

Bentham on Preventive Police: the *Calendar of Delinquency* in evaluation of policy, and the *Police Gazette* in manipulation of opinion

Michael Quinn (Bentham Project, UCL m.quinn@ucl.ac.uk)

Abstract. In 1798–1799 Bentham lent his services to Patrick Colquhoun in drafting Bills to regularize the new Thames Police Office and to establish a Central Board of Police. While recognizing Colquhoun as the ‘author of the system’, Bentham brought his own utilitarian philosophy to bear on the task, and his arguments shed light on the twin role of licensing in both providing the finance necessary for an expansion of police, and in generating a flow of information for use in deterring, detecting and apprehending criminals. The *Police Gazette* and the *Calendar of Delinquency* were to be official publications of the proposed Board of Police, which combined the promulgation of information (thus increasing public knowledge through the understanding) with the effort to mould public opinion (thus influencing the will). Dissemination of facts provided grist to the existing moral sanction’s mill, and facilitated co-operation between the people and the agents of penal law. In reaction to anxiety about contagion from revolutionary France, Bentham also explicitly seeks to guide and direct public opinion, thus connecting his police writings directly with the esoteric elements of indirect legislation.

Key words: Bentham, Colquhoun, Indirect Legislation, Police, Prevention.

Introduction

This paper originated a generous offer from the editor of this journal, and in a desire to advertise the existence of, and provide some introduction to, a practically unknown and previously unpublished set of writings by Jeremy Bentham, the English philosopher, theorist and aspirant reformer of law and legal procedure, and would-be governor of a panopticon prison, while highlighting those elements presented below as Bentham’s specific and original contributions to a project usually identified as the practically exclusive production of Patrick Colquhoun.¹ The Bentham Project’s raison-d’être is the production of a critical edition of Bentham’s works. In a writing career extending over six decades, Bentham wrote every day, and published only a small fraction of his extraordinary output. Most of Bentham’s surviving papers, some 60,000 foolscap sheets, reside in the care of Special Collections at University College London Library, while another 12,000 folios are held in the British Library. Within a few years of his death in 1832, an eleven volume edition of Bentham’s works was produced (Bentham, 1843), which suffers from many weaknesses in terms both of selection (for instance, Bentham’s critical writings on religion and sexual morality, even those which had been previously published, were entirely excluded) and of organization and editing (Schofield, 2009, pp. 24–35). The goal of the Project in relation to works which Bentham did not publish,

or which he published only in ‘Outline’ or ‘Abstract’ form, is to reconstitute them, insofar as possible, in accordance with Bentham’s own stated intentions, and above all to avoid repeating the errors of the earlier edition in splicing together, into something resembling a readable text, sequences which share similar ostensible themes, but which, drafted at different periods and for different purposes, simply do not belong together.² Thanks to the generosity of the Leverhulme Trust, the Project has been able to continue the task of editing Bentham’s writings on political economy, and *Preventive Police* (Bentham, [2018]) will be the third volume in this sub-series published by the Clarendon Press.³ The volume contains eleven works written in 1798–1799, of which the central pair, a ‘Thames Police Bill’ and a ‘Bill for the establishment of a Board of Police’, provide the rationale for the division of the volume into two parts.⁴ In relation to this volume, some 900 sheets of manuscript were surveyed, transcribed,⁵ put into sequences with the assistance of Bentham’s surviving plans and brouillons, and the resulting text annotated.

The *Preventive Police* volume is unusual in Bentham’s corpus in that Bentham was, in a sense, writing to order. The outlines of the proposals for reform both in the policing of the River Thames, and by the establishment of a Board of Police to administer a licencing system for dealers in second-hand goods, originated with Patrick Colquhoun, and find expression in Colquhoun’s *Treatise on the Police of the Metropolis* (1797, pp. 27–28, 66–67, 346–348, 359–368, 426–427).⁶ Bentham met Colquhoun in December 1796, and the latter became an enthusiastic supporter of Bentham’s panopticon prison scheme. In 1798 their interests coincided when both men gave evidence to the Select Committee on Finance, whose 28th report, ‘Police, including Convict Establishments’, printed over the summer of 1798, endorsed both Colquhoun’s general plan for the reform of police and Bentham’s panopticon (Lambert, 1975, pp. 31–32). Colquhoun, who warmly endorsed the panopticon in his evidence to the Finance Committee, sought Bentham’s assistance as, effectively, a parliamentary draftsman, and over the next twelve months Bentham drafted two Bills, together with a series of explanatory and justificatory comments on them.

Colquhoun himself has been identified as a pivotal figure in the shift between a notion of police as a broad governmental responsibility for moral regulation and oversight, and a recognizably modern notion of police as an apolitical service focused on the prevention and investigation of crimes (Dodsworth, 2007, 2008; Neocleous, 2000). In the summer of 1799, Colquhoun believed that he had the strong support of the William Pitt’s administration, and that both the Bills Bentham had drafted would soon become law. In the event, his confidence

turned out to be groundless. For reasons which remain unclear, in the second half of 1799 a decision was taken to limit that limit support to endorsement of a truncated version of one of the bills, so that the Thames Police Act of 1800 (39 & 40 Geo. III, c. 87) was the only legislative enactment of any part of Colquhoun's plan.

In that Bentham consistently recognized Colquhoun as 'the author of the system' (Bentham, [2018], pp. 63, 96n, 98 {UC cl. 139, 656, 736}), it might appear that his police writings offer little of interest to scholars of police or of Bentham, since the substance, if not the words, are not his but Colquhoun's. Some assessment of the nature and extent of Bentham's role, with particular emphasis on the *Police Gazette* and the *Calendar of Delinquency*, is attempted in § 3, but what seems evident is that in his 'Notes to the Police Bill' and 'Elucidations relative to the Police Revenue Bill', liberated on the one hand from the constraints of Parliamentary 'supplusage', and on the other from the directing hand of Colquhoun, Bentham provided some striking examples of his utilitarian reasoning in action in the drafting and justification of public policy.

§ 1. Police, Policy, and Indirect Legislation

English attitudes to police in the eighteenth century were coloured by both suspicion of alien terminology and fears over the importation of continental oppression (Dodsworth, 2007, 2008; Radzinowicz, 1948–1986, iii. 1–8). The origins of the word, and the concept, in translation of Aristotle's *Politics*, made the European understanding capacious enough to encompass all the actions of the state which had a domestic or internal focus: at its broadest, police was everything states did to maintain the internal order and well-being of the commonwealth (Neocleous, 2000, 720–723). In this broad continental sense, and not unreasonably, the English word policy has been suggested as a more appropriate equivalent.⁷ Bentham's lifetime witnessed a revolution in this definition of police, and the development of a modern understanding of police as, first, a professionalized, expert, and non-political institution, and second, an institution whose responsibilities were limited more narrowly to the prevention and investigation of crimes.

The earlier continental idea of police was not entirely rejected in British discourse. The concept appears, without negative comment, in the work of several British writers in the third quarter of the eighteenth century, including Jonas Hanway (1775),⁸ Adam Smith (1978),⁹ and William Blackstone. For the latter,

By the public police and oeconomy I mean the due regulation and domestic order of the kingdom: whereby the individuals of the state, like the members of a well governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood and good manners; and to be decent, industrious, and inoffensive in their respective stations. (1765–1769, iv. 162)

The central core of Blackstone's police was thus the maintenance of order. He went on to argue, in discussion of recognisances (that is forfeitable securities deposited with courts for future good behaviour), that, where feasible, 'preventive justice is ... preferable in all respects to punishing justice' (1765–9, iv. 248).¹⁰

Colquhoun consistently highlighted the importance of preventing crimes. However, as Neocleous notes (2000, 712), he in fact deployed both old and senses of police in his definition:

POLICE in this Country may be considered as a *new Science*, the properties of which consist not in the Judicial Powers which lead to *Punishment*, and which belong to Magistrates alone; but in the PREVENTION AND DETECTION OF CRIMES, and in those other Functions which relate to INTERNAL REGULATIONS for the well ordering and comfort of Civil Society. (Colquhoun, 1800, unpaginated preface)

§ 2. Police and Prevention in Bentham's Writings

For the most part, Bentham mentions police only in passing in his early jurisprudential writings, where he too stresses prevention, describing police as 'the power which occupies itself in preventing mischief' (1970, p. 198n).¹¹ Bentham divides the functions of police into prevention of mischief by natural calamity and mischief by internal enemies, that is criminals. In relation to the latter, he distinguishes between 'preventive police' and justice:

As to mischief from internal adversaries, the expedients employed for averting it may be distinguished into such as may be applied *before* the discovery of any mischievous design in particular, and such as can not be employed but in consequence of the discovery of some such design: the former of these are commonly referred to a branch which may be styled the *preventive* branch of the *police*: the latter to that of justice. (1970, p. 198)

In a long note, Bentham argues that although it will often be difficult to distinguish between the functions of justice and those of the police, his suggested distinction appears the only plausible line of separation (1970, p. 198n). This distinction was partly temporal—police refers to things done to combat mischief before the authorities become aware of specific mischievous designs; justice to things done in awareness of such designs—and partly a matter of a significant variation in focus. Thus measures of justice concern only the specific

type or types of offence in relation to which judgment is demanded, and apply exclusively to the particular individual manifestations thereof in question; measures of police might easily concern the former, but never the latter. In one sense, this looks a long way from a modern definition, in which the police spend most of their time investigating specific instances of criminality, but in another sense anticipates Colquhoun's distinction between the punishment of crime, which is the preserve of the magistracy, and its prevention, which is the business of police. Although Bentham frankly admits that the idea of police 'seems to be too multifarious to be susceptible of any single definition', two inferences might be drawn as to his understanding of the concept. First, police is essentially preventive. Second, police includes action against calamity as well as against crime.

In both parts of its field of action, police was to be distinguished from other regulatory systems which might be, and often were, confused with it, by its negative or prophylactic focus on preventing evil as opposed to producing positive good: 'Other functions, commonly referred to the head of police, may be referred either to that power which occupies itself in promoting in a positive way the increase of national felicity, or that which employs itself in the management of the public wealth' (1970, p. 199n). In discussing offences under the former head, Bentham lists breaches of a series of trusts which the agents of the state might undertake, whose objects range from the promotion of knowledge, to ensuring (whether by providing directly or by regulating private provision is unclear) good education, to the care of those suffering from physical diseases and of the insane, to the care of the poor, the provision of compensation to victims of mischief, and, finally, 'the *hedonarchic* trust', or that of presiding over pleasures (1970, p. 262n). Bentham does not expand on 'these examples of the principal establishments which should or might be put on foot' for making positive increases in national felicity (1970, p. 262n), but they appear to remove many of the responsibilities ascribed to police by the continental understanding. In relation to offences against the public wealth, Bentham lists non-payment of monies owing to the state, such as forfeitures and taxes, and a further series of breaches of public trusts involving speculation or mismanagement of public funds (1970, p. 262n). Insofar as the management of public monies might plausibly be seen as part of the maintenance of good order, this classification removes a further set of responsibilities from the European notion of police.

Further light is shed on the distinction between the prevention of evil and the promotion of good by turning to Bentham's essay on 'Indirect Legislation', written in 1782. He opens his text thus:

The end of government, wherever it is what it ought to be, is to provide for the happiness of the governed. Happiness is provided for partly by combating mischief, partly by promoting good. The former way is that in which there is most to be done by government, and in which the necessity of its interference is least contestible. (No date. UC lxxxvii. 2)

After listing the possible sources of mischief, and limiting the focus of the essay to expedients for the prevention of delinquency and misrule (that is, breaches of the trust which constitutes the rationale of government, or, in other words, misconduct on the part of the sovereign or her agents), Bentham continues:

A word or two concerning that branch of government of which the principal destination is to promote good. Opposite as are the ideas annexed to the *words* good and evil, this is not equally the case with the *propositions* in which those terms occur. To avert evil is one way of promoting good; nor will any good which is introduced be acknowledged to be of any value, except in as far as it stands clear of evil. The things themselves being thus intimately blended, the prevention of evil, I mean, and the production of good, it will not be wondered at if the case should be the same with regard to the operations which are planned with a view to the giving birth to such effects.¹²

After introducing political economy, Bentham makes the comment that 'the promotion of positive good' by government is to be assigned to that branch of political economy (the other being the provision of revenue for the exercise of the functions of the state) 'which consists in the promoting the increase of the national wealth and the national population'. Political economy is thus distinguished from indirect legislation on the one hand, and from police on the other. Further, remember Bentham's list of public trusts for increasing national felicity in *Introduction to the Principles of Morals and Legislation*: unless promoting the increase of population and wealth could be brought under the rubric of caring for the diseased and the poor and presiding over pleasures respectively, the sphere of the provision of positive good as understood in 'Indirect Legislation' is rather more limited than it is in the former work.¹³

Given the centrality of prevention to Bentham's notion of police, one might expect the latter concept to feature centrally in 'Indirect Legislation', which he summarized as 'the several ways of preventing misdeeds otherwise than by (force of) punishment immediately applied to the very act which is obnoxious' (1971, p. 127). Like almost all of Bentham's

works, ‘Indirect Legislation’ was written from the perspective of the legislator (in modern parlance the government, or public policy) whose *raison d’être* was to ‘provide for the happiness of the governed’. From this perspective, as Hume notes, ‘indirect legislation was focused ... on the techniques of government, the means of establishing social control’ (1981, p. 96). In the essay Bentham notes, echoing Blackstone’s judgment: ‘It is evident enough with regard to any offence whatsoever that any expedients by which the progress of it can be checked without the expence of punishment are better than any which consist in punishment’ (No date. UC lxxxvii. 13).¹⁴ However, police is very far from being the explicit focus of the essay. The single Chapter in which police receives more than a passing mention discusses the amelioration of the political sanction, that is, state-inflicted punishment. Bentham deals first with accessory offences,¹⁵ and then lists twenty-five ‘crime-preventing’ expedients, ranging from street-lighting, to registers of travellers, provision of identifying marks for all subjects of the state, regulation of the sale of poisons, establishment of standard weights and measures, publication of accounts and giving publicity to ‘proceedings of state’ (No date. UC lxxxvii. 35–38). Despite this lack of centrality, Hume is surely correct in judging that Bentham’s development of Indirect Legislation ‘accounted for and legitimized preventive police as an activity of government’, and in reading large swathes of the essay as ‘a sort of manual of preventive police’ (1981, pp. 77, 97).

We cannot be certain of the reasons why police, which might easily have been adopted as the main subject of ‘Indirect Legislation’, cuts so marginal a figure in the work. Perhaps one part of the answer lies in the fact that the ostensible subjects of ‘Indirect Legislation’, delinquency and misrule, extended to only half of the sphere of police, since Bentham had explicitly excluded from discussion any consideration of the prevention of calamity. Another part may lie in a reluctance to make systematic use of an idea to which he knew that an English audience was liable to react negatively. Finally, while the explanation cannot simply lie in his ignorance of the concept—it is clear from his earlier discussion that he knew more or less what he understood by it—his admission that the concept was too multifarious to be easily definable might also explain his reluctance to make it the centre of his analysis.

In the mid-1780s Bentham drafted considerable material in French for a projected work ‘Project of a complete body of laws’,¹⁶ much of which was used as source material by his Genevan editor and disciple Etienne Dumont for his recension *Traité de législation civile*

et pénale (Bentham, 1802), while this work was itself later translated and incorporated in various volumes of the Bowring edition of Bentham's works (Bentham 1843). In analysis of the 'Form' of the law, included in that edition as 'A General View of a Complete Code of Laws', Bentham undertook a further brief discussion of police, which is defined as 'a general system of precaution, either for the *prevention of crimes* or of *calamities*' (1843, iii. 155–210, at 169). Bentham's original draft of this discussion survives,¹⁷ and perhaps provides further evidence concerning his hesitation about the term, since he notes that 'Police is one of the vaguest of appellatives: there are few more so, or more intractable: one finds materials from which to nail it down [in import] neither in etymology nor even in usage. Nonetheless, it is necessary to use it still, since however bad a language might be, it is not up to one individual to correct it.'¹⁸ (No date. UC lxii. 20) In the final years of his life, Bentham did make provision in his *Constitutional Code* for a 'Preventive Services Minister', whose functions consisted in 'the prevention of delinquency and calamity' (1983, p. 171), but the intended Chapter detailing those functions remained unpublished in Bentham's lifetime, and the version included in the Bowring edition of his works focuses almost exclusively on calamity rather than delinquency. (Bentham, 1843, ix. 439–41)

In 1798, the idea of police (in both broad and narrow senses of the word, but with heavy emphasis on the latter) formed the organizing core of Colquhoun's proposals for the establishment of a 'Board of Police'. Just as police appears peripheral to the text of 'Indirect Legislation', indirect legislation makes almost no explicit appearance in Bentham's writings on preventive police.¹⁹ Bentham's Police Bill would have established a Central Board of Police in London, charged with achieving the primary object of the Bill as set forth by Bentham in 'Elucidations relative to the Police Revenue Bill', namely 'subjecting to controul and regulation the conduct of the persons whom it subjects to the obligation of taking out a licence' (Bentham, [2018], p. 89 {UC cl. 727}). In 1794 Colquhoun had proposed that twelve classes of traders known to contain many receivers of stolen goods should be licensed, in order to assist in 'relieving Government of the Expences of a Vigilant ... system of Police' (No date. UC cxlix 15–16).²⁰ In *Treatise on the Police of the Metropolis*, Colquhoun listed nineteen classes which should be obliged to register with local magistrates, adding to his earlier list publicans, watchmakers, gold and silversmiths, dealers in furniture and in building materials, stable-keepers, and horse-slaughterers (1797, pp. 366–367n).²¹ In Colquhoun's evidence to the Finance Committee, he provided two similar lists, the second of which, excepting its omission of one class, coincided exactly with that of 1794 (Lambert, 1975, pp.

45–48).²² Colquhoun had thus repeatedly identified the ease of traffic in stolen goods as an obvious failing on the part of the criminal law, which was traceable partly to not making receipt of such goods a discrete offence, partly to failure to identify, define, and prohibit other accessory offences, partly to incompetent drafting, and partly to failure to establish anything like an inventory of dealers in second hand goods (1797, pp. 10–17, 176–191, 423–424). Bentham played no part in this analysis, which had appeared in print before he made Colquhoun’s acquaintance. For his own part, in ‘Indirect Legislation’ he had discussed accessory offences at length (No date. UC lxxxvii. 172–7), and praised the discretionary licencing public houses (No date. UC lxxxvii. 66, 93) which his Bill adopted as its model.

Bentham also agreed with Colquhoun that the drafters of previous statute law were culpable for effectively encouraging offences. As he noted in 1799, in discussion of ‘Coin Police’: ‘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.’ (Bentham, [2018], p. 145 {UC cl. 174}) He was thus ready to accept the principle of Colquhoun’s analysis enthusiastically, and invested time and effort in suggesting amendments to Colquhoun’s list of classes to be licensed, and in reflecting on how best to prioritize their regulation to maximize the prospects of success:²³ as he put it in ‘Elucidations relative to the Police Revenue Bill’, ‘The classes in question are more or less suspected of containing individuals whose dealings are at present not only eventually auxiliary, but wilfully conducive [and] accessory 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.’ (Bentham, [2018], p. 89 {UC cl. 727}).

Both the Thames Police Bill and the Police Bill attempted, in obstructing the trade in stolen goods, to address all three of what Bentham had identified in ‘Indirect Legislation’ as the necessary conditions for voluntary action, namely power, knowledge and inclination. (No date. UC lxxxvii. 4, 7–8) Thus the power of receivers of stolen goods was to be reduced, and their inclination simultaneously modified, by the new obligations to acquire the licence (accompanied by the creation of the new offence of dealing without a licence) (Bentham, [2018], pp. 150–155, 183–184 {UC cl. 182–192, 245} (i.e. ‘Police Bill’ §§ 1, 32)), to keep accounts of receipts and sales, inspectable by the officers of the Board (Bentham, [2018], pp. 177–179, 186 {UC cl. 233, 249 (i.e. ‘Police Bill’ §§ 27, 35)}, and to submit to search of premises (Bentham, [2018], pp. 184–185 {UC cl. 246–248 (i.e. ‘Police Bill’ §§ 33–4)}). The

third condition for voluntary action, knowledge, to the wide dissemination of which Bentham devoted much space in ‘Indirect Legislation’ (No date. UC lxxxvii. 154–171), was central to what Bentham identified in ‘Elucidations relative to the Police Revenue Bill’ as the secondary object of the Bill, the ‘obtaining information’ (Bentham, [2018], p. 89 {UC cl. 727}). Thus the exposure of licenced dealers to observation, not only by police surveyors but by the public, made successful fraud on their part more difficult. Knowledge of offences (and thereby ability to locate, detain and punish offenders) would be vastly increased by the *Police Gazette* (Bentham, [2018], pp. 194–196 {UC cl. 266–7} (i.e. ‘Police Bill’ §45). In terms of using increases in public knowledge to reduce offences, of reducing temptations to offend by increasing the difficulty of offending, and of providing organized invigilation or surveillance, the Police Bill appears to be no less than a systematic exercise in indirect legislation.

Neocleous argues that the modern understanding of police as limited to the control and investigation of crime marks a typically liberal attempt to postulate civil society as an autonomous and spontaneously self-governing sphere which is independent of the state, and which demonstrates ‘liberalism’s inability to grasp the nature of state power’ (1998, 427). The development of a modern concept of police as an institution for combating disorder in the shape of criminality is presented as proceeding in parallel with the development of classical political economy and its assertion of the ‘natural’ order of market exchange. For Neocleous, the different treatments given to police by Smith in his unpublished ‘Lectures on Jurisprudence’ on the one hand (where police refers to a wide-ranging responsibility of government which encompasses, among other things, the best arrangements for generating prosperity), and in *Wealth of Nations* on the other (where it refers exclusively to erroneous and restrictive mercantilist interferences with natural liberty), illustrate the two related developments, and offer a striking example of the change in the meaning of the concept. Under the old understanding, ‘because the task of police was the maintenance of order in all its aspects’, no meaningful distinction was to be made between ‘government’ and ‘police’, since ‘the condition of the order which was to be maintained by the police was the order of the state’. (Neocleous, 1998, 432) Under the new understanding, civil society was understood to be self-policing, or rather as subject to the natural policing of the market, which was identified as ‘the operating principle behind civil society. This *depoliticized* the state of prosperity.’ (1998, 444)

For Neocleous, the consequence of divorcing state from civil society was that the ‘concerns of police and the concerns of political economy are torn apart, the science of wealth seemingly cut off from the science of police’ (1998, 445). This might be true of Adam Smith, but as Neocleous himself notes elsewhere (2000, 717), it is not true of Colquhoun (and nor, we might add, of Bentham). It might seem surprising then, that Bentham’s political economy does seem to fit Neocleous’s characterization of the liberal political economy which emerges from the cleft opened up between state and civil society in Smith’s writing, and the corresponding reduction of the sphere of state competence: ‘the tasks of the sovereign body are narrowed down to internal and external security and of providing the sort of public works and institutions which it is not in the interest of individuals to supply.’ (Neocleous, 1998, 443) And compare both Bentham’s general advice to government in ‘Method of an Institute of Political Economy’ on its role in directly increasing wealth, that is ‘Be quiet’ (No date. UC xvii.211 (26 June 1801) {Bentham 1952–4, iii. 333}), and his recognition that the maintenance of security was the key to the increase of wealth:

The *application* of the matter of wealth to its several purposes, in the character of an instrument of general *security*, is evidently of anterior and superior importance to the *increase* of it. But this class of operations belongs to other heads: to legislation and administration in general—to the establishment of laws distributive and laws penal, and the institution, collation, and exercise, of powers military, fiscal, judicial, and of the police. (No date. UC xvii. 322 (11 March 1804))

And further,

With few exceptions, and those not very considerable ones, the attainment [of] the maximum of enjoyment will be most effectually secured by leaving each individual to pursue the attainment of his own particular maximum of enjoyment in proportion as he is in possession of the means. Inclination in this respect will not be wanting on the part of any one. (No date. UC xvii. 218 (22 August 1801) {Bentham 1952–4, iii.337})

For Neocleous, the shrinking in state responsibilities is largely a consequence of the expulsion of the state from any constitutive role in the formation of civil society: ‘No longer concerned with the maintenance of the whole social body the art of (liberal) governance is instead occupied with the encouragement of the private pursuit of wealth and the protection of private property.’ (1998, 446) For Colquhoun (and the same might be said for Bentham), however, ‘it is not that the discourse of police is displaced by the discourse of political economy and the system of natural liberty... but that police and political economy are the two sides of the same discursive coin’ (Neocleous, 2000, 717–718). Colquhoun is credited with seeing that the naturalness of the social order within which market discipline operates is

the artificial construction of concerted state action. In order for the market to function efficiently, its acceptance as an inescapable natural fact requires, as a necessary condition, the establishment of a moral consensus precisely as to its non-artificiality. As Dodsworth puts it, the liberal preventive police is itself underpinned by an understanding and recognition of the central role of the state in creating the social order, ‘the idea of prevention emerging as part of a detailed regulatory system that sought to actively create the social order’ (2007, 451). Or, with Bentham, ‘What the legislator and the Minister of the Interior have it in their power to do towards encrease either of wealth or population is as nothing in comparison with what is done of course, and without thinking of it, by the Judge, and his assistant the Minister of Police’ (No date. UC xvii.208 (20 August 1801) {Bentham, 1952–4, iii. 323}).

On the one hand, Bentham would agree with Smith on the importance of security, and especially security of property, to the achievement of prosperity. On the other, he would utterly reject the liberal ‘myth of the market’, since he was entirely explicit, as against Smith, in recognizing the manner in which the state, through law, was constitutive of civil society: ‘I leave it to Adam Smith and the champions of the rights of man ... to talk of invasions of natural liberty, and to give as a special argument against this or that law, an argument the effect of which would be to put a negative upon all laws.’ (No date. UC iii.223 {Bentham, 1952–4, iii. 258}) How might the apparent contradiction be removed? In Bentham’s case, simply by deriving the functions of government from their contribution to the goal of maximizing happiness. As Laval notes: ‘A spontaneous economic act in Bentham’s sense is not in any case the pure exercise of a natural faculty, it is an act authorized and guaranteed by the law’ (2003, p. 51).²⁴ In his jurisprudential writings, Smith too recognizes the central role of the state, through law, in constituting civil society. As Ron puts it: ‘legislators create through the act of legislation conditions that allow the formation of shared expectations regarding the activity of subjects.’ (2008: 121) In *Wealth of Nations* especially, Smith is content to exploit the rhetorical appeal to ‘natural liberty’, but his natural liberty covers very much the same ground as Bentham’s security. No more than Bentham does Smith think that anything more than a very temporary exercise of natural liberty is conceivable without the protection of law.

To make the point in reverse, the *sponte acta* of Bentham’s political economy coincide more or less exactly with Smith’s realm of natural or perfect liberty. Bentham’s defines *sponte acta* as ‘Cases in which, and measures or operations by which, the end is promoted, by individuals acting for themselves; and without any *special* interference

exercised with this special view on the part of government; any beyond the distribution made and maintained, and the protection afforded, by the civil and penal branches of the Law.’ (No date. UC xvii. 208 {Bentham 1952–4, iii. 323}) And compare Smith description of natural liberty: ‘Every man, *as long as he does not violate the laws of justice*, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men.’ (1976, ii. 687 emphasis added) For both men, security, the enforcement of the protections promised by the legal order, plays the crucial role in both wealth creation and in the achievement of whatever happiness human beings can attain. Notwithstanding his employment of the rhetoric of natural liberty, Smith himself is perfectly well aware of the potentially positive and extensive role of the state in providing security, in creating and maintaining the conditions in which citizens can live worthwhile lives, and in addressing the inequities liable to result from failing effectively to regulate the rhetorically 'self-regulating' market.

The substance of Bentham’s political economy coincides to a large degree with that of Smith. However, the transformation of civil society into an autonomous, self-regulating sphere is not only absent from Bentham’s thought, it is explicitly and roundly rejected. Bentham was simply less disingenuous about the constitutive role of law in establishing the conditions in which commercial societies could flourish. In this sense, Smith’s political economy succeeds precisely by making the artificial look natural, and by keeping the supporting machinery out of sight behind the curtain. Bentham, as befits ‘a theorist of the art and science of government’ (Engelmann, 2017, 71), that is of police in its broadest sense, is concerned precisely with making the machinery transparent and evaluating its effectiveness in delivering welfare.

Bentham agreed with Colquhoun on the importance of policing the poor, that is the vast majority of the population, in the sense of seeking to influence their moral outlook. Bentham’s 1799 contribution to this goal will receive detailed discussion in § 5, but, given the importance in a British context ascribed by Neocleous to Colquhoun’s ground-breaking concept of ‘social police’, the connection between policing and poverty demands investigation here. For Neocleous, ‘Following Malthus rather than Bentham, Colquhoun was a key figure in effecting a conceptual break in the notion of the “labouring poor” that was to become a crucial conceptual device in the class strategies thereafter’. (2000, 715) The prevailing opinion of commentators on Colquhoun’s efforts to reform the police is that one of his most original contributions was the advocacy of using official channels of intelligence to

mould and direct public opinion. Radzinowicz devotes a subsection to Colquhoun's 'Moralizing Police Gazette' (Radzinowicz, 1948–86, iii. 296–8), and Neocleous highlights the way in which Colquhoun sought to construct a moral consensus which would contribute to a significant reduction in offences. The major source on which both rely is Colquhoun's *Treatise on Indigence* (1806), published in 1806, and itself a vastly expanded version of a pamphlet first published in 1799 (1799a). This matters because the assertion of this paper is that the moving spirit behind the *Police Gazette* (as it incontrovertibly was behind the conceptual division between poverty and indigence, which Neocleous describes as 'the key to understanding his [i.e. Colquhoun's] idea of the Municipal Police and, as such, his notion of prevention') (2000, 715), was not in fact Colquhoun, but Bentham.²⁵

For Neocleous, it is only in Colquhoun's hands that the distinction informs official attitudes to the labouring poor, and forms the intellectual core of the new poor law enacted a generation later. Besides the fact that this line of causation completely overlooks the role of Edwin Chadwick, who was not only Bentham's secretary in the final years of his life, but was completely familiar with Bentham's poor law writings of 1797–1798,²⁶ it also overlooks Colquhoun's own familiarity with those writings, and the intensive co-operation between Colquhoun and Bentham in 1798–1799.

It was certainly the case that Colquhoun consistently bemoaned the moral corruption of the poor, which was only exacerbated by the failings of the penal law (1797, pp. 12–13, 33–38, 242–243). It was also true that Colquhoun connected the spread of crime with that of indigence, and in 1799 proposed the establishment of what he called 'pauper police' (1799a, title page). Again, however Bentham had anticipated him on the importance of preventing the descent from poverty into the indigence which led to crime. In the 1780s, Bentham had noted that 'The police of charity, in drying up the most fecund source of crimes, becomes at the same time police against offences.'²⁷ (No date. UC lxii. 20) Ten years later, the entire point of his detailed schemes for the provision of a whole raft of services—pecuniary, medical, itinerant, and informational—to the independent poor was precisely to maintain their independence (2001, pp. 66–140; 2010, pp. 560–608). As Bentham pointedly noted, once the relevant choice became that between committing crime and starvation, no penalty, however draconian, could deter crime: 'Certain death being the lot of innocence, and only a chance of punishment ... the lot of criminality, [is it] not to be expected that ... a man should seek to relieve himself by whatever means, whether by fraud or force.' (2001, p. 10) There were similarities between Colquhoun's proposals and those which Bentham had advanced in his

own poor law writings. Both men wanted to abolish the parochial post-code lottery, where the quality of relief received depended on the budget and the generosity of local overseers. Both also proposed the systematic examination of mendicants, followed, if appropriate (which for Bentham, but not for Colquhoun, it almost always was) by detention in a House of Industry. However, the two men also differed significantly, most notably over Bentham's proposal for the provision of relief by a joint-stock company (Bentham, 2010, pp. lxxxiv–lxxxv).

Bentham would also plead guilty to advocating the commodification of labour, arguing that the process was a necessary condition for the efficient functioning of a commercial society, and that such societies delivered benefits, to the poor as well as the rich, which outweighed the burdens: 'Security stands before equality: because where there is most inequality ... the condition of the lowest, is not so bad, but that want of security may make it worse' (No date. UC clxx. 51). His attitude is evinced both in his support of agricultural enclosure, which ended the customary practice of gleaning, and in his readiness to co-operate with Colquhoun and the West-India merchants in attempting to criminalize the practice of taking home spillage or spoiled goods. In a sadly fragmentary set of 'Elucidations' to his draft of the Thames Police Bill, Bentham took his stand on the necessity of reducing what he insisted was theft (that is either pilfering or part-payment in kind, depending on whether the respondent was a West-India merchant or a dock-worker):

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. ([2018], p. 40 {UC cl. 96})

Bentham argued that since the necessary separation between natural and factitious waste cannot be made: '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.'

The inescapable inference is that if Colquhoun was one major figure in the development of the legal buttressing of capitalism, Bentham has a strong claim to be another. Bentham makes no principled separation, in the sense of dealing with disconnected and

mutually exclusive systems, between police and civil society, or between police and political economy, or, most basically, between state and civil society. He recognized that the state, through means of law in all its forms, played a creative causative role in the formation of the market, but concluded, with Colquhoun and with Smith, that the security of property, and the endorsement of the inequality that followed on the distribution of rewards by that market, allied to a state underwritten guarantee that none would be abandoned to starvation, was the best guarantee of two of the three remaining subordinate ends of legislation (subsistence and abundance), and that in its absence the only achievable mode of the final subordinate end, equality, would be that of universal indigence and misery. (1843, i. 311–312).

§ 3. The Police Writings: Colquhoun or Bentham?

Before discussing the details of what is presented in §§ 4 and 5 as the core of Bentham's original contribution to Colquhoun's project of police reform, the question of authorship demands some assessment. It is reasonable to query the extent to which Bentham's writings on preventive police were his own, and to what extent they were simply an exercise in expressing positions which properly belonged to Colquhoun. Contemporary evidence of Bentham's subordinate role is provided by his repeated contrast between Colquhoun as 'the Author of the System', and himself as the 'drawer' or 'framer' of the Bills ([2018], pp. 93–96n, 132n {UC cl. 656, 732, 720}). In relation to both the Thames Police Bill and the Police Bill, Colquhoun appears to have equipped Bentham with a brief, outlining the intended substance of the Bills.²⁸ In addition, Colquhoun appears to have exercised a veto upon the modifications and amendments put forward by Bentham as a sort of menu which Colquhoun might adopt or reject at pleasure, as evidenced by Bentham's comment that two sections he had drafted for the Police Bill 'may be either retained or struck out, as may be deemed most advisable' (No date. UC cl. 693),²⁹ and his comment on another cancelled passage drafted for 'Notes to the Police Bill': 'Not now. Disapproved by Mr Colquhoun' (No date. UC cl. 700).³⁰

Some specific evidence of Bentham's input, and of the way in which his Bills were the outcome of a dialogue between the two men, is provided by a brouillon for his first draft of the Thames Police Bill (No date. UC cl. 323 (17 and 27 May 1798)), where he lists 'Additions proposed in Colq's Paper' to the existing Bumboat Act (2 Geo. III, c. 28), all of which were incorporated in one form or another in Bentham's first draft of the Bill. In relation to Colquhoun's suggestion that imprisonment and whipping be substituted to the fines prescribed by the Bumboat Act, Bentham countered: 'No reason why pecuniary

punishment should not remain with encrease—it might be doubled for each subsequent offence’,³¹ and added just such a provision, as well as imprisonment at the magistrate’s discretion, to the correspondent section of the Bill ([2018], pp. 11–12 {UC cl. 91}).

Reflecting three years later, Bentham gave a very modest estimate of his involvement in determining the substance of the Police Bill: ‘The principle of the System, and therefore of the *Bill*, being extant [i.e. in Colquhoun’s *Treatise of the Police of the Metropolis*] .^.^ I may take upon me to state with the less reserve, that neither the merits nor the demerits of it—whatever they may be—belong to me.’ (No date. UC cxx. 169 (15 February 1802)) Bentham went on explicitly to withhold his endorsement of the substance of the measure:

Whether, on the ground of preponderant utility, and ultimate eligibility, the principle of that Bill—supposing it comprehensively and consistently followed up, and carried through all the several applications which the end in view would require to be made of it, in order to give it its full range and efficacy—would upon the whole stand the test of examination, is a question which, from the first to the last, it never seemed necessary or so much as competent[?] to me, to take upon me to grapple with. What I did see in the principle, was—its indispensable tendency to be productive—and that in a very high degree—of the effect aimed at by it—the diminution of the habitual mass of criminality, in the most exuberant and pernicious of its shapes. This was a great and indubitable good. A point I did not tax myself, nor so much as permitt myself, to enquire into, was—whether the price which the system required to be paid for this universally extensive good, in the shape of particular, but unhappily but too extensive, as well as intense, vexation—was worth the purchase. Of coercion in that shape, as in every other shape—of the thus proposed exercise of the imperative powers of Government ... I need scarcely observe ... that it consists altogether in doing evil, in hopes that good may come. Of the two opposite masses—the evil done and the good hoped for—which promises to be the greater, is a calculation, which, in the instance the thus proposed measure, as of all other measures of government, requires to be made. In the present instance I do not take upon me to say—I never have taken upon me to say—for there never was any call upon me of any sort to enquire—on which side the ballance would be found to incline. When I took up the system, it was on the footing suited to the humility, and studied as well as natural obscurity, of my situation, not to speak of the mediocrity of my intellectual powers. (No date. UC cxx. 170–171 (15 February 1802) emphasis added)

If this judgment were taken at face value, the degree of Bentham’s input would appear to be very small. However, his 1799 ‘Elucidations relative to the Police Revenue Bill’, Bentham had been more positive:

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 ... to be insensible to the ... opportunities which from time

to time presented themselves ... 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* ... 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. ... 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. ([2018], pp. 132–133n {UC cl. 720–721})³²

In addition, there are at least three areas in relation to which Bentham's role appears to have been more significant than his later assessment implies. First, in relation to the policing of Royal Dockyards, Bentham's draft 'Mode of disposing of old Stores' ([2018], pp. 44–51 {UC cxlix. 37–45}), which contains all the re-workings and revisions typical of his process of composition, seems a very likely source for the substance of reforms in organization of the sale of naval stores proposed by Colquhoun in a pamphlet published in October 1799 (1799b, pp. 27–32), which was itself reprinted in the sixth edition of *Treatise on the Police of the Metropolis* (1800, pp. 249–87). Second, Bentham himself asserts that the idea of extending the proposed reforms to include 'Arms Police', and to regulate the manufacture, trade and ownership of weapons and ammunition, was his own, and the same appears true of the text he drafted on the subject for 'Elucidations relative to the Police Revenue Bill' ([2018], pp. 94–95n, 96–109 {UC No date. 732, 733–50}). Nothing of this nature appears in any publication by Colquhoun. Third, and most centrally for the purposes of this paper, the evidence suggests that if Bentham made a substantive contribution to the Police Bill, it is above all in relation to Part VI. *Gazette* and *Calendar* that it is to be sought. In this regard, it is relevant to note that the *Police Gazette*, a paper to be published by the Board of Police, and intended to disseminate information enhancing the chances of 'detecting and bringing to justice persons guilty of offences' (Bentham, [2018], p. 195 {UC cl. 266}), makes no appearance in early editions of *Treatise on the Police of the Metropolis*, and that discussion of it in later editions is fleeting at best,³³ in contrast with the twenty-five folios devoted by Bentham to notes to the sections of the Bill which concern the same subject.³⁴

The *Gazette* does appear in Colquhoun's evidence to the Finance Committee of 1798, where he outlined its primary role as a conduit of information, before mentioning a supplementary function 'as a Means of conveying Instruction to the innocent ... respecting

Frauds and other criminal Devices'. (Lambert, 1975, pp. 56–7) There is good evidence, however, that the author of Colquhoun's published response to the Committee's question,³⁵ in which he introduces discussion of the *Police Gazette*, was not in fact Colquhoun, but Bentham, since Bentham's autograph draft of that discussion, bearing all the hallmarks of composition, and presumably composed and inserted at proof stage, survives (No date. UC cliv. 589–590).³⁶ Bentham also summarized the first proofs of Colquhoun's three examinations by the Finance Committee, and added, after a summary of the response in question as originally given, 'Here might come in the *Police Gazette* for Correspondence' (No date. UC cl. 323^v). The obvious implication is that the *Gazette* had not featured at all in Colquhoun's original evidence, and that therefore, in the absence of Bentham's intervention, the importance attached by Colquhoun to the *Gazette* would have been even more negligible than it appears at first glance.

In relation to the *Calendar of Delinquency*, an annual statement to published by the Central Board of Police, containing '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 ... United Kingdom, together with the result, of each act of delinquency, in respect of punishment or impunity' (Bentham, [2018], p. 79 {UC cl. 163}), a similar pattern emerges. The *Calendar* does not appear in *Treatise on the Police of the Metropolis* until 1800, nor does the name '*Calendar of Delinquency*' appear in Colquhoun's evidence to the Finance Committee, although the substance of the proposal for an annual statement of offences and the outcomes of legal process does (Lambert, 1975, p. 57).³⁷ In his summary of Colquhoun's evidence, Bentham noted 'Being asked about a regular annual account of expenditure as a check, he approves of it, and adds a proposal for a Calendar of Delinquency' (No date. UC cl.323^v). If Bentham thus probably invented the name, he might also reasonably be credited with recognizing the importance of regularizing an annual statement of the incidence of crime. In his own 'shadow' draft of the Committee Report, in outlining the functions of the Board of Police, Bentham notes the potential benefits of a 'List of delinquencies committed, with their attendant damage' (No date. UC cl. 411), and goes on to emphasise that while a single such a list or 'picture' would provide much useful information, what was necessary for the purposes of comparison and evaluation of policy was 'a series of such pictures, following one another in regular order at the conclusion of each year' (No date. UC cl. 412). No trace of such emphasis appears in Colquhoun, and once more, the idea

receives little or no attention from Colquhoun, in contrast with the thirty-four folios which Bentham devotes to notes to the sections of the Bill which concern the same subject.³⁸

§ 4. The *Calendar of Delinquency* and Moral Calculation

The *Calendar of Delinquency*, an annual statement of offences committed, including offences unprosecuted, and identifying the outcome of any legal process arising from those offences, was to be presented to Parliament by the Board of Police, which was also to ‘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 ... and for diminishing ... the expence’ (Bentham, [2018], p. 84 {UC cl. 170}). Data for the *Calendar* would come from the *Police Gazette*, and from returns made by Magistrates, Police Surveyors and Gaolers. As to its substance, it represented a classic Benthamic demand for the use of evidence in the formulation and evaluation of policy. As he put it in ‘Notes to the Police Bill’:

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 ... of such exertions as ... come to have been made, in that view. ([2018], p. 333 {UC cl. 596})

Bentham contrasts policy-making in matters of police and political economy, arguing that the former does not suffer from the weakness of the latter, in which government intervention was usually a matter of robbing Peter to pay Paul: ‘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.’ The *Calendar* would allow the evaluation of policy according to its effects, so that it ‘will be, to penal legislation, what the *thermometer* is to Chemistry’ (Bentham, [2018], p. 334 {UC cl. 598}). It would make rational policy making based on cost–benefit analysis possible:

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. (Bentham, [2018], p. 335 {UC cl. 600})

Bentham works through an example of calculation in evaluating an hypothetical proposal that a *Marechausée*, or national watch, be instituted to reduce the incidence of highway robbery. His approach is noteworthy on several counts. First, it seeks to use the proxy of money value to measure the value of a range of variables on a single metric. Second, it is entirely consistent with the method he had set out for estimating the value of pleasures and pains in *Introduction to the Principles of Morals and Legislation* (1970, pp. 38–41). Third, it recognizes the limitations of the method, and frankly admits that significant relevant variables do not admit of precise measurement. Finally, and notwithstanding those limitations, it cleaves to this method as the only rational means of evaluation.

Using money as a metric offered two major advantages. In the first place, it avoided all the problems of seeking to measure intensity, the dimension of sensations which Bentham admitted throughout his career to be ‘imponderable’, that is incapable of direct objective measurement (1998, p. 254). For pains and pleasures which could be translated into money terms this difficulty was surmounted indirectly. Second, it reduced all values to commensurability on a single metric (Quinn, 2014, 77–89). Thus the estimated cost of the *Marechausée* was assumed to be £40,000, whilst the *Calendar of Delinquency* was assumed to reveal that the annual value of property lost through highway robbery was £20,000. It seems that the pain of the taxation necessary to fund the watch easily outweighs the potential benefit, especially since the assumption that the watch would completely eliminate highway robbery is likely to prove over-optimistic, so that the alleged benefits will actually amount to something less than £20,000, while the *Calendars of Delinquency* for the years following the implementation of the measure would supply an objective indication of the amount of the reduction. However, although the measure was aimed primarily at deterring highwaymen, it would in all probability deter other offences as well, for instance smuggling, and its effects on these also required to be taken into account, and, by reference to successive *Calendars of Delinquency*, these effects too might be expressed in money terms. Further, as Bentham had always stressed (1970, pp. 144–147), to estimate the mischief of offences accurately the secondary mischiefs of danger (the objective chance of suffering from a similar offence in future), and especially of alarm (the subjective apprehension of danger), had to be added to the primary mischiefs suffered by the victim and their connections. In relation to highway-robbery, ‘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.’ At this point, utilitarian calculation became less precise:

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. ([2018], p. 336 {UC cl. 601})

Bentham does not expand on this brief comment, but it is a significant concession to the imperfections of moral calculation. At the minimum, it could be construed as merely a reference to the fact that data on alarm were not intended to be collected by the *Calendar of Delinquency*, and were, therefore, ‘not to be had in figures’. However, the reference to ‘incommensurable quantities’ makes it much more plausible to interpret it as a frank recognition that not every pain or mischief could be accurately expressed in money terms, an admission which Bentham had made early in his career, and never repudiated.³⁹ Equally important is Bentham’s response, which is to move directly from the concession to a qualification, but by no means a retraction, of the claim made early in the discussion that ‘nothing can be clearer than the results that may be afforded, nothing more conclusive than the inferences’ derived from the *Calendar of Delinquency* ([2018], p. 334 {UC cl. 597}). Utilitarian calculation might be less exact than one would wish, but it remained the only defensible approach for those seeking a rational criterion for the evaluation of rules or institutions.

§ 5. The ‘Moralizing Police Gazette’

The primary function of the *Police Gazette* was the dissemination of knowledge. As Bentham noted in ‘Bill for the establishment of a Board of Police’:

it might contribute in an especial degree to the bringing of offenders to justice, if a channel of appropriate intelligence 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 ... opportunity might occur of contributing to the discovery or apprehending of the Offender, (Bentham, [2018], p. 194 {UC cl. 266})

The idea of a *Police Gazette* was not itself new. Sir John Fielding, principal magistrate for Westminster for over twenty-five years, had consistently used newspaper adverts to broadcast descriptions of wanted fugitives, and in the early 1760s submitted to government a general plan of police for London, which argued for ‘a Paper established by Law, in which

every Thing, relative to the Discovery of Offenders, should be advertised, and that all Persons be bound to take Notice of whatever is advertised therein' (Radzinowicz, 1948–86, iii. 478). In 1772, in a series of circulars addressed magistrates and mayors, he proposed a co-ordinated national system of reporting and disseminating information relevant to crime, and published and distributed to magistrates and gaolers the first issues of the paper he had envisaged, *the Quarterly Pursuit* (Styles, 1983; Razinowicz, 1948–86, iii. 47–54, 479–84). In 1773, Fielding succeeded in convincing government to cover the cost of publication and distribution, and the paper continued publication, under several different titles,⁴⁰ and was offered to public sale from 1793. Thus, though neither explicitly say so, Bentham and Colquhoun were seeking to build directly on Fielding's work, while a publication which sought to address the need for intelligence which they identified was already in existence.

The *Gazette* of Bentham's Police Bill was to be published weekly or more often, was to be free of stamp duties, and would be distributed without charge to all magistrates, all public licensees, all licensees under the new system, and all parish officials, both of the Church of England and of dissenting congregations. Bentham estimated this '*factitious or forced circulation*' at 100,000 ([2018], p. 324 {UC cl. 580}). The *Gazette* was also to be offered to general sale at a low price, while its cheapness and the combination of natural interest in issues of personal security, and that human prurience which delights in 'true crime', might increase the readership to some 500,000 (Bentham, [2018], p. 325 {UC cl. 581}).

In terms of its content, the *Gazette* was to contain 'all such intelligence, *and such intelligence only*, as ... shall be ... contributory to the detecting and bringing to justice persons guilty of offences' (Bentham, [2018], p. 195 {UC cl. 266}). More specifically, it would contain intelligence of crimes:

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 most numerous classes of society—is of all species of news the most interesting. (Bentham, [2018], p. 323 {UC cl. 579})

It was thus primarily a tool for the dissemination of information between understanding and understanding, and thus not dependent for its efficacy on the employment of affective appeals to emotional or political bias. It would facilitate at once reciprocal exchange between public officials charged with investigation of offences on the one hand, and between members of the public and those officials on the other. In this mode, it was

effectively an extension of Fielding's paper, and a direct anticipation of Edwin Chadwick's similar proposal made thirty years later (1829). Fielding had predicted that such dissemination would reduce crime by reducing the power of criminals, who would no longer be able to escape justice (and remain free to undertake new depredations) by the simple expedient of quitting the neighbourhood where the crime was committed.

As noted above, Neocleous identifies the moralizing agenda of Colquhoun's *Police Gazette* as the crucial factor which differentiates it from Fielding's prototype. However, Colquhoun makes absolutely nothing of the *Gazette* as a means of moral instruction before the period of his intense co-operation with Bentham, or indeed for several years after it. As also noted, The *Gazette* does appear in Colquhoun's evidence to the Finance Committee, where he outlined first its primary role as a conduit of information (Lambert, 1975, cxii. 59) and then a supplementary role as follows:

The same Publication might also prove highly useful as a Means of conveying Instruction to the innocent and well disposed Part of the Community, respecting Frauds and other criminal Devices, for the purposes of putting them on their Guard, and occasionally serve as an Instrument for the Promulgation of such Laws, as might not otherwise come within the Knowledge of those whose Conduct they are designed to regulate. (Lambert, 1975, p. 59)

Despite the use of 'instruction' here, the content of that instruction remained limited to factual information: that is information of a sort which Bentham himself had advised the legislator to disseminate in 'Indirect Legislation', and which he described as 'Furnishing the people with cautionary instructions putting them on their guard against several modes of defraudment and other species of delinquency' (No date. UC lxxxvii. 153). Of moral instruction, in the sense of transmitting substantive judgments about right and wrong, there is no hint in Colquhoun's evidence.

In support of the assertion that Colquhoun wished the *Gazette* to be a moralizing force, Neocleous relies on the 1806 edition of *Treatise on Indigence*, published seven years after the composition of Bentham's 'Notes to the Police Bill'. In 1806, Colquhoun does indeed stress the role of the *Gazette* in moral reformation, recommending that it should include 'Occasional short essays, conveyed in familiar language, enlivened and rendered interesting by the introduction of *narrative*, as often as circumstances will admit' (1806, p. 98). Among the subjects to be covered were 'Religious and moral Duties', under which head twenty-four sub-themes were listed, including 'sloth and idleness, and lounging in ale-houses', 'frugality and sobriety', 'patience under adversity', 'the commendable pride of rearing a family without

parish assistance’, and ‘the great advantages arising from the provident care of the earnings of labour during early life’ (1806, pp. 98–100). It seems probable that Colquhoun’s focus on the role of the *Gazette* in reforming the moral outlook of the poor owed something to the influence of Bentham. As early as 1782, in discussing the ‘culture of the moral sanction’ in ‘Indirect Legislation’, Bentham had advised that government might sponsor morally improving works of literature, featuring ‘virtue represented as amiable, vice in odious, colours: the former rewarded; the latter punished’ (No date. UC lxxxvii.18).

Bentham’s own focus on the moralizing influence of the *Gazette* emerges in his ‘Notes to the Police Bill’. When he begins to offer examples of the additional benefits provided by the *Gazette*, he first offers uses which exemplify the importance of disseminating factual information, and which he had used almost twenty years before in ‘Indirect Legislation’, namely the prevention of escapes, desertion and double-enlistment, and cannot forbear proposing that identity-tattoos might be rendered compulsory for members of the armed services, though clearly not anticipating a positive response (Bentham, [2018], pp. 320–321 {UC cl. 572}). It is in his next suggestion, involving the distribution of the *Gazette* to non-conformist congregations, that Bentham moves from transparent communication of fact between understanding and understanding, to the far from transparent collection of information about specific sub-groups of the population:

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. ... 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. ([2018], pp. 321–322 {UC cl. 574} emphasis added)

Not only would the *Gazette* generate information about minorities whose loyalty could not be taken for granted, but the gradual acceptance of the *Gazette* as an interesting but objective source of information would make possible the undetected transmission of preferences and of will, by exploiting a cognitive gap—an asymmetry in knowledge about the functions of the *Gazette*—between government and its readers:⁴¹

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. ([2018], p. 322 {UC cl. 575} emphasis added)

Indeed, Bentham goes on to identify the use of the *Gazette* in the ‘the capacity of being employed 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’, as a use ‘though but collateral, and *not proper to be mentioned in the Bill, ... still more important, perhaps, than even the direct one*’ (Bentham, [2018], p. 322 {UC cl. 576} emphasis added). The intended audience of Bentham’s commentary on the Police Bill were decision-makers in government. It seems reasonable to assume that among the reasons for the omission of this use from the Bill itself was that it is difficult successfully to manipulate the sentiments of people who you have just made aware of your intention.

Bentham noted that reports of the apprehension and punishment of offenders, which, if all went well, would increasingly constitute the bulk of the *Gazette*’s contents, were in themselves ‘a perpetual lesson of morality and of submission to the laws’.

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. (Bentham, [2018], p. 323 {UC cl. 576} emphasis added)

Since newsworthy events do not happen at regular intervals, all newspapers are liable to suffer from slow news days. Fortunately, ‘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’. In consequence, in the *Gazette* this ‘collateral part’ would ‘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’:

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. ([2018], pp. 323–324 {UC cl. 579} emphasis added)

Bentham thus explicitly advises government to add moral to fable, sermon to text, conscious direction of moral and political preferences to provision of factual information. The communication of will to will is facilitated by familiarity with the *Gazette*, and the

(mis)identification of it purely as a channel of communication of understanding to understanding. To the *Gazette's* ostensible role, as a conduit of factual information, is added an esoteric role as the shaper of opinions, and it is precisely the establishment and general acceptance of its fulfilment of the former role which creates the opportunity to exploit its potential for the latter. In a draft which was omitted from his final text, Bentham was candid about the duplicity involved:

But the sort of Sermon which might be practised, and practised without ceasing in the *Police Gazette*, this *unannounced and unsuspected Sermon, cautiously, sparingly, and in a manner imperceptibly, though at the same time unremittingly, insinuated into a publication composed principally, and to appearance exclusively*, of that sort of matter which, so long as man is man, can never lose ... its hold upon the affections—especially of those otherwise untutored minds, for whose direction it is more especially designed—there would be neither end nor limit to its influence. (No date. UC cl. 279^v emphasis added)⁴²

Bentham anticipates an objection that moral lectures are not an appropriate feature of a government newspaper, since such lessons ought to be read rather in the 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. ... 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.’ ([2018], p. 330 {UC cl. 589}) Once more, he describes the unique strength of the *Gazette* as the manner in which its declared function—the dissemination of factual information—paves the way for its undeclared function—the manipulation of moral and political preferences. No self-declared propaganda sheet could aspire to such influence:

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.* ([2018], p. 329 {UC cl. 587} emphasis added)

The *Gazette* would do better:

Five hundred thousand forms ... 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 ... can never hope to penetrate. ([2018], p. 325 {UC cl. 581})

I have argued elsewhere that some of the expedients of ‘Indirect Legislation’ presented by Bentham seem to fly in the face of his commitment to transparency (Quinn, 2017, 29–32). In discussion of the *Police Gazette*, he repeatedly urges government to exploit its ostensibly objective nature, and the public perception of its objectivity, to pass off substantive moral judgments and condemnations as equally objective. Needless to say, a government-inspired moral catechism which declared itself to be a moral catechism would do nothing but alert the ‘neutral or indifferent, to put themselves upon their guard against its influence’. The contrast with ‘Transparency Bentham’, the apostle of the conjunction of rule with rationale, and of the exposure of all exercises of public power to unremitting public scrutiny, could hardly be more stark. In 1782, in ‘Indirect Legislation’, Bentham had written:

There are but two plans of dealing with the people that bear any tolerable colour of propriety: perfect mystery or perfect unreserve. To exclude the people perfectly and absolutely from the knowledge of their affairs, or to give them as perfect a state of them as possible: to shut the door of intelligence altogether, or to throw it open as wide as possible: to keep them from forming any judgment at all, or to enable them to form a right one: in a word, to deal with them like beasts or to deal with them like men. (No date. UC lxxxvii. 110)

How might this tension be reduced, or at least explained? The short answer is fear. It has been a commonplace for many years that the 1790s were a decade during which Bentham wrote some very unBenthamic things.⁴³ Ideally, communication should take place between understanding and understanding, on the basis of facts, but, noted Bentham in 1794, ‘The people are all *will*—they have no reason, no understanding. ... A proposition must be extremely simple or their minds can not take hold of it—and when they do, it can only be through the medium of their affections’ (No date. UC xliv. 2). A year before drafting the Police Bill, Bentham hoped to interest government in his plan for the reform of the poor laws, partly by the promise therein contained to deliver loyal, docile subjects, who might provide a dependable supply of manpower to supplement the armed forces (2010a, pp. 193–196, 613–616). In ‘Notes to the Police Bill’, Bentham goes so far as to describe Pitt’s Seditious Meetings Act (36 Geo. III, c. 8), which proscribed political meetings of fifty persons or more unless licenced by magistrate, as ‘a second *Magna Charta*, preserving against attacks still more destructive that security which the first had formed’ ([2018], p. 327 {UC cl. 585}). However, the Seditious Meetings Act had failed to regulate the written word, while the *Police*

Gazette is presented as a gentle alternative to explicitly licencing the press ([2018], p. 328 {UC cl. 586}). Again, dissembling on the part of government is explicitly recommended, to the end that an exercise in political indoctrination might be passed off as the dissemination of news. This is the same Bentham who had been arguing for twenty years that freedom of the press was among the defining characteristics of a free state (No date. UC lxxxvii. 18; 1977, p. 485; 2002, pp. 54–61),

If the obvious cause of Bentham's embrace of duplicity was the continuing threat from revolutionary France, the specific (if undeclared) purpose of the *Police Gazette* was to defeat the enemy within:

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 ... 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. ([2018], p. 326 {UC cl. 584} emphasis added)

The vipers lurking in the body of the state were those who had imbibed the democratic and egalitarian ideas popularized by Tom Paine. Schofield notes that one consequence of the French revolution was to delay political reform in Britain 'by delaying the creation and propagation of the utilitarian case for democracy' (2006, p. 108). When he finally made that case in private in 1809—it would only be published in 1817—Bentham admitted in a draft passage: 'In the endless catalogue of calamities and mischiefs of which the French revolution has been the source, not the least is that which consists in the severe and hitherto paralyzing check given to peaceable and rational reform in every shape imaginable.' (No date. UC cxxvii. 47 (18 August 1809))

The later Bentham believed that only the systematic exposure of all exercises of public authority to public scrutiny, combined with the institutionalization of dislocability and thoroughgoing democratic accountability, could avert the dangers of misrule. To the Bentham of 1799 however, the preservation of property, and thereby of security, against a radicalized majority of non-proprietors, justified not only the exclusion of the latter from the franchise, but the surreptitious effort to manipulate their moral attitudes and thus stave off mob-rule, mass expropriations and the destruction of the security of all. Both Benthams are utilitarian,

while the crucial difference between them concerns the level of the threat to security posed by the poor, and the consequent justification of manipulating their political preferences for their own good. The Bentham of the preventive police writings, who identified democracy as a clear and present danger to security and the maintenance of the social order, is a very different animal from the newly radical Bentham who reflected sadly ten years later: 'Scared out of our wits by distant anarchy, we have been drawn into the ever open arms of domestic despotism.' (No date. UC cxxvii. 47 (18 August 1809))

References

- Bentham, J. (No date). University College London collection of Bentham manuscripts, boxes i–clxxvi (UC). Roman numerals refer to the boxes in which the manuscripts are placed, Arabic to the folios within each box. Where individual manuscripts are dated, the date is provided in the reference.
- Bentham, J. (1802) *Traité de législation civile et pénale*, ed. E. Dumont, 3 vols., Paris: Bossange, Masson & Besson.
- Bentham, J. (1817) *Plan of Parliamentary Reform, in the form of a Catechism, with reasons for each article, with an Introduction, shewing the Necessity of Radical, and the inadequacy of moderate, Reform*, London: R. Hunter.
- Bentham, J. (1843) *Works of J. Bentham, published under the superintendence of his executor John Bowring*, 11 vols., Edinburgh: William Tait.
- Bentham, J. (1952–1954) *Jeremy Bentham's Economic Writings*, ed. W. Stark, 3 vols., London: George Allen & Unwin,
- Bentham, J. (1968) *The Correspondence of J. Bentham, Vol. i*, ed. T.L.S. Sprigge, London: Athlone.
- Bentham, J. (1970a) *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart, London: Athlone.
- Bentham, J. (1970b) *Of Laws in General*, ed. H.L.A. Hart, London: Athlone.
- Bentham, J. (1971) *The Correspondence of J. Bentham, vol. iii.*, ed. I.R. Christie: London: Athlone.
- Bentham, J. (1977) A Fragment on Government, in *A Comment on the Commentaries and a Fragment on Government*, ed. H.L.A. Hart and J.H. Burns, London: Athlone, pp. 391–551.
- Bentham, J. (1981) *The Correspondence of J. Bentham, vol. v*, ed. A.T. Milne, London: Athlone.
- Bentham, J. (1983) *Constitutional Code, Volume I*, ed. F. Rosen and J.H. Burns, Oxford: Clarendon Press.

- Bentham, J. (1998) Codification Proposal, Addressed by Jeremy Bentham to All Nations Professing Liberal Opinions, in *'Legislator of the World': Writings on Codification, Law and Education*, ed. P. Schofield and J. Harris, Oxford: Clarendon Press, pp. 241–384
- Bentham, J. (2001) *Writings on the Poor Laws: Volume I*, ed. M. Quinn, Oxford: Clarendon Press.
- Bentham, J. (2002) France, in *Rights, Representation and Reform: Nonsense upon Stilts and other writings on the French Revolution*, ed. P. Schofield, C. Pease-Watkin and C. Blamires, Oxford: Clarendon Press, pp. 1–61.
- Bentham, J. (2010a) *Writings on the Poor Laws: Volume II*, ed. M. Quinn, Oxford, Clarendon Press.
- Bentham, J. (2010b) *Of the Limits of the Penal Branch of Jurisprudence*, ed. P. Schofield, Oxford: Clarendon Press.
- Bentham, J. (2011) *Jeremy Bentham: Selected Writings*, ed. S.G. Engelmann, New Haven and London: Yale University Press.
- Bentham, J. [2018] *Writings on Political Economy: Volume III: Preventive Police*, ed. M. Quinn, pre-publication version made available by the Bentham Project at <http://discovery.ucl.ac.uk/10055084/>
- Blackstone, W. (1765–1769) *Commentaries on the Laws of England*, 4 vols., Oxford: Oxford University Press.
- Chadwick, E. (1829) Preventive Police, *London Review* 1, 252–308.
- Colquhoun, P. (1797) *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 edition, London, C.Dilly.
- Colquhoun, P. (1799a) *The State of Indigence, and the situation of the casual poor in the Metropolis, explained; with reasons assigned why the prevailing system, with respect to this Unfortunate Class of the community, contributes, in a considerable degree, to the increase and multiplication of crimes: with suggestions, shewing the necessity and*

utility of an establishment of pauper police, immediately applicable to the casual poor, under the management of responsible commissioners, with their functions explained,
London: H. Baldwin & son.

Colquhoun, P. (1799b) *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: H. Baldwin & son.

Colquhoun, P. (1799c) *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: H. Baldwin & son..

Colquhoun, P. (1800) *A Treatise on the Police of the Metropolis,* 6th edn., London: Joseph Mawman.

Colquhoun, P. (1806) *A Treatise on Indigence; exhibiting a general view of the national resources for productive labour, with propositions for ameliorating the condition of the poor, and improving the moral habits and increasing the comforts of the labouring people, particularly the rising generation,* London: J. Hatchard.

Dodsworth, F. (2007) Police and the Prevention of Crime: Commerce, Temptation and the Corruption of the Body Politic, from Fielding to Colquhoun, *British Journal of Criminology* 47, 539–554

Dodsworth, F. (2008) The Idea of Police in Eighteenth-Century England: Discipline, Reformation, Superintendence, c. 1780–1800, *Journal of the History of Ideas* 69, 583–604

Engelmann, S.G. (2017) Nudging Bentham: Indirect Legislation and (Neo)Liberal Politics, *History of European Ideas* 43, 70–82.

[Great Britain, Parliament] (1797–1802) *The Parliamentary Register; or, History of the Proceedings and Debates of the Houses of Lords and Commons,* 18 vols., London: J. Stockdale, J. Debrett.

- Hanway, J. (1775) *The Defects of Police the cause of immorality, and the continual robberies committed, particularly in and about the Metropolis, with various proposals for preventing hanging and transportation*, London: J. Dodsley
- Hume, L.J. (1981) *Bentham on Bureaucracy*, Cambridge: Cambridge University Press.
- Lambert, S. (ed.) (1975) Twenty-Eighth Report from the Select Committee on Finance &c. Police, including Convict Establishments, in *House of Commons Sessional Papers of the Eighteenth Century*, 145 vols., Wilmington, Delaware: Scholarly Resources, cxii. 3–216.
- Laval, C. (2003) *J. Bentham, les artifices du capitalisme*, Paris: Presses Universitaires de France.
- Mildmay, W. (1763) *The Police of France: or, An Account of the Laws and Regulations established in that Kingdom, for the Preservation of Peace and the Prevention of Robberies*, London: E.Owen & T. Harrison.
- Neocleous, M. (1998) Policing and pin-making: Adam Smith, police and the state of prosperity, *Policing and Society* 8, 425–449.
- Neocleous, M. (2000) Social Police and the Mechanisms of Prevention: Patrick Colquhoun and the Condition of Poverty, *British Journal of Criminology* 40, 710–726.
- Poynter, J.R. (1969) *Society and Pauperism: English Ideas on Poor Relief, 1795–1834*, Toronto: University of Toronto Press.
- Quinn, M. (2014) Bentham on Mensuration: Calculation and Moral Reasoning, *Utilitas* 26, 61–104.
- Quinn, M. (2017) Jeremy Bentham, Choice Architect: Law, Indirect Legislation and the Context of Choice, *History of European Ideas* 43, 11–33.
- Radzinowicz, L. (1948–1986) *A History of English Criminal Law and its Administration from 1780*, 5 vols., London: Sweet & Maxwell.
- Ron, A. (2008) Modern Natural Law Meets the Market: The case of Adam Smith, *European Journal of Political Theory* 7, 117–136.

Schofield, P. (2006) *Utility and Democracy: The Political Thought of Jeremy Bentham*, Oxford: Oxford University Press.

Schofield, P. (2009) *Bentham: A guide for the perplexed*, London: Continuum.

Smith, A. (1976) *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R.H. Campbell, A.S. Skinner, and W.B. Todd, 2 vols., Oxford: Clarendon Press

.Smith, A. (1978) *Lectures on Jurisprudence*, ed. R.L. Meek, D.D. Raphael and P.G. Stein, Oxford: Clarendon Press.

Styles, J. (1983) Sir John Fielding and the Problem of Criminal Investigation in Eighteenth-Century England, *Transactions of the Royal Historical Society* 33, 127–149

Notes

¹ I am deeply indebted to the generosity of Scott Jacques, both for the initial invitation to provide an overview of Bentham's police writings, and for the invaluable feedback offered by him and an anonymous referee on an earlier draft.

² The first volume in the new edition was published in 1968 (Bentham, 1968), and to date thirty-three of a projected eighty volumes have been published. For further details see the Bentham Project website at <https://www.ucl.ac.uk/bentham-project/>

³ A pre-publication version of *Preventive Police* is available at <http://discovery.ucl.ac.uk/10055084/>

⁴ Part I. Writings on Marine Police, contains Bentham's first draft of the 'Thames Police Bill' (i.e. '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') and a partial 'Contents' thereof; two précis of his revised and expanded version of the Bill; an incomplete set of 'Elucidations' of the revised Bill; and a discrete discussion of the best means of disposing of unserviceable naval stores. Part II. Writings on the Police Bill, contains an early précis or 'Heads' of the Bill (i.e. '*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*'); an essay for which Bentham's working title was 'Preliminary Observations', but which he eventually entitled 'Elucidations relative to the Police Revenue Bill'; a set of 'Introductory Observations' (followed by an Appendix containing an incomplete discussion of coin police); the full text of the Police Bill (i.e. 'A Bill For the establishment of a Board of Police, and for the suppression of divers Offices:—or else, A Bill 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'), as revised early in 1799 (followed by an Appendix containing a 'Table of Precedents'); and finally a set of ': Notes to the Police Bill: containing Reasons, Precedents, and other Elucidations ' (followed by an Appendix, 'Anonymous Information', drafted for but excluded from 'Notes to the Police Bill').

⁵ *Preventive Police* is the first volume in the *Collected Works* to benefit from the efforts of the volunteers of Transcribe Bentham, the award-winning crowdsourcing transcription initiative established in 2010. For further details visit <https://www.ucl.ac.uk/bentham-project/transcribe-bentham>

⁶ This work, first published in 1796, went through six editions by 1800, while the seventh, published at London in 1806, appears to have been a reprint of the sixth. Except where otherwise indicated, references are to the fourth edition. Colquhoun had first developed proposals for licencing dealers in second-hand goods in 1793, and outlined a Bill for the purpose in 1794, documents relating to which survive among Bentham's papers at University College London: see '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 Licences ' (No date. UC cxlix. 12–13), and 'Explanatory

Observations’ (No date. UC cxlix. 14–22) and ‘Queries, Answers and Observations’ (No date. UC cxlix. 23–7) on an identical or very similar Bill.

⁷ For the use of the word policy in this context in the 1790s see, for instance, William Pitt’s comment on 21 February 1798, in debate on the first twenty-two reports of the Select Committee on Finance, that he intended to transferring the functions of the Commissioners of Hawkers and Pedlars to ‘another Board’, but deferred any motion ‘on the question of policy’ (Great Britain, Parliament, 1797–1802, v. 313).

⁸ Hanway, (1775, p. 93) defined police as ‘good regulations for the œconomy and preservation of the people, who are all entitled to one common freedom, so long as they act properly in their several stations’.

⁹ Smith (1778, p. 5) defined the first design of government as justice, and the second as police, while ‘Whatever regulations are made with respect to the trade, commerce, agriculture, manufactures of the country are considered as belonging to the police’. Sir William Mildmay (1763) published a discussion of the police of France, which on the one hand disseminated awareness of the continental understanding, but may also have contributed to its connection with the administration of despotic states.

¹⁰ A recognizance, similar in effect to a bail bond, was a formal acknowledgement undertaken before a court of a debt to the Crown, which debt was voided if certain behavioural conditions were satisfied by the undertaker. If the undertaker breached the conditions, he was obliged to settle the debt named in the recognizance. In his unpublished essay ‘Indirect Legislation’, Bentham described recognizances as a ‘striking and masterly provision . . . , so justly celebrated by the Author of the Commentaries’ (No date. UC xcix. 256). In his ‘Notes to the Police Bill’, however, Bentham criticizes the recognizances employed in licensing publicans as ‘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’ (Bentham, [2108], p. 265 {UC cl. 500}).

¹¹ The full sentence runs as follows: ‘Time out of mind the military department has had a name: so has that of justice: the power which occupies itself in preventing mischief not till lately, and that but a loose one: for the power which takes for its object the introduction of positive good, no peculiar name, however inadequate, seems yet to have been devised.’ *An Introduction to the Principles of Morals and Legislation* was largely printed in 1780, but was not published until 1789 (Bentham, 1970). In 1782, Bentham also wrote three additional chapters in continuation of this text, the two first of which expanded to book length. The first—‘Of the Limits of the Penal Branch of Jurisprudence’, which was edited by H.L.A. Hart as *Of Laws in General*, and appeared in the *Collected Works* in 1970 (Bentham 1970b), before being revised by Philip Schofield and re-issued under its original title—focuses on the question of what is to be understood by a complete law, and mentions police only briefly (Bentham, 2010b, pp. 165–167). A preliminary text of the third, ‘Place and Time’, appeared in a collection of *Selected Writings* in 2011 (Bentham 2011: pp. 152–219). A preliminary text for the second, ‘Indirect Legislation’, was prepared by Charles F. Bahmueller in the early 1980s, but lack of funding to complete editorial work has thus far prevented its appearance in the *Collected Works*.

¹² In quotations from Bentham’s manuscripts his spelling and capitalization are retained in most instances, although some discretion is exercised with regard to his punctuation, which is often inconsistent and sparse.

¹³ In *Introduction to the Principles of Morals and Legislation* (1970, p. 263n), Bentham listed potential offences against national, as opposed to public, wealth (idleness being the first listed), and against population (emigration; suicide; procurement of impotence or barrenness; abortion; unprolific coition; celibacy).

¹⁴ See also UC lxxxviii. 7: ‘The business of legislation, so much of it at least as we are now considering, is to exclude mischief. Now there are two methods by which the business of excluding mischief may be endeavoured to be compassed: 1. by preventing the acts from which mischief is expected to arise: 2. by excluding the mischief itself, although the acts from which it might otherwise arise, should happen to have taken place.’

¹⁵ The discussion (No date. UC lxxxvii. 29–38) is headed ‘Indirect’, and subheaded ‘Political’, the latter being a reference to the political, as opposed to the physical, moral or religious sanctions.

¹⁶ The full title of this projected work is ‘Projet d’un corps de lois complet, à l’usage d’un pays quelconque: avec les principes et les raisons tant générales que particulières sur lesquelles chaque disposition aura été fondée’ (No date. UC xcix. 156) (i.e. ‘Project of a complete body of laws for the use of any country: with principles and reasons as much general as particular on which each disposition will have been founded).

¹⁷ Bentham’s original draft of this passage (No date. UC lxii. 20) differs significantly from Dumont’s version, in providing not one but two enumerations of the functions of police. The, first, differentiated according to the end in view, consisted of seven functions, which Bentham notes might be divided into ‘police de nécessité’ (police of necessity) and ‘police de surérogation’ (police of supererogation). The second, differentiated according to the species of article with which a particular branch was concerned, consisted of thirteen branches, which Bentham notes might be divided into ‘police des villes’ (town police) and ‘police de la campagne’ (country police).

¹⁸ The original reads: ‘Police, c’est un appellative des plus vagues: il y en a plus, et plus intractables[?]: on ne trouve de quoi le fixer, ni dans l’etymologie, ni dans l’usage même. Cependant, il faut s’en server toujours, car quelque mauvaise que soit une langue, il ne depend pas d’un particulier de le corriger.’

¹⁹ The single occurrence in the text comes in an incomplete discussion of ‘Coin Police’ (Bentham, [2108], p. 143 {UC cxlix. 178}): ‘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.’ In a related brouillon (Bentham, [2018], p. 144n {UC cl. 171}), in a list of ‘Topics *Tractandi* per J.B.’, the following appears: ‘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.’

²⁰ The classes were: ‘1. Dealers in Old Naval Stores not used for the purpose of making Paper 2. Wholesale Dealers in Naval Stores, Hand Stuff, Rags &c. 3. Retail Dealer in Rags, Hand Stuff &c for making paper. 4. Dealers in Second-Hand Wearing Apparel &c. 5. Itinerant Dealers in wearing Apparel &c. 6. Pawn Brokers and Salesmen Selling unredeemed Pledges privately 7. Wholesale Dealers in Iron and other Metals 8. Retail Dealers in Old Iron and other Metals. 9. Manufacturers purchasing Metals of persons not Licensed 10. Founders and Others having and using Crucibles, Melting Pots &c. 11. Persons being Licensed Dealers Keeping Draught Carts for Conveying Stores, Rags, Metals &c. 12. [Persons being Licensed Dealers Keeping] Truck Carts for the above purpose.’

²¹ Colquhoun’s iterations of lists of classes to be licensed are often difficult to compare directly, in that, for instance, sometimes trades are divided into retail and wholesale branches, and sometimes not.

²² The omitted class was ‘Pawn Brokers and Salesmen selling unredeemed Pledges privately’. A further list of fourteen classes (with the addition of Horse-slaughterers, Livery-Stable keepers and Auctioneers) was contained in ‘Appendix A’ to the Report, ‘Copy of a Letter from Patrick Colquhoun and Charles Poole, Esquires, to George Rose, Esquire, relative to the Establishment of a Central Board of Police Revenue’ (Lambert, 1975, pp. 39–44, at 43).

²³ On 18 October 1798 Bentham compiled a ‘Police Bill Contents’ (No date. UC clvii. 9), which identified the following thirty-four ‘Classes of Trades and Occupations [proposed to be] subjected to Licence’: ‘1. Dealers in Second-hand Household Goods &c. 2. Wholesale Dealers in Rags and Cordage for Paper-making. 3. Retail Dealers in Rags and Cordage for Paper-making. 4. Dealers in Second-hand Apparel, Made-up Piece Goods and Remnants. 5. Itinerant Dealers in Second-hand Apparel, Made-up Piece Goods and Remnants. 6. Dealers in Second-hand Naval Stores. 7. Wholesale Dealers in Second-hand Metals. 8. Retail Dealers in Second-hand Metals. 9. Purchasers of Second-hand Metals for working up. 10. Metal Founders. 11. Dealers in Second-Hand Building Materials. 12. Cart-Keepers for Second-hand Goods. 13. Hand-Cart-Keepers for Second-hand Goods. 14. Forfeited-Pledger Seller[s]. 15. Water-Hawkers and Bumboat-Keepers. 16. Purchasers of Ship’s Stock. 17. Master or Principal Lumpers. 18. Common Lumpers. 19. Horse Dealers. 20. Post-Horse Letters. 21. Stage-Coach Keepers. 22. Gunpowder-Makers. 23. Wholesale Gunpowder Dealers. 24. Retail Gunpowder Dealers. 25. Makers of Fire-Arms. 26. Dealers in Fire-Arms. 27. Artillery Founders. 28. Makers of edged and pointed weapons. 29. Dealers in edged and pointed weapons. 30. Livery Stable Keepers. 31. Slaughterers, Flayers, and Boilers. 32. Letters of Lodgings ready-furnished of the 1st Class. 33.—of the 2^d class. 34.—of the 3^d class.’ In ‘Elucidations relative to the Police Revenue Bill’ (Bentham, [2018], pp. 91–93n {UC cl. 729–30}) he indicated a total of thirty-one classes which had been considered by either Colquhoun or himself for inclusion in the licensing system. Twenty-eight classes appear in both lists, while each includes three classes not found in the other, and the variation in the total number arises from differences on whether and how far to subdivide two classes common to both. With the exception of the omission of ‘10. Metal-Founders’, the first fourteen classes in the list of 18 October 1798 coincide in name and order with the thirteen classes of ‘*Licentiandi*’ in Bentham’s ‘Bill for the establishment of a Board of Police’. The earlier drafted ‘Heads of the Police Bill’, had also included classes 15–18 and 31 of the list given in ‘Elucidations relative to the Police Revenue Bill’, that is Water-Hawkers and Bum-boat Keepers, Purchasers of Ship’s Stock, Master-Lumpers, Working Lumpers, and Slaughterers. The progressive reduction in the number of classes appears to have been tactical, and intended to reduce possible sources of opposition by reducing the scope of the Bill, with a view to the passage of up to five additional Bills in due course: see Bentham’s explicit discussion of this tactic in ‘Introductory Observations relative to the Board-of-Police Bill’ (Bentham, [2018], pp. 137–138 {UC cl. 126–7}).

²⁴ The French text reads: ‘Un acte économique spontané, au sens de Bentham, n’est en aucun cas l’exercice pur d’une faculté naturelle, c’est un acte autorisé et garanti par la loi.’

²⁵ Colquhoun appropriated the distinction wholesale (Bentham, 2001, pp. xix–xx; Poynter, 1969, pp. 200–202). It is true that the distinction appears Colquhoun’s *State of Indigence*, written in 1799 (1799, p. 18), but that was over two years after he had encountered it in Bentham’s ‘Essays on the Poor Laws’ (2001, pp. 1–140, at 3–5), which Bentham sent to him in December 1796 (Bentham, 1981, p. 349). In 1806, Colquhoun restated the distinction, without attribution, in precisely Bentham’s terms (1806, pp. 7–8). Bentham himself had introduced the central definition of indigence as early as the mid-1780s, when drafting material in French on civil law (No

date. UC xxxii. 42): ‘By the indigent, I mean all those who find themselves outside the condition of supplying themselves with necessaries. By relief to their needs, I mean the supply of these same necessaries.’ (The original reads: ‘Par indigens, j’enten[d]s tous ceux qui se trouvent hors d’état de se fournir à eux-mêmes le nécessaire. Par subvention à leurs besoins, j’enten[d]s la fourniture de ce même nécessaire.’)

²⁶ Edwin Chadwick edited Bentham’s 1797 work ‘Observations on the Poor Bill’ (Bentham, 2001, pp. 217–263) for private circulation in 1838 (Bentham, 2001, pp. xlvii–xlix).

²⁷ The original reads: ‘La police de charité, en tarissant la source la plus féconde des crimes, devient en même temps police contre délits’.

²⁸ In relation to the Thames Police Bill, Bentham referred twice to ‘Colquhoun’s Paper’ (No date. UC cl. 323 (17 and 27 May 1798), 314 (May 1799)), which is likely to be identified with a set of propositions for the reform of the Bumboat Act drafted by Colquhoun for circulation within government. See UC cl. 315, headed ‘Observations on the marginal Annotations written in pencil on the margin of the original draught of M^r Colquhoun’s ‘Propositions’ intended for the Admiralty &[c.]’. In relation to the ‘Bill for the establishment of a Board of Police’, he refers several times in ‘Notes to the Police Bill’ to ‘the Instructions’ given by Colquhoun ([2018], pp. 286, 287, 294 {UC cl. 529, 530, 538}). Unfortunately, neither document has been located.

²⁹ §§ 30–1 of Bentham’s ‘Heads of the Police Bill’ empowered the Police Board to regulate the dress and working hours of Lumpers and Water-Hawkers. In the event, since both classes were omitted from the revised Bill, so were these two sections. Bentham’s ‘Short Heads of a Bill for the more effectual prevention of depredations on the River Thames’, § 17 ([2018], p. 26 {UC cxlix. 146}), contained a similar provision in relation to Lumpers.

³⁰ The note in question concerned a proposal to limit the geographical range of licences issued to ‘Walking Purchasers of Second-hand Apparel &c.’

³¹ Colquhoun (1797, p. 69) had argued that the fines imposed by the Bumboat Act were ineffective, since they were paid from a subscription fund arising from the profits of trade in stolen goods.

³² It should also be noted that Bentham’s 1802 comment referred to a version of the Bill which he had not finally approved, and which he was thus in no position to endorse in detail: ‘The copy ... was one that had never passed under my review. How far it may be a correct one, was accordingly, and still is, a matter of entire uncertainty to me.’ (No date. UC cxx. 174–175 (9 March 1802))

³³ The *Police Gazette* does not appear in the first five editions of *Treatise on the Police of the Metropolis*, published between 1796 and 1797, but is first mentioned by Colquhoun in his 1798 evidence to the Finance Committee of 1798 (Lambert, 1975, p. 59). The *Gazette* also appears once in Colquhoun’s 1799 pamphlet *General View of the National Police System* (Colquhoun, 1799c, pp. 5–6), in the form of a quote from the Committee report. As late as 1800, in the sixth edition of *Treatise on the Police of the Metropolis* (Colquhoun, 1800, p. 539), Colquhoun devotes exactly three lines to the *Gazette*, once more in quoting from the report.

³⁴ i.e. UC cl. 571–595 (Bentham, [2018], pp. 319–333). §§ 45–47 of Bentham’s Bill ([2018] pp. 194–199 {UC cl. 266–271}) dealt with the *Police Gazette*.

³⁵ The question to which Colquhoun was responding was ‘What are the Ramifications of your Plan of Police with respect to the Country? Whom do you look to as the Correspondents of your Central Board; and who do you propose should grant the Licences to the different Traders in the Country?’ (Lambert, 1975, p. 56)..

³⁶ Bentham has noted in the margin in relation to the passage quoted ‘Quere’, while he follows it with the following passage, which he has bracketed for possible deletion, and of which he has noted ‘To be inserted or not?’: ‘and by proper warnings[?] to the memory it might be made to act as an antidote to moral corruption of every sort’. A further fragment in Bentham’s hand, headed ‘Police Revenue Report’ (No date. UC cl. 421–422), contains a discussion of the *Police Gazette* which is similar in substance to that at UC cliv. 589–590, and may be an earlier version of it. Yet a third version of Colquhoun’s response, in a copyist’s hand, is at UC cl. 422^v. The published version of Colquhoun’s response is not identical to Bentham’s draft at UC cliv. 589–590, but with the exception of the addition of a final paragraph, the differences are minor. A fair copy of Colquhoun’s third examination, as published, is at UC cl. 308–311. Bentham’s discussion of the *Police Gazette* for his own draft of the Committee report is at UC cl. 387–390.

³⁷ The Committee reported the proposal as ‘deserving the attentive Consideration of the House’ (Lambert, 1975, p. 33). The term *Calendar of Delinquency* appears twice in *General View of the National Police System* (Colquhoun, 1799c, pp. 5, 10), though seemingly with reference simply to the annual aggregate of offences, rather than to any specific formal annual statement thereof. The expression appears four times in the sixth edition of *Treatise on the Police of the Metropolis* (Colquhoun, 1800, pp. 341, 539, 543, 638). Of these, the second and third are verbatim repetitions of the *General View of the National Police System* references, while the other two both use the plural form, and again seem rather to refer simply to the annual total of offences than any proposed formal annual statement thereof.

³⁸ i.e. UC cl. 596–629 (Bentham, [2018], pp. 333–354). §§ 48–51 of Bentham’s Bill ([2018], pp. 199–206 {UC cl. 272–283}) dealt with the *Calendar of Delinquency*.

³⁹ Bentham frankly admitted the incommensurability between the pleasure of monetary gain and of the satisfaction of ill-will (2010b, pp. 204–205): ‘A man falls upon you and beats you: what pecuniary loss is there that you could be sure would give him just so much pain as the satisfaction of giving vent to his to his ill-will promised to afford him pleasure. It is plain that, between quantities so incommensurate, there is no striking a sure balance.’

⁴⁰ From 30 September 1797 it appeared under the title the *Hue and Cry, and Police Gazette*.

⁴¹ Bentham took the opportunity to reprise another theme which had figured in ‘Indirect Legislation’ (No date. UC lxxxvii. 23–24, 181–184), namely the unquestionable utility, in Catholic countries, of the buttressing of the political sanction with the religious by the institution of the *monitoire*, whereby communicants withholding information of specific crimes were threatened with excommunication.

⁴² In his alternative draft of the Finance Committee Report, Bentham also added the following ‘Note to be inserted in a private letter’: ‘Though what is called news must necessarily be excluded, yet this is not the case with Essays.—These might slide in *sub silentio*: and by means of the universality of circulation compared with that of all the democratic newspapers put together, these might be of unspeakable use in combating without intermission the raging malady of the times.’ (No date. UC cl. 421)

⁴³ See, for instance, the brouillon for a putative work on the electoral system (No date. UC xliv. 1) entitled: ‘Rottenness no corruption’, which dates from 1795. At a subsequent date, Bentham has written on the sheet: ‘What could this be? Surely this was never *my* opinion?’