County, than if they had been transmitted to him directly from the Parish in which they originated, though not more than a few miles off.

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<sup>722</sup> See ‘H<sup>o</sup>u<sup>s</sup>e of C<sup>o</sup>m<sup>o</sup>n<sup>s</sup>. a Bill for the granting to his Majesty certain duties on Licences’, § 50, pp. 79–82 above.

[150\_620]

{108} {2} § 48. page 202. { *Warrant &c. .^^. memorandum therof .^^. to be returned .^^.^^.* }.

Of the system of checks thus proposed to be established, the direct object is—simply to ensure information of the existence of the several documents, the transmission of which is required. But a collateral result and additional good effect would be—the putting Magistrates upon their guard with respect to the propriety of their proceedings, as exhibited and recorded by these instruments: operating thus in the character of a preventive system with regard to the several species of transgression, whether of omission or commission, into which Magistrates, as such, are liable to fall. What the licencing system is with reference to the traders who are the object of it, this system of communication is (due regard being had to the differences in point of rank, education and station in life in the two instances) with reference to the Country Gentlemen of whom the Magistracy is composed. As the tendency of the licencing system is to diminish the business, and still more the demand for the business, of the Old Bailey and the Assizes, so the tendency of this system of communication, with regard to these materials for the *Calendar of Delinquency*, is to diminish that part of the business, and of the demand for the business, of the King's Bench, which concerns informations against Magistrates.

[150\_621]

In the course taken for obtaining the requisite body of information, less ceremony will naturally be used (and accordingly less ceremony is used by the Bill) in the instance of persons of inferior account, such as the Clerks in the several Courts of regular procedure, the Jailers and the Parish Constables, than in the case of the Magistrates, that is the Country Gentlemen of the greatest respectability in their several Counties. In the former case, Penalties, though slight, and rather for shew than use, are avowedly employ'd: in the other case, no mention of any penalty is introduced, except in as far as a penalty pointed at the Magistrate's Clerk, if he happens to have one, may be supposed to affect the Magistrate himself. But the necessary penalties being pointed at the Officers of inferior account (the Jailers and Constables), these Officers may, through apprehension of such penalties, be reasonably expected to furnish with tolerable punctuality the documents required from them: and by reason of the correspondence and necessary connection between that branch of information and that which is required from the Magistracy, no document can be

furnished by either Constable or Jailor, without indicating the demand for a corresponding Document to be transmitted by some Magistrate. No Magistrate can, therefore, ever be a defaulter in this respect, without being pointed out as a Defaulter, and in that character applied to by his neighbour the Country Police Commissioner, or the Board, or both: and finally, by the Lord Lieutenant of his County, by whose representation to the Chancellor, he might be left out of the Commission, if nothing less would serve.<sup>723</sup>

[150\_622]

**{109} {3}** § 48. page 202. {.^.^ *Such .^^. excepted .^^. as the .^^. Treasury .^^. shall have forbidden, in consideration of the expence*}.

In the mere article of paper, the expence that would result from the proposed institution is certainly no trifling object. But by means of the recently instituted *Paper-Office*, the expence will have been reduced to less than half what it might otherwise have amounted to,<sup>724</sup> and there are expedients which might be employ'd with advantage, partly for confining it within its due limits, partly for reimbursing to the public the amount of it.

1. This, (as well as other Paper employ'd for Government purposes and at Government expence) might have some distinctive and conspicuous mark, pervading the whole extent of it, analogous to the broad arrow on the King's naval Stores:<sup>725</sup> on which condition it might be made penal to write upon it for any other purpose: especially as any contravention of this law would carry its own evidence upon the face of it: and, as at any rate it would be paid for at a price higher than that of waste-paper, it could not answer to any person to obtain more of it than what he really wanted for a public purpose.

2. The price charged for it should be the natural prime cost—or at least proportioned

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<sup>723</sup> In fact, the Lord Chancellor and Court of Chancery did not have the power, in their own right, to withdraw the commission from a Justice of the Peace, as this was the prerogative of the Court of King's Bench. However, where a Justice had failed to execute his office, or was otherwise guilty of misconduct, 'the party grieved may complain to the judges of assize, or to the lord chancellor; and upon examination, if it appeareth that the complaint is true, the chancellor may put him out of the commission': see Burn, *Justice of the Peace*, ii. 96.

<sup>724</sup> See p. 346 & n. above.

<sup>725</sup> See p. 47 n. above.

to the natural prime cost—of the article, deducting the duty paid on it to government. This deduction, though it would not diminish the real expence of the institution to Government, would keep down the apparent, and prevent it from doing what it would otherwise do—exceed by a great amount [150\_623] the real expence. It would be misleading Parliament and the public, if the institution were to be charged with so many thousand pounds, as if it were costing that sum to Government, while in fact Government was disbursing nothing for the institution on that score but what, on that same score, it already had received: the institution being as fully the cause of the receipt, as of the expence.

One help towards reimbursing to Government the real amount of the expence might be afforded by a law giving at once to the Police Fund all shares of forfeitures which, under the several Statutes, are given nominally to the *poor* of the parish:<sup>726</sup> in reality, as every body knows, to the *rich* of the same parish, since in as far as the forfeitures are levied and applied, the money goes in diminution of the burthen of that tax upon the rich which is called the *Poor Rate*.<sup>727</sup> For the rich of the several Parishes, this relief is no object: to the Police Fund, the aggregate of the sums levied, or at least the aggregate of the sums that might, and *then would*, be levied, would be a considerable object. This would be a supply—not only applicable to the expence of the *Calendar of Delinquency*—but growing, in a great degree at least, out of the *Calendar of Delinquency* itself: since, among other effects of the supply of information afforded by the returns, would be the information of the supply of money due from a source which otherwise would be apt to lie neglected and unproductive.

[150\_624]

A collateral advantage arising out of the same source would be—the restoring the legal audibility of the only persons who in general are likely to have any evidence to give: and thereby doing away one of the most prolific of those causes of artificial inefficiency which are but too abundant in the system of judicial procedure. On this subject see above Note {93} to § {39}.<sup>728</sup>

A second resource of a similar nature might be the giving to the Police Fund, what is

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<sup>726</sup> See p. 258 & n. above.

<sup>727</sup> See p. 308 & n. above.

<sup>728</sup> See pp. 306–8 above.

called the King's share, of all forfeitures levied under penal Statutes, under which the whole or any part of the sum forfeited is given to the King,<sup>729</sup> or at least of all forfeitures which, being given to the King, are, under statutes of that description, made leviable by Justices of the Peace. What becomes of these forfeitures at present will be mentioned presently.

A third resource might be, the giving to Justices of the Peace the power of levying the penalty to the extent of a certain amount (say £20, or up to £50) in the case of every recognizance taken before Justices of the Peace: a power which, it is apprehended, might just as well be executed by those Magistrates as the power of levying a penalty to the same amount issuing in a more direct way out of the tenor of the law: and the money drawn from this source also might be made payable to the Police Fund. By this means, the intended energy and use might be restored to an instrument which at present is, in one instance, perhaps, out of a hundred, an instrument of ruin to the individual, and in the ninety-nine others a dead letter. On this subject see above in Note {56} to § {15}.<sup>730</sup>

[150\_625]

If, from the sources or supposed sources of revenue here proposed to be transferred to the Police Fund, any thing is at present extracted by individuals on the score of fees of office, an annual indemnification, to the amount of the average annual value of the emoluments thus derived, would of course be to be charged on the Police Fund during the lives of the present occupants of the respective Offices: but the charge on this score does not threaten to be very heavy. From fines and forfeitures levied, or which ought to be levied, on conviction before Magistrates, nothing appears to be derived either to the Revenue or to any Officer of the Revenue—'it not appearing by the view of the Estreats that such fines and forfeitures are included therein, there is too much reason to fear they have not been, in many instances, certified by the Magistrates at the Quarter Sessions, and it may be doubtful whether the Surveyor General of the Green Wax<sup>731</sup> has sufficient means

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<sup>729</sup> See, for instance, the Silk Works Act of 1763 (3 Geo III, c. 21, § 1), the Seducing Certain Artificers to go beyond Sea Act of 1782 (22 Geo. III, c. 60, § 7), and the Customs Act of 1793 (33 Geo. III, c. 70, § 6).

<sup>730</sup> See pp. 264–7 above.

<sup>731</sup> The Surveyor of the Green Wax was the Exchequer official with responsibility for collecting green wax monies, that is revenues deriving from fines, amerccements, forfeitures, and other debts owed to the Crown.

of knowing what fines and forfeitures of this kind accrue, and whether there is any compulsory method to oblige the Justices to certify them at the Quarter Sessions, and to pay them into the hands of the Sheriff, which seems the only course of such fines and forfeitures getting into the Exchequer.<sup>j</sup>

<sup>j</sup> 23<sup>d</sup> Rep. of Committee of Finance, p. 218. Appendix O. 3.<sup>732</sup>

[150\_626]

So much for fines imposed and forfeitures declared by Magistrates sitting singly or in Petty Sessions: and the productiveness and efficiency of fines imposed and forfeitures declared in the Courts of General or Quarter Sessions does not appear to stand on a much better footing—it being, according to the present practice, a period of two years or thereabouts after such Sessions, fines and forfeitures are [estreated before any process is issued for the recovery of them; and in that interval it must happen that many of the Fines and Forfeitures are] lost by the death, removal, or insolvency of the parties. How it has happened that the summons of the Green Wax has not comprehended the Sessions Fines and Forfeitures, as well as the others, we are not able to learn; but we do not find that they have been included in that process within the memory of any Officer now living.<sup>k</sup>

<sup>k</sup> *ibid.* p. 214.<sup>733</sup>

Here then, we see a branch of the Revenue killed by mere old age, having become rotten at the core. This would of itself be no such great matter: the misfortune is that a branch of justice, having been grafted on this branch of the revenue, is become rotten along with it. What becomes of the money levied, or that should be levied, by Magistrates out of Sessions, it is, at present, impossible to know: the best thing that can happen in any instance is, that the Magistrate should have received it, and put it into his own pocket: punishment is then inflicted where it is due: and whether one person [gets]<sup>734</sup> the money or

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The name arose from the colour of the seals traditionally used to authenticate the estreats by which such monies were exacted.

<sup>732</sup> See ‘Twenty-Third Report from the Select Committee on Finance’, in *Commons Sessional Papers of the Eighteenth Century*, cx. 224.

<sup>733</sup> See ‘Twenty-Third Report from the Select Committee on Finance’, in *Commons Sessional Papers of the Eighteenth Century*, cx. 220.

<sup>734</sup> MS ‘eats’.

another, makes little difference in the suffering of the man who, for his punishment, is deprived of it:—the worst that can happen, and the thing that seems likely to happen oftenest, is, that the Magistrate, not seeing any body to hand it over to, and fearing or disdaining to put it into his own pocket, should forbear to take it, because he does not know what to do with it.

[150\_627]

The portion of Revenue and (what is much more) of justice depending for its existence upon Recognizances, requires somebody to watch—not only when the money leviable on this score *is* levied—but when the time is come when it ought to be levied:—that is when it is that any such event happens to take place by the happening of which the forfeiture of the Recognizance is incurred. Recognizances, being of different natures, that is taken for very different purposes, would require to be classed in this view: a task to be executed by or for the Board, and which, if time permitt, may perhaps be executed and subjoined to these Notes.<sup>735</sup> Furnished with the list of Recognizances taken within his district, and invited by a competent share in the penalty, the Police Surveyor of the District would be an effectual Watchman for this purpose. This would be among the fruits of the proposed system of Returns.

The Book-keeping requisite for them is at any rate not without example. In the London Police Offices, accounts can not but be kept of the monies levied on this score, since these monies are to be employ'd, as far as they go, in defraying the expence of those offices. Accounts are by that means kept of the proceedings had, and documents issued, in those several offices, so far at least as is necessary for the purpose of indicating the source from which each sum has been derived. In one of these Offices, a general account is—or at least was—kept of all proceedings: in which, consequently, must have been included a mention in some way or other of each document belonging to the set of documents proposed to be transmitted, either *in terminis* or in abstract, by the proposed Returns. This example serves at least to shew what *may* be done: and what has been done spontaneously in the instance of any one Magistrate, may not unreasonably be expected to be done, when made matter of obligation, [150\_628] by every other: especially when what is required to be done shall have been reduced to a mechanical process—to a mere piece of *Clock-work*, by examples, instructions and blank forms. To execute such a business spontaneously and

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<sup>735</sup> No such classification has been located.

for the first time, required a combination of zeal and talent: to execute it when bidden by law, according to a pattern given by law, will require no other properties than what may reasonably be looked for on the part of every person to whom the authority of a Magistrate has been thought fit to be intrusted.

[150\_629]

Should the sources of indemnification thus indicated fail of being approved of, or should an apprehension be entertained that the proposed expence in paper, notwithstanding all indemnifications, would prove too great to be continued, the expence of making the experiment, were it only for a year or two, might surely not be grudged. If, upon experience, it were regarded as overbalancing the advantage, it might then at any time be struck off. In the mean time, the money thus expended would not have been thrown away: any more than the labour and money expended in the temporary obtainment of other branches of information by Committees of Parliament and Commissions instituted by authority of Parliament has been thrown away. And, moreover, though the *Calendar of Delinquency*, with its constituent elements, the proposed Returns from Regular Courts, Justices, Constables, and Jailors, should, after a year or two's trial, be given up, the proposed sources of indemnification, viz: the transfer of the Poor's and the King's share in forfeitures, and the transfer of forfeitures on Recognizances, to the Police Fund, would not, on that account, be to be given up. If proper in themselves, their propriety would not be affected by any opinion that might be formed of the proposed *Calendar of Delinquency*.

Upon the whole, the proposed expence of paper, whatever it may amount to, does not appear to be of that sort which in prudence can be grudged. What would be thought of the economy of the individual, who, to save the expence of Account Books, should resolve not to keep any accounts?

[150\_630]

{110} {1} § 52. page 206. {*And whereas &c.*}

This Preamble, exhibiting reasons for the franking of the Correspondence, will stand or be struck out as may be deemed most advisable.

{111} {2} § 52. page 207. {Every letter .^^. directed .^^. to the Commissioners .^^. or .^^. by some person appointed .^^. by the .^^. Commissioners .^^. shall be convey'd .^^. free}.

In the following Table are shewn the several Offices to and from which Letters pass free of postage, in virtue of the several Statutes therein mentioned: together with other Government Offices to which the exemption has not been extended, though to appearance as much within the reason of it as the others. The danger of abuse (it will be observed) is proportioned—not to the number of entire departments to which the exemption is granted, but to the number of individuals by whom it is possessed in the several departments taken together.

Departments and Offices possessing the exemption	Statutes conferring the exemption	Offices not possessing the exemption
I. Superior Executive Departments— 1. Treasury 2. Admiralty 3. Secretary of State's Offices 4. Board of Trade 5. Post-Office	4 G. 3. c. 24. <sup>736</sup>	I. Revenue Department 1. Board of Customs. 2. Board of Excise. 3. Stamp Office 4. Salt Office. 5. Tax Office.
II. Parliament— 6. Clerk Assistant of the House of Lords 7. Reading Clerk of the House of Lords 8. Clerk Assistant of the House of Commons 9. Chief Clerk without doors of the House of Commons	9 G. 3. c. 35 § 7. <sup>737</sup>	
III. War Department— 10. Secretary at War	4 G. 3. c. 24.	

<sup>736</sup> i.e. the Postage Act of 1764 (§ 1).

<sup>737</sup> i.e. the Customs, etc. Act of 1769 (§ 7).

11. Commander-in-Chief 12. Secretary to the Commander-in-chief 13. Adjutant General 14. Comptrollers of the Army Accounts (each of them separately for aught that appears)	} 22 G. 3. c. 70. <sup>738</sup> } 23 G. 3. c. 69. <sup>739</sup>	
IV. Ireland. 15. Certain Offices in that Kingdom, not worth noting for the present purpose.		

[150\_631]

The number of individuals to whom the privilege is communicated in the several offices can not perfectly be made out in every instance from the tenor of the Act itself. In some of the Offices it depends, to a certain degree, upon the superior Officers. But, of the number of individuals who partake of it at any given time, a correct list, it is presumed, can not but be kept at the Post-Office: from whence by proper authority it might easily be obtained.

The Post-Office, it is presumed, would be disposed to look with an eye of commendable jealousy into the proposed, as well as every other, institution which bore the appearance of operating in the smallest degree in diminution of that branch of the Revenue. It is with the view of obviating any difficulties from that quarter that a plan of restriction so strict as that exhibited in the text has been devised.

Supposing the privilege to be effectually preserved (as it is presumed it will appear to be) from being diverted from its professed public object to the purpose of private accommodation, it can never operate in the smallest degree in diminution of this branch of the Revenue. The mass of correspondence exempted by the Bill promises, it is true, to be very large: but whether it be large or small, makes not, in this point of view, the smallest difference; since no correspondence is exempted by the Bill, other than what, if it were not for the Bill, would not come into existence.

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<sup>738</sup> i.e. the Postage Act of 1782 (§ 1).

<sup>739</sup> i.e. the Postage Act of 1783 (§ 1).

[150\_632]

The case would, it is true, be different, if the correspondence were to swell to such a bulk as to require any addition to be made on purpose to any part of the stock employ'd by the Post-Office. But an addition to any such amount will hardly be apprehended. If it were, it would only be so much to set down on the loss side in the account of profit and loss upon the total result of the proposed system of police.

Should the strictness here employ'd be disapproved of on the ground of its being wrought up to a degree of affectation, nothing would be easier than to obviate that objection. If existing precedents were to be preferred as models, the clause for this purpose would be comprizable in a very few words. In the last Act granting an exemption of this kind,<sup>1</sup> after the recital that, by the 4<sup>th</sup> G. 3. c. 24, no letters or packets were to be exempt from the duty on postage, except such as are therein particularly excepted—it is provided that the persons therein mentioned, viz: the Adjutant General and the Comptrollers of Army Accounts, 'shall and may send and receive letters and packets free from the duty of postage, in the same manner' {in which} 'and under such restrictions as' {those under which} 'other Officers mentioned in the said Act are thereby permitted, in respect of their Offices, to send and receive the same in pursuance of the said Act'.

<sup>1</sup> 23 G. 3. c. 69.<sup>740</sup>

[150\_633]

In the above Act relative to the Adjutant General and the Comptrollers of Army Accounts, the wording is so loose as to leave the officers in question, each of them (it should seem) separately and individually, at liberty to make use of the privilege for their personal accommodation, with as little difficulty as is experienced by a Member of Parliament.<sup>741</sup> If, in the instance of the proposed new Board, the same latitude were established, it might deserve consideration, perhaps, whether the old established Boards, of

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<sup>740</sup> i.e. the Postage Act of 1783, citing the Postage Act of 1764.

<sup>741</sup> Letters to and from Members of Parliament were exempt from the payment of postage, under a scheme that dated back to a parliamentary ordinance of 2 September 1654: see 'An Ordinance touching the Office of Postage of Letters, Inland and Foreign', § 2, in *Acts and Ordinances of the Interregnum, 1642–1660*, ed. C.H. Firth and R.S. Rait, 3 vols., London, 1911, ii. 1009. The ordinance was revised and qualified by such statutes as the Postage Acts of 1764 (4 Geo. III, c. 24) and 1795 (35 Geo. III, c. 53).

whom some at least will appear of superior importance, viz: the Customs, the Excise, the Stamp Office, and the Tax Office, (not to speak of the Ordnance, the Navy Board, the Transport Board and other Offices whose correspondence is confined to a few places) might not be apt, and not altogether without reason, to regard the distribution as affording them matter of complaint on the score of dignity. In all these instances, it is true, the individuals are, as of course they must be, exonerated in some way or other from all expence on account of letters sent or received by them for the public service: but the way in which they are exonerated, is by their paying the money, and reimbursing themselves by charging the expence to the public under the head of *incidents*: and it does not seem likely that a payment made under this head for a letter really written or received on private account only, should be charged to the public as if written or received for the public service, with as little scruple as the letter itself might be directed and franked. In the former practice, a falshood is asserted: in the latter, no assertion is contained.

[150\_634]

In the Customs notwithstanding, and, it is supposed, in most if not all the other unfranked Departments, private letters, it is said, are somehow or other paid for by the public, and the individuals thus exonerated from the charge. But that the abuse, though unseemly in point of example, can not be very heavy in its amount appears manifest enough from one circumstance. In the Year 1785, the Secretary of the Customs, in giving his evidence to the Commissioners for Enquiry into the public accounts,<sup>m</sup> speaking of the letters written and received in that department, and speaking of them for a purpose which required the number to be represented as great as it would bear to be, states it as amounting to *near* 9,000 in the year. Reckoning the postage for this purpose at 6<sup>d</sup> per letter upon an average (for a letter, if an individual had to pay for it, would not be put into a cover and made a double letter of), this gives for the total of the disbursement on the score of letters received not so much as £225 in the year: state the letters sent at the same sum, this will make the total of expenditure on the score of postage short of £450. If the private correspondence paid for had been over and above the 9,000 letters spoken of, nothing would be to be inferred from it with regard to the extent of the misapplication. But it can hardly be supposed that the disbursement made in the Office on the score of postage could escape the Secretary: his object was professedly to represent the quantity of the correspondence as great as it would [150\_635] bear to be represented: the money disbursed, being the most expeditious and least troublesome standard, would, therefore, probably be

the standard chosen for calculating the number of the letters: and if the number, given in his statement as the actual number received and answered, had been exceeded in any considerable degree by the number paid for, there would have been a repugnancy in the two accounts, and a misapplication of the public money would have been apparent upon the face of them. If then, in an annual expenditure to no greater amount than £450, in so extensive a department, *abuse* and *use* together were both included, the abuse, it is plain, if any, could be no great object of itself.

<sup>m</sup> *Reports* III. 367.<sup>742</sup>

The Excise, it is true, is the department which, if compared with the Customs, would of the two afford the fairest standard for judging of the expenditure that might be expected on this score on the part of the Board of Police: since in the case of the Excise, as in that of the proposed Board of Police, the correspondence must pervade the whole area of the kingdom; whereas, in the case of the Customs, the only points which the central authority has to correspond with, are situated in the extreme circumference. But in regard to the expenditure of the Excise under this head, no documents have been discovered.

[150\_636]

In the case of the Stamp-Office, the limits of the abuse are given in a more direct way than in that of the Customs, and though the field of correspondence is here, as well as in the case of the Excise, an entire *area*, and not, as in the case of the Customs, a mere circumference, these limits appear to be still narrower than in the case of the Customs. Here, by a strange confusion, all Bills for incidents whatsoever which in each instance happen to fall short, or are made to fall short, of £10, are lumped with postage. Total payment on this mixt account notwithstanding, for 1782 no more than £529: 16: 4:<sup>n</sup> d<sup>o</sup> for

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<sup>742</sup> See ‘Appendix to The Fourteenth Report’ of the Commissioners appointed to Examine, Take, and State, The Public Accounts of the Kingdom, in *The Reports of the Commissioners appointed to examine, take, and state The Public Accounts of the Kingdom, presented to His Majesty, and to both Houses of Parliament: with the Appendixes Complete*, ed. John Lane, 3 vols., London, 1783–7, iii. 331–569, at 367 (*Commons Sessional Papers of the Eighteenth Century*, xlv. 197–483, at 279). Bentham’s total of 9,000 letters seems significantly to understate the correspondence received by the Customs Office. William Stiles, Secretary to the Board of Customs 1783–8, referred specifically to ‘near Nine thousand Letters’ as being received annually ‘from the Out Ports’, with a further ‘near Ten thousand Petitions for the Port of *London* only’, and this ‘[b]esides the Correspondence with the Public Offices’.

1796, instead of having increased with the encrease of business arising from additional taxes, reduced to £491: 1: 2.<sup>o</sup>

<sup>n</sup> 6 *Rep. Comm. on Finance*. p. 43.<sup>743</sup>

<sup>o</sup> *ibid.* p. 44.<sup>744</sup>

In point of amplitude of correspondence, the case may possibly be after all, that the field of the Stamp Office bears a greater resemblance to the less fruitful field of the Customs than to the more fruitful field of the Excise: since the Head Distributors are for the whole of England but 66:<sup>p</sup> and the Head Distributors pay, appoint, and are answerable for their respective Sub-Distributors: thence it seems probable that it is the Head Distributors only, and not the Sub-Distributors, that maintain any direct correspondence with the Board. If the expence of the whole, or any considerable part, of the correspondence between the Head Distributors and their respective Sub-Distributors is included in the above account, which appears rather to be the case, the moderation of it seems to be truly wonderful.

<sup>p</sup> *ib.* p. 36, 37.<sup>745</sup>

[150\_637]

Upon the face of these precedents, the question as between franking and payment does not promise to be of that importance that was at first expected; because the greatest probable amount of the payments likely to be made on this score does not, as far as these precedents afford an adequate standard, turn out to be so great as was expected. But the truth seems to be, that no decided inference can well be drawn from the one to the other as to this point. In the case of the Board of Police, no precise limits can be set to the probable

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<sup>743</sup> See ‘Sixth Report from the Select Committee on Finance, &c. Stamp Office’, 19 July 1797, in *Commons Sessional Papers of the Eighteenth Century*, cviii. 3–65, at 45.

<sup>744</sup> See ‘Sixth Report from the Select Committee on Finance’, in *Commons Sessional Papers of the Eighteenth Century*, cviii. 46.

<sup>745</sup> See ‘Sixth Report from the Select Committee on Finance’, in *Commons Sessional Papers of the Eighteenth Century*, cviii. 38–9. Bentham’s total of sixty-six distributors of stamped parchment and paper covers those responsible for the various counties and regions of England and Wales, but omits the single individual responsible for Ireland.

copiousness of the correspondence: thus much, however, may be asserted without difficulty, that the more copious, the more serviceable, untill the service done by it shall have begun to lessen the demand for it.

Under the franking plan, if the proposed restrictions be adopted, all abuse of the privilege is manifestly impossible: under the postage-payment plan, standing on its present footing, and unguarded by any such restrictions, abuse to a certain degree seems scarcely to be avoided: and as in the instance of the proposed Board, the copiousness of the correspondence promises to be unexampled, and as the room for such abuse seems to be in proportion to that copiousness, the magnitude of the abuse under the postage payment plan might in this instance rise to a[n] amount too great to be neglected. The danger [150\_638] seems to be lest, in that event, under the spur of the irritation produced by the view or suspicion of the abuse, measures should be taken such as may prove prejudicial to the use.<sup>746</sup> Personal interest being so much more sharp-sighted than official duty, it might thus happen, that the use might bear the burthen of the retrenchment, while the abuse continued much the same.

Upon the whole, therefore, for the good of this particular branch of service, as well as for the sake of economy, and still more for the appearance of it, not to mention the circuitry of paying money out of one hand of government into another, the franking plan, guarded by the proposed restrictions, seems to be the most eligible.

[150\_639]

As to the engraved stamp, instead of handwriting, the use of it is to save time. Letters and Packets being to be sent from the Board by every post to all parts of the United Kingdom on the same day, the time of a single person would frequently not suffice, if all of them were to be thus franked by the same hand. For that part of the superscription of each letter or packet which is peculiar to it, viz: the direction, the whole number of letters and packets for each day might be distributed among any number of hands writing at the same time: while that part which is the same for all, viz: the authenticative part and the

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<sup>746</sup> Bentham has struck through the following passage which appears at this point: ‘One plain and simple idea is the idea which the purpose requires to be promulgated and received: viz: that all information whatever tending to the furtherance of penal justice, and especially to the prevention of offences, will be received and issued(?) without expence to the informant.’

date, may be performed by a stamp as fast as common printing is performed. The business of directing the *Police Gazette*, of which so many thousand copies would be to be sent on each day of its publication, is a business that may of itself be sufficient to occupy a considerable number of hands. In the Post-Office abuse Act, 4 G. 3. c. 24, the supposition is that the operation of franking for the public service may employ in the Admiralty Office, 8 hands in time of peace, and 12 in time of war: and in the War-Office, 6 in time of peace, and 10 in time of war.<sup>747</sup> Under the proposed Board of Police, the number of hands that would require to be thus employ'd would probably be considerably greater than either under the Admiralty or the War-Office, unless the powers of mechanism were to be thus employ'd, in as far as they were applicable, to the reduction of it. The words 'On his Majesty's service', though usual, might (it may be thought) be spared. But they would contribute to secure care and attention for the letter in the Country Offices, they [would] operate as a sort of memento not to misapply the exemption to the purposes of private correspondence, nor, when delineated by a stamp, would they add any thing to the consumption of time.

[150\_640]

{112} {1} § 53. page 208. { *Commissioners .^^. shall .^^. give an account .^^. to .^^. Parliament .^^.* }.

The words between the inverted Commas<sup>748</sup> are copied from the first of the three Acts of the present reign for appointing Commissioners for the suggestion of improvements, viz: 20<sup>th</sup> G. 3. c. 54.<sup>749</sup>

The direction to report to *Parliament* is taken from the *first* of the above three Acts:

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<sup>747</sup> See the Postage Act of 1764 (§ 3). The establishments of the Admiralty and War Office were exceptional in this respect: in other government departments (including the Treasury, the Post Office, and the offices of the principal secretaries of state), the Act limited to two the number of officials with authority to endorse letters and packets for free postage.

<sup>748</sup> i.e. in the text of § 53 of 'A Bill for the establishment of a Board of Police', p. 208 above.

<sup>749</sup> i.e. the Audit of Public Accounts Act of 1780 (§ 5). The relevant passage is reproduced in the margin at p. 208 above, in accordance with Bentham's note in the margin at this point: 'Transcribe this in the margin of the text of the Bill.'

in the second,<sup>q</sup> it was to the King in Council only that the Reports were to be made: Parliament being omitted: but in the last,<sup>r</sup> Parliament was again inserted. The difference is by no means immaterial: Reports to Parliament are Reports to the public, whose eye will be upon the notice taken of them. Reports to the Council Board<sup>750</sup> might sleep upon the shelves.

<sup>q</sup> 25 G. 3. c. [19].<sup>751</sup>

<sup>r</sup> 26 G. 3. c. 87.<sup>752</sup>

{113} {2} § 53. page 208. {.^.^ Suggest .^.^ regulations .^.^ calculated for augmenting the efficacy .^.^ }

The first of the three reforming Statutes, viz: that which concerns the public *Accounts*, speaks of ‘*defects*’;<sup>753</sup> the last, viz: that relative to the Crown Lands, of ‘*Abuses*’.<sup>754</sup> In the present instance both words may be dispensed with (it should seem) with advantage. Professional men are not fond of hearing of *defects*, much less of *abuses*, in the law, or any branch of it. Under the words used in the text, legal power will not be wanting adequate to any stock of intellectual power that can be pressed into the service.

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<sup>750</sup> i.e. the Privy Council.

<sup>751</sup> MS ‘74’ is a slip. Bentham gives the correct chapter number in ‘A Bill for the establishment of a Board of Police’, p. 208 n. above. The Inquiry into Fees, Public Offices Act of 1785 (25 Geo. III, c. 19, § 1) required the commissioners for enquiring into the fees and emoluments of public offices to ‘report and certify their Proceedings .^.^ to the King in Council’.

<sup>752</sup> i.e. the Crown Lands Revenues, etc. Act of 1786 (§ 1).

<sup>753</sup> The preamble to the Audit of Public Accounts Act of 1780 noted the need to identify ‘What Defects there are in the present Mode of receiving, collecting, issuing, and accounting for publick monies’, and the word ‘Defects’ is repeated in §§ 1 and 3.

<sup>754</sup> Among the duties imposed by the Crown Lands Revenues, etc. Act of 1786 (§ 1) on the ‘Commissioners for examining and enquiring into the State, Management, Produce, and Expenditure of the said Rent of Lands’, was that of ‘redressing any Abuses in the Management of the said landed Estates’.

## APPENDIX TO ‘Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations’

### ANONYMOUS INFORMATION<sup>755</sup>

[149\_157]

The topic of anonymous information presents itself as a ground on which any description of persons who may regard the institution of the Board as being likely to operate as an obstacle to their enterprizes will be apt to wait for it, in the view of attacking it with the weapons of common-place rhetorick, with the benefit of a certain portion of vulgar prejudice on their side.—Will not the Board, with the facilities given it for correspondence, be an Office for the receipt of anonymous information?—seems a question which can scarcely fail of being asked. Such has been the importance given to this topic that a few observations over and above what might be necessary to convey and establish a simple negative may not be altogether ill-bestowed.

In the first place, let anonymous information be ever so great a grievance, it is not in the nature of any such institution as that of the proposed Board to add any thing to the magnitude of the grievance. It can give no facility, over and above what exists already, to the receiving of such intelligence: it can add nothing to whatever power or disposition there may be already to act upon it or listen to it. While the Post continues to be a channel of communication, there is no person existing *by whom*, nor any (in or out of office) *to whom*, such information may not at any time be sent. It is to the case of State Offences, and State Offences only, that the apprehensions entertained against information thus circumstanced, apply.<sup>756</sup> The existing Office of the Secretary of State for the Home

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<sup>755</sup> Bentham composed the following discussion for ‘Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations’, and in particular for the notes to § 45 of the Bill (see p. 332 above), but in the event decided to exclude it. For further details see the Editorial Introduction, p. 000 above.

<sup>756</sup> Bentham probably had in mind the furore over the receipt and employment of anonymous information by the Association for Preserving Liberty and Property against Republicans and Levellers, for which see p. 370 & n. below. On 1 February 1793 Fox (see p. 178 n. above) protested in the House of Commons that while he might have expected that ‘he himself should now be represented the partisan of France’, he had been alarmed to learn that the Association ‘not only received anonymous letters reflecting on individuals, but .^^. even sometimes transmitted their slanders to the secretary of state. He could not be much surprised at any aspersion on his character, knowing this; and therefore he hoped the House would give him the credit of being innocent till an open charge was made; and that if any man heard improper correspondence imputed to

Department is an Office which holds out at present to Informers thus circumstanced as obvious a prospect of being attended to, as could be holden out by the proposed Board: and no probable cause can be shewn why the attention paid by the proposed Board to such information should be greater in any respect than what is at present paid to it in that Office.

[149\_158]

In the next place, whence comes the mischief of anonymous information, where it happens to be mischievous?—not solely from its being anonymous—not merely from the author’s being unknown:—to convert the danger into real mischief in any case, three circumstances more are requisite—viz:—that it be false as well as anonymous—and that it be acted upon—and acted upon to the prejudice of some individual—as if it were true.

[149\_159]

From anonymous information, one plain and undeniable advantage is obtainable—viz: the obtaining information in cases where, from apprehension of revenge on the part of the persons whose enterprizes are exposed to defeat, or their persons to punishment by it, or from apprehension of popular odium, or from mere bashfulness, as extensive and powerful a cause perhaps as any, a man having true information to give and not meaning to give any that was not true, would, however, not give any at all, if he did not give it in this way.

On the other hand, the danger is—at least what imaginable danger there can be, must be of this sort—lest under favour of the difficulty of discovering the author of the calumny thus convey’d—calumny should be convey’d: i:e: information charging the individual concerned with having been concerned in some enterprize the effect of which, when discovered, is to subject him either to actual punishment so called—viz: to punishment at the hands of the law—or at least some inconvenience, which, with reference to his interests or feelings shall have the effect of punishment.

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him in private, he would believe that he heard a falsehood, which he who circulated it in secret durst not utter in public’: see *Parliamentary History* (1792–4) xxx. 313–14. On 28 February 1793 Fox again condemned the practice of the Association ‘in receiving and considering anonymous informations; and transmitting them on to government, which he reprobated in the strongest and most emphatical terms, as destructive both of the peace and character of individuals in all probability innocent, and totally subversive of every principle of liberty’: see *ibid.* 547.

[149\_160]

That there are cases in which anonymous information may have its use—that is, that there are cases in which information may be productive of benefit to the public, although the informant should not, at the time of giving the information, nor even at any subsequent time, make himself or be made known, will not be denied by any one.

One case is—where a crime is as yet but meditated, and an anonymous informant, without saying by whom meditated, gives such information of it as serves for the prevention of it, no person in particular being called to account, or so much as suspected of being concerned in it. Newgate is intended to be broke open tomorrow night.—The Bank is intended to be broke open tomorrow night.—A quantity of smuggled goods lie concealed in such or such a hole or cave.—Suppose a man to give information to any such effect without making himself known, supporting it by indications, which on enquiry prove to be true. Is it better that Newgate should be emptied of its inhabitants, or the Bank of its treasures, than that anonymous information of this sort should be attended to and acted upon?—The Gunpowder plot would not have [149\_161] been prevented from taking effect, had it not been for anonymous information.<sup>757</sup>—Was there any harm in the prevention of the Gunpowder plot? This depends upon the position of the party who is to judge of it. None in the estimation of the Parliament who were to have been blown up—none in the estimation of any Parliament which has succeeded it, or any which is likely to succeed it:—but a great deal in the estimate of Guy Fawkes, even though disappointment only, and not punishment, had been the consequence.<sup>758</sup>

So again, although a crime has already been committed.—Your horse, which had been stolen, and abandoned by the thief on his being pursued, is now in such a pound.—No harm in this information, so far at least.—But suppose it to go on, and say—the horse has the thief's saddle on, and the name of the Sadler who sold it to him—and suppose that, by

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<sup>757</sup> The Gunpowder Plot, a failed attempt by a group of Catholic conspirators to blow up the House of Lords during the State Opening of Parliament on 5 November 1605, and so murder James VI and I (1566–1625), King of Scotland from 1567, King of England, Scotland and Ireland from 1603, was foiled following the receipt by William Parker (1574/5–1622), fourth Baron Monteagle from 1604, thirteenth Baron Morley from 1618, of an anonymous letter advising him to absent himself from Parliament.

<sup>758</sup> Guy Fawkes (bap. 1570, d. 1606) was one of the ringleaders of the Gunpowder Plot. Following its exposure, he was found guilty of high treason and executed.

following up this clue, the thief were discovered, apprehended, convicted, punished—even thus the harm done by the information, anonymous as it is supposed to be, does not appear to be very great.—But it is needless to multiply cases where anonymous information may be harmless, when there are none in which it can be mischievous, except those in which it is at the same time false and acted upon as true, and that in such a manner as to bring down punishment or other suffering upon the head of one who is innocent of any such offence as that with which he is thus charged.

[149\_162]

The worst that can be said against anonymous information is, that to the public, in respect of the interest it has in the prevention of the offence and the punishment of the offender, it is not, generally speaking, altogether upon a par in point of utility with information from a person known, because it is not so certain of being adequate to the object of it, viz: the prevention of the offence, or the bringing the offender to punishment: if the man were known and forthcoming, you might get out from him every thing he knew: while he remains unknown, you must be content with what he gives you. But whatever it is, it may be just so much more than you could have got at all, had it not been for the faculty which the informant reserved to himself of concealing himself: and if what it amounts to happens to prove sufficient to lead to the discovery of other evidence, affording a sufficient ground for conviction, it has then all the good effects that information from a known Informant could have had. To the public, therefore, information from a person unknown is not quite so desirable as information from a person known: because, in the latter, case conviction may be obtained without further evidence or research, which, in the other case, can not be. But as to the person informed against, it is either more favourable to his interests than information from a person known, or at any rate not less so. If he is innocent, it is not the worse for him for being anonymous, for it is only upon evidence given by a known [149\_163] witness that he can be either convicted, put upon his trial, arrested or called to account in any shape:—if he is guilty, it is much more favourable to him than it would be if the informant declared himself, because in that case conviction, as above mentioned, might take place at once, without either the trouble of looking out for further evidence, or the danger of not getting it. In what way could anonymous information be more prejudicial to him than information from a person known, or so much as equally prejudicial? No Magistrate, no Board, no Jury, ever yet convicted upon such evidence as the bare allegation of an unknown informant, or of any number of unknown informants:—

to ground a conviction, there must be evidence given by an individual known, examined in person, upon oath and in presence of the party charged. So sure as a Magistrate presumed to convict without the concurrence of any of these requisites (*confession*, which supersedes them all, being here out of the question), so surely would he himself be convicted and punished on application to the Court of King's Bench. In every point of view, it is so much the better for the party whose supposed practices or designs form the subject-matter of the information, that the informant should be unknown. If the informant were known, conviction and punishment would be the probable consequence. But so long as the informant is unknown, conviction without some other evidence is impossible, and the worst that can happen to a plotter is the frustration of the plot.

[149\_164]

But though a man's life, or his liberty, or his money can not be taken away from him by this means in the way of punishment legally inflicted and properly so called, yet in an oblique and secret way, not according to law, his reputation may thus be made to suffer in a certain degree (it may be said) notwithstanding his perfect innocence, and his chance of advancement in various ways be defeated.

[149\_165]

One case there is, it must be confessed, in which anonymous information, if false as well as anonymous, is productive of incalculable mischief, and that is where the public at large is the tribunal to which it is given: anonymous accusation, convey'd, for example, through the channel of a newspaper.—Why?—because the public at large is a Court composed of Judges, a great part of whom are always ready to convict, and to punish to the extent (which is not inconsiderable) of their powers of punishment, without any better or further evidence. Here is a real grievance: but this is not the grievance which lies heavy upon the minds of those on whose part the clamour against anonymous information is apt to be most vehement: what the grievance is that presses upon them will be mentioned presently.<sup>759</sup> Here the mischief of the information is not only aggravated, but in most instances constituted, by its being anonymous, that is by the circumstance of the author's being unknown: for as long as the author is unknown, there is, in case of falshood, neither adequate means of defence for the party accused, nor remedy for the wrong, nor means of

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<sup>759</sup> See pp. 377–9 below.

bringing down punishment on the wrong-doer: and hence the propensity to inflict such injuries by such means, and the unhappy frequency with which they are inflicted.

[149\_166]

History, it is true, furnishes a case in which information, and in particular anonymous information, if it was received and acted upon, as probably it was, was frequently productive (there appears reason to think) of great public mischief. This is the case of the Roman Government under the Emperors, especially some of the first Emperors.<sup>760</sup> But what was the real cause of the mischief in that case? Not that anonymous information was noticed and acted upon, but that the mode of acting upon it was arbitrary: witness, not known to the accused—witness, not examined *vivâ voce*—not examined, perhaps, at all after his original information—not examined upon oath—not confronted with the accused—trial, not public:—in some instances, perhaps, not so much as any pre-existing law declaring the act to be an offence.<sup>761</sup> In a word, there can be no doubt of the mischievous effects of anonymous information, wherever the mode of proceeding is arbitrary. Hence the mischievousness, if any, of the Venetian Lions:<sup>762</sup> hence whatever mischief may happen to result from the same source under any of the governments upon the Continent: a mischief, of course, the greater in proportion as the government is more

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<sup>760</sup> For the use of anonymous information by, for instance, Tiberius Julius Caesar Augustus (42 BC—37 AD), Roman Emperor from 14, see Suetonius, *De vita Caesarum*, III. lxxiii. 1: cum in actis senatus legisset dimissos ac ne auditos quidem quosdam reos, de quibus strictim et nihil aliud quam nominatos ab indice scripserat, pro contempto se habitum fremens, i.e. ‘having read in the proceedings of the senate that some of those under accusation, about whom he had written briefly, merely stating that they had been named by an informer, had been discharged without a hearing, he cried out in anger that he was held in contempt’.

<sup>761</sup> For a notable abuse of arbitrary power over life and death by Nero Claudius Caesar (37–68), Roman Emperor from 54, in reacting to the sighting of a comet on several successive nights which was popularly believed to presage the death of a ruler, see Suetonius, *De vita Caesarum*, VI. xxxvii. 1: Nullus posthac adhibitus dilectus aut modus interimendi quoscumque libuisset quacumque de causa, i.e. ‘After this he showed neither discrimination nor moderation in putting to death whomsoever he pleased on any pretext whatever.’

<sup>762</sup> In the Republic of Venice, the *bocche dei leoni* (lions’ mouths) were a series of stone letter boxes, generally carved in the form of lions or grotesques with open mouths, set in public locations around the city: citizens were encouraged to use them to inform the magistracy of alleged breaches of the law, by means of either signed or anonymous denunciations of their neighbours. See Carlo Antonio Pilati di Tassulo, *Voyages en Differens Pays de l’Europe*, 2 vols., La Hay, 1777, i. 256, and John Moore, *A View of Society and Manners in Italy: With Anecdotes relating to some Eminent Characters*, 2 vols., London, 1781, i. 53.

arbitrary—that is, freer from those restraints upon injustice which have just been specified. Under the actual government of France, the mischief is probably at its height: higher probably than at the worst period of the Monarchy.<sup>763</sup>

[149\_167]

In this country and but a few years back, a particular conjuncture arose, which gave particular occasion and acrimony to the clamour against anonymous information. This was the *Association at the Crown and Anchor*.<sup>764</sup> The benefits which that association may have been productive of, how considerable soever, are not here in question. In this instance, it seems not altogether improbable, that the receipt of anonymous information may have been productive of some mischief.—From what cause? from the same cause in virtue of which anonymous newspaper information is apt to be productive of mischief. The association, being so numerous, formed a little public of themselves; judging, part of them, of course, with the same precipitancy and partiality and levity that characterizes the judgments of the public at large. Not that it was in the power of this or any other association, had its suffrages been unanimous, to cause them to be followed by punishment properly so called. But what was in their power was to cause a man, through the medium of his reputation, to suffer damage and thence injury, in a variety of shapes, by prejudicing him in the opinion of those on whom [the]<sup>765</sup> increase or continuance of his prosperity might happen to depend. A man whose antipathies were confined to certain persons,

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<sup>763</sup> In alluding to the monarchy, Bentham was probably thinking of the proliferation in the 1770s and 1780s of *libelles*, literary texts maligning public figures, almost invariably anonymous and sometimes running into several volumes: many had been the work of French expatriates based in London. It is less clear what more recent instances he may have had in mind, but anonymous smears continued in widespread circulation during the Revolutionary and post-Revolutionary periods: in August 1797, for instance, it was reported that, ‘The walls of Paris are every day covered with incendiary and anonymous placards. Some are Royalist and others Revolutionary’: see the *London Packet* (11–14 August 1797), p. 4.

<sup>764</sup> i.e. the Association for Preserving Liberty and Property against Republicans and Levellers, a loyalist body established by John Reeves (see pp. 254 n. above) at the Crown and Anchor tavern in the Strand, London, on 20 November 1792. On occasion the association initiated prosecutions for seditious conduct, and was accused of doing so on the basis of anonymous information. Thomas Law (1756–1834), financial writer, a member of the Association’s Sub-Committee of Correspondence, publicly resigned in protest against the Committee’s willingness to admit anonymous communications. See Thomas Law, ‘To John Reeves, Esq. Chairman, and members of the Committee from the Association at the Crown and Anchor, for securing Liberty and Property’, the *Morning Chronicle*, 24 January 1793, p. 3.

members of the government, or to certain measures, or at the worst to certain parts of the government in themselves or in his eyes easily susceptible of alteration, would, perhaps, on the information of some person whose [150\_768] contrary opinions and affections had experienced irritation from the contrariety, be set down as actuated by affections hostile to the very essence and constitution of the government itself. By the propagation of these notions from mouth to mouth among the public at large, hence it might happen to a man to find himself bereft in any proportion of those benefits to which society owes its value, without having deserved to suffer any thing at all, or at any rate without deserving to suffer so much. Wherever accusations are received and acted upon, unjust accusations must be received along with the rest, and may, by misadventure, be productive of the same effects as if they were just: this is the price, that is a part of the price, that we are liable to pay for the protection we receive from Courts of justice. The danger of the effects that have been just represented was the price, and the whole price, which the public paid for the benefits it derived from that association. It seems but natural to suppose, as just stated, that the price paid in this way for the benefits of the association, may have been greater than the price paid in the same way for the protection of the Courts of Justice. Whensoever any associations are entered into for the support of the existing government in this or any other Country, a price of the same sort will necessarily, it should seem, be to be paid for whatever benefits may be to be derived from such associations. Whether, from the consideration of this price, a sufficient reason be derivable for the prohibiting, or forbearing to engage in, any such associations [150\_769] for that purpose, is a question the discussion of which does not belong to the matter now in hand.

[150\_770]

As far as the proposed Board is concerned, the true question, supposing it to be the tendency of anonymous information, when convey'd to persons in authority, to be productive of suffering to the innocent—the true question is whether that tendency would be likely to receive any and what encrease from any such institution as that of the proposed Board. The answer is clearly in the negative, and that for the reasons following.

1. In the first place, it is not proposed that the Board should encourage, but on the contrary that it should discourage, the transmitting to it any of that branch of intelligence

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<sup>765</sup> MS 'his'.

from which the chief part, or rather the whole, of the clamour that has ever been raised against anonymous information takes its rise—viz: information relative to Offences against the State—but of this afterwards.

2. In the next place, it is not proposed that, on whatever topics information, with or without a name, may happen to be transmitted to it, it should act upon it at all in the way of any exercise of power exercisable upon the person or property of any individual, not even of any such power as, under the existing laws, is exercised by a Justice of the Peace. It may transmitt any such information to any Justice, and nothing hinders but that the Members of the Board, all or any of them, may be Justices. But whether Justices or not, it is not proposed that, in consequence of any such information, they should be possessed of any power exercisable over person or goods, more than what exists already without the Board.

[150\_771]

3. In the third place, even if it were proposed, (which it is not) that, in the case of State Offences, the Board as such were to exert any active exercise of power in consequence of any such information so received, the individual, at the expence of whose liberty such power came to be exercised, would not have more, but on the contrary would have less, ground for apprehension than he has at present. Were the Board, in consequence of any such information, to act in any such way—to come to the point, were it to issue Warrants, the effect, and only effect, of the change would be—that so far as it acted in this way, so far what was done in this way would, instead of being done by or under the authority of some single person, such as a Chief Justice, an ordinary Justice of the Peace, a Secretary of State or an Under Secretary of State (which two latter Officers, if they acted in any such way, could no otherwise act than as being Justices of the Peace), would be done by a Board composed of five, or three at least, or whatever might be made the *quorum* of Members for this purpose. Where, then, would lie the difference?—In this.—In the breast of a single person, if not sufficiently upon his guard, false information thus convey'd might be apt to ferment and infuse into his mind prejudices against some unblemished char[150\_772]acter, whom, though he will not punish him under the name of punishment, because he has it not in his power, he will cause to suffer in some indirect way (such as the giving hints to persons, on whom his prosperity may depend, of his being a person of a dangerous character, a person to be guarded against, and the like), and this not from any malice (there being by the supposition no cause for it), but through mere indolence, to save

the trouble that it might cost to get at the bottom of the charge. Before a Board, the claim which the information has to obtain credit will call for some sort of discussion, and a prejudice caught up by one Member may be removed by an observation from another.

Among the regulations made by Lewis the 16<sup>th</sup> for the protection of his subjects against arbitrary power, was that of taking the business of the *Lettres de Cachet* out of the hands of a single person, a Minister of State, and transferring it to a Board, consisting of three persons, Men of Law:<sup>766</sup> and hence it was, that upon the destruction of the Bastille, when the time came for liberating the Prisoners, there were scarce any to be found.<sup>767</sup>

[150\_773]

One case there is in which, as far as the interest of individuals exposed to the exercise of coercive power is concerned, [the] advantage that would be derived from the transference of the authority from an individual Officer to this or any Board, presents itself as indubitable. I speak of the individuals on whose account it is that the apprehensions of anonymous information are always entertained: for upon the whole, public and individuals taken together, whether any such change would be eligible is another and much more complicated question. The case in view is that of the Office for the Superintendence of

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<sup>766</sup> In *ancien régime* France, *lettres de cachet* were orders issued under the King's private signet (*cachet*), including warrants for imprisonment without trial, conventionally signed by the king and countersigned by one of his secretaries of state. The system acquired a sinister reputation as a symbol of tyranny. In 1775 Chrétien Guillaume de Lamoignon Malesherbes (1721–94), French jurist and statesman, President of the Court of Aids of Paris 1750–75, Secretary of State to the Department of Paris 1775–6, having visited the Bastille, a fortress in Paris used as a prison, and interviewed detainees under *lettres de cachet*, proposed reforms in their use. According to [Louis Petit de Bachaumont], *Mémoires secrets pour servir à l'histoire de la république des lettres en France, depuis MDCCLXII jusqu'à nos jours*, 30 vols., [Amsterdam?], 1784–6, viii. 127, Malesherbes obtained the agreement of Louis XVI (1754–93), King of France from 1774 to 1792, 'qu'il ne se chargeât des Lettres de cachet qu'à condition qu'il n'en donneroit aucune que les motifs de leur demande n'eussent portés, agités, discutés et jugés valables en plein Conseil'. Bachaumont goes on to say that in August, referral to the Council of all *lettres de cachet* having proved too slow and too difficult, Malesherbes 'a proposé de nommer quatre commissaires *ad hoc*; et que le Roi ayant encore confié le choix desdits commissaires, il avoit déclaré ne pouvoir mieux les choisir qu'au sein de la compagnie dont il avoit logtems eu l'honneur d'être le chef: en sorte qu'on croit qu'ils seront pris dans la Cour des Aides'. No such commission, however, was established.

<sup>767</sup> On 14 July 1789, when a Parisian mob stormed the Bastille, partly with the aim of liberating its prisoners, they discovered only seven, two of whom were insane.

Aliens.<sup>768</sup> Experience here comes in aid of theory. More instances than one have presented themselves to the writer of these papers, in which for want of such division of authority, had it not been for an accident, what appeared to him to be injustice would have been done: one in which he happened to be himself the cause, and the sole cause, of the avoidance of that injustice.<sup>769</sup> But whence comes the danger in this case?—From this—that in this case, to the universal faculty of receiving anonymous accusation is added a special coercive power altogether arbitrary: altogether clear of every one of those already enumerated restrictions of which the protective character of the Judge in this country is composed. Banishment, including privation of lively-hood, thence perhaps of life, the punishment given to be inflicted:<sup>770</sup> accusing witness [150\_774] not known to the accused—accusing witness examined in detail, as it may happen—examined *vivâ voce* or not, as it might happen—accusing witness not so much as confronted with the accused—not cross-examined by the accused—trial, not public: no written declaration or other accessible or existing document, with or without the form of law, by which a man can tell what species of conduct will and what will not be regarded as an offence—to crown all, the accusing witness not examined, nor so much as examinable, upon oath. The latter circumstance is remarkable. The Statute has been examined, and in vain, for a power to this purpose. To what cause is the omission to be ascribed?—Was it oversight?—Was it the apprehension of Parliament’s being startled at it? Whatever may have been the cause, such is the effect, that this Officer, Supreme Master of the existence of so many thousands, has had no sufficient means in his hands for doing justice either to the individual subjected to him, or so much as to the public for whose security the subjection is established.

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<sup>768</sup> The Alien Office was established to oversee the provisions of the Aliens Act of 1793 (33 Geo. III, c. 4). Its functions included monitoring the movements of alien immigrants, and issuing of passports to them: see p. 326 n. above.

<sup>769</sup> In February 1793, Bentham had intervened with the Home Secretary Henry Dundas, and William Huskisson (1770–1830), Superintendent of Aliens 1793–5, to prevent the deportation under the Aliens Act of M. Duquesneau, a shoe-maker, who was the husband of Bentham’s French cook: see Bentham to Henry Dundas, 4 February 1793, *The Correspondence of Jeremy Bentham*, vol. iv, ed. A.T. Milne, London, 1981 (CW), pp. 417–18.

<sup>770</sup> The Aliens Act of 1793 (§§ 11–13, 15–16, 19, 25–6, 30) had prescribed a range of escalating penalties on aliens who failed to register their details with the authorities, were unable to produce a valid passport, or refused to surrender any arms in their possession, including imprisonment, deportation and transportation for life. Under § 38 of the Act, ‘any Person ordered or adjudged to be transported, [who] shall be found at large within this Realm after Sentence of Transportation pronounced’ was made liable to the death penalty.

[150\_775]

Determined, whether by considerations such as the above, or by analogy, or economy, or all together, the Committee of Finance, in their list of measures recommended, have inserted that of consolidating the functions of the Superintendent of Aliens with those of the proposed Board.<sup>771</sup> The idea was a natural and consistent one: but, upon enquiry, it is believed it will scarcely be found practicable with advantage. The Board will have business enough upon its hands to fill up its time without this source of business: it will be exposed to jealousy enough without this source of jealousy. Considering the numbers, and above all the characters, he has to deal with, the Superintendent of Aliens, though the business of his Office is vested in his single and unchecked hand, does not seem likely to have time sufficient for it: turned over to a Board, it would require a great deal more time: for a Board is that sort of animal in which the quickness of motion is not in the direct, but in the inverse, ratio of the number of the legs.<sup>772</sup>

If this be so, then if the business of the Superintendent of Aliens is executed by a Board, there must be a Board on purpose.—Would it be eligible, upon the whole, that there should be a Board on purpose? Would not what would thus be given in the shape of security to the individual be taken in the same shape from the public? Would it not be a less evil that a hundred innocent persons should be banished from a residence they have no [150\_776] legal right to, than that an incendiary should be left to set it on fire? Is an authority thus arbitrary any thing worse than what they have been used to live under all their lives? Is [there]<sup>773</sup> any injustice in banishing here and there an innocent person, when the whole tribe of persons equally innocent might be banished without injustice? Does the shock<sup>774</sup> extend its concussion to<sup>775</sup>

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<sup>771</sup> See ‘Twenty-Eighth Report from the Select Committee on Finance’, in *Commons Sessional Papers of the Eighteenth Century*, cxii. 7, 31.

<sup>772</sup> See, for instance, John Wesley, *A Survey of the Wisdom of God in The Creation: or, a Compendium of Natural Philosophy*, 3rd edn., 5 vols., London, 1777, iv. 95: ‘The legs of insects are scaly and membranous.^.^.^ These two sorts of legs are often united in the same worm. Some of them have several hundred legs; but do not on that account walk faster than such as have only six.’

<sup>773</sup> MS ‘their’.

<sup>774</sup> MS orig. ‘even one injustice’.

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[151\_486]

The idea of heaping odium on the character of the Informer is, if entertained by an honest man, one of the grossest as well as most pernicious absurdities that ever disgraced a thinking being. If Informers should be odious, so should Judges be odious, so should the Laws be odious—so should Society be odious. Declamations against informers can have no consistency in any other mouth than that of Rousseau, who pretended to regard society as a nuisance.<sup>776</sup>

If any fruit but what is good results in any case from the exertions of the Informer (I do not mean a Perjurer), the fault lies—never in the Informer—always in the Law. Among the functions proposed for the proposed Board is that of pointing out for correction those imperfections in the law<sup>777</sup> to which the character of an informer is indebted for so much of the odium attached to it as hath any foundation any where.

Whoever conceives the idea of rendering to the cause of public justice that service which every subject is bound by every tie of duty, moral as well as political, to render, as often as circumstances throw the occasion in his way, finds the following dilemma. The outcry which we have seen to be raised against anonymous information, is but a branch of that plan of warfare which malefactors of every size and species never cease to carry on against the power of those laws which have been made to protect Society against their machinations. Without somebody or other, known or unknown, to point out instances of transgression against those laws on the obedience to which the existence of government depends, the law becomes a dead letter, malefactors triumph, the supporters and assailants

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<sup>775</sup> The passage has been abandoned at this point. The pagination indicates that a page is missing at this point.

<sup>776</sup> Jean-Jacques Rousseau (1712–78), philosopher, contrasted the innocent and useful ‘amour de soi’ which characterized man in the state of nature with the pernicious ‘amour propre’ which arose from the continuous perception of himself through the eyes of others which characterized man in society. See *Discours sur l’origine et les fondemens de l’inégalité parmi les hommes*, Amsterdam, 1755, p. 209: ‘Comparez sans préjugés l’état de l’homme Civil avec celui de l’homme Sauvage, et recherchez si vous le pouvez, combien, outre sa méchanceté, ses besoins et ses misères, le premier a ouvert de nouvelles portes à la douleur et à la mort.’

<sup>777</sup> See pp. 84, 208, 214–17, and 363 above.

of the law change places, and the government is overturned. This is no secret to the enemy: accordingly, Informers, whether of the one description or the other, are constantly taken for the objects of his utmost malice. Information from avowed authors is endeavoured to be prevented, sometimes by threats of personal violence, always by dint of the odium heaped without ceasing on the character of an informer: information from persons not avowing themselves is endeavoured to be rendered still more odious by means of the word *anonymous* prefixed to it. If a man shews himself, he is to be [151\_487] odious because he is an informer: and if he does not shew himself, then, in the event of his ever being discovered, he is to find himself a thousand times more odious, merely because, for fear of being so, he did not shew himself.

The effrontery with which, under cover of this shallow pretext, men not recognized as malefactors make common cause with those who are, is as curious as it is reproachful to the age that bears with it. They have sympathy—but it is for the malefactor: they have indignation—but the whole force of it is bent against the minister of the laws: against him to whom we all owe that which we have of life, of property, of character.

By politicians of this stamp, every thing that contributes to infuse into the body of the laws any of those principles of weakness, unhappily but too numerous, which the dæmon of prejudice has infused in it—every thing that tends to the discharge of the guilty—every pretence for the rejection of an evidence unheard—not forgetting the gross absurdity of requiring, for the most dangerous and at the same time the most abundant, because the least dishonourable, class of offences, twice the evidence that is required for the slightest peccadillo—an absurdity which gives an open licence to committ the crime in the presence of any one witness at one’s choice<sup>778</sup>—all these blemishes in the law, the product of an order of things diametrically opposite to the present, are held for sacred and metamorphosed into excellencies. When you observe a man declaiming against informers—meaning those who give information of state Offences—set that man down (for you may do so without danger of injustice) [as] either a traitor in his heart, or, at best,

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<sup>778</sup> It is not clear what Bentham had in mind. In general, under English law, ‘[o]ne witness (if credible) is *sufficient* evidence to a jury of any single fact; though undoubtedly the concurrence of two or more corroborates the proof’: see Blackstone, *Commentaries on the Laws of England*, iii. 370. There were, however, a number of specific offences, perjury among them, for which there was a statutory requirement for the evidence of two witnesses: see Gilbert, *Law of Evidence*, i. 288–94, iv. 1257–1266.

a dupe and a tool of those that are.

[149\_168]

The penalties here imposed on false information, and the much severer penalty for false anonymous information,<sup>779</sup> are imposed partly for the purpose of securing the Board from being misled by falshood of that kind, partly for the purpose of securing the Board and Government itself from the vulgar imputation of wishing so to be deceived. In the former character, it seems to be a provision for which there actually exists a real and substantial demand: in the other, it seems to bid fair for making a by no means unfavourable impression on the public mind, affording a security against, and as it were a compensation for, whatever accession of force the Board may appear to present to the hand of Government.

In the case of state-offences—such as treason, sedition and the like, as no step will be to be taken by the Board in consequence of any information coming under any such head, and, as matters of that nature belong in a more especial manner to the cognizance of the Secretary of State’s Office, it may be proper that the Board should, in virtue of a standing order for that purpose, lie under the obligation of handing up forthwith every intelligence of that nature to that Office. An intimation to that effect might also be made public on the part of the Board itself, recommending it to persons who otherwise might have become its [correspondents],<sup>780</sup> to address any correspondence of that nature to the Secretary of State in preference. But an intimation of this sort would not of itself be altogether sufficient to produce the effect desired, because the lack of distinguishing state offences from other offences would be a task to which all correspondents would not be equally competent. An intimation of this sort would at any rate be sufficient to produce the other effect in view, viz: the securing the Board against any unpopularity that might be apprehended from that source.<sup>781</sup>

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<sup>779</sup> See p. 196 above.

<sup>780</sup> MS ‘correspondence’.

<sup>781</sup> The following related passage headed ‘VI. Miscellaneous’, is at UC cli. 484, 483: ‘A Board, such as that in question, can scarcely sit for any length of time, without obtaining a stock of experience, if mere warning were not enough, sufficient to put them effectually upon their guard against any snares that may be laid for them by such of their anonymous informants as act with wicked views. Information of this sort is perhaps still more likely to come from malefactors themselves, than from persons disposed without just grounds to

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accuse others of being malefactors. If information of this sort were to be acted upon without the support of other sufficient evidence (to which, when existing, it may be highly useful as a clue) the Board, with its Officers, would soon be caught in the traps that would be laid for them by the Malefactors, whom it would be their business to bring to justice. Such a quantity of stolen goods will be found in John Stiles's Warehouse this day sennight, is the information which John Stiles, a Receiver of stolen goods, would convey to the Board by an anonymous letter, knowing that before that day all the stolen part of his stock will have been cleared away. What follows?—The Officer makes his search, finds nothing, and then comes the malefactor with his action, in the character of injured innocence.'