

Bentham and the Scots

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What I have to offer here is not so much a paper as some scraps of paper. These represent, on the whole, the result of enquiries on which I have embarked at various times, but which I have not pursued rigorously to their appropriate conclusions. Nor does it now seem likely that I shall ever do so. To some extent, therefore, what I am presenting is an agenda of unfinished business, in the hope that some of the themes I have partially discussed will seem to others to be worth taking further. To this I must add that, even if this were a paper rather than a scrapbook, it would still be an imperfectly structured and incomplete paper. I shall present, to some extent, the beginning of the story and the end – though I shall, perversely, reverse their chronological order. The middle, however, will be all but completely missing. This is because my explorations, such as they have been, have never taken me beyond the threshold of Bentham's *Scotch Reform* writings, which ought clearly to constitute the missing part of the story, falling as they do in that middle ground between the Bentham of the radical Enlightenment and the Bentham of philosophical radicalism.

One more preliminary point before I begin – at the end.¹ One reason for raising this subject at all is, I suggest, that there is something of a paradox to be considered. Bentham was, like Elizabeth I, 'mere English' – and he has always seemed to me to be, if not representatively, at all events essentially English in many of his characteristics. Yet it is a striking fact that many of the most important relationships in his life were with Scotsmen. I will not labour the case of John Lind, beyond pointing out that Lind was definitely of Scots extraction, his grandfather Adam Lind being, in this branch of the family, the one who took the high road that led so many Scots of the eighteenth century into England. George Wilson, however, to whom or at least to whose nudging, we owe the 1789 publication of *An Introduction to the Principles of Morals and Legislation*, was wholly Scots, though he pursued – like a number of his contemporary fellow-countrymen – his legal career in England. (One of

¹ For the relationships mentioned in the ensuing paragraph see esp. *The Correspondence of Jeremy Bentham*, vols. i-vii, Oxford, 1968-1988 (*The Collected Works of Jeremy Bentham*), as indexes. Hereafter *Correspondence* (CW).

those other Scots, it is worth noting, was also significant for Bentham – Lord Mansfield). And in the case of James Anderson, at a slightly later date, we have a Scot who was predominantly active north of the Border. This is by no means the whole story – a comprehensive catalogue of such contacts would have to include the close relationship between both Bentham brothers and the Fordyce family. For present purposes, however, it is more important to take note of the fact that, at a critical point in the emergence of Benthamism a key if problematic part was played by James Mill – that superb specimen (as I have called him elsewhere) of ‘the unspeakable Scot’.

To end that part of my preliminaries with Mill provides an apt cue for the first more substantial part of my discussion, not just because of his nationality but because he represents, at least for a few years, the prolongation of philosophical radicalism after Bentham’s death. As I have said, I am beginning at the end – even, indeed, pursuing the topic beyond the grave, or through the Auto-Icon’s box and out at the back. The theme I have in mind is the Scottish dimension of Benthamite utilitarianism. This is not meant to raise again – though I shall certainly have to refer to it later – something I have tried to deal with.² I am not, that is to say, concerned here to analyse the relationship between the proto-sociology and philosophical history of the Scottish Enlightenment and the doctrines of what became known as philosophical radicalism. What I have in view is less familiar but seems to merit some attention. Two Scots played crucial parts in the immediately posthumous dissemination of Bentham’s ideas; and it is with William Tait and John Hill Burton that I want to deal briefly here.³

Tait’s Edinburgh Magazine must, I think, be regarded as a vehicle of some importance in that process of dissemination. That, among other things, its pages carried the first published version of John Bowring’s *Memoirs of Bentham* is a fact of which the significance and value may be variously estimated. More generally, there is at least a minor piece of research to be undertaken by someone willing to scan and analyse the contents of the magazine in the first decade or two after 1832. More important, of course, is the fact that it was Tait, an Edinburgh bookseller, who undertook the not inconsiderable burden – and risk – of publishing the first (and even now the most extensive if not comprehensive collection of Bentham’s writings. No

² Cf. J.H. Burns, ‘The Light of Reason: Philosophical History in the two Mills’, in ed. J. M. Robson & M. Laine, *James and John Stuart Mill: Papers of the Centenary Conference* (Toronto & Buffalo, 1976), pp. 3-20. See also J.H. Burns, ‘Scottish philosophy and the science of legislation’, in *Royal Society of Edinburgh Occasional Papers*, vol 2 (1985), pp. 11-29.

³ For Tait (1793-1864) see *DNB*.

doubt one might sourly comment that Edinburgh's outstanding record in printing and publishing makes the repellent format and typography of that edition all the more deplorable. Yet in the end what mattered – and matters – is that Tait did indeed publish the eleven formidable volumes. If this achieved nothing else, it firmly – and dauntingly – established the sheer scale of what Bentham had achieved in the half-century and more that ended with his death. The edition may, to be sure, have done more to confirm what were already quite strong prejudices against Bentham's ideas (and his prose style) than to achieve what was presumably Tait's aim – to make Bentham's thought more widely available and more generally accepted. However that may be, we should not forget that without Tait's enterprise most of Bentham's works – even when they existed in previously published editions – would have ceased to be available in English very soon after his death. Other publishers might have done the same, or at least done something; but I strongly suspect that they would not.

It is also true, of course, that what we conventionally call 'the Bowring edition' would not have been possible without the devoted – and at times almost distracted – labours of a small group of Benthamites. And it is not, I hope, to underrate the achievements of such industrious disciples as Richard Doane and Southwood Smith to say that the most important part here was played by John Hill Burton, the future Historiographer Royal of Scotland.⁴ Burton's name could, I suppose, be added to those of James Mill and George Grote in the paradoxical list of those who in some measure followed the profoundly ahistorical – even anti-historical – Bentham and yet are best remembered for their historical writings. Nor can we argue, I think, that Burton's seven-volume *History of Scotland* (1867-70) betrays much of the influence of Benthamism – or for that matter of the Enlightened philosophical historiography that Mill, in his *History of British India*, had found compatible with his utilitarianism. Contemporary critics found Burton as an historian 'reticent ... calm dispassionate': they saw a striking contrast with J. A. Froude's 'glowing eulogiums ... and ... bitter one-sided pictures'. A writer in the *Revue des deux mondes* found Burton 'érudit avec la sagacité d'un habile avocat, historien avec la méthode précise du jurisconsult'.⁵ Both the critics and the author himself, however, seem to have seen his

⁴ On Burton (1809-81), see *DNB*, together with the Memoir by his widow in the posthumous edition of *The Book-Hunter*, Edinburgh and London, 1882.

⁵ Citations from the preliminary pages of J.H. Burton, *The History of Scotland, from Agricola's Invasion to the Extinction of the Last Jacobite Invasion*, 8 vols, Edinburgh and London, 1905. The English phrases were used by reviewers in *Blackwood's Magazine* and in the *Standard*.

work as exemplifying ‘the painstaking research of the nineteenth century’ rather than the philosophical history of the eighteenth. At an early point in the work he contrasts ‘an inductive history, sufficient to fill up a blank in written history’ with what he sarcastically dismisses as ‘fables’ which ‘profess to be born of the philosophy’ and ‘are not less unreal than the old fables, and only much less amusing’.⁶ It may indeed be worth considering – though I must leave the point aside here – whether this might, after all, be the kind of history a Benthamite might think it reasonable to write, if history must indeed be written.

It is, however, with earlier aspects of Burton’s work that I am concerned more directly here. The *Memoir* written by his wife soon after his death certainly does not treat his editorial work on Bentham as a major aspect of his activity and achievement. It appears there more or less as a spare-time occupation; but at least one crucial fact is put on record – namely, that Burton was ‘editor, along with Dr (afterwards Sir John)’.⁷ The importance of this has, I think, been less than fully recognised. The truth is that even the joint editorship that has occasionally won recognition in library catalogues and elsewhere does less than justice to Burton’s contribution. The more the matter is investigated the clearer it becomes that Burton, not Bowring, was the effectively responsible editor. That may sound more like an accusation than an accolade. The ‘Bowring edition’ has attracted a good deal of wholly justifiable adverse criticism, not to say abuse. Yet, as one who has certainly not been backward in such critical attacks, I must confess to some degree of belated compunction. Even before I fled from the general editorship of the Bentham Project I had begun to feel at least grudging respect for anyone who could achieve what was achieved within a dozen years of Bentham’s death. But such respect is surely due more to Burton than to Bowring; for it seems clear that, apart from the indispensable but execrable *Memoirs*, Bowring’s direct contribution was pretty limited. For that matter, even the charge of having notoriously omitted – even suppressed – Bentham’s extensive and peculiar writings on religion and the church – sometimes ascribed to Bowring’s circumspection must be regarded as (to use an aptly Scottish verdict) not proven. The probability is that the edition was cut short for the eminently respectable reason that the money to publish more was not to be found; and such a decision would presumably have been taken in Edinburgh, where the financial shoe pinched. Again,

⁶ *History of Scotland* (8 vols; Edinburgh & London, 1905), vol. 1, 78-9.

as I have already recalled, the edition was in the end the work of quite a few hands – some of which, like those of John Stuart Mill, had done their work long before Tait’s edition was in prospect. In the end, however, it does seem fair to claim that Burton’s contribution was decisively important, not least in what remains one of the edition’s most valuable features – the elaborate analytical index to the whole collection. And Burton’s own *Benthamiana* must surely have had many more readers than ‘the greater work’ to which, as Burton’s widow remarked, it was intended to be ‘a precursor’.⁸

Nor should we see Burton simply as someone who, having undertaken this work at a relatively early stage in his career, turned as soon as possible in the more congenial directions that took him – in his major historical work – far away from the world of *Benthamiana*. His first substantial independent work was neither Benthamic nor, strictly, historical; and yet his *Life and Correspondence of David Hume* (1846) may surely be regarded as lying closer to the world of Jeremy Bentham than to the painstaking *History of Scotland*.⁹ Burton’s book was the first major work of the kind, and it represents a moment of some importance in the development of Hume studies. Over a century later, writing on Hume for the 1955 edition of *Chambers’s Encyclopædia*, John Laird found Burton’s book still worth consulting and only partly superseded by the work of J. Y. T. Greig.¹⁰ Now, given Hume’s central significance for the Scottish Enlightenment as a whole, this may well suggest that we should see John Hill Burton not only as an important figure in the conservation and dissemination of the Benthamic texts, but also as one channel whereby the work of perhaps the greatest philosopher of the eighteenth century was transmitted to the Victorian age. There, for the moment, I leave this part of my subject, adding only that, as I have tried to suggest, the subject of Scottish Benthamism might well repay fuller investigation.

In any case, David Hume serves to carry me conveniently from the end to the beginning of my theme; for I want now to consider the subject of ‘Bentham and the Scots’ in the context of the earliest phases in his long career. The first of the two aspects I shall try to examine is the relationship between Bentham’s emerging and developing thought in the 1770s and 1780s on the one hand and, on the other, the

⁷ *The Book-Hunter*, 1882 edn, p. xlvii.

⁸ See J.H. Burton, *Benthamiana; or, Select Extracts from the Works of Jeremy Bentham*, Edinburgh, 1843; Burton, *Book-Hunter*, p. xlvii.

⁹ J.H. Burton, *Life and Correspondence of David Hume*, 2 vols, Edinburgh, 184.

ideas associated with the Scottish Enlightenment; and much of what I say will be a concentrated version of the 1783 paper already mentioned (cf. n. 2 above).

Bentham himself acknowledged a considerable debt to Hume in regard to the earliest formative steps in his intellectual development. The fundamental notion of utility itself as the essential criterion to be applied in the moral sciences; the critique of conventional natural-law thinking; the demolition of the social contract – these constitute perhaps the greatest part of that indebtedness. And they are certainly enough to indicate the importance of the debt. However, if Bentham – like Kant in another context – was ‘awakened from his dogmatic slumbers’ by reading Hume – and a well-known footnote in *A Fragment on Government* makes that a not inappropriate comparison – the world he came to see through the eyes thus opened was not in the end a Humean world¹¹ Even the term ‘utility’ and the cognate ‘principle of utility’ came to seem in some ways ill-chosen for Bentham’s purposes; and at the end of his life, in the *Deontology* and related manuscripts, he was at least as much concerned to criticise Hume as to praise him. The shorthand notes on Hume’s theory of the virtues, deciphered by Amnon Goldworth, are especially interesting evidence here.¹² Long before that, however, as early as the second chapter of *An Introduction to the Principles of Morals and Legislation*, Bentham had tried and found wanting the whole ‘moral sense’ basis of the philosophy he found in Hume – and which he would have found also in such other figures of the Scottish Enlightenment as Adam Smith.¹³

Yet, even in a cursory discussion like this, the Bentham-Hume relationship cannot be left there, simply as a matter of early enthusiasm followed by fairly rapid disenchantment. It has, for one thing, been generally recognised that the dismissal of alternative ethical theories in the *Introduction to the Principles* is as superficial as it is brash; and in any case, however unacceptable Bentham found the notion of a moral sense, his indebtedness to Hume remained profound. If we go back to the 1770s, when Bentham was writing the *Comment on the Commentaries* and the derivative

¹⁰ *Chambers’s Encyclopaedia*, 15 vols, London, 1955. See also J.Y.T. Greig, *David Hume*, Oxford, 1931, and *The Letters of David Hume*, 2 vols, ed. J.Y.T. Greig, Oxford, 1932.

¹¹ *A Comment on the Commentaries and A Fragment of Government*, ed. J.H. Burns and H.L.A. Hart, Oxford, 1970 (*The Collected Works of Jeremy Bentham*), hereafter *Comment (CW)*, pp. 439-40n.

¹² *Deontology together with a Table of the Springs of Action and Article on Utilitarianism*, ed. Amnon Goldworth, Oxford, 1983, (*CW*), Appendix C, pp. 345-63. Hereafter *Deontology (CW)*.

¹³ *IPML (CW)*, p. 26n. With Smith’s political economy, of course, Bentham’s relationship was very different; but that is not germane here, and I leave it to more expert hands.

Fragment on Government, bearing in mind that this was still very much the period when he was defining his intellectual position and declaring his intellectual loyalties, we shall find indications of important issues. There is, for instance, the contempt with which Bentham rejects the ‘common sense’ rejoinder to Hume’s sceptical reasoning – his satire against the ‘trio of Scotch Doctors’ – James Beattie, Thomas Reid, and James Oswald – who ‘won’t be argued with’, who ‘cut everything short with the sword of common sense’.¹⁴ Now it was, of course and above all, Hume’s ‘infidelity’ that aroused such opposition; and it is reasonable to conclude that, for Bentham, Hume stood with Voltaire and with Gibbon at the head of the forces of light against the forces of darkness. This has a further effect on his reaction to Scottish ideas at this period. It is true that he can, up to a point, see William Robertson as embodying a concept of history, a way of envisaging the past, which can be advantageously contrasted with Blackstone’s prejudices ‘in favour of antiquity’. Yet Robertson was himself ‘a clerical historian’, held back by the religious beliefs he professed. The candour of historical and philosophical investigation was constantly apt to meet with ‘some formal dogma which he dare not thwart for fear either of himself or of the world’.¹⁵

Yet it would not be quite correct to conclude that Hume (together with Smith in respect of political economy, and subject to some reservations) accounts for the whole of Bentham’s indebtedness to Scottish Enlightenment thinking. There is at least one lesser but not negligible figure to be reckoned with – Henry Home, Lord Kames (1696-1782). It is certainly the case that Bentham refers approvingly to Kames on several occasions in his early writings (and we need not attach too much significance to the fact he consistently misspelt the name as ‘Keymis’). Kames’s *Historical Law Tracts* (1758) do seem to have made a favourable impression on Bentham, at least as an example (the work of Daines Barrington south of the Border would have been another) of how historical learning might be applied in jurisprudence more beneficially than ‘poor Blackstone’ had achieved.¹⁶ The library of University College London has Bentham’s marked copy of the book; but it has to be said that this evidence suggests that, when Bentham was not using ‘Keymis’ as a stick with which to beat Blackstone, his admiration fell some way short of idolatry. He was, to be sure,

¹⁴ *Comment (CW)*, pp. 337-8 & nn.

¹⁵ *Ibid.*, pp. 317-18.

¹⁶ H. Home, Lord Kames, *Historical Law Tracts*, 2 vols, Edinburgh, 1758.

ready to forgive in Kames what he censured in Robertson. ‘The wanderings of an imagination, warmed by a zeal for virtue’, he noted, ‘will always be pardonable: but’, he adds at once, ‘I do not see of what use rhetorical exclamations against experience can be in a work like this of the didactic kind’. The occasion of this austere if kindly reproof is worth pausing over. Kames had claimed that the dread of punishment, ‘when the result of atrocious and unnatural Crimes, is often a tremendous [*sic*] punishment far exceeding all that has been invented by Man’. This will not do for Bentham, who makes his case against it by referring to the case of Robert-François Damiens, executed in 1757 for attempting to assassinate Louis XV:

Damiens was guilty of an atrocious crime; but I cannot think that any body but his Lordship, nor even his Lordship himself upon a second review can seriously suppose that his misery was greater before the engines of Torture were applied to his body than at the time of the application. His shrieks were such as made an impression on the mind of a bystander from whom I had it not to be obliterated by half a year’s duration. But I never heard that those shrieks commenced before the Torture was applied.¹⁷

I now turn – though my route will bring me circuitously back to the Scottish *philosophes* – to a different aspect of Bentham’s view of matters and men in Scotland. At several points in his writings in the 1770s and 1780s, he finds occasion to refer to the constitutional status of Scotland following the Union of 1707. Sometimes his purpose is only to poke fun at Blackstone – suggesting ironically, for instance, that at one point in the *Commentaries* ‘our__ Author’ seems to envisage Scottish Presbyterians rising in opposition to measures that would have benefited their fellow-presbyterians in England. Why? Because the proposed measures, by undermining the secured status of the Anglican Church in England would tend to subvert the guarantees given to the Church of Scotland at the time of the Union.¹⁸ Elsewhere, however, Bentham sees the terms of the Union as raising more serious issues of constitutional jurisprudence.

¹⁷ *Ibid.*, pp. 3-4. Bentham’s comments are in the copy in University College London Library, Bentham Collection 6H2.

The issue at stake here is the issue of sovereignty, and Bentham's acceptance of – or, rather, his insistence upon – the point that a sovereign legislature may properly be regarded as limited by what he calls 'express conventions'. One situation in which this may happen is, Bentham argues, that in which one state has 'upon terms' submitted itself to the government of another. This, he evidently supposes, is what had happened between Scotland and England in 1707. I will not enter into the debate such an interpretation necessarily prompts; but it is proper to point out, in a paper on 'Bentham and the Scots', that it manifestly reflects an Anglocentric view of the transaction only to be expected of one who was (as I have said) 'mere English' – or, to employ a Scottish rendering, 'English, poor thing!' What is more important – and becomes even more so if a less Anglocentric view is substituted – is that Bentham, at least when he wrote the *Fragment on Government*, was prepared to base upon this view the hypothesis that, under such an arrangement, means *could* be found of safeguarding the conditions of the Union without impairing the ordinary sovereignty of the legislature. What he suggests is that legislative measures that might seem to affect adversely the conditions guaranteed to the Scottish minority in the United Kingdom might, after due enactment, be suspended for the period of a year or two, during which time it would be possible for the Scots to petition against the proposed law. Petitioning at a certain predetermined level would suffice to invalidate what the legislature had passed. It is also noteworthy that this is offered as only one possible way of dealing with a problem Bentham plainly regarded as both important and soluble.¹⁹

None of this, of course, modified Bentham's distaste, both then and later, for the concept of 'fundamental law'. It is interesting to see how this emerges in the *Scotch Reform* period – into which I now take my one hesitant step. Writing to Samuel Romilly in June 1807, Bentham comments on the Memorial submitted by the Scottish judges on the subject of the reform of legal procedure in Scotland. He expresses his surprise at finding himself largely in agreement with the substance of what the judges proposed - the surprise stemming from what he calls 'the stile of their address to their constitutional superiors, and the use, or rather abuse, they had attempted to make of the *Act of Union*'. As John Dinwiddy pointed out in his footnote, Bentham had, in notes written a couple of months earlier, 'criticised the Scottish judges for

¹⁸ Cf. *Comment (CW)*, pp. 156-7.

maintaining that some parts of Grenville's bill contravened the "fundamental" provisions of the Act of Union: this, Bentham said, was to argue on grounds of right rather than of utility'.²⁰

Clearly, however, this area of constitutional jurisprudence was, or had been, more problematic for Bentham than the brisk rejection of 'fundamental law' might suggest. Its problems led him, in *Of Laws in General*, into an intricate discussion of what he there called 'constitutional laws *in principem*'; and while I do not propose to enter here into those complexities. It is relevant to note that, at the end of the relevant passage, Bentham comes back, as it were, to Scotland. To deny 'all efficacy' to such laws, he says, 'would be going too far'. To do so would entail a series of conclusions Bentham plainly regarded as inadmissible: 'it would be as much as to say' – *inter alia* – 'that the Act of Union has never been anything but a dead letter.'²¹

What I am suggesting, in the context of this paper, is that the constitutional relationship between Scotland and England was problematic for Bentham. And I indicated earlier that this excursus into constitutional theory would bring me back, circuitously, to Bentham's relationship with the Scottish Enlightenment. In what will be, apart from a brief coda, the final part of this paper, I want to develop that point a little. For one thing, I want to repeat a point made in my 1983 paper, already cited, on 'Scottish philosophers and the science of legislation'. For Bentham, as for Adam Smith in his lectures on jurisprudence, to accept the fundamental doctrine of sovereignty is not to preclude entirely the possibility of a division or distribution of sovereign power. More important, however, is another aspect of Smith's jurisprudence, which seems to bring him closer to Bentham than one might have been disposed to expect. Both Smith and Bentham – at least the early Bentham – regarded paternal power and the model of authority to be found in the family as crucially important for our understanding of the relationship between sovereign and subject. And this in turn takes us back to an element in Bentham's thinking in which we may discern significant affinities with Scottish Enlightened thought, and more specifically with David Hume. In the end, as we know, Bentham's theory of sovereignty – at least, again, his early theory; but it was a theory he never disowned – revolves around the notion of a habit of obedience. Much of his polemic against Blackstone's account of

¹⁹ *Ibid.*, 490-1 n.

²⁰ *Correspondence (CW)*, vii. pp. 432 & n. 3.

²¹ *Of Laws in General*, ed. H.L.A. Hart, Oxford, 1970 (CW), pp. 70-1. Hereafter *Of Laws (CW)*.

the matter, both in the *Fragment on Government* and in *Of Laws in General*, proceeds on this basis. Now it seems to me – though I have never (I must frankly admit) subjected the impression to appropriately rigorous analysis and textual exploration – that the notion that social and political arrangements rest ultimately upon a process of habituation must, at the very least, have considerable Humean resonance. If this is true, then perhaps Bentham’s indebtedness to Hume really did penetrate to a deeper level in his thought than my remarks earlier in this paper might suggest.

In what I have called my coda, I want to invert matters and to ask what can be said, not about Bentham’s response to the Scottish Enlightenment, but rather about the reaction of Scottish Enlightened thinkers to Bentham. Even more than the earlier parts of this paper, this is a theme demanding much more careful and thorough investigation than I have myself undertaken. Yet one or two points may be worth making here. On the one hand, if we may regard the conductors of the *Edinburgh Review* as second-generation apostles of the Scottish Enlightenment, we do of course have their response to some parts of Bentham’s work. I limit myself here to the period nearest to that earlier part of Bentham’s career to which this paper has mainly referred. The evidence is, of course, to be found in Francis Jeffrey’s 1804 review of the Dumont *Traité de législation* (1802); and it may suffice here to make two points. First, the review was notably unsatisfactory to both Bentham and Dumont at the time. Three years after it appeared, Bentham was still referring to it as ‘that critique on Dumont Principles which we were all so discontented with’. Dumont himself, as soon as he read the article, wrote, with wry irony, ‘I am charmed that the lessons of these young people have come in time to prevent me from continuing my follies. I only just wait to read what they say, before I throw all your MSS into the fire’.²² And in our own time, Biancamaria Fontana has seen Jeffrey’s critique as marking the beginning of decades of argument between Whigs and Utilitarians as to the appropriate methodology of the social sciences.²³

Yet if there was always – as I believe there was – a gulf between Bentham and the ‘Scotch philosophers’, it was not quite the ‘great gulf fixed’ between Dives and

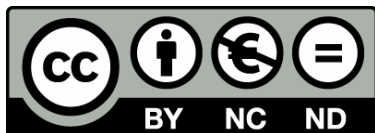
²² Dumont to Bentham, April 1804, *Correspondence (CW)*, vii. pp. 266-677. Romilly had told Dumont that the *Traité* ‘had been treated [in the *Edinburgh Review*] with scandalous irreverence’. For Bentham’s later reference, see his letter to Samuel Bentham of 5 March 1807 in *ibid.*, pp. 415-16. For the Jeffrey’s review, see *Edinburgh Review*, vol. 4 (April 1804), pp. 1-26.

²³ B. Fontana, *Rethinking the Politics of Commercial Society: The Edinburgh Review 1802- 1832*, Cambridge, 1985, p. 160 ff.

Lazarus. I end with a passage from Dugald Stewart's *Dissertation on the History of Ethical Philosophy* (1815/21):

Mr Bentham's expressions are somewhat unguarded, when he calls the *Law of Nature* "an obscure phantom, which, in the imaginations of those who go in chase of it, points sometimes to *manners*, sometimes to *laws*, sometimes to what law *is*, sometimes to what it *ought to be*". Nothing, indeed, can be more exact and judicious than this description, when restricted to the *Law of Nature*, as commonly treated of by writers on Jurisprudence; but if extended to the *Law of Nature*, as originally understood by ethical writers, it is impossible to assent to it, without abandoning all the principles on which the science of morals ultimately rests. With these obvious, but, in my opinion, very essential limitations, I perfectly agree with Mr Bentham, in considering an abstract code of laws as a thing equally unphilosophical in the design, and useless in the execution.²⁴

And what precisely we are to discern through that Scotch mist I must leave to others to determine.



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²⁴ Originally published in two parts (1815, 1822), this was to be incorporated in Stewart's 'Dissertation ... Exhibiting a general view of the Progress of Metaphysical, Ethical, and Political Philosophy since the revival of letters in Europe' in the six-volume *Supplement to the ... Encyclopædia Britannica*, Edinburgh, 1824. The passage cited is at i. p. 187; cf. also Stewart's *Collected Works*, London and Edinburgh, 1854, i. p. 187. For Stewart's Bentham citation cf. *IPML (CW)*, p. 298 n. a2.