World History Studies
Vol. 8, No. 1, June 2021, pp.29–53

Jeremy Bentham and Robert Peel in the Context of Legal Reform Movement (1826-1832)

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Abstract: *The lobbying to the Tory politician Robert Peel for a series of law reform measures in the late 1820s is one example of the British utilitarian philosopher Jeremy Bentham's strategy to promote utilitarianism as a guiding philosophy in legislation. This study examines their relationship through their debates on law reform topics such as codification, legal officers' aptitude and Bentham's lobbying strategy. It is argued that through correspondence, Peel perceived Bentham's radical legal thinking and its close association with democratic politics. Bentham learned Peel's private attitude and worked out some tactics to influence him. The failure of Bentham's lobbying suggests the resilience of conservatism in 1826-1832.*

Keywords: *Jeremy Bentham, Robert Peel, Law Reform, Lobbying*

The lobbying to the Tory Home Secretary Robert Peel (1788-1850) for a series of law reform measures between 1826 and 1832[1] is one example of Jeremy Bentham's strategy[2] to promote utilitarianism as a guiding philosophy in legislation. Utilitarian

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[1] This timeline is based on their 31 surviving letters, which were transcribed in *The Correspondence of Jeremy Bentham*, vol. 12 and 13. Volume 12 is published. See Luke O'Sullivan and Catherine Fuller (eds.), *The Correspondence of Jeremy Bentham*, vol. 12, Oxford: Clarendon Press, 2006. Volume 13 is in the process of editing. The Bentham Project of UCL kindly supplies me the digital and transcribed version of the 13 letters after April 1827. After this acknowledgment, the citations hereafter will only mention the original source. Besides, Bentham's correspondence with Peel was started earlier than August 1826, but the topics directly relevant to judicial reform were first mentioned then. See Bentham to Peel, Aug. 19, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, 239. Finally, this study of Bentham's lobbying is wholly based on the surviving letters and thus subjected to the discovery of new materials.

[2] Philip Schofield demonstrates twofold of Bentham's strategy: first, in "publicly disseminating his ideas through the press", and second, working "privately to influence leading politicians". See *Utility & Democracy: The Political Thought of Jeremy Bentham*, Oxford: Oxford University Press, 2006, p. 306.

philosopher Jeremy Bentham (1748-1832) became a persistent critic of English laws from the 1770s and by the 1820s. He had been viewed as an intellectual leader by many young talents. Those people, including James Mill[3], John Stuart Mill[4], and Henry Bickersteth[5], were described by contemporaries as "Benthamites", or Bentham's disciples.[6] Bentham was surrounded by them and established reforming networks in the press (they founded the *Westminster Review* in 1824 and *The Jurist* in 1827), and in London learned societies (they founded the Political Economy Club in 1821 and the London Debating Society in 1825).[7] Through public media and private conversations, Bentham and his disciples were actively propagandizing that the existing common law and parliamentary statutes needed a radical rational reform through codification. Their effort echoed with the legal codification movements in Continental Europe, especially the Napoleonic Code. However, Bentham emphasized the superiority of his codification principles and expected British legislators to recognize their merits.

Meanwhile, lawyers outside Bentham's circles also began to discuss codification. In the summer of 1826, with the publication of a leading conveyancer, James Humphreys' book *Observations on the Actual state of the English Laws of Real Property with the Outlines of a Code*, codification attracted many legal writers' attention. However, most working lawyers held a critical attitude that codification would cause more damage than benefit to the common law England. They labeled codification as a synonym of absolutism and thus dangerous to the Englishman's freedom that was guarded by the common law and jury system.[8] Meanwhile, in the

[3] James Mill (1773-1836), Scottish historian, economist, and utilitarian reformer who published *The History of British India* and influenced some administrative and legal reforms there.

[4] John Stuart Mill (1806-1873), English philosopher and reformer who contributed to Victorian liberal thinking and legislation reforming.

[5] Henry Bickersteth (1783-1851), English lawyer and Master of the Rolls in the Court of Chancery from 1836, who promoted some rationalisation of the procedures of the court.

[6] According to the *Oxford English Dictionary*, the first public use of "Benthamite" is made by *The Times* on 8 November 1826 citing Irish poet Thomas Moore's poem "The Ghost of Miltiades": "The Ghost of Miltiades came at night, And he stood by the bed of the Benthamite". https://www-oed-com.libproxy.york.ac.uk/view/Entry/17782?redirectedFrom=benthamite#eid23261085. Accessed May 26, 2021.

[7] Detailed studies of Benthamties, see Élie Halévy, *The Growth of Philosophic Radicalism*, translated by Mary Morris, London: Faber & Faber, 1934, second edition; Joseph Hamburger, *Intellectuals in Politics: John Stuart Mill and the Philosophic Radicals*, New Haven & London: Yale University Press, 1965; William Thomas, *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817-1841*, Oxford: Clarendon Press, 1979.

[8] Michael Lobban, *The Common Law and English Jurisprudence 1760-1850*, Oxford: Oxford University Press, 1991, pp. 195-291; Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828", PhD diss., University College London, 1994, pp. 72-5; K.J.M. Smith, "Anthony Hammond: 'Mr. Surface' Peel's Persistent Codifier", *Journal of Legal History*, vol. 20, no. 1 (1999), pp. 36-7; Keith Smith, "The Sources and Form of the Criminal Law: The Medium of Change and Development: Consolidation or Codification?", in William Cornish, J Stuart Anderson, Ray Cocks, Michael Lobban, Patrick Polden, and Keith Smith (eds.), *The Oxford History of the Laws of England: volume XIII: 1820-1914 Fields of Development*, Oxford: Oxford University Press, 2010, pp. 187-193.

wider literary sphere, the *Quarterly Review* commented that "We are not fond of the term '*Code*'; and fancy that there is something imperial and arbitrary in its sound… so un-English an appellation".[9] Just before these critical opinions became prevailing, Bentham ventured to recommend Peel codification and other reforming projects.

Bentham's epistolary networking with Peel has only received limited attention.[10] In a wider context, this topic is relevant to Bentham's impact on the early nineteenth-century law reform movement. Legal historians tend to stress the two factors that limited Bentham's legislative achievement after David Lieberman's reconstruction of a Baconian law reform tradition.[11] Jurisprudentially, the Baconian tradition, which adopted a gradualist consolidation approach, played a dominant role in the British legal thinking and thus marginalized Bentham. Politically, the French association of the word "codification", and Bentham's proclaimed political radicalism, were disliked by many lawyers and politicians.[12] In this jurisprudential-political interpretation, Peel is viewed as a key figure whose "natural and overwhelming political inclination was to regulate the content and pace of reform" against the Whig and radical reformers.[13] Moreover, his deferential attitude towards the common law judges was particularly marked, which is interpreted as a factor in Bentham's failure.[14] Based on their insights, this article aims to place Bentham's relationship with Peel in the context of reforming politics, thereby analyzing the interactions between individual reformers and political culture.

Ⅰ. Codification and Consolidation

The word "codification" was coined by Bentham in 1806, meaning "the action or practice of reducing laws or rules to a code, or organizing them into a systematic collection".[15] By comparison, the word "consolidation" used by Peel referring to his method of reform was older; and in legislation, it means the combination of

[9] At the same time, the journal was calling for more able expertise: "a new code, the validity or sufficiency of which it is for others than ourselves to determine". *Quarterly Review*, vol. 34, no. 68 (Sep. 1826), pp. 563, 577.
[10] Expect some brief mentions, see Norman Gash, *Mr. Secretary Peel*, London: Longmans, 1964, pp. 331-4. Philip Schofield, *Utility & Democracy: The Political Thought of Jeremy Bentham*, Oxford: Oxford University Press, 2006, pp. 306, 313-5, 332.
[11] David Lieberman, *The Province of Legislation Determined, Legal theory in eighteenth-century Britain*, Cambridge University Press, 1989 and 2002.
[12] Lieberman, "The Challenge of Codification in English Legal History", Presentation for the Research Institute of Economy, Trade and Industry (RIETI), July 12, 2009; Anne Brunon-Ernst, "Bentham, Common Law and Codification," CM—DU Common Law – Grands systèmes de droit contemporain (2017), pp. 1-20.
[13] K.J.M. Smith, "Anthony Hammond: 'Mr. Surface' Peel's Persistent Codifier", p. 38.
[14] Lieberman, "The Challenge of Codification in English Legal History," 14; Lobban, "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830", in Arthur Burns and Joanna Innes (eds.), *Rethinking the Age of Reform Britain 1780-1850*, Cambridge: Cambridge University Press, 2003, p. 125.
[15] The Oxford English Dictionary Online, https://www-oed-com.libproxy.york.ac.uk/view/Entry/35603?redirectedFrom=codification#eid. Accessed December 15, 2020.

two or more bills, acts, or statutes in one.[16] However, as the word "codification" was relatively new, contemporaries might feel perplexed in distinguishing the two terms.[17] The lack of clarity in terminology may attract speculations of what Peel's real intention was. Bentham's judgment was also influenced bu it. In August 1825, Bentham wrote to Venezuelan statesman Simón Bolívar that "the necessity of a real and all-comprehensive Code…is now at length making itself sensible…Intentions of this sort have even been declared in the English Parliament by the Home Secretary [Peel]".[18]

However, on 19 August 1826, writing privately to Peel, Bentham distinguished codification from consolidation. Codification, as Bentham explained, meant to codify the common law into statute law. Consolidation, as Bentham reminded, as far as Peel had achieved, meant to consolidate two or more existing statutes into fewer, which was irrelevant to the common law. Then, Bentham argued that if Peel stopped at consolidation and left the common law untouched, the only use of this reform would be "alleviating their[lawyers'] labors: leaving the rule of action throughout as incomprehensible to non-lawyers, as before; especially if the lengthy and involved phraseology…be *persevered in*". Bentham continued to emphasize the evils of not clarifying the law in a tone as if he was liberating the law from the legal profession's tyranny. The "*Legislative* power is *in effect* subordinate to the *Judicial*: the Judges complying with, or frustrating and in effect *over-ruling*, the Statute law".[19]

Why Bentham interpreted Peel's "consolidation" inconsistently? The timing was important. When writing to Simón Bolívar in 1825, Bentham had been impressed by Peel's achievements in rationalizing some parts of the criminal statutes, such as the Gaol Act of 1823 and the Jury Act of 1825. In his first letter on 1 April 1826, Bentham directly praised Peel for those policies.[20] On 13 April, Bentham sent his "Draught of a New Plan for the organization of the Judicial Establishment in France", encouraging Peel to read the measures of codification in this pamphlet.[21] Bentham expected that the pamphlet could be a guidebook for Peel to draft a bill to improve judicial administration, a plan which Peel announced in the House of Commons in March.[22] However, Peel appeared to be indifferent to Bentham's pamphlet. While on 18 April he wrote to Bentham for retaining the pamphlet longer, Peel did not add any of its measures into his bill, which passed its third reading on 28 April and became a statute

[16] The Oxford English Dictionary Online, https://www-oed-com.libproxy.york.ac.uk/view/Entry/39693?redirectedFrom=consolidation#eid. Accessed December 15, 2020.
[17] Smith, "Anthony Hammond: 'Mr Surface' Peel's Persistent Codifier", note 2.
[18] Bentham to Simón Bolívar, Aug. 13, 1825, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 140.
[19] Bentham to Peel, Aug. 19, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 241.
[20] Bentham to Peel, Apr. 1, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 205.
[21] Bentham to Peel, Apr. 13, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, pp. 210-1.
[22] *Hansard House of Commons Debates*, Mar. 9, 1826, vol. 14, p. 1214.

(7 Geo. IV c. 64).[23]

A comparison of "Draught of a New Plan for the organization of the Judicial Establishment in France" and "An Act for improving the Administration of Criminal Justice in *England*" (7 Geo. IV c. 64) explained Bentham's criticism of Peel's compromise to the legal profession. Bentham's pamphlet was printed in 1790 and circulated in France, with the expectation of being recognised by the revolutionary government. The pamphlet proposed a radical systematic change of the whole established administration. It aimed to provide maximal judicial accessibility for all citizens and proposed to set up numerous new local courts across the whole country. The distribution of courts was regulated by the size, population, and administrative function of the place. The capital city would set up a supreme court of appeal. Each local district would set up its own district court and district court of appeal to achieve the separation and balance of judicial powers. Every court would only be charged by one judge who was elected by local voters in the same manner of an open political election. The payment of a judge would be from the public money instead of private fees. There would be regular examinations both from higher officials and the general public to supervise the judge. Peel's plan was not much about increasing the accessibility and regulating judicial powers. Instead, it concentrated on clarifying the conditions of excising judicial power in the cases of felony. By comparison to Bentham's, this plan was highly detailed and narrow in scope. It also directly opposed the idea of a single judge presiding and insisted that if evidence could not be presented to multiple judges, the suspect would not be committed to prison. But if evidence were examined by two or more judges, external checks would be no longer needed, and no reform of the appeal system was suggested.

In the letter to Peel, Bentham blamed lawyers for manipulating the Home Secretary to produce the discriminative law which failed to protect the public interest. Bentham questioned the moral integrity of the lawyer MPs and law lords, accusing them of interfering with Peel's ongoing reform and sacrificing the non-lawyers. Lawyers were thus divided from other social groups and labeled as an evil profession. Secondly, as the common law was left unreformed, judges were still more powerful than legislators in law-making, for they enjoyed great influence both in legislature and judiciary.[24] Without codification, the common law language would continue obscure and perplexing, to force the public to rely on the judges. However, why should one have to listen to a judge but not use one's own intellect? Reasoning as everyman's natural

[23] Peel to Bentham, Apr. 18, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 212.

[24] Until the end of the 19th Century, judges could be elected as MPs. Lord Chief Justice Ellenborough in 1806 accepted a seat in the Cabinet. The office of Lord Chancellor was another example. https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/justice-sys-and-constitution/. Accessed December 1, 2020.

faculty was universally applicable. And Bentham long insisted that the best way to achieve the greatest happiness of the greatest people was to liberate every individual from the ruling few and to act the best judge of one's own interest.[25] This equalitarian attitude directly challenged Peel's paternalism.

Bentham continued the analysis and argued that a deeper cause of the "*Subdespotism* of the Judges" was the executive. His logic was, for the legal language was a problem so obvious that "This can not be a secret to *Cabinets*". That was to say, a series of governments failed to act beneficially to the public. Rather, successive governments acted despotically, deliberately conniving with the judiciary to use the law as an instrument of despotism over the legislature. Because technically, parliamentary law-making took a longer time and was more likely to meet troublesome objections. Also, a judge could create a new interpretation to be referred to as precedence, "at the expense of a few words, in a few minutes…without any the smallest responsibility".[26]

However, as Bentham asked, was the common law really a political tool of the executive? Did the "Cabinet and the Great Land-holders in both Houses—Tories and Whigs together" best secure their interest through the common law? This questioning divided lawyers from the "ruling few". Bentham then argued that "if then these same *ruling few* have confidence enough in their own strength", they would be aware that the common law failed to best secure their interest. However, Bentham did not clarify why the common law failed and what was the best mode. He mentioned that there was a part of the interest of the ruling few "which is opposite to the interest of the *subject-many*", and suggested that for now, the ruling few had no confidence and relied on "the support of the lawyers for the protection of that part of their interest".[27] This expression may convey a warning that, with the march of intellect, and as the common law was demystified by reformers like Bentham and his ever-increasing disciples, lawyers would no longer be capable of deceiving the subject many. If the law were not corrected in time, social conflicts would appear more frequently. Therefore, clearly, the common law could not provide "the universal security" and was daily weakened by publicity of its flaws.

Then Bentham suggested that codification could be "establishable without Parliamentary Reform". The aim of codification was to build a system that would operate "without any deviation, to the ends of justice". Then Bentham explained his understanding of justice. It was the realization of the will of the legislative authority, which Bentham placed as the sovereign power in a community. And the judiciary should be subservient to the legislature, and its function was to facilitate the realization of justice. This understanding of the relationship between the judiciary

[25] Schofield, *Utility & Democracy: The Political Thought of Jeremy Bentham*, pp. 48-50.
[26] Bentham to Peel, Aug. 19, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 241.
[27] Ibid, p. 242.

and legislature reflected Bentham's ideal constitution. Judging by this ideal, the judiciary had long been overruling by using the common law to confuse both the executive and legislature. Therefore, to clarify the common law by codification, making it intelligible to non-lawyers, was a method to provide more safeguards to check the accountability of judges. This argument leads to another ideal. He believed that a universally intelligible legal language could be written. And the problem of the common law was a linguistic or intellectual problem. With the reformers like John Horne Tooke endeavored to write a "*Universal Grammar*", Bentham believed that a "*Universal Legislation*" could be written as well, especially when James Humphreys had started to codify the land laws.[28]

Two weeks later, in responding to Bentham, Peel admitted that the vague and undefined law was an evil and emphasised that he was trying to clarify the law, and sent three bills that he was working on to consolidate the laws relating to offences against property.[29] However, he did not clarify how far his legal language reform would go, or how intelligible the law should be. He appeared to be content with the point that Bentham opposed: to lessen the work of lawyers but still leave the law as perplexing to the laymen. Moreover, from February 1827 Peel became a firm opponent expressively attacking codification. He argued that codification was to change the substance of the law, and this method would rather weaken the law's "strength" and cause "practical inconvenience".[30] In 1830, Peel added a new reason against codification: "the more concise any legal Code was made, the more its interpretation was left to the discretion of the Judge…making a Code…would be too concise to embrace more than general principles", which would cause more technical difficulties to regulate the judicial discretion, and thus damage the administration of justice.[31]

Bentham's debate with Peel over the question of whether the common law should be codified and how to best conduct the statute consolidation was closely related to the wider European law reform movement. With the resolutions of sixteenth-century religious wars and the separation of moral and scientific discussions from theology, law reform increasingly attracted the attention of Enlightened monarchies and philosophers. Inspired by the Roman Emperor Justinian's *Corpus Juris Civilis*, numerous rulers and jurists endeavored to unify and simplify the local customs and laws into national codes. Enlightened jurists were driven by the ideal to improve human condition through more rationalized laws, and rulers saw those reforms as useful to strengthen their political power when convinced by the superiority of the

[28] Bentham to Peel, Aug. 19, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 245.
[29] Peel to Bentham, Sep. 2, 1826, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 249.
[30] *Hansard House of Commons Debates*, Feb. 22, 1827, vol. 16, pp. 641-2.
[31] *Hansard House of Commons Debates*, Feb. 18, 1830, vol. 22, p. 677.

power of reason over religious beliefs. Although with different purposes, the allying force of philosophers and rulers facilitated a series of codification projects, including the Prussian code of 1794, the Austrian general civil code of 1811, and the French code civil of 1804.[32]

British legal writers were aware of these foreign discussions and practices of law reforms. As David Lieberman has demonstrated, throughout the eighteenth century, the Roman law tradition and the writings of European jurists such as Cesare Beccaria's *On Crimes and Punishments*, continuously served as the intellectual stimulus for British lawyers. Before Bentham, there were William Blackstone and Lord Mansfield who borrowed Roman legal doctrines.[33] However, Bentham's predecessors viewed the main problem located in the statutes and insisted that through periodical digest (statute consolidation), the English legal system could be updated and improved. In his context, Bentham radically denied such professional consensus and looked at the common law as the main problem. As John Dinwiddy observes, Bentham "saw the English legal system as an intractable and disordered accumulation of precedents and practices, shot through with technicalities and fictions and incomprehensible to everyone except professional lawyers".[34] Also, influenced by the belief in science shared and promoted by contemporary industrial inventors and continental *philosophers*, Bentham developed a philosophy of legislation, utilitarianism, and devoted to writing a comprehensive code, transforming the common law into legislation, thereby making the law intelligible to all.

Bentham's aim to clarify the legal language was agreed by many, but they differed from the point of whether the law could be understandable to all or only to the professionals. To many, including Peel, Bentham's radical aim was unrealistic and too speculative. As mentioned above, Peel shared with the consensus that the common law should not be radically changed. It was also politically safe to insist on this point for a Tory politician. Because in the French Revolution and later wars, the Tory party justified their legitimacy to rule by highlighting the link between the common law and political stability. As the then Prime Minister William Pitt the younger spoke to the House of Commons in 1792, Britain's liberal constitution in which the common law was a key element, "raising a barrier equally firm against the encroachments of power, and the violence of popular commotions, affords to keep its just security".[35]

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[32] Horst Klaus Lücke, "The European Natural Law Codes: The Age of Reason and the Powers of Government", *University of Queensland Law Journal*, vol. 31, no. 1 (2012), pp. 7-38.
[33] David Lieberman, *The Province of Legislation Determined, Legal theory in eighteenth-century Britain*, pp. 29-122.
[34] John Dinwiddy, *Bentham*, Oxford: Oxford University Press, 1989, p. 2.
[35] Frank O'Gorman, "Pitt and the 'Tory' Reaction to the French Revolution", in H.T. Dickinson (ed.), *Britain and the French Revolution, 1789-1815*, New York: St. Martin's Press, 1989, p. 28.

Besides, the legal profession had long worried that the common law was being marginalized by parliamentary interference. Around the middle of the 18th century, leading barristers and judges began to resist the activism of parliament expressively. In 1756, Lord Chancellor Hardwicke complained in the House of Lords that "now… every member of the other House takes upon him to be a legislator…our statute books are increased to such an enormous size, that they confound every man who is obliged to look into them".[36] By the 1820s, this judiciary suspicion was still strong. Hardwicke's successor Lord Eldon was known for his extreme hostility to radicalism. For nearly 25 years, except about 14 months between 1806 and 1807, Eldon held the highest judicial position. He built a tremendous patronage network to support his belief, that judicial "institutions kept back the flood waters of anarchy".[37] That was why Eldon once told Peel that he would reject "any Bill, materially affecting the Justice to be administered in the country".[38] Also, it appeared that Eldon's immediate reaction to Peel's speech of 9 March 1826 was negative.[39]

Peel was still a junior in the Cabinet in 1826 and was conscious that Eldon was an important Protestant ally in the Catholic question which fundamentally divided the Cabinet. Moreover, he had to secure Eldon's support for law reform, otherwise Eldon's influence on legal lords in the upper House would be a devastating factor. Furthermore, his attitude towards the common law was far more deferential than Bentham's. He entered politics as a supporter of William Pitt's nationalistic approach, which placed law and order in a superior position than reform. His administrative experience in Ireland, being appointed the Chief Secretary in 1812 at the age of 24, shaped a cynical attitude towards human nature.

The difficult Irish-English relationship during the war period (English protestant authorities suspected Irish Catholics to be allied with the French) exposed many problems of the law. However, as Robert Shipkey has demonstrated, Peel experienced constant frustration in the politics of patronage; "within a matter of days Peel was besieged by requests for positions in the stipendiary magistracy".[40] Soon he was forced

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[36] David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century*, Oxford: Oxford University Press, 2000, pp. 321-2.

[37] R.A. Melikan, *John Scott, Lord Eldon, 1751-1838: The Duty of Loyalty*, Cambridge: Cambridge University Press, 1999, p. 325.

[38] Eldon to Peel, British Library Add. MS 40315, f. 83, quoted in Richard R. Follett, *Penal Theory and the Politics of Criminal Law Reform in England, 1808-30*, New York: Palgrave Macmillan, 2001, p. 175.

[39] Whig leader George Tierney noted that Eldon "very much disapproves of what he is doing". Tierney to Holland, Mar. 12, 1826, in British Library Add. MS 51584. Quoted in David R. Fisher (ed.), "Peel, Robert 1788-1850", in *The History of Parliament: The House of Commons 1820-1832*, Cambridge: Cambridge University Press, 2009. https://www.historyofparliamentonline.org/volume/1820-1832/member/peel-robert-1788-1850#footnote100_in7t7lo. Accessed December 12. 2020.

[40] Robert Shipkey, "Robert Peel's Irish Policy: 1812-1846", PhD diss., Harvard University, 1962, 1987 reprinted, p. 136.

to compromise to the local interests and withdrew the Peace Preservation Act in 1817. This unsuccessful experience confined Peel's innovative passion. More importantly, this experience served as a formative lesson to his temperament as an administrator: the maintenance of order and quest for stability would then always be the priority.

On the other hand, Bentham was a committed reformer. He was 40 years older than Peel. He studied law in the 1760s and was called to the Bar in 1769, 19 years before Peel's birth. Though qualified as a barrister, Bentham devoted himself to reforming rather than practising the law. As John Dinwiddy has observed, young Bentham "saw the English legal system as an intractable and disordered accumulation of precedents and practices, shot through with technicalities and fictions and incomprehensible to everyone except professional lawyers".[41] Also, in the 1760s, influenced by the optimism shared and promoted by many contemporary industrial inventors, scientists, and continent *philosophes*, Bentham evaluated the common law through the lens of philosophy and science and concluded that it required a radical reform to abolish the antiquarian and deceptive character. Soon he developed the science of legislation, discussing law as it ought to be. Besides, Bentham published a critical pamphlet against Eldon in 1825 and made a mockery of Eldon's personality privately to Peel.[42] Bentham's private language could be a trap to provoke Peel to write some words that might be used by Bentham to attack him on another occasion, which might have directly alerted Peel.

Ⅱ. Legal Officers' Aptitude

On 14 January 1827, in a letter to Peel, Bentham wrote that he maintained the critical view against Peel's measure of increasing the salaries of the metropolitan police magistrates and limiting the candidates to barristers of at least three years' standing.[43] Bentham had in 1825 published a pamphlet on this topic.[44] On 21 March 1825, Peel proposed in the House of Commons "A Bill to amend an Act for the more effectual Administration of the Office of Justice of the Peace, in and near the Metropolis". On 20 May 1825, Peel's bill received the Royal assent (6 Geo. IV, c. 21), and as the Home Secretary, he was empowered to raise magistrates' annual salaries from £600 to £800. This Act amended an 1822 Act titled "for the more effectual Administration of the Office of a Justice of the Peace in and near the Metropolis, and for the more effectual

[41] John Dinwiddy, *Bentham*, Oxford: Oxford University Press, 1989, p. 2.
[42] Bentham, *Indications respecting Lord Eldon, including History of the pending Judges'-Salary-Raising Measure* (London, 1825); Bentham to Peel, Mar. 26, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 333.
[43] Bentham to Peel, 14 Jan. 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 271.
[44] Jeremy Bentham, "Observations on Mr. Secretary Peel's House of Commons Speech, 21 March 1825, introducing his Police Magistrates' Salary Raising Bill", in Philip Schofield (ed.), *Official Aptitude Maximized Expense Minimized*, Oxford: Clarendon Press, 1993, pp. 157-98.

prevention of Depredations on the River Thames and its Vicinity, for Seven Years". The 1822 Act regulated the annual salary of a magistrate at £600, and it would have expired in 1829, but with Peel's interference, a higher salary plan was discussed and achieved for those stipendiary magistrates. Moreover, Stipendiary magistracy was a recent institution to Britain, and it had first been established by the Metropolitan Justices Act of 1792 (32 Geo. III, c. 53) with the salary set at £400.

Stipendiary magistracy was a precursor of Britain's modern police force. It aimed to replace the traditional policing system, which heavily relied on voluntary magistrates and a paid but unreliable system of espionage, with a more coordinated, centralized, professional system under the direct supervision of the Home Secretary. Peel played a key role in persuading reluctant landed elites to accept the idea of professional policing. In eighteenth-century Britain, the idea of a standing police had often been associated with a standing army and Oliver Cromwell. During the French Revolution, professional policing was suspected of being foreign and unpatriotic. As Norman Gash has described, there was "a deep-rooted popular prejudice" imagining police "as an arbitrary and oppressive engine of executive tyranny".[45] When suggesting to professionalize the system in the House of Commons, Peel was often confronted by negative opinions. He had chaired a parliamentary committee to investigate the existing organization of the London police in 1822. Despite his effort, the committee refused to enlarge the power of the police and concluded: "it is difficult to reconcile an effective system of police, with that perfect freedom of action and exemption from interference, which are the great privileges and blessings of society in this country".[46]

By 1825, through Peel's persistent presentation of the criminal statistics proving the inefficiency and moral corruption of the espionage system in regulating major popular protests such as the Peterloo event of 1819, the House of Commons softened its tone. On 21 March 1825, Peel presented the salary-raising bill, arguing that "since the institution of police magistrates, the business which devolved upon those individuals had, owing to various acts of parliament, independently of the increase of population, greatly augmented".[47] Such change required better-qualified candidates. In Peel's view, there should be a formal rule that only barristers of three year's standing could be appointed. This raised another question about how to attract those experienced lawyers to give up their original business. Peel argued that an annual salary of £600 could not realize this aim and "in future, the Secretary of State should be empowered to give to each police magistrate the sum of 800l (£800) per annum".[48]

[45] Norman Gash, *Mr. Secretary Peel*, p. 310.
[46] Ibid., p. 313.
[47] *Hansard House of Commons Debates*, Mar. 21, 1825, vol. 12, p. 1128.
[48] *Hansard House of Commons Debates*, Mar. 21, 1825, vol. 12, p. 1129.

Peel's argument believed that experienced barristers were the best candidates to conduct the policing task in London. They were even better than experienced voluntary magistrates, who were rejected by Peel because voluntary magistrates were mainly in the countryside and local connection with landlord and tenant was an important factor to their policing, but if they came to a metropolis, their advantage disappeared, and they would feel the cases much more complicated. In short, Peel believed that the gentlemanly magistrates lacked the training and legal expertise to deal with the situation in London.

After Bentham learned Peel's speech, he wrote a critical pamphlet to disprove Peel. "Observations on Mr. Secretary Peel's House of Commons Speech" was published in May 1825, advertised in the *Morning Chronicle* of 13 May 1825.[49] This pamphlet demanded the Home Secretary to explain why the existing police magistrates of an annual salary of £600 were ill-qualified. Bentham quoted Peel's words reported by *The Times* and the *Morning Chronicle*, which praised those officers for performing their duties "to the great satisfaction of the country". Then Bentham questioned, if Peel's words were all correct, why did he complain the ill-qualification of the same persons in the House of Commons? Bentham pointed out and mocked Peel's self-contradiction: "What a scene is here! The Right Hon. Gentleman at daggers drawn with himself!"[50] Then Bentham analyzed the motives which drove Peel to make such a public mistake. He argued that the Home Secretary was pressed by the existing officers who were impatient to wait for the expiration of the 1822 Act. Furthermore, Bentham suggested that Peel was acting as a government patron who looked after his intimate connections. Or a position of police magistrate had been secretly priced for sale. Bentham claimed that he had seen a document called "Cabinet Minister's Red Book", which listed the prices of official positions. When a cabinet minister wanted to legitimize the increase of the price of a position, it had been a common practice for him to draft a bill and then managed to make it a law through parliament. "All official persons whose salaries had risen or should hereafter rise to a certain amount, might be added to the Test and Corporation Acts".[51] And if anyone dared to suggest publicly an officer as a partaker of this corruption, either a buyer or a patron, he was under the risk of being prosecuted by a parasitic judge.

Now in 1827, Bentham re-raised this questioning to Peel but privately. This time

[49] Philip Schofield (ed.), *Official Aptitude Maximized Expense Minimized*, p. xxix.
[50] Jeremy Bentham, "Observations on Mr. Secretary Peel's House of Commons Speech, 21 March 1825, introducing his Police Magistrates' Salary Raising Bill", in Philip Schofield (ed.), *Official Aptitude Maximized Expense Minimized*, pp. 161-2.
[51] Jeremy Bentham, "Observations on Mr. Secretary Peel's House of Commons Speech, 21 March 1825, introducing his Police Magistrates' Salary Raising Bill", p. 163.

Bentham emphasized the French practice to justify a more economic arrangement.[52] The French equivalent to an English police magistrate received an annual salary of £50. Those French magistrates were under the *Justices de Paix*, a national system of local courts aiming to provide simple, fast, and accessible justice to those who lived away from the metropolis. Bentham provided a series of the latest numbers of this system. By 1827, France had established 2,854 local courts, all singled-seated. In addition, there were 892 commercial courts (*Tribunaux de Commerce*) which presided by more than one judge, 1,600 courts of first the instance (*Tribunaux de premiere instance*), and so on. These statistics clearly showed that with a more economic arrangement, France managed to provide an accessible justice. Therefore, Bentham expected Peel to redistribute the annual salary of £800, "given to each Judge of the local Judicatories, in the number necessary to produce universally accessible justice".[53]

On 3 February 1827, Peel replied and insisted that his measure of increasing salary was "much better policy" for a metropolis like London. And it was naïve to think, Peel implied, that officers would perform "gratuitously" and accepted a lower salary than £800 a year. The difficulty of policing a metropolis required a higher salary than elsewhere.[54] One year later, on 29 February 1828, Peel repeated this view in parliament, directly attacking Bentham's ideas as unrealistic and pro-French.[55]

Peel simply ignored Bentham's questioning of the contradictory words on the existing officers and insisted that the increased workload justified this salary raise. Of Bentham's French statistics, Peel denied them as unsuitable to England. In the shadow of the French Revolution, Tory politicians often rejected pro-French ideas as unpatriotic and dangerously radical to the British constitution. This simple conservative rhetoric was prevailing in the early nineteenth-century political debates because the conservatives effectively mobilized popular sentiments to believe that the established order could protect their liberty and prosperity, whereas French ideas could not.[56] However, on the other hand, through private letters, Bentham acquired Peel's response. To Bentham, it was a better result than the 1825 pamphlet to which Peel did not respond. Moreover, Peel's response was a written letter which could easily be used as a piece of evidence to write another critical pamphlet against Peel's reformist reputation. Bentham indeed made use of Peel's private letter to write a series

[52] He had mentioned the salary of a French policeman in the 1825 pamphlet. See Jeremy Bentham, "Observations on Mr. Secretary Peel's House of Commons Speech, 21 March 1825, introducing his Police Magistrates' Salary Raising Bill", p. 195.
[53] Bentham to Peel, Jan. 14, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 271.
[54] Peel to Bentham, Feb. 3, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 312.
[55] *Hansard House of Commons Debates*, Feb. 29, 1828, vol. 12, p. 894.
[56] Emma Vincent Macleod, "British Attitudes to the French Revolution", *The Historical Journal*, vol. 50, no. 3 (2007), p. 694.

of public letters published in the *Morning Herald* in April and May 1828.[57] The timing of Bentham's anonymous public letters was interesting, as it came after Peel's attack on Bentham in parliament, which encourages one to wonder whether Bentham's later action was a fightback.

Bentham also privately questioned Peel's Jury Act of 1825 (6 Geo. IV, c. 50). On 7 April 1827, Bentham sent Peel an extract titled "Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection" and informed him that he had contacted some MPs and a relevant bill to amend Peel's Jury Act would be brought before parliament.[58] He argued that Peel's jury reform failed to promote the individual jurors' performance as well. "Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection" was an extract from Bentham's *Constitutional Code*. In the published version of 1830, Bentham added a long footnote to argue that Peel's measure failed to make the jury system a check to the judges. Peel's Jury Act was still "a feeble and very imperfect *check*".[59] Two days after Bentham's letter, Peel replied with a firm rejection: "I am not prepared to bring in a Bill for the alteration of the Jury act in the mode you suggest".[60]

Bentham's criticism of Peel's jury reform followed the same line of his criticism of Peel's police magistrate reform. He viewed Peel's claim to improve legal officers' aptitude as hypocrisy for hiding the government patron's real intention to build corrupt patronage that might serve to increase his personal political influence. Bentham's letter only gave a brief opinion and in the footnote of "Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection" Bentham gave a justification. Bentham quoted Peel's Jury Act to argue that Peel did nothing to correct the problems of jury selection. Although Peel made improvements to clarify the qualifications of a potential juror and the legal officers who could be trusted to appoint, Bentham argued that they were not enough to put an end to corruption. Bentham had extensively exposed the abusive usage of jury selection in the current criminal investigation in his 1821 pamphlet *The Elements of the Art of Packing, as Applied to Special Juries*. According to James Oldham, this pamphlet was influential in stimulating popular criticism and pressing parliament to make an adjustment.[61]

"Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection"

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[57] Of a short analysis of Bentham's critical letters, see Schofield, *Utility & Democracy: The Political Thought of Jeremy Bentham*, pp. 314-5.

[58] Bentham did not mention any MP's name, but one of the contacted MP was Edward Southwell Ruthven, through John Bowring's connection. See Bentham to Peel, Apr. 7, 1827, *The Correspondence of Jeremy Bentham*, vol. 12, p. 339, note 6.

[59] Jeremy Bentham, *Constitutional Code: For the Use of All Nations and All Governments Professing Liberal Opinions*, vol. 1, London, 1830, p. 446.

[60] Peel to Bentham, Apr. 9, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 341.

[61] James Oldham, "Special juries in England: Nineteenth Century Usage and Reform", *The Journal of Legal History*, vol. 8, no. 2 (1987), p. 153.

was sent to Peel for the purpose of being a practical guidebook. This 11-pages tract concisely listed the measures to improve Peel's Act. Bentham argued that the principle of selection should be by *chance* rather than by *choice*.[62] Peel's Act continued the practice of selection by the choice by legal officers, and this practice could not guarantee the accountability of the officers. As having been revealed by Bentham in 1821 *The Elements of the Art of Packing, as Applied to Special Juries*, officers often exercised their power discriminatively for the interest of the Crown and government.[63] In "Supplement to §16. Locable Who. Use of Lot as an Instrument of Selection", Bentham observed that Peel's Act still confirmed that the sheriffs and judges of great criminal courts led by the King's Bench still acquired an arbitrary power from the Crown, and there was still no effective check upon their conduct. However, the British constitution proudly stated that the jury system was a check to despotism. Bentham denounced such statement as hypocrisy, and the jury system under the principle of *choice* was in fact a "most powerful *instrument*" for despotism to distort the justice.[64] Therefore, Bentham proposed the method of lottery under the public examination to select jurors.

Bentham then argued that being freedom from political influences was the first step. Other procedures should be devised for the purpose of the best realization of justice. Like the police magistrates, individual jurors should receive constant training and public examination to guide their conduct during an investigation or a trial. Bentham did not believe that the endorsement from a senior officer could be a guarantee for the moral and intellectual aptitude of a juror. Instead, Bentham thought that the judicial institution should provide better guarantees. For example, there should be "Question Books" distributed to the jurors to better equip themselves with the special knowledge such as chemistry and mechanics required by the case. And they would receive regular questioning to check their knowledge. Lottery would be used to distinguish the examiners and examined so that the chance for political interference was minimized. Moreover, all prepared questions should be "have had place in the lottery".[65]

This idea of training and examination anticipated the Northcote-Trevelyan Report of 1854. Bentham's insistence on using the lottery to block patronage powers was in line with the principle of an impartial civil service which formed the basis of the 1854 report. Besides, Bentham's ideas inspired reformers such as Charles Trevelyan and John Stuart Mill, who contributed to the reforming ideology in the mid-nineteenth

[62] Bentham's highlights, see *Constitutional Code; for the use of All Nations and All Governments professing Liberal Opinions*, p. 444.
[63] Bentham, *The Elements of the Art of Packing, as Applied to Special Juries*, in John Bowring (ed.), *The Works of Jeremy Bentham*, vol. 5, Edinburgh: William Tait, 1843, p. 122.
[64] Bentham, *Constitutional Code; for the use of All Nations and All Governments professing Liberal Opinions*, p. 445.
[65] Ibid, p. 441.

century and directly participated in administrative reforms.[66] More specifically, through Bentham's disciples Joseph Hume, Henry Parnell, and James Graham, utilitarianism was spread and accepted by the public account commission of 1828, and more transparent and accountable procedures were adopted in the accounting practices of the central government, which paved the road to further reforms of improving official aptitude.[67]

Ⅲ. Lobbying Strategy

On 22 April 1829, Bentham wrote to Peel, claiming that "*Opinion has changed*". Because Bentham's "aptitude to afford useful information" was more widely acknowledged. Some top lawyers regarded him as "a Scholar to his Master" and "the only man by whom that subject has been made as a study of for that purpose and who in that study has been engaged for more than 60 years".[68] Under the sway of reforming opinions led by Bentham himself, the philosopher again endeavored to ask for cooperation with the Home Secretary. This time Bentham targeted the royal commission of the common law courts, appointed by Peel in 1828, to investigate the problems of those courts. Bentham believed that the selected commissioners belonged to "the particular and confederated interest of lawyers, official and professional taken together (for shortness I say Judge & Co.)". He planned to attack them in the press, letting the public be the judge. However, before the declaration of the war, Bentham asked Peel to arrange a meeting between him and the commissioners, so that Bentham might correct them privately.

It was more likely that Bentham was tactical in praising Peel's commitment to the public interest.[69] As Bentham wrote:

> *The person I am addressing has two natures; that of the Home Secretary and that of Mr. Robert Peel. The Home Secretary is in league with Judge and Co.: this is a matter of certainty. But in the breast of Mr. Robert Peel may have place some sparks of regard for the present good opinion of the civilized world, for the future good opinion of posterity, and even of sympathy for the happiness and misery of the subject many, here and now.*[70]

Bentham saw Peel's institutional character as having been corrupt. But as an

[66] John Richard Edwards, "Professionalising British central government bureaucracy c. 1850: The accounting dimension", *Journal of Accounting and Public Policy*, vol. 30, no. 3 (2011), p. 221.
[67] John Richard Edwards and Hugh T. Greener, "Introducing 'mercantile' bookkeeping into British central government, 1828-1844", *Accounting and Business Research*, vol. 33, no. 1 (2003), pp. 51-64.
[68] Bentham to Peel, Apr. 22, 1829, in UCL Bentham Manuscripts, box xib, pp. 334-6.
[69] In 1829, Peel was described as "the pseudo reformist" in Bentham's manuscripts. Sokol, "Jeremy Bentham and the Real Property Commission of 1828", p. 229.
[70] Bentham to Peel, Apr. 22, 1829, in UCL Bentham Manuscripts, box xib, pp. 334-6.

individual, Peel still could sympathize with "the happiness and misery of the subject many". Moreover, Bentham stressed that such a liberal character was Peel's true self, whereas his reluctance "is circumstantial".[71] Specifically, it was the situation Peel occupied, and the administrative life he was so used to, that blinded him. John William Flood has argued that this character analysis reflects Bentham's individualistic philosophy, which "saw the group as unable to violate its own selfish interests" but "one man was to achieve the impossible task of bringing a majority of the group over to the proper course".[72]

However, it is argued here that it reflects more of Bentham's lobbying strategy. This letter was written on 22 April 1829, which was an unprecedented moment that Peel compromised his Protestantism to support Catholic emancipation. The royal assent was given to the Roman Catholic Relief Act on 13 April 1829. And Bentham was involved in the internal politics of this event for his contact with the Catholic leader Daniel O'Connell, who even visited Bentham in March and thus may have discussed tactics of negotiating with the ministers.[73] Through the alliance of a successful and experienced political negotiators, Bentham felt more confident of nudging Peel.

Politician Peel did a U-turn and surprised many. In one sense, when Bentham contacted him, Peel's reputation as a liberal or reformer was at its peak, though temporarily. As Gaunt observes, "Peel's reputation was transformed from that of 'Orange Peel', the oppressor of the Catholics of Ireland and the 'Coryphaeus' of the Church, to 'Peel emancipated'".[74] And some Whig leaders like Henry Brougham commented that Peel was "far more to be trusted" than Wellington "for liberal courses".[75] However, the new image also brought new pressure. The Relief Act did not please the anti-Catholics. Peel was thus vulnerable to many of his anti-Catholic rivals. The immediate difficulty pushed this thin-skin young politician in a hurry of justifying his decision and repairing his protestant reputation. For example, Peel wrote on 3 April 1829 to the novelist Sir Walter Scott, "You will think I am now mad on the Catholic question", and then passionately wished Scott's support in the press. In terms of his justification, Peel highlighted that he acted purely as a disinterested statesman who could sacrifice himself for the public: "I knew too much to make it possible for me to

[71] Bentham to Peel, Apr. 22, 1829, in UCL Bentham Manuscripts, box xib, pp. 334-6.
[72] John William Flood, "The Benthamites and Their Use of the Press", PhD diss., University College London, 1974, pp. 202-3.
[73] O'Connell to his wife, Mar. 6, 1829, in *The Correspondence of Daniel O'Connell, vol. IV 1829-1832*, Maurice R. O'Connell, (ed.), Dublin Stationery Office for the Irish Manuscripts Commission, 1977, p. 20.
[74] Richard A. Gaunt, *Sir Robert Peel, The Life and Legacy*, p. 30.
[75] Quoted in "Peel, Robert(1788-1850)" in *The History of Parliament: the House of Commons 1820-1832*, D.R. Fisher (ed.), Cambridge: Cambridge University Press, 2009, p. note 197. https://www.historyofparliamentonline.org/volume/1820-1832/member/peel-robert-1788-1850#footnote197_s4b6b3e. Accessed December 20, 2020.

take any other course than that which I have taken. The time is past when either party can coquet any longer with the Catholic question".[76] The danger of being assassinated was much real. The former Spencer Perceval's tragedy of 1812 to Peel was still a fresh memory. Peel's own memoir recorded this anxiety. He felt that he was exposed to the "condemnation assumed every form, and varied in every degree, from friendly expostulation and the temperate expression of conscientious dissent to the most violent abuse, and the imputation of the basest motives".[77] After a self-justification, Peel concluded that "I can with truth affirm, as I do solemnly affirm in the presence of Almighty God…I was swayed by no fear except the fear of public calamity, and that I acted throughout on a deep conviction, that those measures were not only conducive to the general welfare, but that they had become imperatively necessary", specially to protect the "interests of the Church and of institutions connected with the Church".[78]

Around the same time, Bentham used the same strategy to another minister. On 9 April 1829, Bentham offered the Governor-General of India Lord William Bentinck suggestions relevant to the latter's ongoing judicial reforms and wrote, "Whatever is done for the benefit of British India through your means it is by you yourself by means of the weight the authority of your name that it must be done…your so generous and enlightened endeavors. By what you have done already, you have placed yourself at a height which no such mind as Mr Peels, is or will ever be able to reach. Your endeavors and his are in a state of diametrical opposites: As to the rule of action, your endeavors are to render it knowable: his to keep it from being so: As to justice your endeavors are to render it accessible: his to keep it inaccessible…He is a genuine disciple of Lord Eldon: and is either a dupe or an accomplice of those irreconciliate enemies of mankind—the existing fraternity of lawyers".[79] This not only idealized Bentinck's liberal or enlightened character, but also used a divisive language to separate Bentinck from his corrupt colleagues.

Lobbying as a political industry "emerged during the 1800s as a systematic and national practice…it exhibited many of the characteristics of the major industry it has become".[80] As far as the few pertinent studies show, the lobbying tactics could be categorized as two main types, either by persuasion or intimidation.[81] The persuasion

[76] Peel to Scott, Apr. 3, 1829, in *Sir Robert Peel from his private papers*, vol. 2, Charles Stuart Parker (ed.), London: John Murray, 1899, pp. 99-100.
[77] *Sir Robert Peel from his private papers*, vol. 2, Charles Stuart Parker (ed.), p. 106.
[78] Ibid, p. 108.
[79] Bentham to Bentinck, Apr. 9, 1829, in UCL Bentham Manuscripts, box number x, pp. 175-8.
[80] Conor McGrath, "British Lobbying in Newspaper and Parliamentary Discourse, 1800-1950", *Parliamentary History*, vol. 37, no. 2 (2018), p. 227.
[81] No direct relevant study of this period has been found. Of the both types of an earlier period, see John Brewer, *The Sinews of Power: war and the English state, 1688-1783*, New York: Alfred A. Knopt, 1989, pp. 186, 189-95; Of a case study of James Mill's extra-parliamentary agitation between 1830-2, see Joseph Hamburger, *James Mill and the Art of Revolution*, New Haven & London: Yale University Press, 1963.

type is to find the common interest and offer a collaborative scheme. For example, lobbyists from the commercial and industrial interest groups would exploit the information that departmental clerical staff was unable to access. The other type, intimidation, in James Mill's case, operated in chorus in both the public and private spheres, is to demonstrate the likelihood of violence through mass organizations, public meetings, petitions, and the press.[82]

Sometimes a lobbyist entered the public sphere to be an agitator. Catholic leader Daniel O'Connell acted both roles skillfully. He used his popular influence as a leverage to lobby powerful protestants. For example, shortly after the Duke of York's death in January 1827, O'Connell calculated an opportunity to contact and lobby the new heir-presumptive, the Duke of Clarence, for a tacit alliance.[83] Moreover, on the same day (15 January), O'Connell also planned to lobby the Whig leader, the Marquis of Lansdowne. And O'Connell's description of Lansdowne's character was similar to Bentham's idealization of Peel: contrast to "the Eldon and Peel dynasty", "He[Lansdowne] is a practical man from whom everything solid and useful may be expected. He is, besides, a man of steady principle and will not join anyone who will not join with him in some of the vital measures for securing the *Peace* and *Strength* of the Country".[84]

This period saw a "prodigious" growth of reform projects from "interested individuals" who tried to lobby the Home Office.[85] After O'Connell's tremendous success, more were agitated. Some directly contacted O'Connell for guidance. The Catholic leader was delighted to share his experience and told the Birmingham reformer, Thomas Attwood:

> *There are two principal means of attaining our constitutional objects which will never be lost sight of. The first is the perpetual determination to avoid anything like physical force or violence and by keeping in all respects within the letter as well as the spirit of the law, to continue peaceable, rational, but energetic measures so as to combine the wise and the good of all classes, stations and persuasions in one determination to abolish abuse and renovate the tone*[86]

Bentham could learn from O'Connell. Their correspondence from July 1828

[82] Joseph Hamburger, *James Mill and the Art of Revolution*, the chapter "The language of menace".
[83] O'Connell to Richard Newton Bennett, Jan. 15, 1827, in M.R. O'Connell (ed.), *The Correspondence of Daniel O'Connell*, vol. 3, Shannon: Irish University Press, 1972, p. 288.
[84] O'Connell to the Knight of Kerry, Jan. 15, 1827, in *The Correspondence of Daniel O'Connell*, vol. 3, p. 287.
[85] David Eastwood, "Men, Morals and the Machinery of Social Legislation, 1790-1840", *Parliamentary History*, vol. 13, no. 2 (1994), p. 193.
[86] O'Connell to Attwood, Feb. 16, 1830, in M. R. O'Connell (ed.), *The Correspondence of Daniel O'Connell*, vol. 4, M.R. Dublin: Stationery Office, 1977, p. 129.

exchanged opinions of many public figures, and on 2 November 1828, O'Connell wrote that "It is quite true the 'fierce extremes' mingle in our estimate of men… Nay, I am convinced that it is necessary to be warm with *our love*, to glow with our resentment".[87] O'Connell might have provided a similar description of Peel's character as the Clerk of the Council in Ordinary Charles Greville wrote, "Under that placid exterior he[Peel] conceals, I believe, a boundless ambition, and hatred and jealousy lurk under his professions of esteem and political attachment".[88]

Bentham's lobbying rhetoric has two aspects, and the idealization was combined with a language of menace. If Peel shielded the common law commissioners from a private examination, Bentham threatened to agitate the public opinion within and beyond Britain.

> *I denounce Mr. Robert Peel as being actually engaged as an accomplice in a conspiracy of Judge and Co., with whom, so unhappily for the community, the Home Secretary is a partaker in sinister interest. This war will be continued in the same spirit as that manifested in the Indications respecting Lord Eldon and the Observations on the Police Magistrates Salary raising Bill; and this with whatsoever increased advantage it may happen to have derived from the Petition which the herewith inclosed tract employs its endeavors to procure, and from the parliamentary assistance I have secured…whatever menace can contribute to the attainment of compliance.*[89]

This ideological "war" would occur in the press, petitioning campaign, and parliament, where Bentham was exploiting the "menace" for Peel's "compliance". Meanwhile, Bentham stressed that the public opinion was on his side. The "most effectual defence" of the "Judge & Co.", he argued, "consists in silence: were they to answer, the closer and more explicit the answer the wider open would be the eyes of the Judge to the badness of their cause".[90] This confidence in public opinion thus encouraged Bentham to believe that reformers should be more actively propagandizing for popular support. On the other hand, Bentham's confidence was shared by many reformers. In 1835 Mill retrospectively wondered that in most of his adult life, reformers had little hope for immediate success, but recent years witnessed a dramatic change. He even commented that "the circumstance of the present period on which the

[87] O'Connell to Bentham, Nov. 2, 1828, in M.R. O'Connell (ed.), *The Correspondence of Daniel O'Connell*, vol. 8, Blackwater Dublin, 1980, pp. 210-12.
[88] E.A. Smith, *Reform or Revolution? A Diary of Reform in England, 1830-2*, Gloucestershire: Alan Sutton Publishing Limited, 1992, p. 17.
[89] Bentham to Peel, Apr. 22, 1829, in UCL Bentham Manuscripts, box number xib, pp. 334-6.
[90] Ibid.

future historian will dwell with the greatest astonishment" about the moment of fame which certain reformers enjoyed.[91] This exceptional change had much to do "by way of stimulating discontent, formulating demands for change, and circulating arguments".[92]

However, in the current historiography Bentham had-been overshadowed by James Mill regarding their roles in the reform politics.[93] Mill took the main credit for inventing the skillful propaganda which secured the passing of the Reform Bill. This propaganda, characterized by Hamburger, is that "constitutional change could be peacefully achieved by concessions from rulers, provided rulers saw that such concession was dictated by prudence; and this required that the ruler see only the two alternatives—concession or revolution. Mill visualised the ruler as conceding to a threat of revolution; for as a rational being he would yield to the threat rather than follow the more costly procedure of resisting it. If these tactics were to be used successfully, it was necessary that the ruler really believe that revolution threatened".[94] Adding to this narrative, Bentham used a similar language of menace, and thus also deserved the credit of inventing lobbying strategies.

However, as a result, Bentham's intimidation caused Peel's hostile reply. Soon Bentham moderated the tone and explained to Peel that "no sentiment of resentment nor consequently an expression of any such sentiment will it ever elicit from me… On reconsideration of that letter of your's[Peel's]…you have misconceived me, or I you".[95] This did not persuade Peel to accept Bentham's request. In general, Peel maintained an indifferent attitude, and avoided letting Bentham acquire the information which might be used in public.

By comparison to the previous studies, which mainly focus on the ideological difference, a biographical approach reveals more of the personal dimensions of those big ideas such as radicalism and conservatism. Moreover, Lieberman and Lobban tend to pursue a structural explanation of the resilience of a moderate reform tradition, namely, the Baconian approach. This pursuit may be balanced by an effort "to put back human agency into the study of history", as Lawrence Goldman stresses the importance of biography in history writing.[96] Specifically, both Peel and Bentham

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[91] Joseph Hamburger, *James Mill and the Art of Revolution*, p. 48.
[92] Joseph Hamburger, *James Mill and the Art of Revolution*, p. 49.
[93] Bentham is neglected in Joseph Hamburger, *James Mill and the Art of Revolution*, and dismissed in Hamburger's another book with this description: "James Mill should be credited with intellectual leadership[of the philosophical radicals]…Contrary to general belief, Bentham personally had little direct contact with the Philosophic Radicals", in *Intellectuals in Politics: John Stuart Mill and the Philosophic Radicals*, New Haven: Yale University Press, 1965, p. 15; Another important study of the philosophic radicals also puts Mill in centre, not Bentham. William Thomas, *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817-1841*, Oxford: Clarendon Press, 1979.
[94] Hamburger, *James Mill and the Art of Revolution*, p. 50.
[95] Bentham to Peel, May. 17, 1829, in UCL Bentham Manuscripts, box number xib, pp. 342-44.
[96] See Goldman, "History and biography", *Historical Research*, vol. 89, no. 245 (Aug. 2016), p. 404.

were active, not passive, agents who not only consciously but also tactically chose the timing and occasion to exert their opinions of law reform.

Bentham's failure to convert Peel has been described as a piece of evidence of the resilience of conservatism.[97] Peel was more open to reforming ideas than his predecessors. He was confident that the government could take the initiative in the debates of law reform. His team of legal advisors included reforming lawyer Anthony Hammond, who was a friend of the Whig MP Stephen Lushington. To some extent, he aimed to make law reform lesser of a political question but more of a technical question that should be managed by professionals. This explains why he expressed a deferential attitude towards Bentham in September 1826. Peel was interested in Bentham's expertise and thought that continuing private contacts might alleviate the old radical's grievance against the government while exploiting and appropriating his expertise for better legal drafting. As his private letter in 1822 to Lord Liverpool suggested, when preparing an attack on the Whig MP James Mackintosh's criminal law reform measures, the government could divide the alliance of reformers by projecting an official version of reform which focused on the difficulty of technical details. "It appears to me that it will be for our advantage, and for the advantage of the question itself, to consider it in its details; not to argue as if there was some criminal code which must be maintained in all its integrity, but to look at all the offences which are now punishable with death, to select those (if there be any) which can be safely visited with a mitigated punishment, and to be prepared to assign our reasons for maintaining the punishment of death in each case in which it ought to be maintained".[98]

By monitoring Bentham through letters, Peel could also identify who were the radicals in the legal profession and then collect the material they used to marginalize them in political debates. For example, after Humphreys and Hammond were mentioned and praised by Bentham, Peel determined not to recruit them as official commissioners to investigate the law and suggest reform. When Humphreys was expecting an invitation to join the Real Property Commission of 1828, Peel used his power as the Home Secretary to exclude him.[99] For Hammond's part, Bentham's letter of 3 February 1827, which wrote that Peel had authorized Hammond's codes, was followed by Peel's decisive action to repudiate Hammond and the idea of codification in the press and parliament.[100]

Even at his most vulnerable political moment. Peel still firmly resisted Bentham's menace of war for public opinion: "I beg to assure you, that I have not the slightest

[97] Lobban, "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830", pp. 114-135; Lieberman, "The Challenge of Codification in English Legal History", pp. 1-15.
[98] Peel to Liverpool, Oct. 12, 1822, in Charles Duke Yonge (ed.), *The Life and Administration of Robert Banks, Second Earl of Liverpool*, vol. 3, London: Macmillan, 1868, p. 216.
[99] Mary Sokol, "Jeremy Bentham and the Real Property Commission of 1828", *Utilitas*, 1992, p. 239.
[100] Smith, "Anthony Hammond: 'Mr. Surface' Peel's Persistent Codifier", p. 31-2.

Objection to the Publication of the Letter which you have addressed to me".[101] Bentham seized Peel's weakness as a thin-skin minister who was often under pressure of being questioned about his character. However, Peel did not believe that Bentham could mobilize a similar level of public support as O'Connell had done for the Catholics. Rather, he expressed absolute confidence over Bentham's judgments in the leadership of law reform policies. This tendency showed publicly in 1828 when he scolded Bentham's judgment of the police salary. Again in 1830, when Peel took the initiative to tackle the very controversial question, the judicial fees, he confidently referred to his Irish experience.[102]

Moreover, in a debate against the Whig party's penal legislation, on 21 September 1831, Peel spoke that "I had not a doubt, that the new principles were now to be called into action…sanctioned by the sage of the law (Mr. Bentham)…was the restoration of mantraps!"[103] Peel might have been influenced by the law professor at King's College London, John James Park, a leading critic of legal codification and Bentham's school of law reformers.[104] In 1830, Park anonymously published a pamphlet that analyzed the politics of law reformers. The pamphlet was dedicated to Peel and warned the home secretary not to be compromised to accept Bentham's ideas.[105]

Finally, as Keith Smith observes, Peel needed "to carry the judiciary with him".[106] Peel was sensitive to the feelings of the working judges and lawyers and was directly and publicly warned to be alert of Bentham's influence. Park's pamphlet was published after the announcement of law reform as a national agenda by the government in February 1830.[107] Radicals, Whigs, and Tories then debated on how good is was to reform. The Benthamite law journal, *The Jurist*, was silent at the year. By contrast, the conservative *Law Magazine* in April 1830 published the first letter of Park's *Juridical Letters* to Peel, approving it as being "just".[108] Similarly, *Blackwood's Edinburgh Magazine* contrasted Peel's policies in law reform with his decision to support the Catholic emancipation: "Honest men, in all ages, will find it as difficult to reconcile his apostasy to honest principles…But he has incorporated his name with the legislative renown of England".[109] These public acknowledgments stimulated Peel to

[101] Peel to Bentham, Apr. 29, 1829, in ULC Bentham Manuscripts, box number xib, p. 337.
[102] Lobban, "'Old wine in new bottles': the concept and practice of law reform, c. 1780-1830", p. 131. *Hansard House of Commons Debates*, Feb. 18, 1830, vol. 22, pp. 654-5.
[103] *Hansard House of Commons Debates*, Sep. 21, 1831, vol. 7, p. 449. Norman Gash interprets this source as Peel's compliment to Bentham, see *Mr. Secretary Peel*, p. 334.
[104] Of Park's fear of Bentham's popularity, see my chapter 4 on the Law Reform Association. See also J.R. Dinwiddy, *Radicalism and reform in Britain, 1780-1850*, Rio Grande, Ohio: The Hambledon Press, 1992, p. 350.
[105] John James Park, *Juridical Letters: Addressed to the Right Hon. Robert Peel, in Reference to the Present Crisis of Law Reform* (London: 1830), pp. 12-27.
[106] Smith, "Anthony Hammond: 'Mr. Surface' Peel's Persistent Codifier", p. 38.
[107] *Hansard House of Lords Debates*, Feb. 4, 1830, vol. 22, pp. 1-4.
[108] *The Law Magazine* (Apr. 1830), p. 393.
[109] *Blackwood Edinburgh Magazine* (May 1830), p. 727.

be more careful in expressing his attitude towards law reforms, and more determined to separate himself from radicalism.

Conclusion

The conflicts with the Whig reformers in 1817 and 1818[110], and the little prospect of a reforming government, diminished Bentham's enthusiasm for lobbying British elites for radical law reform until his correspondence with the Home Secretary Robert Peel in 1826. Peel's criminal law reforms gave Bentham new hope of influencing a powerful conduit. Bentham recommended Peel to codify the common law, reduce the salary of police magistrates, reform the jury, and arrange a meeting with the common law commission of 1828 for him. Peel rejected all these requests, publicly denied any association with codification, and attacked Bentham in parliament. Bentham was not discouraged by the negative responses. Instead, he continued to nudge and exploited Peel's compromise in the Catholic Emancipation in April 1829 to devise a new strategy of persuasion, idealizing Peel's liberal character. It is argued that this relationship is more complex than previous historians have described. Both men were influenced by past personal experiences, current politics, and the prospect of a Whig government.

This article also discusses Bentham's influence on the politics of law reform. The question is about identifying those well-connected individuals and understanding the nature of their "influence". Bentham's resourceful long life enabled him to build an extensive network. He lived from 1748 to 6 June 1832, one day before the royal assent of the Reform Act. From the late 1780s, he associated with enlightened aristocrats such as Lord Lansdowne[111], well-connected conduits such as Romilly (a leading chancery lawyer and Solicitor General of 1806-7), and popular leaders such as Daniel O'Connell. This article focuses on Bentham's correspondence with the Home Secretary Robert Peel after 1826, pressing the Tory politician for codification, retrenchment of judicial officials, and democratizing the jury selection.

Of the nature of Bentham's "influence", Fred Rosen has argued that Bentham's ideas became a cultural icon in the 1820s, representing Enlightenment values, and were appropriated by people to suit their own purposes. Because Bentham's name had been linked with progressive ideals whose historical role was in the ascendency, it acquired a legitimizing power for those who were attracted to justify their personal

[110] Bentham published Plan of Parliamentary Reform, directly attacking the Whig party's moderate reform as hypocrisy. Stefan Collini, Donald Winch, *John Burrow, That Noble Science of Politics: A study in nineteenth-century intellectual history*, Cambridge: Cambridge University Press, 1983, pp. 91-126.

[111] Emmanuelle de Champs, "Jeremy Bentham at Bowood", in Nigel Aston and Clarissa Campbell Orr (eds.), *An Enlightenment Statesman in Whig Britain: Lord Shelburne in Context, 1737-1805*, Woodbridge: Boydell Press, 2011, pp. 233-248.

goals.[112] To some extent, Rosen's argument suggests that Bentham's influence could be seen as a soft power, the ability to attract rather than coerce, which shaped the preferences of audiences through appeal and attraction.[113] I largely agree with this understanding of Bentham's influence and aim to enrich it by providing more details of Bentham's epistolary "conversations".

Bentham's language in the letters was more accessible and tailored to the correspondents. To his intimate friend Romilly, who was often given the latest writings, Bentham's language was specific and bold, directly expressing his critical and real attitude towards the government and judiciary. For example, when complaining about the government's negligence to his lobbying of the benefits of the Panopticon prison, Bentham wrote to Romilly on 27 August 1802, "The enemy begins to squeak".[114] The enemy referred to the Home Secretary Lord Pelham.

To Robert Peel, a Tory politician he had attacked on 1825 in a pamphlet *Observations on Mr. Secretary Peel's House of Commons Speech, 21St March 1825, introducing his Police Magistrates' Salary Raising Bill*, Bentham's language was polite and formal, emphasizing the benefits of philosophy to Peel's liberal reputation. For example, when lobbying Peel for codification, Bentham wrote on 19 August 1826, "Your's is the option, whether to continue to be what, in appearance at any rate, you have begun to be, a *friend to mankind*, or a member of the *interior* Holy-Alliance, of oppressionists and depredationists".[115]

Was Bentham's strategy effective? It is argued that Bentham sustained Enlightenment visions through the anti-reform periods under the shadow of the French Revolution. In his letters, he defended the ideal of democracy and liberation of individuals from the sinister interest. Moreover, Bentham's defense was based on rigorous reasoning. His utilitarianism provided reformers both the ideal and the analytical terminology to criticize the established system. For example, his *Book of Fallacies* (1825) revealed and analyzed the arguments used by reformers and anti-reformers. These arguments were systematically classified by Bentham to define radical, moderate, pretend, and anti-reformers, which was a strategy to force his correspondents to clarify their attitude position, eradicating any pretension.

Edited by Liu Fan

[112] Fred Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought*, Oxford: Oxford University Press, 1992, pp. 15-6.
[113] Joseph Nye, *Soft Power: The Means to Success in World Politics*, PublicAffairs, 2004.
[114] Bentham to Romilly, Aug. 27, 1802, in J.R. Dinwiddy (ed.), *The Correspondence of Jeremy Bentham*, vol. 7, Oxford: Oxford University Press, 1986, p. 90.
[115] Bentham to Peel, Aug. 19, 1826, in Luke O'Sullivan and Catherine Fuller (eds.), *The Correspondence of Jeremy Bentham*, vol. 12, Oxford: Oxford University Press, 2006, p. 243.