AUSTRALIA FELIX

Jeremy Bentham and Australian colonial democracy

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Abstract

Jeremy Bentham considered that society should be ordered on the idea of the greatest happiness. From this foundation, he devised a democratic political system. Drawing on others’ ideas, this included: the secret ballot; payment of members of parliament; equal electoral districts; one person one vote; universal adult male and female franchise; and annual elections. It also included: a single parliamentary chamber; law made by legislation, including codification of the common law; a strong but highly accountable executive; peaceful change; and eventual colonial independence. Bentham inspired several generations of radical reformers. Many of these reformers took an interest in the colonies as fields for political experiment and as cradles for democracy. Several played a direct role in implementing democratic reform in the colonies. They occupied influential positions in Australia and in London. They sought peaceful change, and looked towards the eventual independence of the colonies.

This thesis traces the influence of Bentham, and those who followed his ideas, on democratic reform in the Australian colonies. It also examines the Benthamite input into the 1838 Charter in Britain, and relationships between the Charter and subsequent reform in Australia. The thesis notes ideas implemented in Australia that emerged from the experiences of other colonies, especially Canada. The Wakefield land and emigration system, and responsible government for the colonies, both saw their genesis in the Canadian experience, and both were theorised or taken up as causes by people who were members of the Benthamite circle.

South Australia was founded as an experiment for ideas promoted by Bentham and his followers. Liberal agitations for democracy in New South Wales and Victoria were influenced by Bentham’s followers. The successes of Benthamite reformers in the Australian colonies included the first secret ballot system as we recognise it today, introduced to parliaments in Victoria, South Australia and Van Diemen’s Land almost simultaneously.

The system of government favoured positive liberalism. Generally proponents of the small state, Bentham’s followers played a considerable role in laying the constitutional foundations that allowed the growth of the mixed Australian system, which looked both to the freedom of the individual coupled with a strong role for the state.

The thesis does not claim that Bentham’s ideas were the only influence in colonial constitutional reform. Nor does the thesis uncover activity that has not been recognised elsewhere. Rather, the thesis identifies the influence of Bentham’s ideas on actors already recognised for their role in colonial reform. The thesis adds coherence to a story that is generally presented as a series of unconnected ideas expressed in unconnected acts by unconnected actors. Recognising the Benthamite association of the relevant actors adds coherence to the story of Australian colonial democratic reform and challenges some existing interpretations. It also helps confirm the observations of some scholars that Australia is fundamentally utilitarian or Benthamite.
This thesis comprises only my original work towards the Doctor of Philosophy. Due acknowledgement has been made in the text to all other material used. The thesis is fewer than the maximum word limit in length, exclusive of the bibliography.

Signed

[Signature]
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Chapter 1: Introduction

His doctrines have become so far part of the common thought of the time, that there is hardly an educated man who does not accept as too clear for argument truths which were invisible till Bentham pointed them out. (Encyclopaedia Britannica, 1911)

Utilitarianism is acknowledged by many authors as having a particularly important place in Australia. Keith Hancock in his influential Australia suggested that for Australians a practical utilitarianism had become ‘almost a part of their national character’. Hugh Collins was more specific in his essay ‘Political Ideology in Australia: The Distinctiveness of a Benthamite Society’. He identified in Australian culture and institutions a strong association with the ideas of Jeremy Bentham. Meanwhile, an American university lecture series has been built around the topic of Bentham and Australia. Marian Sawer, too, acknowledges the utilitarian heritage, although she considers it dropped from view during the late nineteenth century. While there is a significant literature that refers to this utilitarian heritage, the subject remains undeveloped. Questions such as who brought utilitarian ideas to Australia and the scope of their influence remain largely unaddressed. Observations of the utilitarian nature of Australian society are generally made at a high level of generality. Occasionally the contribution of Bentham, or an individual or individuals associated with Bentham, is noted with a narrow specificity. Broad-ranging discussions identifying the transmission of utilitarianism to Australia and its important political

2 W.K. Hancock, Australia (London: Ernest Benn, 1930), 214.
6 Instances include Alan Atkinson, "Jeremy Bentham and the Rum Rebellion," Journal of the Royal Australian Historical Society 64, no. 1 (1978), and other works that identify Bentham’s ideas as having a role in the Rum Rebellion, referred to later in this introduction.
and cultural influences are mostly absent. Important participants in the early establishment of Australian institutions had Benthamite associations, but, while their activities and achievements are recognized, their links to Bentham and his ideas are not commonly developed in historical writing.

This thesis serves to identify the role of Bentham and his followers in an important aspect of Australian development, that of the gradual move towards democracy during the period from the 1830s to the introduction of the colonial constitutions of the 1850s. It seeks to sharpen our understanding of the intentions of some of the people influential in changes to the early political systems in the Australian colonies by providing additional context to existing accounts. The thesis contextualizes the actions of important actors in early Australian institution building, with their political beliefs and their earlier lives of political activity. The thesis is not intended to be a survey of the influence of Bentham and his followers on Australian development more broadly, but instead focusses on constitutional reform.

Bentham was born in London in 1748 and died there in 1832. His influence in constitutional, legal and social reform in Britain was most marked after his death. Even so, during Bentham’s lifetime José del Valle, the Guatemalan statesman, addressed him as ‘legislator of the world’. ⁷

As a young man Bentham picked up the idea that society should be organized for the greatest happiness. ⁸ The idea electrified him, and spurred him to reform the law and law-making processes. He accumulated many political allies who were both to assist and influence him, and he inspired several generations of reformers, some of whom played important roles in early Australian constitutional developments. ⁹

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⁹ Georgios Varouxakis and Barton Schultz, “Introduction,” in Utilitarianism and Empire ed. Georgios Varouxakis and Barton Schultz (Lanham: Lexington Books, 2005), 4. John Bowring said of Bentham: ‘He left it to others to shape and adapt to use the fabric of thought which came out continuously from the manufactory of his own brain.’ In George Grote, An Examination of the Utilitarian Philosophy (Bristol: Thoemmes, 1870), ix.
Some general observations on Australian histories and Bentham

Australian histories tend to refer to the Benthamite influence in Australia in a patchwork fashion. Bentham and his followers had a role in the development of Australian law, liberalism, democracy, economics, the anti-transportation campaign, the rum rebellion, education and colonial policy generally. Bentham’s followers held high places in British government, in Australian governments, in the public service, and in legal office. Despite this, writings drawing attention to the Benthamite connection to Australian democratic and legal development are scattered and usually brief. Moreover, recognition of Bentham and his followers’ role in Australian history is usually confined to the specialist journal or the technical book. Bentham rarely enters into the pages of more general histories. His role is almost entirely unknown to the Australian reading public. Where he does appear it is not unusual to have his and his followers’ influence minimised or viewed negatively. This seems extraordinary if Collins is correct and Australia can be cast as a Benthamite society.

Gascoigne goes some way in providing an answer as to why Bentham’s influence might have been largely overlooked. He points out that during the twentieth century ‘the themes of British and European influence which had once so dominated the subject were, for a time, overshadowed’.¹⁰ This overshadowing was in reaction to an excessively Anglocentric view of Australian history, but, he suggests, an examination of these themes and influences was now on the rise again. Gascoigne points to works by Peter Bridges,¹¹ Alan Atkinson¹² and David Malouf¹³ as examples of this re-emergence. Gascoigne himself features Bentham and utilitarianism prominently in his discussions of education, the penal system, and government, but, since he is discussing Australian developments within the context of the Enlightenment generally, his treatment is necessarily limited. Nevertheless, one cannot leave


Gascoigne’s book without being aware that Bentham’s ideas had a broad influence in Australia’s development.

There is little pattern to detect in Australian historians’ recognition of Bentham’s influence. Between the world wars a small number of articles by F.L. Wood and C.H. Currey dealing with Bentham’s influence on law, education and the Rum Rebellion were published in the Journal of the Royal Australian Historical Society. Meanwhile, however, Sweetman’s work, *Australian Constitutional Development*, and A.C.V. Melbourne’s *Early Constitutional Development in Australia*, published in 1925 and 1934 respectively, refer to the substantial contributions to colonial reform made by, for example, Charles Buller, George Grote and William Molesworth, but neither author identifies their main actors’ Benthamite connections.

The post-war discussion of the Benthamite contribution is generally either dismissive (such as Cochrane), negative, absent entirely, or made in passing. An aggressive tone can be detected in the scholarship of John Ward and Douglas Pike, which might be attributed in part to a rise of nationalist historical writing and in part to the political stance of the authors. Where the Benthamite influence is mentioned sympathetically, it is rarely developed. An example is C.H. Currey’s 1968 biography, *Sir Francis Forbes*, first Chief Judge of the New South Wales Supreme Court, from 1824 to 1837.

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16 A.C.V. Melbourne, *Early Constitutional Development in Australia* (St Lucia: University of Queensland Press, 1963). Melbourne appears to follow the model proposed by Arthur Newton, his PhD supervisor and editor of his book. Newton suggests: ‘The history of the colonies settled by a population of European descent is concerned largely with the constitutional problems dealing with their gradual acquisition of full rights of self-government and ultimately of a dominion status which differs little from nationhood.’ See Arthur Newton, *An Introduction to the Study of Colonial History* (London: Society for Promoting Christian Knowledge, 1919), 11. Newton, like his student, does not note the Benthamite connections that existed between several of the important figures to whom he refers. (30-35.)

17 See also the more recent Peter Cochrane, *Colonial Ambition: Foundations of Australian Democracy* (Carlton: Melbourne University Press, 2006), for the same tendency.

18 Ibid.
The biography refers to Forbes as a Benthamite, and yet the connection between his ideas and the Benthamite program remains unexplored.\(^{19}\)

A curious expression of awareness of Benthamite ideas, coupled with a silence, is found when comparing two works by A.G.L Shaw. Edward Gibbon Wakefield’s economic theory was promoted by the Benthamites, and implemented to significant effect in Australia at the urging of Benthamites. In Shaw’s *The History of the Port Phillip District*,\(^ {20}\) Wakefield’s policy, implemented as Ripon’s Rules, does not get a mention, nor does Wakefield. There can be no doubt that Shaw was fully aware of Wakefield’s contribution to colonial policy. Shaw edited the book *Great Britain and the Colonies 1815-1865, Debates in Economic History* which provides a thorough examination of Wakefield’s economic theories and colonial policy by ten authors.\(^ {21}\) But these are specialist essays for the economic historian. Shaw seems to have made an editorial decision about his more popular work compared with the more technical discussion.

An example of mixed recognition is found in Robert Hughes’ *The Fatal Shore*. In a discussion of land policy of the 1830s Hughes describes William Molesworth as a “‘Philosophical Radical,” a follower of Bentham and Hobbes’.\(^ {22}\) However, Hughes portrays Wakefield’s policy as though it was designed to exclude the poor from the land, which is, in fact, opposite to the intended effect.

Additional brief references to Bentham and utilitarianism are made in disparate works during the post-war period. For example, in Gordon Greenwood’s *Australia: A Social and Political History* (1955), McNaughton contributes an essay arguing that the Benthamite principle of the ‘good of the greatest number’\(^ {23}\) can be seen as underlying

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the shift of power from squatters to the cities. Crauford Goodwin’s *Economic Enquiry in Australia* (1966) refers to Bentham twice, once in the context of the colonial reformers and population policy, and once in relation to university curricula. The references are muted, however, and barely contextualised within the broader discussion of colonial economics. J.A. LaNauze’s *Political Economy in Australia* (1949) does not specifically identify utilitarianism in Australia, though it does point to the important influence of J.S. Mill. L.J. Hume addresses some aspects of the influence of utilitarianism in Australia, but despite being a Bentham scholar, his treatment of Australian political formation is limited. He addresses the nature of Australian utilitarianism in the early 1800s in his chapter ‘Foundations of Populism and Pluralism: Australian Writings of Politics to 1860’, in Geoff Stokes’ *Australian Political Ideas*, referring to four main streams of political debate at the time, which he identifies as liberalism, utilitarianism, civic republicanism and various forms of populism. The article is useful, but his attention to utilitarianism is limited by the broad nature of the topic he is addressing in the short article. Hume's major work, *Bentham and Bureaucracy* is relevant to Australia, but does not address Australia directly.

In all, there is very little pattern to the various levels of treatment given Bentham and his followers. It would be convenient to paint a picture of a rise in interest prior to World War Two, drying up with a post-war nationalist interpretation, and a subsequent re-emergence, but that would not account for the absences in Sweetman and Melbourne’s works, nor would it account for the various positive, neutral, and critical references to Bentham scattered through the post-war period. The best that can be said is that some authors appear to be content to assign a significant role to the Benthamites, and are happy to draw it out a little, though leaving the theme largely undeveloped, while others prefer to concentrate on other matters. Some post-war

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24 Ibid., 109.
scholars have succumbed to a temptation to find a degree of fault that is not supported by the evidence.

**Review of chapters and prior scholarly treatment**

Chapter two briefly examines the background to radicalism in Britain and the evolution of Bentham’s ideas. It contextualises the ideas of the philosophical radicals with Bentham’s own ideas, and also notes how Bentham’s ideas diverged from other forms of radicalism. The chapter serves as background for discussion in the remaining chapters. The chapter includes a discussion of differences in Bentham’s thought over the period of his life and contextualises his ideas with events. Several key points emerge. The first is that Benthamite radicalism was not based on revolutionary doctrines of natural rights, and did not eschew the concept of property. His was seen as a home-grown philosophy by the English, and thus its radical aspects were more acceptable than continental ideas based on natural rights and social contract. Second, Bentham’s ideas in relation to colonialism changed over time. There has been some discussion of this evolution, with Donald Winch, Lea Campos Boralevi, and Philip Schofield contributing. The thesis refers to these discussions which suggest that, in brief, the shifts in Bentham’s ideas reflect an inconsistency (Winch), that they adjusted in response to the idea of ‘sinister interest’ (Schofield), and that Bentham’s thought is consistent with utility, but shifts according to prevailing circumstances (Boralevi). The chapter notes in addition to these observations that Bentham’s thought was linked to the interests and concerns of his contemporaries, and that to some extent he took up issues and reached conclusions consistent with prevailing thought and attitudes, but he added utilitarian analysis to the discussions. He thus provided a very different foundation for reform objectives that already had some currency.

Chartism, discussed in chapter three, was an influential force in the promulgation of democratic ideas both in the United Kingdom and Australia. Radical Benthamites strongly supported the peaceful implementation of the points of the Charter. Many immigrants arriving in Australia came imbued with Chartist ideals. Moral force

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Chartism set the tone for democratic reform in the Australian colonies. Important figures in Australian political history were influenced by or associated with Chartism. Henry Parkes, known as ‘the father of federation’, was influenced by moral force Chartism during his youth in Birmingham. Henry Chapman, who drafted Victoria’s secret ballot legislation, had been closely associated with the authors of the Charter during the 1830s in London, and with campaigns for electoral and constitutional reform both in England and Canada. John Roebuck, co-author of the Charter, was active in Canadian democratic agitation, the outcome of which was influential in subsequent events in Australia. Several of the leaders of the 1854 campaign for a change to gold licence laws at Ballarat were moral force Chartists. Moreover, in Britain, several people influential in the creation of the colonial constitutions had also been supporters of the Charter. Thus, for example, William Molesworth, an important colonial reformer, had been a member of the London Working Men’s Association. The connection between Bentham and Chartism is closer than is ordinarily supposed, and this relationship is drawn out in chapter three.

The six points of the Charter were a recipe for how the interests of the people could be made manifest in government. The points were: uniform electorates, secret ballot, adult male franchise, annual elections, paid members, and no property qualification for members of parliament. People from all sectors of British society came to Australia inspired with the principles of the Charter. Four points of the Charter were implemented in several Australian colonies by the mid-1850s, with important contributions by people who associated themselves with Bentham and his ideas. This represents a substantial achievement for Benthamite political reform. As Eddy puts it:

Benthamism did not reach Australia ‘disembodied’ even if those ‘who prevailed in the colonial political struggles of the nineteenth century were, consciously or unwittingly, bearers of these ideas’. Chartism, for example, was an inspiration to many colonial

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31 The Charter was initiated and written by this Association. Molesworth, 1810-1855, was 8th Baronet of Pencarrow.

politicians… Bentham gave a justifying philosophy concerning suffrage, and the change to be brought about by representation rather than revolution, and the fruits to be gained by the alliance of the reformist middle- and working-classes. Yet by the 1860s, as W.K. Hancock points out, ‘Within ten years of the discovery of gold, practically the whole political program of the Chartists is revealed in the Australian colonies’, whereas it had failed utterly in Britain.  

In this thesis I develop the argument that Benthamite ideas were important to the Charter and to the moral force version of Chartism influential in Britain and Australia. I do not claim that this was the only influence on political developments, but that Benthamism was an important and often overlooked component to political developments in Australia. 

After examining the Benthamite contribution to, and ambitions for, Chartism in chapter three, chapter four considers early political reform in Australia. This chapter helps to provide continuity between the state of political thought and ambition in England, and the early laying down of colonial institutions, culminating in the 1850s colonial constitutions. The chapter traces the evolution of representative institutions from the earliest days of the colonies. There is continuity between the ambitions of the Benthamites for the Charter and the ambitions of the Benthamite reformers in Australia. Thus the names of Roebuck, Molesworth and Chapman appear as participants in both the story of the Charter and the story of colonial democratic constitutional reform. In fact the two spheres of influence might be characterized as a part of a single project – that of developing the ideas for, and establishing the conditions for the peaceful transition to democracy in the British world. The chapter examines the ambitions of the Wakefield system for democratic development, and its Benthamite associations. It includes a commentary by Bentham on the foundation of

South Australia, and a reference to the Benthamite vision for democracy to arise from colonisation. It establishes the democratic credentials of the Benthamite utilitarians first by discussing their role in the agitation for the passing of the Reform Bill in 1832, and then examining their role in the long work towards the implementation of democracy in New South Wales. The discussion considers the influence of the Durham Report of 1838, seen by many during the period as extremely influential in democratic reform in the colonies. The role of Benthamites in the anti-convict campaigns is then briefly examined, in particular as it reflected an increasingly empowered populace. The final stage of constitutional reform in Victoria and New South Wales leading up to and including the 1850s constitutions is next examined. The implementation of these constitutions stands as confirmation of Harriet Grote’s observation that, in England, revolutions ‘proceed silently and in a leisurely way’.\(^{34}\) As noted above, the constitutions are referred to by Hancock as having put into place most of the Chartist program. What has not been recognized previously is that some of the main actors in colonial democratic reform were closely associated with those who created the Charter itself.

Many important topics identified in Australian historical scholarship covering the period discussed in chapter four have a strong Benthamite component. This is sometimes recognized in scholarship, though mostly not developed. Important examples are in the discussion of the Wakefield land system and transportation.

The economic theories of Edward Gibbon Wakefield were deeply influential in land law and the economics of colonialism after 1830. Bentham gave Wakefield’s theories his stamp of approval in 1831, and they were subsequently implemented in Australia as Ripon’s Rules in 1831 after agitation by Bentham’s followers, including John Stuart Mill, an early supporter.\(^{35}\) Wakefield’s influence was broad. Richard Mills, in

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\(^{35}\) Richard Mills, *The Colonization of Australia, 1829-42 – the Wakefield Experiment in Empire Building* (London: Sidgwick & Jackson, 1915). See also Shaw, ed. *Great Britain and the Colonies 1815–1865*, in which several of the authors make much of Bentham’s connection with Wakefield’s economics and theory of colonization, including ‘Introduction’ by Shaw,
his *Colonization of Australia*, published in 1915 from his PhD completed at the London School of Economics, noted that of Wakefield’s ideas one was the most resilient:

the Wakefield theory had a definite political as well as a social and economic side. Indeed, this was the only permanent part of the Wakefield system, for it was especially in the direction of responsible government for colonies that Wakefield and his followers achieved lasting results.\(^{36}\)

The English philosopher, Henry Sidgwick, declared that the Colonization Society, which promoted Wakefield’s ideas, represented ‘one of the most remarkable triumphs of constructive theorising that English history has to show’ and continues ‘We may fairly attribute the success of Australia and New Zealand to the Colonization Society.’\(^{37}\) While this is a high claim, it helps illustrate the nineteenth century perception of the importance of Wakefield’s economic theory, echoed in the early twentieth century by Graham Wallas, in the foreword to Mills’ *Colonization of Australia*:

> Australia and New Zealand have made a better start in social organization than Cuba or Paraguay, and … they owe that better start largely to the fact that Wakefield and his followers forced the British Government in the critical years of 1830 to 1845 to awake from its absence of mind.\(^{38}\)

In addition to Richard Mills’ work, a focus on the Benthamite influence and heritage in Australia, including the influence of Wakefield, can be found in the British historian Harrop’s 1928 work, *The Amazing Career of Edward Gibbon Wakefield*.\(^{39}\) This work provides a useful account of the development of Wakefield’s ideas and their implementation in Australia, is mindful of the Benthamite connection, and

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indicates the survival well into the twentieth century of a strong association between
Wakefield’s ideas and the successful creation of new colonial societies.

Wakefield’s ideas underpinned the foundation of South Australia. This is covered in
Mills’ and Harrop’s works, and is also an important theme in the work of South
Australian historian Douglas Pike, published in 1957. Pike’s view of the Benthamite
influence is mixed. On the one hand Pike accepts that Benthamite policies played a
sufficient role in the foundation of South Australian democracy for Bentham to be
considered a founder of South Australia.\(^{40}\) On the other hand, Pike identifies
Benthamite policy (in particular the Wakefield system) with the creation of an
inescapable agricultural serfdom.\(^{41}\) John Ward’s 1976 work, *Colonial Self-
Government – the British Experience*, echoes this second, critical vision of the
Benthamite contribution to Australian development. In *Colonial Self-Government*
Bentham is referred to from time to time, and even receives something approaching
recognition for his objection to gubernatorial power in 1803 in *A Plea for the
Constitution*.\(^{42}\) The key reference to Bentham and his followers, however, occurs with
the description of the attitudes of the political economists to colonisation. Here the
philosophical radicals, with Bentham, are said to have been ‘authoritarian reformers’
who found the idea of ‘the colonies in tutelage’ attractive.\(^{43}\) Wakefield is described as
a ‘social conservative’ who ‘deplored the march to revolution’\(^{44}\) and his system was a
‘systematic, middle class colonisation’. According to Ward, for Wakefield democracy
was ‘a threat to stability’ and might lead to a revolution of property that would destroy
society.\(^{45}\) Pike and Ward represent a post-war nationalist perspective.

\(^{41}\) Ibid., 81.
\(^{42}\) John Ward, *Colonial Self-Government – the British Experience 1759-1856* (London:
Enormities Committed to the Oppression of British Subjects, Innocent as Well as Guilty, in
Breach of Magna Charta, the Petition of Right, the Habeas Corpus Act, and the Bill of Rights;
as Likewise of the Several Transportation Acts; in and by the Design, Foundation and
Government of the Penal Colony of New South Wales; Including an Inquiry into the Right of
the Crown to Legislature without Parliament in Trinidad, and Other British Colonies,” in *The

\(^{44}\) Ibid., 227.
\(^{45}\) Ibid.
While the contribution of several Benthamites in the anti-transportation movement and other major political and constitutional developments of the mid-nineteenth century is frequently recognized, their Benthamite affiliations are often overlooked. Sweetman’s work, *Australian Constitutional Development*, and A.C.V. Melbourne’s *Early Constitutional Development in Australia*, referred to above, do not identify their main actors’ Benthamite connections. As a result, much context is missing from the discussion.

However, Bentham’s contribution to anti-transportation sentiment was discussed by F.L. Wood in 1933. Later, Ruth Knight’s biography of Robert Lowe, an important figure in the anti-transportation movement and in the lead up to the mid-century colonial constitutions, identifies him as a Benthamite. John Hirst, too, in *Convict Society and its Enemies*, suggests that Bentham has a significant place in early anti-convict agitation, particularly in regard to his *Panopticon versus New South Wales* (published in 1802) in which Bentham argued for a reforming imprisonment rather than a punishing colonial exile. Hirst states that Bentham stimulated a twenty-year battle against the convict system by inspiring, he implies, Romilly, Mackintosh, and Lord Brougham with his principles for law reform. However, Hirst’s is typical of works which mention the contribution of other utilitarians without mentioning their politics or political associations. Only a few pages after referring to Bentham, Hirst refers to the ‘Radical’ Molesworth without providing a context for his radicalism.

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46 Sweetman, *Australian Constitutional Development*.
47 Melbourne, *Early Constitutional Development*.
48 See also the more recent Cochrane, *Colonial Ambition*, for the same tendency.
52 Ibid., 15.
53 Ibid., 26.
Hirst is right to privilege the role of followers of Bentham in convict reform, but he does not explain their connections, or their philosophical position.  

The period discussed in chapter four also saw the Rum Rebellion and the establishment of local councils. In relation to the rebellion, Alan Atkinson argues that the ideas in Bentham’s pamphlet *A Plea for the Constitution* were picked up around 1804 by John Macarthur, a leader of the rebellion, and kept in reserve until the appropriate occasion arrived for their use – in this instance a property dispute coupled with more general complaints.

The introduction of local councils into the Australian colonies is discussed by A.G.L. Shaw, referring to the contributions of Lord Durham and Poulett Thomson. Both had strong connections to Bentham. Shaw does not mention the association. Instead, he associates the impetus for the establishment of municipal government with ‘current progressive ideas’, and directs his readers to de Tocqueville’s writings.

Bentham’s influence was not confined to the legislature and elite activists. Terry Irving’s *The Southern Tree of Liberty*, dealing with the period covered in chapter four, provides a useful reminder of the influence of Bentham’s ideas at a grass roots level in Australia. The book, which, in Irving’s words, ‘tells the story of the mobilisation of the working classes, the turbulent street crowds’, includes a description of the

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operations of the Mutual Protection Society in Sydney. The society was devoted to radical constitutional change which would elevate the interests of the working class during the early 1840s. James McEachern in *The Guardian* in 1842 described the society as supporting ‘Constitutional Radicalism’. Irving provides a précis of McEachern’s article: the radical understanding of constitutionality was ‘based on the writings of Bentham and Lord Durham [and] relied not only on the positive rights recognized by the constitution, but on principles prior and independent to these, such as rectitude and justice, as defined in the phrase, “the greatest good of the greatest number”. James Mill was likely to have been another influence’.59 While Hirst suggests that in New South Wales during the 1840s and 50s there was no mass agitation for democracy, Terry Irving’s *The Southern Tree of Liberty* does provide evidence of such agitation, however, there was not anywhere near the level of violence associated with the European revolutions.60

Chapter four helps to order, contextualize, and expand upon some of these Bentham-related contributions to reform referred to in the existing historical literature. While it focusses on the contributions of the Benthamites, it does not stray far from the mainstream histories such as those of Melbourne, Sweetman, or more recently, Peter Cochrane’s *Colonial Ambition*.61 The main characters are the same, with the major difference being that in this thesis the Benthamite associations are drawn out in an effort to provide a useful context for political change. Thus, the chapter helps open up an understanding of the role of the Benthamites in Australian political development.

Chapter five further discusses the influence of the Benthamites, and Benthamite ideas, in Australian politics. While chapter four is primarily a discussion at the institutional level, chapter five examines the implementation of Benthamite ideas in Victoria, South Australia, and New South Wales through the politics of three figures: Henry Chapman, George Kingston, and Henry Parkes. The discussion is broadly around the move towards democracy.

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59 Ibid., 130.


61 Cochrane, *Colonial Ambition*.
Not much has been written on Henry Chapman and there is no extensive biography.\textsuperscript{62} This might seem surprising considering his role in theorising responsible government in Australia and in drafting the legislation for the first manifestation of the secret ballot as we understand it today. Chapman attended at least one Sunday meeting of the London Working Men’s Association in London, supported the Association with at least one donation, and corresponded with William Lovett. As a young man he worked for John Roebuck’s electoral campaign in Bath in 1832. Chapman also worked with Roebuck during the mid-1830s, producing pamphlets promoting political change including electoral reform. Chapman later worked as a judge in New Zealand and Van Diemen’s Land, after which he went to Victoria where he introduced his electoral legislation.

Unlike Chapman, a published biography exists for G.S. Kingston, but it concentrates on his architectural achievements.\textsuperscript{63} The published work is taken from the author Donald Langmead’s 1983 PhD thesis.\textsuperscript{64} The thesis covers Kingston’s political involvement in more detail and is a useful resource.

Kingston was on one of the ships leaving London in March, 1836 to found the colony of South Australia. His involvement with the South Australia project commenced in 1834 when he joined the South Australian Association. During his period in London he assisted the Society with its efforts in selling land and lobbying for the legislation to found South Australia to be passed in parliament.

Kingston’s influence was felt throughout the first forty years of the colony. As a member of parliament, Kingston worked for democracy. Like Chapman in Victoria, Kingston was influential in the passing of the first secret ballot legislation in South Australia.

Parkes is the only person in this study without a direct association with the Benthamites based in London. Rather, he represents the influence of moral force Chartism on a generation, and the more diffuse influence of Bentham’s ideas in


\textsuperscript{63} Donald Langmead, \textit{Accidental Architect} (Darlinghurst, NSW: Crossing Press, 1994).

\textsuperscript{64} Donald Langmead, "George Strickland Kingston: Pioneer and Architect" (PhD, Flinders University, 1983), 54.
relation to what government was for and how it should be constructed. It is notable that his coming to Australia was enabled through his participation in the Wakefield scheme, which included fully funded immigration from the sale of land in the Australian colonies.

During Parkes’ newspaper and parliamentary career he looked from time to time to Bentham’s work to make his arguments, but his direct references to Bentham were limited. He did, however, act as a ready sponge for ideas identified with Bentham and his followers. For example, he enthusiastically adopted Cobden’s free trade doctrines, while at the same time developing the operations of the state. While championing free-trade he was not averse to using government to provide services and ameliorate hardship. His actions can be reconciled with Rosen’s reading of Bentham’s form of liberalism as ‘security liberalism’, where the state can intervene to help achieve the greatest happiness.65

Chapter six discusses the nature of Benthamite liberalism and how it might be seen to manifest itself in Australia. Bentham is often characterised as having opened the way for the rise of the powerful state. In this respect, Michael James makes the point that for Benthamites liberty is not the primary concern. The primary concern is the greatest happiness.66

Collins, Wallas, and Hancock’s references to Bentham or utilitarianism have been referred to above. Some other scholars have reflected on the broad effects of a Benthamite influence in Australia, suggesting that it has had an important role in shaping Australia’s society and institutions. James Walter has examined the influence of the theories of Bentham and J.S. Mill on the development of a unique strand of liberalism in Australia that included a substantial role for the state, suggesting that the influence was more profound in the colonies than in Britain.67 In this vein, for Halévy, Bentham’s philosophy was dangerous. It was ‘essentially a philosophy written for

legislators and men engaged in government, that is to say for men whose profession it is to restrict liberty’. He states these people will ‘see to it, by despotically and methodically imposing suffering on individuals, heedless of their instinctive and sentimental protests, that finally and on the whole the sum of pleasures shall outweigh the sum of pains’.\(^6\) Similarly, for Tim O’Neill, a recent observer from the United States, the Benthamite qualities of the Australian system of government appear intrusive upon liberty.\(^6\) Melleuish, in The Power of Ideas, suggests that while scholars have painted utilitarianism in Australia as a sign of modernity, in fact utilitarianism has a longer history, including in absolutist states.\(^7\)

By contrast, Rosen has characterised Bentham as creating a liberalism concerned with the security of the individual, a security that helps provide for the development of the individual, while otherwise restraining the state.\(^8\) It is this manifestation of Benthamism that Hugh Collins refers to in his article Political Ideology in Australia: The Distinctiveness of a Benthamite Society. Collins suggests that the institutional means developed by Bentham (and substantially implemented in Australia) ‘reconcile the pursuit of individual interest with the achievement of the sovereign interest or greatest happiness’.\(^9\) Collins proposes that Benthamism in Australia satisfies neither

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\(^6\) Elie Halévy, The Growth of Philosophical Radicalism (London: Faber and Faber, 1972), 74-5. See also Alexis de Tocqueville, Democracy in America, trans. Henry Reeve, vol. 2 (New York: Century, 1898), 393, discussing the potential for democracy to become a soft despotism in which laws soften, bend, and guide. ‘Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd’.


those who seek small government nor those who seek an all-embracing economic role for government.\textsuperscript{73} Similarly, Michael James notes that for the observer from the left the system does not sufficiently promote or open the way for socialism.\textsuperscript{74} Despite these references in Australian historical writing, Benthamism has been underemphasized in attempts to understand the implementation of the various shades of liberalism and socialism in Australia, and in particular little account has been taken of the flexibility of Benthamite doctrine and its ability to accommodate and modify a variety of systems. The options offered by various ideologies become a storehouse of potential policy, to be selected according to the deeper foundation of utilitarian well-being.

Chapter six refers to the book \textit{Republicanism and Responsible Government}, by Benjamin Jones.\textsuperscript{75} Jones proposes that the mid-nineteenth century democratic movement in many of the settler British colonies, including Canada and Australia, had a significant positive liberal element. He attributes this to a civic republican tradition derived from classical Rome and Greece, including the tradition of the virtuous

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\bibitem{Collins} Collins, "Political Ideology in Australia," 154.


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citizen. This, he argues, encouraged in Australia the qualities of collectivism and a concern for the common good.\textsuperscript{76} Chapter six discusses Benthamism from the perspective of positive liberty, finding that the Benthamite state can indeed have a strong capacity to interfere in the lives of its citizens. Benthamism is therefore consistent with Jones’ observations about positive liberalism in Australia, however, I conclude that Benthamism might be a more immediate source of positive liberalism than classical virtue.

\textbf{Methodology}

This thesis was begun with a simple hypothesis – that Bentham’s ideas have played a significant role in the development of Australia. This hypothesis was developed as a result of my becoming acquainted with Ripon’s Rules and their origins while writing my honours thesis, and from subsequently reading Richard Mills’ \textit{Colonization of Australia}, John Gascoigne’s \textit{The Enlightenment and the Origins of European Australia}, selections from Thomas De Quincey’s collected works, Thomas Carlyle’s \textit{Sartor Resartus}, and, some time later, Hugh Collins’ ‘Australia as a Benthamite Society’. Collins referred to, among other things, Chartism, individualism, collectivism, the role of legislation in Australian political life, and an Australian resistance to political polarity, as having a relationship to Benthamism. Despite many years of tertiary education, I had been largely unaware of Bentham, and had been completely unaware of the Australian connection. Moreover, there was no comprehensive text on his influence.

\textit{Context and intention}

This thesis became an exercise in uncovering context and authorial intention for various documents and individuals important in the Australian colonial democratic reforms of the 1850s. Quentin Skinner notes the importance of context and authorial

\textsuperscript{76} Ibid., 102.
intention in intellectual history.\textsuperscript{77} While this thesis is not an intellectual history, but rather the story of the implementation of a series of proposals for institutional and social reform made by Jeremy Bentham and his followers, Skinner’s observations remain relevant. For example, an important text examined in this thesis is the 1838 Charter for democratic reform, and the context of its production produces an interesting link with Bentham and with Australian constitutional reform. An examination of the authors’ biographical details gives some insight into the intention behind the document and helps us understand some aspects of the Charter hitherto overlooked.

Skinner identified two competing modes of analysis in writing intellectual history current at the time of his article. The first involves taking important works in the history of ideas autonomously, without placing them in the context of their creation. The second emphasises the context of the works examined. The former, he observed, is prevalent in the history of ideas. The method’s proponents, he suggested, argue that ‘any attempt to reconstitute the “total context” is ‘gratuitous, and worse’.\textsuperscript{78} Skinner argues that the first approach can create distortions, including: the elision of contradictory or awkward elements,\textsuperscript{79} the attribution of influence on a work which was in fact absent;\textsuperscript{80} and the false attribution of meaning, confusing what might be meaningful in a text to us today with the actual intention of the author.\textsuperscript{81} For the second approach, Skinner’s support is cautious. We must not, he reminds us, forget that while context is important and can help overcome some of the limitations of the autonomous approach, so too authorial intention is important.\textsuperscript{82} Therefore we must try to understand not only context, but how the author intended to be understood by others, and how the author understood his or her own work.\textsuperscript{83} Did the author, for

\begin{itemize}
\item[78] Skinner, "Meaning and Understanding in the History of Ideas," 29.
\item[79] Ibid., 38-40.
\item[80] Ibid., 45.
\item[81] Ibid., 44.
\item[82] Ibid., 59.
\item[83] Ibid., 63.
\end{itemize}
example, in failing to consider something we might consider important, do this deliberately? Skinner concludes ‘that to concentrate either on studying a text in itself, or on studying its social context as a means of determining the meaning of the text, is to make it impossible to recognise – let alone to solve – some of the most difficult issues about the conditions for understanding texts’. He thus further concludes that ‘it must be a mistake even to try either to write intellectual biographies concentrating on the works of a given writer, or to write histories of ideas tracing the morphology of a given concept over time’.

The phrase ‘concentrating on the works of a given writer’ should be taken, in context, to mean ‘concentrating [solely] on the works of a given writer’. Skinner provides an example where a discussion of Machiavelli’s work is substantially enhanced by reference to external materials:

The fact that The Prince was in part intended as a deliberate attack on the moral conventions of advice-books cannot be discovered by attending to the text, since this is not a fact contained in the text… no-one can be said fully to understand Machiavelli’s text who does not understand this fact about it.

For Skinner, context and authorial intention can be seen as a framework to understand what someone might have intended to communicate. This includes, suggests Skinner, an interest in the biographical details of the author. James Tully notes that this also includes an examination of normative language and ideology.

Many authors have written against Skinner’s prescription, suggesting it is little more than a ‘straitjacket’, a ‘waste of time’, and without practical value. The essence of the many critiques appears to be that Skinner’s methodology is far too prescriptive. Nevertheless, Skinner’s desire to find meaning not just from central texts, but to go

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84 Ibid., 62.
85 Ibid., 63.
89 Ibid., 10-14.
further to discover context, and to delve further again to uncover the author’s intention and understanding, is a useful guidepost to researching and writing history, be it an intellectual history, or, like this thesis, the history of the application of a set of ideas.

A balance between written texts, context, and authorial intention is key. Important texts must be understood not only for their own internal logic, but by an examination of surrounding works, biography, ideologies, language, or other clues, to provide meaning. The choice of contextual sources, and the distance they take us in understanding our primary subject, is loosely dictated by another of Skinner’s observations: ‘the decisions we have to make about what to study must be our own decisions, arrived at by applying our own criteria for judging what is rational and significant’. There are value judgements to be made. Interpreting Skinner, Kari Palonen suggests that the point of a classic text is easier to define when it is examined in context with available sources. In practice, Skinner’s argument implies that where surrounding sources are abundant, context and authorial intention, and thus meaning, is likely to be more readily found.

Many of the aspects of historical enquiry that Skinner elevates are reasonably unproblematic in the case of Bentham and his followers. We have not only their primary works such as books and treatises, but we have their letters, parliamentary speeches, parliamentary enquiries, journals and reviews, newspaper articles, biographies and autobiographies. This fund of material can and does create its own ambiguities and have its own silences, it is true. Nevertheless, that there is a large and useful record of materials from the nineteenth century in relation to this influential cluster of people provides the enquirer with a solid base. This includes a substantial commentary on the Benthamite line of thought by competing figures of the age, which is similarly supported by copious materials.

The people profiled in this thesis either looked to Bentham for inspiration, or took on doctrines that had a strong and overt Benthamite influence. The thesis attempts to

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93 Skinner, "Meaning and Understanding in the History of Ideas,” 63.
understand what Bentham and his followers sought to achieve by their interventions. The methodology is uncomplicated. Skinner admired Geoffrey Elton’s method, a craftsmanship model, by which the questions asked are ‘forced by the material upon the historian’. This method informed my first realisation of the Benthamite influence, and I continue to follow it.\(^{94}\) The hypothesis was investigated by reading works about, and works by, key constitutional figures, and also reading key constitutional texts of the age. Economics, colonial independence, education, codification and transportation and a discussion of liberalism make an appearance alongside this central investigation. I have tried to provide a new context to enhance our understanding of Australian colonial political reform. I have also explored some established topics, such as Chartism, through the lens of Benthamite involvement.

As one travels further from Bentham’s own times, the ability to identify a Benthamite legacy becomes more difficult. Nevertheless, I am fortunate that many of the early reformers in matters relating to Australia self-identified as being influenced by Bentham, were friends with each other, and worked in relative unity towards common political goals. As with any political group, they had disagreements and sometimes diverged in their ideas, but, at least in relation to democracy, theirs was a broadly common ideal.

Many of those who took their ideas from Bentham adapted them. In relation to democracy, however, the fundamental ideas remained the same. These were based on the most important idea of all, that individual happiness should be the basis for social formation. This idea is not exclusively Benthamite, but the Benthamites had much to do with making viable the implementation of the philosophy within a practical political system.

**Entangled history**

A useful way to conceptualise the Benthamite influence in Australia is to consider Eliga H. Gould’s idea of entangled history.\(^{95}\) Countries and regions are

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\(^{94}\) Skinner, "Some Problems in the Analysis of Political Thought and Action,” 281.

interconnected. People, ideas, political formulations, and material goods move from one place to another. Tracking the influence of a political idea reveals a part of this interconnectedness. As noted by Arthur Newton in 1919, Australian colonial history is connected with the histories of other British colonies and ex-colonies, in particular Canada, New Zealand, and the United States.96

In this thesis, Canada features in the development of Wakefield’s ideas, referred to in chapter four. Canada is also important to the discussion of the development of responsible government for the colonies. The United States served as an example to London Radicals and the new Australian colonies of what was possible and what was to be avoided. New Zealand was developed along very similar lines to Australia, substantially influenced by the Wakefield economic theory. Henry Chapman, an important figure in this thesis, was active in London and several colonies. Of him, Chief Justice Sir Robert Stout stated:

I do not know of any other man who had been associated in the development of the colonies of Canada, New Zealand, Tasmania, and Victoria. In all of these colonies [he] took up a public and distinguished position.97

The histories of the Australian colonies are entangled with each other. In chapter five, an examination of the implementation of the secret ballot in the three colonies of Victoria, South Australia, and Tasmania suggests co-operation between the colonies. Australian development is also entangled with developments in Britain. Settlers brought Chartist ideas with them to Australia, where they were rapidly implemented, supported by key officials in Britain.

An understanding of the Benthamite association of various constitutional and policy matters helps to provide some unity to what otherwise might appear quite disparate developments. The attitudes of the Colonial Office, constitutional change including innovative electoral laws, economic policy, social development, and legal development can all be better understood in the Australian context where a common Benthamite association is recognised.

96 Newton, An Introduction to the Study of Colonial History, 11, 30-5.

This thesis examines the advance of democratic institutions, as devised by Bentham and his followers, in the colonial setting in Australia. It begins in London with an examination of an important episode in the promulgation of those liberal ideas, the campaign for democratic reform promised by the Charter of 1838, as written by Bentham’s followers.
Chapter 2: Bentham, radicalism, utilitarianism, and the philosophical radicals

Benthamite radicalism was part of a broader movement in Britain for constitutional change. This chapter first outlines what is meant by Benthamite utilitarianism in its political sense. The chapter then refers to some assessments of Bentham’s influence. English radicalism is briefly examined in the third part, in order to provide a context for Bentham’s reformist activities. After this a short section identifies characteristics which were broadly in common between the philosophical radicals (followers of Bentham) and the ideas they shared with Bentham himself. This discussion is extended into an examination of the attitude of Bentham and the philosophical radicals to colonisation. The chapter is designed to provide some background for the discussion in the following chapters.

Utilitarianism

Bentham defined utilitarianism as ‘that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question’.\(^98\) This is based on the idea that ‘Nature has placed mankind under the governance of two sovereign masters, pain and pleasure.’\(^99\) This principle can be applied to the individual, but can also be a principle for the foundation of government.

As a political idea, Benthamite utilitarianism proposes that society should be ordered to maximise happiness in the population. As a result Bentham was an early advocate of democracy. Bentham’s journal, the Westminster Review, declared:

> If the happiness of men was the object of government, it was plain that this object was to be obtained by their being governed with a view to their own interest, and not to the


\(^{99}\) Ibid. 11.
interest of somebody else. The way to effect this was that they should govern themselves.\textsuperscript{100}

Thus Alfred Deakin\textsuperscript{101} could remark of the utilitarian John Stuart Mill that he was a democrat by ‘intellectual necessity’.\textsuperscript{102} Bentham, and many of his followers, became active in the campaign to implement democracy in Britain and the colonies. Several leading figures in the story of the move to democracy in Australia were utilitarians with strong associations with the Benthamite school. Through their combined efforts, Bentham and his followers helped develop a program for constitutional reform, the most complete early adoption of which was in British colonies, including Australia. Bentham and his followers rejected the idea of liberty through the rights of man. Rather, constitutional design should align the interests of the ruled and the rulers, the guiding principle being to maximize happiness.\textsuperscript{103}

Many of Bentham’s ideas were not wholly original. John Stuart Mill, an early follower and later adapter of Bentham’s ideas, suggests Bentham’s chief contribution was his method – that of bringing science to philosophy, of ‘breaking every question into pieces before attempting to solve it’.\textsuperscript{104} As Mill pointed out, Bentham did not

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\textsuperscript{100} “Greatest Happiness Principle,” 263.
\textsuperscript{101} Member of Parliament, colony of Victoria, 1879, 1880-1901; Prime Minister of Australia, 1903-4, 1905-8, 1909-10.
\textsuperscript{102} Alfred Deakin, \textit{The Age}, 5 June, 1878. Mill’s utilitarianism was deeply indebted to Bentham’s influence. While Mill objected to the idea that all pleasures might have equal value, he retained a strong respect for democracy, though fearing the potentially baleful influence of majoritarianism. John Stuart Mill, “Autobiography” in \textit{Collected Works}, vol.1, 200-1, 259-62. While most utilitarians in the Benthamite line were democrats, at least one, John Austin, preferred rule by an elite. See ‘Introduction’ by Sarah Austin in John Austin, \textit{Lectures on Jurisprudence or the Philosophy of Positive Law} (London: John Murray, 1869), 20. Note that Melleuish observes that ‘Absolutist states were often based on ideals that were essentially utilitarian.’ Gregory Melleuish, "The Strange Birth of Colonial Democracy Revisited: The NSW 1859 Election,” in \textit{Australian National University Jubilee Conference of the Australasian Political Studies Association} (Canberra: 2002), 5, referring to Keith Tribe, \textit{Governing Economy: The Reformation of German Economic Discourse 1750–1840} (Cambridge: Cambridge University Press, 1988). Nevertheless, the large majority of those utilitarians who allied themselves with Bentham’s heritage were strongly democratic at a time when democracy was a radical idea and it was this influence that was felt in Australia.
\textsuperscript{104} John Stuart Mill, "Bentham,” in \textit{Collected Works}, vol.10, 83. See also David Weinstein, \textit{Utilitarianism and the New Liberalism} (Cambridge: Cambridge University Press, 2007), for a discussion of John Stuart Mill and George Grote, and their appreciation of a Platonic style of interrogation in matters of philosophy. The question of Bentham’s originality was current during his lifetime. For a brief discussion of various viewpoints see John Dinwiddy,
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invent human happiness as a foundation for political philosophy, but he did provide rigour to its application.\textsuperscript{105} Mill saw Bentham’s thought as particularly useful when applied to law, and the theory of government.\textsuperscript{106}

\textbf{Bentham’s influence}

Bentham’s influence has been noted by many scholars. L.J. Hume’s article ‘Jeremy Bentham and the Nineteenth-Century Revolution in Government’ saw Bentham as holding a substantial place in the reform of government during the nineteenth century.\textsuperscript{107} J.B. Brebner suggested that state intervention from 1825 to 1870 was essentially Benthamite.\textsuperscript{108} A.V. Dicey declared ‘The history of modern English law is the history of a gigantic revolution produced by the ideas of one man.’\textsuperscript{109} H.L.A. Hart gave Bentham first place in commencing the positivist tradition in English jurisprudence.\textsuperscript{110} In 1900, the American scholar Charles Gregory observed that many reforms of the previous century had emerged from Benthamism. Gregory refers to Bentham’s central role in legal reform, the introduction of state education, and the introduction of the ballot: ‘It has been freely said that hardly an important reform in law has been effected within this century which Bentham had not foreshadowed and

\textsuperscript{105} Mill, "Bentham,” 86.

\textsuperscript{106} Ibid., 100, 105-9. While Mill finds Bentham’s writings on government useful (109), he emphasises his own concern for the possibility of an oppressive majority rule arising from Bentham’s system.


\textsuperscript{109} A.V. Dicey, "Modern English Law," The Nation, 2 November, 1876, 273.

early advocated’.

The Fabian, Graham Wallas noted: ‘at the end of the nineteenth century Sir Henry Maine was able to say, “I do not know a single law reform effected since Bentham’s day which cannot be traced to his influence.”’ 112 In 1877, Henry Sidgwick described Bentham’s system as ‘an important element of our current political thought; hardly a decade … has elapsed since it might almost have been called a predominant element’.

As recently as 1999, referring to England, Ross Harrison observed ‘to a large extent the Benthamite state has come to pass: for better or for worse, the Benthamite state is our state’. In 1849 John Roebuck, a follower of Bentham, summarised a shift in thinking during the 1820s, in a letter to Francis Place:


114 Ross Harrison, Arguments of the Philosophers: Bentham (Florence, Kentucky: Routledge, 1999), 260. For a contradictory position see MacDonagh, A Pattern of Government Growth 1800-60. MacDonagh later allowed that Bentham had, as Kerry Mills puts it, ‘virtually invented the mechanics of government’. See Kerry Fraser Mills, "Of the People, by the People, for the People: Law-Making in New South Wales, 1843–1855" (Ph.D., University of New England, 2006). 24, referring to Oliver MacDonagh, Early Victorian Government, 1830-1870 (New York: Holmes & Meier Publishers, 1977). For further discussion see Henry Parris, "The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised," The Historical Journal III (1960). Parris also supports the idea that Bentham’s ideas were influential, and not merely reflective of a broader public intellectual direction. Quentin Skinner, meanwhile, sides with MacDonagh. He observes that scholars tend to concentrate on the cannon of classic texts, adopting ‘a naive diffusionist account of the relations between the work of leading social theorists and the popular acceptance of new social and political attitudes’ Pointing to those who elevate Bentham’s ideas, he states ‘...consider the attempts which have recently been made to vindicate the influence of Bentham’s ideas on the development of nineteenth-century social policies’. Skinner, "Some Problems in the Analysis of Political Thought and Action,” 99-100. Here Skinner is referring to Parris, referred to above, and to J. Hart, "Nineteenth-Century Social Reform: A Tory Interpretation of History," Past and Present 31 (1965). Skinner does not provide any evidence for this counter historical suggestion, though his speculation is useful nevertheless. It is certain, however, that during Bentham’s life, and directly after, many writers considered Bentham and his followers’ role important. The intention and context of their writing leaves little doubt of these contemporary views.
The writings of Bentham produced a silent revolution in the mode of treating all political and moral subjects. The habits of thought were entirely new, and a whole body of political writers, without (for the most part) knowing whence the inspiration came, were full of a new spirit, and submitted all acts to a new test. Utility … and not mere unmeaning sentiment, was this test. … To discuss the changes that occurred is very difficult. It is not a history of battles and murders, or great party conflicts, but of wonderful mental changes in a whole people.\textsuperscript{115}

C.H. Currey draws a connection between Bentham’s influence in Britain and the Australian experience: ‘During the first half of the [nineteenth] century the law of England was thoroughly reformed and humanised. That signal achievement was due to the genius of Jeremy Bentham and his eminent disciples. To them the people of New South Wales owe much.’\textsuperscript{116} This thesis examines the activities of Bentham and those ‘disciples’ in relation to the move towards democracy in Australia, including the Benthamite link with the mobilization of democratic feeling and agitation in Britain, and subsequently Australia. The thesis makes particular reference to the Charter of 1838, and subsequent democratic reform in Australia.

The foundations of the Australian state were laid down during the period when the idea of a society based on happiness became most actively pursued and most fundamental to political thought in England. The writings and activities of Bentham and his followers provided an important part of the architecture of such a political construction in Australia.

One of the most important contributions to democratic reform made by the Benthamites was their involvement in helping build a climate of expectation and ambition for political change, and helping direct that energy towards specific goals. They played a pivotal role in placing pressure on the government prior to the 1832 Reform Act, and they were again at centre stage with the creation of the moral force

\textsuperscript{115} R.E. Leader, ed. The Life and Letters of John Arthur Roebuck (London: Edward Arnold,1897), 217. Stephen Conway refers to this quote in Stephen Conway, "Bentham and the Nineteenth-Century Revolution in Government," in Victorian Liberalism: Nineteenth-Century Political Thought and Practice, ed. Richard Bellamy (London: Routledge, 1990), 84. Conway’s article supports the proposition that Bentham’s influence was profound, both from the acts of his immediate followers and from a less direct influence of the kind referred to by Roebuck.

\textsuperscript{116} Currey, "Influence of the English Law Reformers," 241.
Charter campaign.\textsuperscript{117} While much has been written on the Charter, little has been written on the Benthamite contribution, and the intentions of the Benthamites for the Charter and for the movement. Mention is occasionally made that one or other of the authors of the Charter was a follower of Bentham’s ideas, but the treatment is limited. Of its three authors, John Roebuck and Francis Place were avowed Benthamites, and the third, William Lovett, was in substantial agreement with their ideas.

\textbf{English Radicalism}

Benthamite democratic thought existed within a tradition in Britain of demand for political change. During the seventeenth century, the Cromwellian era had seen a brief rise to prominence of the Levellers. They wanted to push Cromwell towards a republican democracy, and were ‘the first English political group to advance a doctrine of popular sovereignty in an unambiguous form’.\textsuperscript{118} For the Levellers, sovereignty did not rest with parliament, but with those who elected their representatives. They demanded manhood suffrage, equal constituencies, and regular (annual or biennial) parliaments.\textsuperscript{119} However, the Leveller influence was short-lived, with the movement crushed by 1649. Rather than resulting in substantial and long-lasting reform, the disturbed years of the Commonwealth instead cast a long shadow. Cannon observes reform became associated with civil disturbance, and this retarded its development.\textsuperscript{120} In place of reform and popular representation, the concept of virtual representation allowed that the interests of the poor could be satisfactorily represented in parliament by the wealthy.\textsuperscript{121} However, as elections became costly, the landed gentry was gradually forced out of parliament. As a result, during the late


\textsuperscript{119} Ibid., 36-7.


\textsuperscript{121} Ibid., 31.
seventeenth and first half of the eighteenth century, more powerful landed interests began to dominate the borough electorates and an oligarchy developed.\textsuperscript{122} The Crown and the aristocracy largely gained control. A ‘national sclerosis’ set in, with a belief that an ideal political formula had been found.\textsuperscript{123} This was reinforced by an admiring Continent, who looked to the British system of the ‘balanced constitution’ as an ideal, acting as a comparison with European absolutism. Montesquieu, somewhat against the reality, found in the system both the separation of power and the balance of power.\textsuperscript{124} The Crown was not all powerful, and instead the rule of law was seen to predominate.\textsuperscript{125} Improving economic conditions under the system gave it credibility.

During the eighteenth century, Commonwealth republicans provided a voice of dissent. These scattered writers, ‘Commonwealthmen’, did not seek the overthrow of English order, but sought a return to older values.\textsuperscript{126} They sought checks on power including: a more complete separation of powers; expansion of the franchise to bring public opinion into government, but with a property qualification to sit in parliament; the right to be governed by law to which one had consented and the extension of this right to all humanity; individual freedoms including of thought and religion; and a secularised education. These writers also posed queries relating to equality, including limitations on wealth, and a very few advocated a community of property. In general, the Commonwealth republicans were not concerned with extending democracy to all, and, as with other Whigs, notions of the ‘people’ to whom their ideas might apply did not necessarily include the poorer members of the society.\textsuperscript{127} In summary, the Commonwealthmen ‘looked back to a time of imagined civic virtue and worked for the restoration of what they took to be a natural scheme of governance’.\textsuperscript{128} For those of the late eighteenth century, this included a balanced government where fiscal

\textsuperscript{122} Ibid., 39-43.
\textsuperscript{123} Ibid., 43-4.
\textsuperscript{124} Schofield, \textit{Utility and Democracy}, 232.
\textsuperscript{125} Cannon, \textit{Parliamentary Reform}, 44.
\textsuperscript{127} Ibid., 7-15.
powers were not abused, as they considered had occurred during that century.\textsuperscript{129} Commonwealth republicans can barely be said to have formed a movement, but their ideas did influence later developments in the formation of the United States.\textsuperscript{130}

During the first half of the eighteenth century dissenting voices, including the Commonwealthmen, had limited effect.\textsuperscript{131} By 1751 parliament had become so quiescent that one wit proclaimed that a bird might happily build its nest in the Speaker’s wig.\textsuperscript{132} Two latent forces were developing, however. On the one hand the landed gentry quietly hankered after its lost power, but perhaps more importantly, by the 1730s a rising urban middle class sought representation.\textsuperscript{133} Several elements combined during the late 1760s to create storms. In 1768, corruption in borough representation resulted in a widely-read article in the \textit{Political Register}, proposing reform including a large extension of the franchise, the secret ballot, annual elections and economic reform.\textsuperscript{134} Earlier, in 1761, the appointment by the new king, George III, of Lord Bute, a personal friend, as Secretary of State, indirectly caused the breakup of the Pitt and Newcastle administration. As a result, part of the aristocracy flirted with reform.\textsuperscript{135} Third, John Wilkes’ repeated expulsion from parliament, in part for his democratic beliefs, provoked calls for reform. First elected in 1757, he retired in 1790, with two spells of four years out of parliament. For Wilkes, all men should have the vote, the purpose of government was the good of the people, and the people possessed ultimate political authority. Wilkes added the secret ballot to the Levellers’ demands.\textsuperscript{136} Other elements adding to discontent were bad harvests, high prices and

\begin{footnotes}{\footnotesize
\textsuperscript{129} Ibid.
\textsuperscript{130} Robbins, \textit{The Eighteenth-Century Commonwealthman}, 3-5.
\textsuperscript{131} Cannon, \textit{Parliamentary Reform}, 45.
\textsuperscript{132} Ibid., 46.
\textsuperscript{133} Ibid., 48-52.
\textsuperscript{134} Ibid., 54-5. Especially an article by \textit{Regulus} in a special edition of the \textit{Political Register} in March 1768. The \textit{Political Register} was published by John Almon.
\textsuperscript{135} Ibid., 58.
\textsuperscript{136} Ibid., 58-9. Birch, \textit{Representative and Responsible Government}, 38-9. Gash, too, draws attention to the lineage of democratic thought, and the principles to be found in the 1838 Charter. He notes that the main ideas of the Charter can be found in Major Cartwright's plan for parliamentary reform in 1776. This informed the programme of the London Corresponding Society of 1791-8. Francis Place was a member. Gash states ‘All six points of the Charter are to be found in a nine-point programme issued by the Westminster reform committee of 1780’. These were conveyed in the Benthamite formula of ‘Secrecy,

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high unemployment, plus repeated attacks on looms at Spitalfields.\(^{137}\) In addition, the American objection to taxation without representation added to the reforming spirit.\(^{138}\) In 1769, an alliance between supporters of the Bill of Rights was formed to little effect, and, in a split in 1771, the ‘Constitutional Society’ was formed. But there was little support. Radicals did not try to bring in the working people, and reform became tainted by association with the American Revolution. As with most radical proposals of the era, reform rested on the social contract, which led to the conclusion that members of a society should have sovereignty, rather than sovereignty rest in parliament. Although the general population was not engaged, London, with its rising merchant class and lack of a conservative rural influence, showed a greater commitment to radical reform.\(^{139}\) While urban life was beginning to change the nature of political aspiration, in 1776 Wilkes could still complain that the population had sunk to ‘mean vassals, ignominiously courting and bowing their necks to the ministerial yoke.’\(^{140}\) Meanwhile, the conservative argument for virtual representation held sway, at least to the commencement of the 1790s.\(^{141}\)

By the 1780s interest in reform had grown. On the agenda were economic reform, such as honing back the civil list, moderate parliamentary reform, driven by Christopher Wyvill, and a more radical stream of electoral reform supported by John Jebb, John Cartwright, and the Duke of Richmond.\(^{142}\) In 1780 allies of Wyvill in the Westminster Association\(^{143}\) declared themselves against a suffrage based on property,

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138 Ibid., 60.
139 Ibid., 65-8.
140 Ibid., 67.
and in favour of manhood suffrage, annual parliaments, equal electoral areas, the secret ballot, payment of members, and no property qualification to vote.\textsuperscript{144} Schofield describes this as ‘the most radical by far of all the various schemes [of electoral reform] which had been discussed at the time.’\textsuperscript{145} But even the milder reforms proposed by Wyvill and other associates failed, including 100 additional county members, annual Parliaments and equal electoral areas. In 1782 a vote in parliament on a motion for reform put by William Pitt calling for at least 100 extra county members and the gradual elimination of corrupt boroughs met with severe defeat. A further attempt in 1785 for borough reform was also soundly defeated. The unrepresented towns had shown no interest, and Wyvill also blamed disunity in the reform movement. But Wyvill had contributed an important element to political campaigns – the creation of committees of association across the nation, which provided continuity to the otherwise intermittent expressions of discontent.\textsuperscript{146} An important component of the democratic ideal pursued by many radical reformers was to deny the sovereignty of parliament, and place sovereignty with the people.\textsuperscript{147} This was inspired by the social contract doctrine, which required sovereignty in the people in order that they might protect rights surviving under the contract. Conversely, preservation of parliamentary sovereignty was a cornerstone of conservative opposition to reform. For example, in 1770 Jeremiah Dyson warned of the tyranny of the mob should parliament be required to act at the behest of the populace.\textsuperscript{148}

A flourish of interest in reform occurred alongside the French Revolution. At first the Revolution produced a fillip for reformers, but its later excesses created a strong disenchantment with reform.\textsuperscript{149} Natural rights were a predominant concept. Rights were derived in part from Rousseau’s work. Those who promoted his ideas in

\begin{itemize}
\item\textsuperscript{144} Cannon, \textit{Parliamentary Reform}, 82. The reforms proposed by the Westminster Committee were publicised by the Society for Constitutional Information, also founded in 1780. See Dickinson, \textit{Liberty and Property}, 220. An influential member of both organisations was Thomas Brand Hollis. Cannon, \textit{Parliamentary Reform}, 83. See Report of the Sub-Committee of Westminster, Appointed April 12, 1780. (London: Society for Constitutional Information, 1780). The electoral reforms proposed were those later adopted in the 1838 Charter.
\item\textsuperscript{145} Schofield, \textit{Utility and Democracy}, 154 n69.
\item\textsuperscript{146} Cannon, \textit{Parliamentary Reform}, 97.
\item\textsuperscript{147} Dickinson, \textit{Liberty and Property}, 217, 222-5.
\item\textsuperscript{148} Ibid., 288.
\item\textsuperscript{149} Cannon, \textit{Parliamentary Reform}, 116.
\end{itemize}
England included Joseph Priestly and Richard Price.\footnote{Birch, Representative and Responsible Government, 40-1. In relation to Rousseau’s ideas, see his Du Contrat Social, Principes du Droit Politique (The Social Contract, Principles of Political Right), first published in 1762. In this work he develops rights and the social contract.} Theories of rights were also advocated by Thomas Paine and Thomas Spence.\footnote{In particular in Paine’s Common Sense, 1776 and Rights of Man, 1791. Spence sold Paine’s works at his bookshop in London, and published his own pamphlets, including one in 1793 titled The Real Rights of Man, largely dealing with land reform.} For Paine the interests of the rulers were to be aligned with the interests of the ruled through democratic reform including annual parliaments, universal suffrage and the secret ballot. The ruled possessed natural rights which could not legitimately be taken from them. Paine’s work inspired the formation of hundreds of workers’ organisations throughout Britain. Paine sought to elevate the ‘happiness of the governed’.\footnote{Birch, Representative and Responsible Government, 42.} He defended property, though he sought some redistribution. For Spence, the rights of man included a right to land and its fruits, and common ownership of industry. He sought all wealth to be distributed equally.\footnote{Mary Ashraf, The Life and Times of Thomas Spence (Newcastle upon Tyne: Frank Graham, 1983), 120; Terry Parssinen, "Thomas Spence and the Origins of English Land Nationalization," Journal of the History of Ideas 34, no. 1 (1973), 135-141.} But the French revolution kindled and then killed enthusiasm for reform.\footnote{Cannon, Parliamentary Reform, 141.} Amongst the middle class, reform became associated with godless republicanism and complete overthrow of the established order, and lost what little appeal it might have had for them.\footnote{Ibid., 140. Cannon argues that the French revolution did not delay reform, as there had been little appetite for it in the first place. The revolution did raise the desire for reform, but then subdued what it had raised.} Strong state action, a lingering sense that manhood suffrage put property at risk, and a lack of enthusiasm for a complete overthrow of the constitution all worked to quench reform. A lasting contribution of Paine was the establishment of radical reform clubs available to workers, continuing the organisational strength introduced by Wyvill.\footnote{Ibid., 97, 120, 124.} Despite this innovation in organisation, reformists such as Cartwright and Cobbett struggled to keep interest in reform alive.\footnote{Ibid., 152.}
It was not until 1802 that an appetite for reform returned, and not until 1809 that it became prominent. The Whigs were more interested in their alignment with the Crown, and maintaining an aristocratic sensibility, than engaging with reformers. What life there was in reform emerged from urban interests. Increasing taxation to support an unsuccessful war on the Continent, along with a scandal relating to the mistress of the Duke of York selling army commissions, produced discontent. In 1809, Sir Francis Burdett, member for Westminster, put forward a motion for household franchise, electoral division according to taxation, elections to be held at the same time, and a limited duration of parliament. It gained few votes in favour.

Reform did not have appeal beyond being a response to specific and passing events. Two broad processes were at work, contradicting each other. On the one hand, as J.W. Ward noted in 1812 in parliament, the last century had seen a vast increase in prosperity, particularly over the previous twenty years. The current system was thus, in broad terms, successful. On the other hand, that wealth and the manner of its generation by urban industrial activity, was creating a more knowledgeable and economically powerful populace, a populace which might demand political influence. Working against reform was the fragmentation of the goals of the reformers. They often hated each other just as much as, or possibly more than, the system they sought to change. Moreover, the system of balance between the powers of the Crown, the aristocracy, and the parliament still seemed to many people to provide the workings of a constitution better than any other.

Poor economic conditions following the termination of the war against Napoleon in 1815, and increasingly repressive acts of government to maintain order in response to various risings, including the Peterloo massacre, brought reformist discontent to the

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158 Ibid., 150.
159 Ibid., 151.
160 Ibid., 153.
161 Ibid., 156-7.
162 Ibid., 164.
163 Ibid., 162.
164 Ibid., 157,165-6.
165 Ibid., 171.
Petitions flowed into parliament at an unprecedented rate. However, the radicals failed to make an impact. Hating each other, the radical factions remained unable to act in concert. The reforms they proposed were not backed by sufficiently strategic thinking. In 1818, to help keep debate alive, Burdett put forward a motion framed with Jeremy Bentham calling for annual parliaments, manhood suffrage, the secret ballot and equal electoral areas. It gained not a single vote. Nevertheless, the Whigs were feeling some pressure, and turned to minor borough reform.

By the early 1820s reform was seen as inevitable, but increasing prosperity reduced its urgency. It was not until a recession commenced in late 1829 that a new, and this time far more productive, interest in reform re-emerged.

From the late 1810s onwards, an important contribution to radical thought and strategy was made by the Benthamite radicals. Bentham’s interest in and attitude to democracy tended to follow the broader interest as outlined above. Bentham had enjoyed a brief flirtation with democratic reform during the early part of the French Revolution. In 1789, in his ‘Projet of a Constitutional Code for France’, Bentham had rejected both the separation of powers and the balance of power. For him a national assembly, wielding supreme legislative power, should be subordinate to the electors. Executive power should be subordinate to the legislature. Those wielding executive power included the king, who was thus also subordinate to the legislature. Because the legislative power would be dependent upon the electors who express their will by majority vote, and the executive power of the king would be dependent upon the legislature, there would be no need for a specific limit to sovereign power. Bentham

166 Ibid., 166-7.
167 Ibid., 170-1.
168 Ibid., 172-4.
169 Ibid., 175.
170 Ibid., 177.
171 Ibid., 183-5. Francis Place provides a contrary view, stating that from 1821 to 1825 (the latter being the year of writing) there was little interest in political issues, and that ‘Reform of Parliament, seems to have been abandoned as hopeless’. It may be that Place is referring to immediate reform, in which case a sense of inevitability and present hopelessness are not inconsistent. See Francis Place, The Autobiography of Francis Place, ed. Mary Thale (Cambridge: Cambridge University Press, 1972), 248.
172 Schofield, Utility and Democracy, 232-5, referring to Bentham’s ‘Projet of a Constitutional Code for France’ in Pease-Watkin; Schofield; Blamires, ed. Rights,
was content that the crown and aristocracy survive, a position he held until around 1818.

In line with many of his countrymen, the increasing violence in France during the early 1790s resulted in Bentham adopting a more benign view of the English Constitution. However, by 1809, when again reform was on the agenda, he had reached the conclusion that the English legal and parliamentary systems were primarily constructed to satisfy the ‘sinister interest’ of those who benefitted most from them. This attacked the long-standing conservative defence of the constitution, including that of Whigs, that the rule of law guaranteed liberty, and prevented arbitrary and tyrannical government. Bentham found that in fact the law was far from impartial in its daily operation, and was a rigged game in favour of power elites. He was therefore attacking the integrity of a fundamental aspect of the constitution. Where Bentham had believed those in power only needed to be guided towards improvement in laws, he came to believe that radical change – change to the root of the system – was required. This view emerged in part from Bentham’s experience with the panopticon, his largely unsuccessful attempt to reform the penal system. But Bentham’s final step towards resuming his advocacy for democracy has been attributed to his meeting James Mill, who formulated utilitarian democratic arguments from 1808. Halévy identifies the Benthamite era as beginning around this time:

A particular circumstance ... was necessary to make Bentham take over the leadership of the [utilitarian] movement: – the meeting, in 1808, of James Mill and Bentham. [By] all available methods of publicity, James Mill made himself the enthusiastic propagandist of Benthamism. For a long time, as far back as the eighteenth century, isolated individuals had been spreading the scattered ideas which only now, thanks to


175 Dickinson, Liberty and Property, 159-62, 286.
176 Schofield, Utility and Democracy, 237, 239, 346.
177 Ibid., 111.
178 Ibid., 137.
James Mill and under the auspices of Bentham, became concentrated in the Utilitarian school.\textsuperscript{179}

Schofield notes, based on the work of R.A. Fenn, that it is not possible to attribute to Mill a ‘conversion’ of Bentham to democratic reform.\textsuperscript{180} He notes that Bentham himself, in the ‘Plan of Parliamentary Reform’, stated that he had become convinced of the need for democratic reform ‘long’ before 1809, and had been developing an awareness of the sinister interest of the legal profession from at least 1804. He had linked this with the legislature in the early part of 1809 in ‘Elements of the Art of Packing’, arguing the legal profession and the legislature worked in collaboration to promote their own interests.\textsuperscript{181} They were ‘bound together in a partnership of sinister interest’.\textsuperscript{182} His answer was democratic reform. In 1809 Bentham wrote his ‘Parliamentary Reform Catechism’, that would later form a part of his ‘Plan of Parliamentary Reform’, published in 1817. The ‘Plan of Parliamentary Reform’ caused a ‘sensation’ according to Francis Place.\textsuperscript{183} In it Bentham advocated ‘democratic ascendency’ [sic] whereby members of parliament, under the existing system dependent upon the King, would be dependent upon the electorate.\textsuperscript{184} The members would be more likely to act in the interests of the electorate, and thus increase happiness.\textsuperscript{185} Bentham still did not require the removal of the monarchy and aristocracy. Rather ‘my wishes confine them to the securing, if it be possible, a participation in that same benefit to democracy’.\textsuperscript{186} Such was its effect, a year later the Plan was debated in Parliament.\textsuperscript{187} To help ensure the practical application of the

\textsuperscript{179} Halévy, \textit{The Growth of Philosophical Radicalism}, 154.

\textsuperscript{180} Schofield, \textit{Utility and Democracy}, 138.

\textsuperscript{181} Ibid., 135, 139.

\textsuperscript{182} Ibid., 131. See also 139-40.

\textsuperscript{183} Ibid., 163.


\textsuperscript{185} Bentham, "Plan of Parliamentary Reform in the Form of Catechism," 438-444.

\textsuperscript{186} Ibid., 441. See also Schofield, \textit{Utility and Democracy}, 168.

\textsuperscript{187} Schofield, \textit{Utility and Democracy}, 163.
ideas in his ‘Plan of Parliamentary Reform’, Bentham produced the ‘Radical Reform Bill’, published in 1819. This included a call for:

Universal Suffrage, Annual Parliaments, and Election by Ballot – At Public Meetings, these are the words commonly (it is believed) employed, for expressing the essential features of Radical Reform.

Another expression, however, there is, which in some respects seems to afford a promise of being more apposite. This is – Secret, universal, equal, and annual suffrage… Suffrage is the common subject, to which all these qualities are referable…

Secrecy is of the very first importance: because where there is no secrecy there can be no assurance of genuineness.188

As for property:

Under Radicalism, all property it is said, would be destroyed… In Pennsylvania, for these forty years, radicalism has been supreme: radicalism without Monarchy or Aristocracy: radicalism without control, and not any the slightest shock has property there ever received.189

At the end of the ‘Preliminary Explanation’, Bentham provides reassurance again in relation to property, proposes gradual reform, and refers the reader to his upcoming ‘Radicalism Not Dangerous’.190 Bentham’s system reassuringly preserved fundamental aspects of the British constitution and economic life.

After 1818, Bentham came to support a republic. Failing to garner interest in his codification plans, Bentham considered that publicity was the key to legal reform, and that a liberal press and public discussion would best be enabled under a representative democracy.191 Thus, he no longer promoted a system of democratic ascendancy, but became republican. Bentham presented his republican views in his ‘First Lines of a Proposed Code of Law for Any Nation Compleat and Rationalized’ in 1821-2 during the period he was attempting to arouse interest in codification:

189 Ibid., 560.
The Constitutional branch of law has, for its proper end, the greatest happiness of the greatest number. The propriety of this end will not easily be disputed. Under a Representative Democracy, the Constitutional branch of law has, for its actual end, that same exclusively proper end—the greatest happiness of the greatest number.

Under a limited Monarchy, the Constitutional branch of law has for its actual object … the greatest happiness of the Monarch, coupled with, and limited by, the greatest happiness of the conjunctly or subordinately ruling few, by whose respective powers the limitations, such as they are, that are applied to the power of the Monarch, are applied.¹⁹²

Later, in his ‘Constitutional Code’, Bentham placed sovereignty solely in the people.¹⁹³ That part of the people with constitutive authority had the power to elect ‘deputies’ to the legislature.¹⁹⁴ In his Code there was no monarch or aristocracy. Unlike his earlier position which supported democratic ascendancy, there was no room for a monarch in this system. The sinister interest of a monarch worked against the greatest happiness for the greatest number. Thus, over time, Bentham had proposed two different systems, one inclusive of the Crown and the aristocracy and, later, one exclusive of it.

Birch recognizes in Bentham’s ideas a new stream of radical thought. For Bentham, all men seek to maximize their own happiness, and ‘“the right and proper end” of government is the “greatest happiness of the greatest number” of citizens’.¹⁹⁵ This challenged both the Tory and the Whig view. Against supporters of the monarchy and aristocracy, Bentham claimed the first priority of the ‘ruling few’ was their own happiness, not that of the greatest number. Whigs were content with parliament being


¹⁹⁴ Burns, ed. Constitutional Code, 30.

¹⁹⁵ Birch, Representative and Responsible Government, 45.
drawn from the votes of a narrow social group. For Bentham, such a parliament would not represent the interests of the broader populace.

Bentham also rejected popular notions of the foundation for wide political participation:

Rousseau’s theory of popular sovereignty was … condemned, for it rested on a distinction between men’s actual, selfish wills and the general will they would share as members of the same community.\(^{196}\)

Mill and Bentham would not allow that there could be a different motivation at the individual and collective level. For them, collective interest is the aggregate of individual interest:

Take for the description of the ultimate end the advancement of the universal interest.

In the description of this end is included comprehension of all distinguishable particular interests.\(^{197}\)

For Bentham, suffrage was to be universal, not because of an abstract right, but because the interests of all could be represented in parliament, helping to elevate the general happiness.\(^{198}\) The theory, concludes Birch, was attractive to the new middle classes as it was radical without seeming revolutionary.\(^{199}\) For Bentham, the violence of revolution was in itself undesirable, because of the misery it involved and the precedent it set as a means of expressing disagreement and accomplishing change.\(^{200}\)

Elie Halévy similarly points out that by the end of the eighteenth century political radicalism in England, taken as a whole, was based on contract, a position with which Bentham contrasted utility.\(^{201}\) Of the non-Benthamite reformers he writes `The

\(^{196}\) Ibid., 45.
\(^{198}\) Birch, *Representative and Responsible Government*, 46.
\(^{199}\) Ibid., 47.
\(^{200}\) Ibid., 32. See also Robbins, *The Eighteenth-Century Commonwealth*, 7.

The Lockean social contract allowed for revolution against a sovereign power where, for example, an individual acts as a tyrant by dissolving parliament and disallowing the voice of
reformers who were demanding universal suffrage or annual parliaments took their stand, not so much on the supposed utility of the reforms, as on their conformity with the original clauses of an historic convention, established between the governors and the governed.'\textsuperscript{202} By contrast, for the Benthamites suffrage was to be universal not through rights and social contract, but because the greatest happiness principle demanded it. However, even for those who based their ideas on different foundations, or sought different outcomes from Bentham, utility was an important consideration. Halévy notes:

In politics, Burke took his stand on the principle of utility in order to develop a traditional philosophy which ultimately bordered on mysticism… On the other hand, in Mackintosh, Paine and Godwin, the principle of the identity of interests constantly tended to gain the upper hand over the principle of the equality of rights.

In economics, Godwin took his stand on the principle of utility in his hope for the advent of a state society in which individual property should disappear, and so all individuals would be equally and abundantly provided with the subsistence which they needed.\textsuperscript{203}

He suggests ‘The Utilitarianism of these men foreshadows the future Philosophical Radicalism.'\textsuperscript{204} Benthamite utilitarianism, however, saw the greatest happiness being attained with the retention of property, without the metaphysics of natural rights, and without revolution.\textsuperscript{205}

For Halévy, Bentham changed the face of radicalism. No longer need it stand for revolution:


Bentham sought evidence of the social contract, but found it unavailable. Schofield notes: ‘Bentham had asked [lawyers] to show him ‘that page of history’ where the contract was recorded, whereupon they had been forced to ‘confess the whole to be a fiction’. Schofield, \textit{Utility and Democracy}, 6.

\textsuperscript{202} Halévy, \textit{The Growth of Philosophical Radicalism}, 130.

\textsuperscript{203} Ibid., 154. Edmund Burke, 1729-1797, political theorist and Member of House of Commons. James Mackintosh, 1765-1832, historian, political theorist, Member of House of Commons. William Godwin, 1756-1836, political philosopher.

\textsuperscript{204} Ibid.

\textsuperscript{205} The idea of socialism gained ground during the Chartist campaigns, and will be referred to in chapter three. Bentham, and most of those associated with him, did not think a propertyless socialism viable.
the very fact that Bentham had become a Radical was destined to change the nature of the Radical party. At first the Radicals were confused with the revolutionaries, robbers and incendiaries – disciples of Spence who advocated the ownership of land should return to the community – who struck terror into aristocrats and bourgeois of the famine years. … Bentham, however, repudiated the doctrines of the new ‘levellers’, and in 1820 wrote his *Radicalism Not Dangerous*, to separate the cause of Radicalism from the cause of what would to-day be called Communism. There was no longer any question of demanding that established government should be overthrown by means of violent revolution.…

In fact Bentham and his followers, unlike many radicals of the day, were supportive of cooperation between the classes, and for a slow, but thorough reform.

While Bentham did not believe in natural rights and broadly rejected the idea of political change by violence, Royle and Walvin note that his plans for reform were no less sweeping than the plans of those who sought change by revolution. In their view:

his theories could lead to a democratic programme of reform and a critical questioning of every institution in the land – parliament, the Church, the universities and the legal profession – which put the Benthamites among the most radical of all reformers.


208 Ibid., 97. Note that the Benthamites not only rejected violence and natural rights, they also did not accept the tenets of socialism, as discussed in chapter three. Socialism was promoted by Chartist leaders such as Robert Owen (170) and James O’Brien. (Mark Bevir, *The Making of British Socialism* (Princeton: Princeton University Press, 2011), 107.

Dickinson suggests that the utilitarian strand of radicalism was ultimately the most fruitful. In his biography of Lord Durham, Chester New notes ‘Englishmen were more easily led to democracy by a new theory of true British origin, free from the stigma of the French Revolution.’

Given the ultimate success of the Benthamite utilitarian strain of thought it is useful to ponder whether the French Revolution retarded democratic reform in Britain because it alienated the development of the utilitarian case for reform. Schofield notes:

> Given the fact that one of main influences bringing about political, legal, and ecclesiastical reform in Britain in the years following the Napoleonic Wars was that of philosophic radicalism, and given the fact that philosophic radicalism was in large part the creation of Bentham, the impact of the French Revolution was therefore to delay political reform in a further way, namely by delaying the creation and propagation of the utilitarian case for political reform.

But this may be softened a little when taking Cannon’s perspective into account, that the Revolution merely raised hopes and then dashed them. Without the Revolution, Bentham’s interest in political, as opposed to legal, reform might not have been inspired in the first place. It may also be softened by the realisation that Bentham’s interest in radical politics broadly coincided with his countrymen’s level of desire for radical reform. His own interest reached a high point during the French revolutionary period, next during the latter half of the first decade of the nineteenth century, then after the Napoleonic wars ended and conditions in Britain became politically fraught, and lastly during the 1820s, when reform appeared almost inevitable – a sentiment to which Bentham himself probably contributed. Without the Revolution, and without the subsequent general interest in reform amongst his countrymen, it is possible Bentham would not have acted with quite the same reforming zeal.

**Benthamite utilitarians**

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211 Schofield, "Jeremy Bentham, the French Revolution and Political Radicalism,” 401.
In the political context, Benthamite utilitarians are those who founded their political ideas and activities on those of Jeremy Bentham. In 1832 they included James Mill, John Stuart Mill, Francis Place, John Roebuck, Joseph Hume, Charles Austin, John Austin, George Grote, John Bowring, William Molesworth, Charles Buller, and Charles Villiers. Many of these people are referred to in this thesis as active participants in forwarding colonial democracy. As with any group of political thinkers and actors, there were individual differences that created various schisms between them, such as between Bentham and James Mill, between John Stuart Mill and John Roebuck, between Roebuck and Charles Buller, and between George Grote and James Mill. For the purposes of this thesis, the common Benthamite commitment to democracy is of most relevance.

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214 The Benthamite legal philosopher, John Austin, was not a democrat, but his ideas were adapted to the democratic system. Predominant Benthamite ideas of the generations referred to in this thesis included the need for codification and demystification of the law, a commitment to the implementation of democracy and support for the women’s franchise, support for the points of the 1838 Charter, support for gradual and peaceful political change, co-operation between the classes, qualified support for the independence of colonial populations, a role for the state in the provision of services and development of the public service, support for establishment of local councils, free trade between polities, freedom of contract, property, positive law based on the greatest happiness (as determined by democratic procedure) as opposed to law based on tradition or a metaphysics, elimination of aristocratic privilege, utilization of rules of procedure in parliaments, intervention in the treatment and transportation of convicts, and rationalizing methods of land allocation in the colonies. Bentham and his followers did not believe in the perfectibility of human nature, distinguishing them from the utilitarian William Godwin. See Frederick Rosen, "Utilitarianism and Justice: A Note on Bentham and Godwin," *Enlightenment and Dissent* 4(1985), 47-52. Bentham’s emphasis on self-regarding action was more in line with the conservative understanding of human nature, and may have contributed to his broad appeal. See Dickinson, *Liberty and Property*, 293-7. Bentham and his followers were suspicious of government, preferred it small, and required it to be subject to rigorous observation and control. See Freedman, *Ideologies and Political Theory*, 144-152.
This thesis refers to the followers of Bentham variously as Benthamite utilitarians, Benthamites, philosophical radicals, and utilitarians.\textsuperscript{215} Of the term philosophical radical, Halévy observes: ‘[A]t the time when Utilitarianism was an organized philosophy and not merely a current opinion, to be a Utilitarian it was necessary to be a Radical (hence the name Philosophical Radicals).’\textsuperscript{216} It was to become the name of the parliamentary presence of the group,\textsuperscript{217} but Halévy, for example, uses it more widely to refer to the political movement between approximately 1820 and 1850. Halévy dates the Benthamite, or philosophical radical era as ending during the 1850s, as competing political philosophies, or refinements of Bentham’s ideas, emerged.\textsuperscript{218}

While often associated with \textit{laissez faire} economics, Benthamism has also become associated with state interference. Its influence is seen by many as surviving after the demise of Philosophical Radicalism as defined by Halévy.

Because the Benthamite utilitarians were so dominant a force in the utilitarianism of the era, where the term ‘utilitarian’ is used in this thesis in reference to the political identification of an actor, it is applied without further qualification. It is to be taken as referring to those who based their ideas and activities on the Benthamite program unless the context clearly suggests otherwise. Within this thesis – as a result of its timeframe and the geographical limits – each of the terms ‘utilitarian’, Benthamite, and ‘philosophical radical’ is effectively interchangeable with the other, in accordance with broad scholarly usage, although I confine the term philosophical radical to the parliamentary group and its immediate associates.

The period discussed in this thesis ends at the time identified by Halévy as the end of the philosophical radical period. By this time Benthamite utilitarians had played a central role in developing and advancing democracy in the Australian colonies, including a role in theorising and implementing the secret ballot as we understand its

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\textsuperscript{215} The term utilitarian is used here in its political context, and no attempt is made in this thesis to discuss the moral philosophy of Benthamite utilitarians or its relationship to the Benthamite political program.

\textsuperscript{216} Halévy, \textit{The Growth of Philosophical Radicalism}, xvii. Molesworth’s nickname, ‘the philosopher’, supplied the ‘philosophical’ that was added to ‘radical’, to create the term ‘philosophical radicals’, a term applied to the followers of Bentham, particularly the parliamentary group. Fawcett, \textit{Life of the Right Hon. Sir William Molesworth} (New York: Macmillan, 1901), 14.

\textsuperscript{217} Halévy, \textit{The Growth of Philosophical Radicalism}, 264.

\textsuperscript{218} Ibid., 514.
practice today. It is to be remembered that in Australia the full adult male franchise was adopted in the 1850s, compared with its adoption in Britain in 1918. Almost certainly as a result, the balance between liberalism, *laissez faire*, and state action undertook a different evolution in Australia from that experienced in Britain.

**Bentham and colonisation**

Some debate has occurred in relation to Bentham’s attitude towards colonisation. Bentham first wrote in favour of the retention of colonies, in response to the American Declaration of Independence. He did not support the argument for independence based on natural rights.\(^{219}\) Some fifteen years later, Bentham wrote in favour of the complete severing of colonies. In ‘Emancipate Your Colonies’, written in 1793 and directed towards the French, he declared:

> You choose your own government: why are not other people to choose theirs? Do you seriously mean to govern the world, and do you call that *liberty*? What is become of the rights of men? Are you the only men who have rights? Alas! my fellow citizens, have you two measures?\(^{220}\)

Despite this, around 1801-4 Bentham wrote in favour of colonies as a destination for excess population and capital.\(^{221}\) Later, in 1820 Bentham wrote against all colonising activity, declaring ‘all colonies and distant dependencies, without exception, are essentially mischievous’.\(^{222}\) However, in 1829, Bentham revised the pamphlet ‘Emancipate Your Colonies’, adding a postscript reversing his main thesis in its application to India, China and Australia, for the reason of prevention of local corruption by patronage. But, he continues:

> In regard to Australia, it is in his eyes preponderantly probable that, long before this century is at an end, the settlements in that vast and distant country will, all of them,


\(^{220}\) Bentham, "Works (Bowring) - Emancipate Your Colonies!,” Vol.4, 408.

\(^{221}\) Schofield, *Utility and Democracy*, 200.

\(^{222}\) Bentham to Rivadavia, April?, 1820, Correspondence, ix 428-9, quoted in ibid., 199.
have emancipated themselves, changing the government from a dependency on the
English monarchy, into a representative democracy.\textsuperscript{223}

Two years after that, in 1831, he was actively promoting the colonising project of
South Australia.\textsuperscript{224}

Several explanations have been proposed to account for Bentham’s changing views on
the colonies. Donald Winch sees inconsistency in Bentham’s ideas. Winch points to
Bentham’s various positions, including the foundation of a new colony. He finds him
at least a part-time advocate for colonies. Winch thus observes that:

It will … be necessary to acknowledge Bentham's status as a kind of patron to the
colonial reform movement, especially those aspects of it that centred on the idea of an
empire of self-governing states, with unresolved problems of what should be reserved
for 'mother-country' responsibility in the field of land disposal and emigration.\textsuperscript{225}

Boralevi, meanwhile, resolves the potential contradiction by pointing to the
underlying principle of utility.\textsuperscript{226} Boralevi suggests that the consistent element for
Bentham in his attitude to colonies, and throughout his work, is utility – all else is
subservient to the fundamental principle.\textsuperscript{227} Schofield explains Bentham’s changing
views on colonies by observing that after the early 1800s his ideas were informed by
the idea of sinister interest.\textsuperscript{228} In this respect, colonies provided a fertile field for
patronage through granting of land and making administrative appointments,
contributing to misrule.\textsuperscript{229} Colonies were, therefore, undesirable, but where colonial
rule might better restrict sinister interest than might independence, depriving the
colony of independence could be justified.

The Benthamite colonial reformers exhibited a variety of responses to colonial issues.
For example, in 1837-8 in relation to the Canadian crisis, Roebuck and Hume

\textsuperscript{223} Bentham, "Works (Bowring) - Emancipate Your Colonies!,” 418. Bentham is referring to
himself in the third person.
\textsuperscript{224} Winch, "Bentham on Colonies and Empire,” 148-9.
\textsuperscript{225} Ibid., 151.
\textsuperscript{226} Schofield, \textit{Utility and Democracy}, 200 referring to Donald Winch, \textit{Classical Political
Economy and Colonies} (London: The London School of Economics and Political Science,
1965); Boralevi, \textit{Bentham and the Oppressed}.
\textsuperscript{227} Boralevi, \textit{Bentham and the Oppressed}, 134.
\textsuperscript{228} Schofield, \textit{Utility and Democracy}, 202, 203-4, 207.
\textsuperscript{229} Ibid., 208, 211, 214.
republished Bentham’s *Emancipate Your Colonies*. Roebuck, in a speech to parliament, appeared to stoke the fires of rebellion and independence.²³⁰ However, before Durham’s departure for Canada, Roebuck advised him of a constitutional structure that included the British link.²³¹ Consistent with this approach, Buller and Wakefield, with Lord Durham, helped create a new colonial system which, while giving substantial independence, retained links with Britain. Molesworth, in parliament, first pointed to separation of the colony, then retention.²³² At the time, Molesworth was also engaged in colonial reform for Australia, retaining the British connection. He was by no means anti-colonial by conviction.²³³

The final position in relation to Canada of most of the radicals was retention of the colonies. It was retention by war they objected to, not colonial possessions in principle. In parliament, none argued for colonial separation as a good in itself. What they sought was good government for a particular set of circumstances, a position similar to that identified by Boralevi and Schofield in relation to Bentham’s views. For Canada, the radicals’ final view of colonial possession conformed to the exception expressed in Bentham’s pamphlet *Emancipate your Colonies* introduced in 1829 – the broad principle of which was that the retention of colonies could be justified if it


²³¹ John Roebuck, The Colonies of England: A Plan for the Government of Some Portion of Our Colonial Possessions (London: John Parker, 1849), 126, 193, 186-225. Roebuck’s election platform in 1832 for the seat of Bath did not contain republican sentiments, though he was labelled as republican by opponents. Leader, ed. The Life and Letters of John Arthur Roebuck, 44.


Molesworth - Member for Leeds. On 22 December, 1837 he argued for independence. (1466) On 23 January, 1838 he argued in a manner consistent with retention of the colonies. (386) Grote - Member for the City of London. On 22 December, 1837 he argued for a change in policy to allow for retention. (1485) On 23 January, 1838 he argued for separation. (403) Note that Warburton also argued for separation on 22 December, 1837. (1476)

²³³ See New, Lord Durham: A Biography of John George Lambton, First Earl of Durham, 318 n1, in which New states “In a speech of the following March, just before Durham left for Canada, [Molesworth] stated that he believed in colonies, if they were well governed, and was at pains to dissociate himself from the general Radical position of ‘emancipate your colonies’ (which meant ‘let them go’).” This is probably not a correct analysis of the broader philosophical radical position, as discussed.
resulted in better government. There is some truth to Gladstone’s summary of their vacillation:

They proposed one day the separation of the Canadas from the mother-country, and the next, when intelligence arrived from the colony proving that there was no desire for such separation entertained there, they were struck suddenly dumb, and no such proposition issued from their lips.  

Bentham’s view on republicanism needs to be reconciled with his, and his followers’ view on the colonies. Republicanism, as constructed in his Constitutional Code, implies full independence. But Bentham, in his Emancipate Your Colonies, suggested the Australian colonies might not reach independence until around the end of the century. In practice, in relation to Canada, the philosophical radicals sided with Durham in retaining the Crown and thus connection with Britain, and it is this form that later became the model for the Australian colonies. The system had evolved into responsible government in Canada by 1848, and gave the colonies substantial independence. Although Bentham preferred full independence for the colonies, he was content that it might take some time. Nevertheless, his model for South Australia was for a rapid transition to full independence with the design of the constitution to be built on his ‘Parliamentary Reform Bill’, as far as was considered appropriate to the circumstances. When Bentham died, in 1832, the Australian colonies had little or no independence, but by the 1850s some had won a high level of independence. Bentham’s followers had a significant input into this change. The Australian colonies became hybrids. On the one hand they were not completely independent states as recommended in one stream of Bentham’s writing, and they were not structured as republics in accordance with Bentham’s Constitutional Code. In particular they retained a role for the Crown, and had upper houses, in most cases appointed or subject to significant property restrictions. On the other hand they possessed significant operational independence, and a level of democracy substantially in accord with Benthamite ambitions – the secret ballot, regular parliaments, equal electoral areas, and full adult male franchise, with the design of the system for the secret ballot leading the world. Moreover, amongst those closest to the reform process, there was


an understanding that the passage of time would probably see greater independence. The retention of colonies was consistent with Bentham’s idea that some colonies should remain connected with Britain until they were ready for self-government, and their structure was consistent with Bentham’s pre-republican political structure in that a role for the Crown was retained.

The colonial constitutions were empowering of government. They did not seek to disperse power through separation of powers. They, instead, provide for strong democratic action, consistent with Bentham’s intention.²³⁶ This potential for strong, active government is found in both the Durham Report and in Chapman’s writing. In his 1844 article ‘Sir Charles Metcalf in Canada’, Wakefield suggested that the United States was ‘the greatest, and no doubt the best constituted Democracy the world has ever known’.²³⁷ However, he also observed that the separation of power created, among other things, indecisive government, short termism, corruption, and lack of responsibility.²³⁸ While living in Australia, Henry Chapman wrote that parliamentary (responsible) government ‘is—unknown to the constitution of the United States’.²³⁹ He continues: ‘This peculiar condition of the executive may not be ill suited to the American constitution. The Americans themselves must perceive some important advantages in it, or they would not have permitted it to continue as part of their constitution for so long a period.’²⁴⁰ However, he observed, under responsible government Canada had advanced in population, wealth, and general resources ‘such as would have been impossible under a feeble Government’.²⁴¹ He continued:

Before the introduction of a responsible ministry into Canada the greatest inconvenience was continually felt from the fact that the executive Government had no influence whatever within the walls of the Assemblies. The irresponsible officers of the Government could seldom obtain seats, so that all communications between the


²³⁹ Henry Samuel Chapman, Parliamentary Government; or Responsible Ministries for the Australian Colonies (Hobart: Pratt & Son, 1854), 4.

²⁴⁰ Ibid.

²⁴¹ Ibid., 9-10.
executive and the legislature was by message, and address in answer, as in the United States of America. To any one accustomed to the working of the English constitution this must seem a very great defect... 

Without a strong executive a perfectly efficient government can have no existence. But an irresponsible government must always be viewed with jealousy and suspicion, by a representative legislature and by the people whom they represent. Under the influence of this feeling, not only does the executive derive no support from the legislature or from general opinion, but constant efforts are resorted to in order to weaken it. The weakening of the executive is obviously a mere defensive expedient to mitigate the evils of irresponsibility. Let responsibility be introduced, and legislative support—which must include the support of the majority of the constituencies—will be at once freely given to the executive. This constitutes a strong executive. With a ministry that can only hold office so long as it can command a majority in the house—with the power of dissolving the provincial parliament, if there be reason to believe the lower house does not faithfully represent the constituencies—there seems no place for that jealousy, suspicion, and constant desire to weaken and damage the executive, which is, and ever has been so conspicuous in all colonies where, but only so long as, irresponsibility has prevailed.

Lord Durham, too, referred to the weakness of the United States’ executive in despatches while undertaking his investigations in Canada that led to the Durham Report and his recommendation for responsible government. Responsible government and the powerful sovereign were the dominant intellectual models of constitutional reform for the era.

Perhaps the most significant departure from Bentham’s *Constitutional Code* in the constitutions implemented by the philosophical radicals and their associates was the retention of an upper house. As is discussed later, the idea of a single house had various airings in the lead up to the implementation of the constitutions of the 1850s

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242 Ibid., 8.
243 Ibid., 36-7.
in the Australian colonies, but was not adopted. For Bentham, the second house was not essential. In England it represented the influence of the aristocracy. In the colonies it was variously conceived, but a common element is that the house would act as a brake on the enthusiasms of the lower house. While Bentham was content that voters were able to learn how to govern themselves in a responsible fashion through the action of doing it, J.S. Mill, for example, preferred a brake on the potential for a tyranny of the majority.  

245 Roebuck, in 1849, proposed a design for the Australian colonies which included an upper house.  

246 Molesworth’s constitutions all contained an upper house. In the Durham report, Durham, and by inference Wakefield and Buller, agreed to a second chamber.

The extent to which it can be said that the colonial constitutions were Benthamite derives from their being consistent with one set of his ideas. They were not republican and did not conform with Bentham’s constitutional ideas of the 1820s. Instead they retained the broad features of the old constitution, consistent with Bentham’s earlier constitutional writings. They were also in keeping with Bentham’s idea that the colonies should be provided with full independence when ready rather than immediately. The structure of government allowed for a powerful executive, and provided democratic control. The constitutions are not republican, but they are a fine balance between independence and the needs of good government. In Australia they were the first to implement most of the points of the 1838 Charter, a document written by Benthamites and supported by Bentham’s followers.

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Chapter 3: Chartism and utilitarianism

Introduction

The aim of this chapter is to examine the relationship between Chartism – perhaps the most significant democratic movement in the British world during the nineteenth century – and the Benthamite utilitarians. In particular, this chapter examines the democratic reforms sought by the authors of the Charter, and their intentions for the manner in which those reforms would be undertaken. It is both the reforms laid out in the Charter, and the intended manner of their achievement, that were evident in the move to democracy in Australia. The Charter sought adult male suffrage, the secret ballot, no property qualification for members of Parliament, payment of members, and equal electoral districts. Two of the three authors had been associates of Bentham. All authors sought the implementation of the Charter by a moral force campaign.

The Charter is identified by several authors as an important influence in the development of Australian democracy. Many British immigrants coming to Australia brought with them the ideals of the Charter. For most, the Charter also included a commitment to class cooperation and peaceful change. Henry Parkes serves as an example of a man who, when young, adopted the values of moral force Chartism. Henry Chapman, who helped implement democratic reforms in Victoria, was a close associate of the Benthamites in London, in particular John Roebuck, one of the authors of the Charter. Moral force Chartism was the creed of most of the leaders in Ballarat prior to the turn to violence in the Eureka uprising. The Charter has strong Benthamite associations and qualities, and these were reflected in the early development of Australian political culture and its colonial constitutions. At the time, people noted the strong association between the reforms in Australia and Bentham’s influence.

247 For example Pickering, "Chartism in Colonial Australia;" Ernest Scott, "The History of the Victorian Ballot," The Victorian Historical Magazine VIII, no. 1 (1920); Collins, "Political Ideology in Australia." While recognition of the influence is uncontroversial, it has not been very deeply developed in the literature.
Chartism is often characterised as having commenced during the lead up to the writing of the Charter in 1838, and having declined by 1850. It is also often characterised as having had two phases: the first phase dominated by those who sought change by peaceful means including political cooperation between the middle and working classes; and a second phase dominated by those who sought change by physical force and who wished to elevate the interests of the working class while constructing the middle class as an enemy.

The movement began as a moral force campaign, with meetings, publications and other political tactics employed to put pressure on parliament to adjust the electoral laws. In June, 1839 a petition of over a million signatures was introduced into parliament in support of the implementation of the points of the Charter. The petition was rejected. After that rejection, the physical force tendency of the movement became prominent. Events that followed include a rising at Newport in November, 1839 in which some twenty protesters were killed; strikes in 1842 accompanied by violence; a second petition of three million signatures rejected in 1842; and by 1848 a series of meetings held across Britain in support of a third petition, with some of the meetings becoming violent. An uprising was planned for later that year, but the plot was foiled by a spy.248

During this second phase of Chartism those who supported the tactic of moral force found it necessary to abandon the term Chartism because of its association with violence. Eventually, after the violent strain faded, all but one of the points of the Charter were implemented in Britain over a period of some seventy years through various reform acts.249

The appropriation of the term ‘Chartism’ by physical force Chartists should not deflect attention from those who worked for the points of the Charter while specifically repudiating the use of violence. Physical force Chartism does not match with the intentions of early Chartist leadership, and belies the internal logic of the


249 The call for annual parliaments has never been implemented and there remains no appetite for that reform. Nevertheless the essence of the idea was implemented, given that in Australia and elsewhere regular and frequent elections are held.

Reference to varying viewpoints amongst scholars as to the importance of violence to subsequent reforms may be found in John Saville, *1848: The British State and the Chartist Movement* (Cambridge: Cambridge University Press, 1987), 217-29.
Charter itself. The Charter instead had a significant Benthamite influence, which placed class cooperation and peaceful transition to the fore. Moreover, the Charter can be seen as an intervention designed to avoid bloody conflict, not to inflame it. This chapter will identify the elements of Benthamite Chartism that promoted peaceful change. The commitment to peaceful change was imported into Australia by many who left the shores of Britain for several decades after the Charter was written.

Democratic reform was a feature of nineteenth century Britain. After the Reform Act of 1832, the Reform Act of 1867 doubled the male franchise to include all urban male householders. In 1884, the franchise was extended to rural adult male householders so that some sixty per cent of adult males could vote. Subsequent acts of 1918 and 1928 enfranchised virtually all adult men and women. Democratic reform, the ambition of the Charter, may have been slow in Britain, but eventually it was successfully implemented.

In Australia, most of the points of the Charter were implemented by peaceful means by the 1850s, and as a result several Australian colonies became, arguably, amongst the most progressive democracies in the world.

This chapter argues that the Charter and moral force Chartism were strongly associated with the Benthamite radicals. The chapters that follow include discussion of the implementation of Charter principles in several Australian colonies, and the Benthamite associations of some of the key actors.

Chartism has received much scholarly attention. It has frequently been discussed in terms of class, in terms derived from Marxism, and involving the pursuit of socialism. Within this discourse Chartism has been presented as having failed. This reading of Chartism remains prevalent. In 1997 the British historian John Charlton wrote of Chartism primarily in terms of the ‘proletariat’ in opposition to the ‘bourgeoisie’, concluding the discussion in terms of the failure of the movement. He states

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250 Chartist scholarship has moved through several phases. Discussions of these phases can be found in, for example, John Charlton, *The Chartists: The First National Workers’ Movement* (London: Pluto Press, 1997); Neil Pye, "Review: Chartism: A New History, by Malcolm Chase," *Canadian Journal of History* 43(2008); Dorothy Thompson, *Outsiders: Class, Gender and Nation* (London: Verso, 1993); and in Boyd Hilton, *A Mad, Bad, and Dangerous People?: England, 1783-1852* (Oxford: Oxford University Press, 2006). However, in none of these approaches is the Benthamite contribution prominent, if referred to at all.

251 Charlton, *The Chartists*, 79.
‘Chartists were crushed by a very well co-ordinated state power’, and ‘By the end of 1848 Chartism as a mass movement capable of mobilising tens of thousands of working people was dead. Ten years later the remaining organisation and its press was also gone,’ Like Charlton, Dorothy Thompson also appears to privilege a ‘working class’ version of Chartism, finding it failed, in her 1984 book, The Chartists.

During the 1960s D.J. Rowe expressed opposition to the long-standing elevation of the class conflict strand of Chartism. He introduced into the contemporary debate the role of important early figures such as Francis Place and Dr. J.R. Black in shaping the ideas that led to the writing of the Charter. Theirs was a moral force Chartism.

Some important aspects of the Chartist movement remain unexplored. Chief among these is the depth of the association between Chartism and Benthamism. The association was noted, for example, by Charlton, but not developed. Boyd Hilton gets close when he acknowledges that Francis Place was ‘an intimate of Bentham’.

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252 Ibid., 82.
253 Ibid., 83.


Factional strains developed and, for the ‘proletarian’, Chartism was ‘a mere means to further ends’. (235.) These strains resulted in a complete take-over. For example in 1843, the ‘bourgeoisie’ in Birmingham who supported the points of the Charter, sought to distance themselves from the word ‘Chartism’ because it had become associated with violence. Thus ‘From this moment Chartism was purely a working-men’s cause freed from all bourgeois elements’. (234)

By now only the ‘proletarians’ are Chartists, and these proletarians see constitutional reform as a means to further ends. They seek among other things, revolution, (18) socialism, (237) and the abolition of competition, (236) with the driving force being class hatred. (237.) See also 240, where Engels divides the Chartist movement into three categories, bourgeois, socialist and proletarian. Engels suggests that ‘it is only the proletariat and the Socialists who have succeeded in developing [Bentham’s] teachings a step forward.’

A useful discussion in this regard can be found in Geoff Eley, A Crooked Line, from Cultural History to the History of Society (Ann Arbor: University of Michigan Press, 2005). See also Rowe, “Place and the Historian,” 60.

256 Charlton, The Chartists, 12.
but he omits the role of another Benthamite, John Roebuck.\textsuperscript{257} Asa Briggs notes the involvement of Roebuck and Place, but does not identify them with Bentham.\textsuperscript{258} On the other hand, Chase rapidly dismisses any notion that the Charter was written by any other than William Lovett, though he allows a very minor contribution by Roebuck. He draws no connection with Bentham.\textsuperscript{259}

The Charter exercised a powerful effect on political reform in Britain, setting out political aims that gave expression to a shared understanding of how society was organised and how it ought to be changed. Benthamites were there at the inception of the movement, and later were particularly effective in achieving the implementation of the aims of the Charter in the Australian colonies. Australia saw a peaceful, if somewhat rowdy, version of Chartism.\textsuperscript{260} Large meetings were common, and demonstrations sometimes involved the destruction of property. Nevertheless, put simply, physical force Chartism, with its commitment to fundamental economic change, to be achieved by revolution if necessary, had little relevance in Australia. Moral force Chartism, however, was of high relevance. It is appropriate to take a closer look at moral force Chartism and some of its leading adherents in Britain and Australia since many of the points of the Charter were implemented in the Australian colonies by the 1850s.

The thesis observes that Benthamite utilitarians in London and Australia connected with the Charter had interwoven personal and intellectual connections.\textsuperscript{261} Henry Chapman, who later drafted Victoria’s secret ballot legislation was a visitor to a meeting of the London Working Men’s Association (LWMA), and contributed financially to the cause. William Molesworth, later an important democratic reformer for the colonies, but based in London, was connected with the LWMA. Henry Parkes was in London during the height of the moral force campaign. He was highly influenced by the moral force Chartists and contributed to a Chartist paper, having earlier eagerly participated in Chartist events in Birmingham. John Roebuck, co-

\textsuperscript{257} Hilton, \textit{A Mad, Bad, and Dangerous People}?
\textsuperscript{260} For a discussion of the rowdier agitation for reform, see Irving, \textit{The Southern Tree of Liberty}.
\textsuperscript{261} As noted above, with the exception of annual parliaments.
author of the Charter, was a close associate of those who later drafted the Durham Report – arguably the blueprint for responsible government in the colonies. He was also a close associate of Henry Chapman.

**Lovett, Place, Roebuck, and the authorship of the Charter**

The Charter was born in a spirit of compromise and was designed to promote a unity of intention amongst those political groups adopting it. In as much as it was a ‘clear expression of working-class consciousness’, it was also the expression of all those who wished to expand the franchise, including aristocrats and members of parliament. The Charter’s universality was its strength. It did not belong to any one group, and the six points were supported by many people of different political persuasions. The moral force Charter campaign was deliberately designed to overcome the fracturing of political action that had frustrated reformists in the past. The Charter was also intended as a document to foster peaceful change.

Three people wrote the Charter: William Lovett, Francis Place and John Roebuck. All were associated with the LWMA. Lovett was a coffee-house proprietor, with a long history of political involvement, whose original preference had been socialism, but who had moved towards a form of cooperative capitalism. Place, a key Benthamite, was a tailor who had grown wealthy through hard work, and favoured the *laissez faire* economy and democracy. Roebuck, once strongly associated with J.S. Mill, was an important member of the Benthamite philosophical radicals. A member of parliament immediately prior to the drafting of the Charter, he was very influential in the campaign for democracy in the colonies, particularly in Canada.

On 7 June, 1837 a committee of ‘working men’ was set up to draft a bill for parliament stating the six points of the Charter. The committee comprised twelve members, six being members of parliament. John Roebuck was to present the measure in parliament. Parliamentarians Daniel O’Connell, Sharman Crawford, Joseph Hume,

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262 Pickering, "Chartism in Colonial Australia,” 33.

and William Molesworth pledged to support the measure.\textsuperscript{264} The autobiographical accounts of Lovett and Place differ as to who drafted the Charter. Both claimed authorship, with Place saying he had worked off a paper he requested from Lovett detailing the points. Ward suggests that certainty in the matter is now impossible.\textsuperscript{265}

All authors of the Charter agree that the drafting was shared. While Roebuck is given only a smaller part in both Place’s and Lovett’s accounts, his role was intended by all to be larger. Lovett states that he and Roebuck were to draw up the bill, but the Canadian rebellion of 1838 distracted Roebuck from the task.\textsuperscript{266} Lovett wrote the bill with Roebuck in mind, and when he had finished he took the draft immediately to Roebuck, and from him to Place. Place made suggestions, with which Roebuck concurred, and which necessitated a rewrite, primarily to re-arrange the various points under specific heads. Lovett completed the task. Lovett states:

When the bill was so prepared, a meeting of the committee of twelve was called at the office of the Combination Committee, Bridge Street, Westminster, to submit it for their opinion. The bill having been read, Mr O’Connell suggested a new preamble to it, the one prepared having set forth several reasons for the enactment of the measure. He dictated one which he thought would suit the purpose, but that not being approved of by the committee they requested Mr. Roebuck to prepare one against the next meeting. He did so, and that which he wrote now forms the preamble or first three paragraphs of the bill. They then went through the various clauses, and after some trifling amendments it was ordered to be submitted to the Working Men’s Association previous to its being printed.\textsuperscript{267}

Given three busy lives, the preparation of the bill was as much a joint effort between Roebuck, Place and Lovett as was possible. The bill appears to have reflected the views of all. The Charter was, in other words, a cooperative effort.\textsuperscript{268}


\textsuperscript{265} Ibid., 84. See also the letter of Thomas Prout to Francis Place in D.J. Rowe, London Radicalism 1830-1843 – a Selection from the Papers of Francis Place (London: London Record Society, 1970), 177ff. (Papers of Francis Place, British Library Manuscripts Collection, Add. Ms. 27844, f. 271).

\textsuperscript{266} William Lovett, The Life and Struggles of William Lovett (New York: Garland, 1984), 164.

\textsuperscript{267} Ibid., 164-6.

\textsuperscript{268} Wallas gives Place’s account precedence. Graham Wallas, The Life of Francis Place, 1771-1854 (London: Longmans, Green, 1898), 367.
Lovett continues that the document was then circulated ‘to all the Working Men’s Associations and Radical Associations of the kingdom for their opinions respecting it’, from which a few amendments were made. Lovett rewrote the document in accordance with the amendments, and then wrote a 1,800 word address to be appended to the bill. Some segments from the address illustrate Lovett’s (and most likely the committee’s) attitude to representative government, class, violence, and to the unifying power of the Charter:

Suffice it to say, that we hold it to be an axiom in politics, that self-government, by representation, is the only just foundation of political power – the only true basis of constitutional Rights – the only legitimate parent of good laws …

While, however, we contend for the principle of self-government, we admit that laws will only be just in proportion as the people are enlightened; on this, socially and politically, the happiness of all must depend …

And we could wish it to be engraven on the memory of every Reformer, ‘that the people must be free, in proportion as they will it’, not by foolishly lending themselves to bigotry or party, to become the instruments of the conceited or selfishly ambitious, as they have too often done, nor by violently overthrowing the empire of title, the folly of privilege, or the domination of wealth…

The Charter was an exercise in peaceful change to the electoral laws by legislative means.

The following section examines the attitude of the writers of the Charter to change by cooperation between the classes, and indicates their association with the Benthamite political viewpoint.

Lovett, Place, Roebuck – their politics and attitudes to cooperative change

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270 Ibid., 166.
271 Ibid.
272 Ibid., 169. Lovett’s emphasis.
At the time of writing the Charter, Lovett was a supporter of class cooperation, and peaceful political change. In his autobiography, Lovett attributes the Charter’s lack of immediate success to the attempt to implement it by violence. He forcefully explains that the points of the Charter united a myriad of factions all of which desired to free the House of Commons from being the ‘ready tool and lackey’ of the House of Lords. The Charter ‘brought home to the minds of many the justice, the practicability, and the efficiency of the measure. They saw in it at once a plan calculated to give *all classes their legitimate share in the government of their country.*'  

Within a year, he states, over a million people supported the Charter, but, he argues, the movement was then taken over by those seeking violent change who brought the movement into disrepute and caused it temporarily to fail. Nevertheless, he declares, ‘its spirit is not dead and is yet destined to have a glorious resurrection, unmarked by violence and untarnished by folly – an uprising that shall inspire all classes who love justice to hail it as the hopeful regenerator of their country’.  

By 1838 Lovett had shifted his politics substantially towards the centre from his early Owenite days, though he remained interested in the idea of cooperation in production. He had once favoured the idea of community of property, and had great dreams of communal facilities. Lovett had come to realise, however, that the facilities he dreamed of were better realised through individual effort and reward for invention. 

Lovett’s political position is hard to place within either capitalism or socialism. It appears to be informed by a significant input of individualism, while retaining a level of interest in cooperative ventures. Lovett absolutely rejected the idea of a community of property. However, he does support co-operative endeavour. While in prison from 1839 to 1840 he wrote, with John Collins, the book *Chartism: A New Organisation for the People,* which encouraged people to pool their resources in order to build

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273 Ibid., 171. Lovett’s emphasis.  
274 Ibid., 172.  
275 Ibid., 45.
facilities for public education and improvement. Lovett called for a small state, and found the competitive spirit socially useful. Again and again throughout his writing, Lovett rejected violence.

Lovett was content that the world be organised around property, individualism and capitalism. He was a supporter, however, of cooperative effort within that system. Cooperatives were a practical means for the poor to gain a foothold. Seeking the franchise for all was not a precursor to the implementation of a system of communal property. Instead it was meant to release reward for effort, to create a law-making regime that did not allow either an aristocracy or a collective to stifle personal striving. These values strongly accorded with those of the Benthamites. Lovett had been associated with Place and other Benthamites for some years and appears to have absorbed much of their reasoning, the importance of private property included.

Later in his life, Wiener records, Lovett’s writings were ‘saturated with political economy’. In the preface to his *Social and Political Morality* Lovett stated ‘For many facts and opinions embodied in the work I have to acknowledge myself indebted to the writings of Jeremy Bentham, John Stuart Mill, George Combe, T. Perronet Thompson; as also to the admirable lectures and works on social science by my esteemed friend William Ellis.’ Of these, only the businessman and educationalist, Ellis, and educationalist and criminal punishment reformer, Combe, were not demonstrably connected to Bentham.

The closest that Lovett came to Bentham himself was when it was rather too late:

277 Ibid., 8.
279 See also ibid., 73.
280 In Wallas, *Life of Francis Place*, 360-1.
281 Note that while the Charter seeks the franchise only for males, an earlier draft supported full adult franchise and this was dropped only as a matter of political expediency. See Lovett, *The Life and Struggles of William Lovett*, 170, also at 430, where Lovett discusses women’s ‘social slavery’ and their need for equality. For Bentham’s assessment that a delay in political reform in this respect is strategically appropriate see Bentham, *First Principles Preparatory to Constitutional Code*, 100.
I remember going with [a friend] to the Webb Street School of Anatomy, soon after the dissection of the celebrated Jeremy Bentham, where we saw his head on one of the shelves of the place. I remember that we were both struck with his very large perceptive faculties, but thought his head not so very large considering the vast amount of intellectual labour that he had performed.284

During his life, Lovett moved from being closely associated with a class-based socialism, to adopting a position that closely reflected the Benthamite influence he had begun to absorb as a member of the LWMA during the 1830s.

The remaining two authors of the Charter, Francis Place and John Roebuck, however, were Benthamite *par excellence*. If one contemporary is to be believed, Place was the inspiration for many of the ideas of Bentham’s circle.

**Francis Place**

Place met James Mill in 1808, and Jeremy Bentham in 1812. Holyoake has it that Mill was so impressed with Place that he gave him charge of the political development of his son, John Stuart.285 In 1817 Place stayed and worked with Mill and Bentham at Bentham’s home in the country, Ford Abbey.

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A letter from Francis Place to his wife showing the seating arrangements in the ‘salon’ at Ford Abbey.\footnote{286}

The editor of Place’s autobiography, Mary Thale, explains how closely they worked together:

Place, like other followers of Bentham, assisted in composing Bentham’s notes into readable books. Place worked with others on the Book of Fallacies, the Plan of Parliamentary Reform, and Chrestomathia; alone he edited Bentham’s Not Paul, but Jesus. So close was the friendship that Place, in his diary for 1827, recorded, ‘Visits from and to Mr Bentham have not been hitherto mentioned, as each of our houses were as frequently entered by either as his own.’\footnote{287}

Thale continues:

According to Holyoake, ‘Bentham, who lived in Queens Square, Westminster, took his utilitarian walks with Place, and accompanied him on his business calls to take orders from his customers, or to deliver the garments he had made for them. While Place was engaged within, Bentham would walk outside until his friend emerged again, when they would continue their walks and their political conversation.’\footnote{288}

Hamburger sees Place as a philosophical radical, co-ordinating the parliamentary wing of the Benthamites,\footnote{289} and to be numbered among J.S. Mill, Grote, Roebuck, Buller, Molesworth, Hume, and E. G. Wakefield. Graham Wallas, a key Fabian, describes Place as a disciple of Bentham.\footnote{290} Place himself referred to Bentham in the most flattering terms, describing a warmth of character and lack of class prejudice:

My good old friend and master Mr Bentham is almost the only man among my genteel acquaintance who has never shewn this feeling [of class prejudice]. He is however too

\footnote{286}Catherine Fuller, “It Is the Theatre of Great Felicity to a Number of People’: Bentham at Ford Abbey,” Bentham Project, University College, available from https://www.ucl.ac.uk/Bentham-Project/journal/cfford.htm#143b; [16 August, 2008].

\footnote{287}Place, The Autobiography of Francis Place, 250, n.2.

\footnote{288}Thale in ibid., 250, quoting Holyoake, Sixty Years of an Agitator’s Life, 215. The story continues that one day when Place was detained in a house, Bentham tired of standing outside and sat down on the step to wait. A kindly passer-by came up and offered him a shilling.

\footnote{289}Though not in parliament himself. Hamburger, “James Mill on Universal Suffrage and the Middle Class,” 184. See also Harriet Grote, Philosophical Radicals of 1832, Research & Source Works Series (New York: Burt Franklin, 1970), 20, 22, 24, 25, 31, for references to Place’s role as organiser of the parliamentary representation of the radicals, particularly in relation to the seat of Westminster.

\footnote{290}Wallas, Life of Francis Place, 73.
good a judge of others not to have perceived it, and he has frequently mentioned it and
sometimes ridiculed it, he used to annoy some of his friends by praising his friend
Place the tailor.\textsuperscript{291}

Place was not merely known as an extra-parliamentary leader of the radicals, but also
as a supporter of the principles of political economy. An article in the \textit{European
Magazine} states:

It is true that Jeremy Bentham is his senior by a year or two, but still we see no reason
why Jeremy Bentham should not be the pupil, and Mr. Place the instructor, and we are
sure that of the other philosophers of Queens Square\textsuperscript{292} he is the manufacturer…. The
government of [James] Mill, the political economy of McCulloch, the speeches of Dr.
Borthwick Gilchrist, the lectures of Dr. Birbeck, the poetry of Bowring, and as we have
sometimes been inclined to think, the holdings forth of Gast and Gregory – all have a
smack of Place in them…\textsuperscript{293}

Place was instrumental in driving the poor laws through parliament,\textsuperscript{294} he accepted the
Malthusian view of the effect of population on wages,\textsuperscript{295} and he supported absolute
freedom of contract – thus sweeping away the combination laws which had prevented
union activity.\textsuperscript{296} Place supported free trade and the abolition of the Corn Laws.\textsuperscript{297} He
rejected the French doctrine of natural rights.\textsuperscript{298}

\textsuperscript{291} Place, \textit{The Autobiography of Francis Place}, 250. Place’s emphasis.
\textsuperscript{292} Bentham, the Mills, Charles Buller, and John and Sarah Austin lived there, but there were
also many regular visitors. In relation to Buller, see Grote, \textit{Philosophical Radicals of 1832},
12.
\textsuperscript{293} \textit{European Magazine}, New Series, vol. ii No. 7, March, 1826, 227-33 quoted in Wallas, \textit{Life
of Francis Place}, 189.
\textsuperscript{294} Ibid., 332. So strong and influential was his support he was described by the Chartist
newspaper, \textit{Northern Liberator}, 3 December, 1837, as the ‘very head and chief, the life and
soul, of the Poor-Law Amendment Bill.’ This leadership position is common to many of the
causes Place took up.
\textsuperscript{295} For example Wallas, \textit{Life of Francis Place}, 174, 214.
\textsuperscript{296} Ibid., 210. Place thought the very reverse would be the result – that with freedom of
contract trade unions would disappear. In fact the repeal of the laws produced ‘an outbreak of
trade unionism and strikes’ and Place wrote to leaders of trade unions suggesting that they
apply restraint or see the combination laws revived. In assessing Place’s position it is critical
to understand that while he urged restraint, he was opposed to re-regulation. Ibid., 217-8. At
page four of J.A. Roebeck, ”The Dorchester Labourers,” in \textit{The Dorchester Labourers; on the
Qualification Clause of the Corporation Bill [Thomas Falconer]}, ed. J.A. Roebeck (London:
J. Longley, 1835), in outlining the history of the case and the sentence of the men to
transportation, Roebeck refers to Place: ‘I have an important letter in my possession, written
by Mr Place on this matter, which I shall publish in a future pamphlet.’ Doubtless this letter
Like Lovett, he was opposed to the use of violence for political change. He believed in the idea of rational and gradual change, to be found in his favourite book, Godwin’s *Enquiry Concerning Political Justice And Its Influence On Morals and Happiness*. Prior to the introduction of the *Reform Bill* he wrote:

> People, silly, puling people, aye, and those who ought to know better, are talking of ‘revolutionary measures’. To oppose ministers is to promote violent, bloody revolution, plunder, rape, and the devil knows what besides…. The drivellers, and yet there is not a damned soul among them who does not say the Lords must be reorganised…. Aye, aye, say you, but what if Billy [King William IV] damned and -----ed his eyes as he is apt to do, and refused to prorogue? What! Why a little wholesome agitation like one of those thunderstorms which purify the air, and do no harm to any one. …Bloody revolution, indeed; no, no, there never can be such a revolution as long as the people have confidence in the House of Commons.

In his attitude to violence he was in accord with Bentham. Halévy observes that Bentham, in advocating democratic ideas, created a schism in the Radical movement, about the necessity for violence. Halévy gives to Bentham the mantle of ‘chief thinker of Radicalism’, eschewing violence in 1820 in *Radicalism Not Dangerous*. As Rosen puts it:

> Bentham believed that ‘to reform the world by force, you might as well reform the moon, and the design is fit only for lunatics’. Bentham apparently adhered to this view would provide important evidence of Place’s position. In the context of the pamphlet, the reader is left with the impression that Place’s position is in accord with the other radicals mentioned. Roebuck describes the parliamentary speech of Wakeley, which was sympathetic to the cause. Ibid., 4.

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297 Wallas, *Life of Francis Place*, 391.
298 Ibid., 89.
300 For example, Godwin explains that people will learn by degrees, and as the proportion of the population adopting new principles increases institutions will change; ‘we shall have many reforms, but no revolutions…. Revolutions are the produce of passion, not of sober and tranquil reason’. William Godwin, *Enquiry Concerning Political Justice and Its Influence on Morals and Happiness*, vol. 1 (London: J.Watson, 1842), 116-7.
throughout his life. It stood behind his strategy for gradual reform, which included the abolition of slavery and other forms of injustice and oppression.  

Bentham’s attitude to violence is further discussed below.

Place, in 1838, anticipating that the Charter would take time to implement, did not consider that violence was required to achieve the goal. Wallas has it that Place thought Chartism had little chance of immediate success, but that ‘a well-managed agitation for the Charter would create a strong democratic party, led by a new class of educated working-men, and [be] able to put pressure on Parliament’.  

Place also saw that Chartism belonged to a significant degree to the ‘working people’:

This is the first time that the desire for reform has been moved by them (the working people) and carried upwards. Until now it has always proceeded downwards, and expired when abandoned, as it always has been, by their gentlemen leaders. It will not again expire, but will go on continually, sometimes with more, sometimes with less, rapidity, but on it will go.

Place wrote that the immediate future of Chartism would belong to the wilder sections of the Chartist movement, but eventually the movement would settle down. While it was in the hands of those he saw as irresponsible, it would not flourish. After this, matters would right themselves.

[The working people] persuade themselves that they shall obtain the Act in a short time. Disappointment will vex and perplex them, and numbers will fly off and determine to adopt violent proceedings. This feeling will not last long. It will give way to rational feelings again, and then the matter will fluctuate, no one can say how long,


304 Wallas, Life of Francis Place, 369. Note that the revolutionary status of 1832 is itself not a given. For example Rowe writes: ‘Francis Place had actually hoodwinked both Whig and Tory Members of Parliament into believing that if the Reform Bill were not conceded revolution would be unleashed in all the great cities of the Kingdom’. In Rowe, "Place and the Historian," 60.

Also note James Mill's role in this pretence, discussed generally in Hamburger, James Mill and the Art of Revolution. In Wrong, Charles Buller and Responsible Government. Wrong observes that Buller said of O'Connell he ‘taught the people that the insurrection which was to be effective in coercing a government was that which never broke out, but always was to be apprehended.’ (49)

305 Place to Hume, 13 September, 1838. Quoted in Wallas, Life of Francis Place, 368-9.
nor what incidents of a decisive nature will occur, nor how any portion of the whole matter will finally terminate.  

This prescient view accords with Lovett’s, quoted above. Violence would harm the cause, but moral force would prevail.

Wallas suggests the kind of agitation sought by Place was to be narrowly focussed on a single proposal and supported by patient and good-natured propaganda. He continues:

Before consenting to draft the Charter, [Place] had made leaders of the Working-Men’s Association promise that they would prevent speeches against the new Poor-Law or for Socialism from being delivered on their platforms. He declared at the time that they were determined “to cease using opprobrious terms and epithets, and to receive every one as a friend who will take the Charter as his guide, and to work on steadily with every such person for the accomplishment of their purpose.” “Such Associations,” he afterwards wrote, “can only succeed by long-continued, steady, patient, liberal conduct, accepting and using every kind of assistance which may at any time, and in every way, be available, making no absurd pretensions to anything, and especially not to superior wisdom and honesty, but acting with becoming modesty, but with indomitable perseverance.”

Ultimately, Place saw education, coupled with a patient and continuing fight for democracy, as the engine for change. As will be observed later, the LWMA itself was a vehicle for such education. For Place, the democratic movement had strong roots in the working people, but this does not exclude the involvement of others. Unlike Engels in 1845, Place saw no need for a ‘purification’ of Chartist. On the contrary, he went to considerable lengths to educate potential leadership for democratic reform and played a major role in establishing the very idea of social movements. Tilly states:

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306 Wallas in ibid., 369-70.
307 Ibid., 370.
308 See for example Rowe, "Place and the Historian,” 53, but also innumerable references in Place’s works to the value and central importance of education.
309 Wallas, Life of Francis Place, 371.
One can make a reasonable case that British political entrepreneurs from John Wilkes to Francis Place invented the national social movement as a standard way of making claims; they co-ordinated marches, meetings, petitions, slogans, publications, and special purpose associations into nationwide challenges to the existing distribution or use of state power. British popular politics thus provided a new model for the citizens of other western states.\footnote{Charles Tilly, \textit{Popular Contention in Great Britain 1758–1834} (London: Cambridge University Press, 1995), 146.}

As a key Benthamite, Place’s role in social reform of the era was profound. He was a strong supporter of class cooperation and peaceful political change.

\textit{John Roebuck}

John Roebuck was a barrister and became a Queen’s Counsel in 1843. He was also a member of the House of Commons from 1832 to 1837, and for thirty of the thirty-nine years (inclusive) from 1841 to 1879.\footnote{See Paul Foot, \textit{The Vote: How It Was Won and How It Was Undermined} (London: Viking, 2005), 107, in which Foot discusses Roebuck’s defence of Henry Vincent, ‘the young, popular “Chartist Demosthenes”’ and three others, against charges of conspiracy and attending illegal meetings. The case was heard in 1839. Vincent later became a part of the struggle for electoral reform.} Hyde notes that Place and Bentham had cultivated a friendship between Roebuck and J.S. Mill, with the intention that they would become future collaborators in the advancement of utilitarian principles. However, each took their own intellectual path during the early 1830s, shattering their friendship. Pursuing utilitarian ideas, Roebuck entered parliament with the assistance of Joseph Hume, who was enlisted to help in the matter by Francis Place.\footnote{Francis E. Hyde, “Utility and Radicalism, 1825–1837: A Note on the Mill – Roebuck Friendship,” \textit{The Economic History Review} 16, no. 1 (1946).} Roebuck, Thomas says, typified the utilitarians’ confidence that their mastery of the most advanced social and political thought of their time gave them an advantage over their aristocratic and clerical enemies’.\footnote{William Thomas, \textit{The Philosphic Radicals : Nine Studies in Theory and Practice, 1817–1841} (Oxford Clarendon Press, 1979), 220.} Science and order were to replace custom.\footnote{Ibid., 230, citing article in \textit{London Review}, April, 1835.}
Roebuck was active in the LWMA. At a meeting of the Association in June, 1837, he was elected to a committee, along with Lovett,\textsuperscript{316} charged with drawing up a parliamentary bill with the six points. As time passed Lovett and Roebuck became the only active committee members, and, after his parliamentary defeat in July 1837, and because of other commitments, Roebuck withdrew from the committee. This left Place and Lovett with the primary task of drafting the bill, but with Roebuck maintaining a strong interest.\textsuperscript{317}

Along with the other authors of the Charter, Roebuck was a supporter of political change through class cooperation. For example, Place approved of Roebuck’s condemnation of violence at an early meeting of the National Political Union in 1831.\textsuperscript{318}

None of the authors of the Charter were revolutionists; two of the three were key Benthamites, and all had a strong commitment to reward for individual effort. All sought change through effort over time.

The Charter helped channel political endeavour in a particular and clearly marked direction. The Charter did not produce wholesale violence, and the points of the Charter were implemented over time without violence. Utilitarians continued playing a vital role in changing the thinking of the British people towards full franchise democracy,\textsuperscript{319} and played an important role in the implementation of representative institutions in the colonies.

**A Benthamite Philosophy behind the Charter?**


\textsuperscript{317} See ibid., 51-2.


There are several important elements of Benthamism to be found in the Charter and the democratic reform that followed it.

One important element is the combining of individual interests in order that the government is inclined to work towards the greatest happiness. The six points of the Charter allow for this aggregation to occur through the democratic mechanism. Each person is entitled to an equal share in determining the government; each person’s vote is to be protected against external interference by the secret ballot; anyone may stand for election and there is no economic bar to this – thus members are to be paid; each electorate is to be of roughly equal size to prevent people in a small electorate effectively having more power than those in a large electorate; the parliament is to be reconstituted regularly to prevent the entrenchment of the interests of the elected representatives. Individual dissatisfaction, whatever the cause, combined into a majority can result in a change in government. Because of the structure of the English parliament after the 1832 Reform Act, it was implicit within Chartism that the executive was to be formed in the parliament, and thus that it would be under the direct control of the people. The executive also has legislative power. In a sense the executive and the legislature are combined, providing for strong and effective government, and allowing for the will of the electorate to be implemented. Thus the interests of the majority gain ascendancy under a Benthamite parliament. No minority class or interest group has a hold on power. The greatest happiness, then, is at the core of the Benthamite political structure. Or, as Collins puts it:

Bentham’s lengthy account of schemes for representation, legislation, and administration is a detailed exposition of the institutional means of securing that public good which maximizes private interest.

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320 See for example Collins, "Political Ideology in Australia,” 148. See also, for example, Mill, An Essay on Government.


Two less conspicuous elements of Benthamism to be found in the Charter and Chartist promulgations are the idea of happiness fundamental to Benthamism and an internal logic towards peaceful change.

**Happiness**

In his autobiography Lovett provides the text of many of the declarations of the LWMA, some of which were also adopted by other Chartist organisations throughout Britain. The concept of happiness features in most of these, alongside other consistently occurring concepts such as freedom, and the cooperation of all classes. The concept of happiness in these documents is not subsidiary or incidental, but intrinsic. The concept of virtue appears occasionally as well, but it is rarely invoked. Additionally, the concept of rights is muted in these declarations.

In the opening paragraph of the 1837 address *To the Queen of the United Kingdom of Great Britain and Ireland, and its Dependencies. The Address of the undersigned Members of the Working Men’s Association*:

> While we approach your Majesty in the spirit of plain men seeking their political and social rights, apart from mere names, forms, or useless ceremonies, we yield to none in the just fulfillment of our duties, or in the ardent wish that our country may be made to advance to the highest point of prosperity and happiness. 324

The petition of the LWMA agreed to at the Crown and Anchor in 1837 opens:

> That the only rational use of the institutions and laws of society is justly to protect, encourage, and support all that can be made to contribute to the happiness of all the people…. That to take away this sacred right from the person and to vest it in property, is a willful perversion of justice and common sense, as the creation and security of property are the consequences of society – the great object of which is human happiness. 325

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323 This does not include such words as duty. See for example ‘Address to the Queen of the United Kingdom’ in Lovett, *The Life and Struggles of William Lovett*, 124.

324 Ibid.

325 Ibid., 444-5. Emphasis in text.
In an address to the ‘working classes’ about education, in 1837, the Association writes:

Now, if ignorance can be shown to be the most prolific source of evil, and knowledge the most efficient means of happiness, it is evidently the duty of government to establish for all classes the best possible system of education.\footnote{Ibid., 136. Emphasis in text.}

In his address appended to the Charter itself, Lovett writes in the second paragraph:

While, however, we contend for the principle of self-government, we admit that laws will only be just in proportion as the people are enlightened; on this, socially and politically, the happiness of all must depend…\footnote{Ibid., 166.}

In a press statement replying to criticisms by physical force Chartists in 1838, the Association declares:

They say that we are ‘adopting and imitating the mischievous conduct of our oppressors, in seeking to make men free and happy by means of legislation!’ What, we would ask, but legislation has made the difference between democratic America, despotic Russia, and pauperized and oppressed England?\footnote{Ibid., 175.}

The statement is of particular interest because it emphasises the role of the legislature and legislation in the moral force reform movement and in the creation of happiness, a reflection of the Benthamite program.\footnote{See in relation to Benthamism, Collins, "Political Ideology in Australia," 148-150. See also Wolfgang Friedmann, Law in a Changing Society (Ringwood: Penguin, 1972), 19. ‘It was Bentham’s philosophy, and that of his disciples, which turned the British Parliament – and similar institutions in other countries – into active legislative instruments, effecting social reforms, partly in response to, and partly in stimulation of, felt social needs’.}

A speech given by Lovett on 6 August, 1838 at the ‘Great Birmingham Meeting’, subsequently sent as an address to the Irish people, endorsed and signed by 136 working men’s and radical associations, stated:

This we feel is the great source of our oppression; ignorance, immorality, poverty and crime have their origin directly or indirectly in exclusive legislation; for as long as exclusive interests are made the basis of law and government, so long will exclusive measures be supported at the sacrifice of peace, happiness, and virtue … The happiness

\footnote{Lovett, The Life and Struggles of William Lovett, 181.}
of the country does not depend on her commerce, so much as on the quantity of comforts she can retain for her population….  

A manifesto, made up by the General Convention of the Industrious Classes in case the million signature petition of 1839 to parliament was rejected, stated:

Do they ardently desire the happiness and prosperity of their country? 

Uses of the term ‘social happiness’ occurred in an address related to the formation of the National Association of the United Kingdom, a moral force Chartist organisation (c. 1840), and in an address by the same organisation to the Political and Social Reformers of the United Kingdom (1841).

In 1848 a prospectus for a school in the National Hall declared that education would enable the school’s pupils to ‘diffuse the greatest amount of happiness among their fellow-men’. The term happiness was used in the opening sentence of the Address to the Radical Reformers of the United Kingdom made by the newly formed People’s League: ‘Fellow-Countrymen, – Desiring the peace, prosperity, and happiness of our country…’

In fact most, if not all, of the key documents and important addresses quoted in Lovett’s book have happiness as a central platform, or a key concept. This helps confirm that, at a minimum, the ultimate end of those who wrote and publicised the Charter was consistent with the Benthamite ambition for greatest happiness, and provides contributing evidence for Engels’ view, expressed in Conditions of the Working Class in England, that Benthamism was included at the heart of the origins of the early nineteenth-century struggle to reform parliament and society – be it toward an increase in social happiness, or an individualised and aggregated happiness.

331 Ibid., 183-5.
332 Ibid., 212.
333 Ibid., 246-7.
334 Ibid., 258.
335 Ibid., 334.
336 Ibid., 336.

For further examples of the use of happiness in various documents and addresses in his autobiography see Lovett, The Life and Struggles of William Lovett, 270, 276, 277, 313, 330,
Non-violence

Achieving political change through non-violent means was an abiding concern of Bentham and his followers, although Bentham’s position did change during the 1820s. The French revolution was the example to which they looked for political change gone wrong. Bentham became famous for his critique, written in 1795, of the ostensibly liberating idea of natural rights as stated in the Declaration of Rights published by the French National Assembly in 1791. He took the declaration sentence by sentence, and subjected it to a withering attack. On ‘The end in view of every political association, is the preservation of the natural and imprescriptible rights of man’ he asserts:

[The words] can scarcely be said to have a meaning: but if they have … these would be the propositions either asserted or implied.

1. That there are such things as rights anterior to the establishment of governments: for natural, as applied to rights, if it mean anything, is meant to stand in opposition to legal — to such rights as are acknowledged to owe their existence to government.…

Bentham acknowledges rights given in law, but not rights preceding government, called natural rights. Thus he makes his famous declaration:

Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts.

352. I have not sought to distinguish the concept of social happiness from the greatest individual happiness across the society. There is no indication in Marx or Engels as to how this is to be done, and it seems fair to suggest that the two concepts are allied and possibly indistinguishable. It may be that social happiness is impossible without at least the majority of the community being happy according to their own assessment.

338 Schofield, Pease-Watkin, Blamires, (eds.), Rights, Representation and Reform, xlix. Bentham’s critique was first published in 1816, in French. (1)


340 Ibid., 330.
Bentham continues:

But this rhetorical nonsense ends in the old strain of mischievous nonsense. For immediately a list of these pretended natural rights is given, and these are so expressed as to present to view legal rights. And of these rights, whatever they are, there is not, it seems, any one of which any government can ... upon any occasion whatever, abrogate the smallest particle.

So much for Terrorist language.

So, Bentham argued in 1794:

Remember the ides of September [1792] is a memento I always conceive of as given when I hear of natural rights: where this is the imagery displayed in front, I always see in the background a cluster of daggers or of pikes introduced in the National Assembly... Of late these pikes and daggers have been exhibited in broad day, and pointed out to reasonable and reasoning men, as gibbets used to be to to murderers and thieves. But though till lately kept behind the curtain, they were always at hand, and but too close to the elbow of many a well-meaning man who hardly suspected how near he was to use them, or how void of all meaning his discourse, his politics, his fancied philosophy was, except in so far as he meant to use them.  

Burns suggests that ‘In a real sense, then, the French Revolution made possible the creation of Benthamism.’ Perhaps it might be said, more specifically, that the operation of democracy in America gave Bentham inspiration, and the French Revolution was instructive largely for its failures.

The idea of revolution was to have a presence in radicalism in England during the 1790s and following the 1832 Reform Bill and the 1838 Charter. Natural rights

343 For example see Chilton Williamson, "Bentham Looks at America," Political Science Quarterly 70, no. 4 (1955). John Austin, the Benthamite legal theorist, condemned the American war of independence as a waste, and argued with a fine satire, and along with Edmund Burke, that if utility had been the guide, rather than rights, no war need to have been undertaken. Austin, Lectures on Jurisprudence, Vol. 1, 122-4. There is every reason to suppose that this was the prevailing Benthamite perspective. On the Bentham’s views on America see Hart, "Bentham and the United States of America."
underpinned the American and French Revolutions and were widely promulgated in Thomas Paine’s immensely popular *Rights of Man.* During the 1790s some members of the London Corresponding Society supported Painite revolution. During the Chartist era, the prominent radical Peter McDouall had a revolutionary intention, based on an appeal to natural rights. The Chartist George Julian Harney also appealed to natural rights and the French Revolution, encouraging the use of physical force. Natural rights carried with them the doctrine of the separation of powers. The purpose of the state was to guarantee the natural rights of the citizen. Despotism was to be prevented by formally separating the functions of the legislature,


The question of whether English radicalism ever came close to revolution is one as yet unresolved. As Dyck notes, there is a discourse of the ‘missing revolution’ in historical writing about the era, with proponents of the idea that a revolution was imminent, and others who suggest that revolution was never a serious possibility. Ian Dyck, "'Rural War' and the Missing Revolution in Early Nineteenth-Century England," in *Radicalism and Revolution in Britain, 1775-1848*, ed. Michael Davis (London: Macmillan, 2000), 179.
the executive and the judiciary. Montesquieu had seen the separation of powers as the key to liberty.\textsuperscript{349}

For Bentham, writing in 1776, the language of utility encouraged rational debate and non-violent change. Although he allowed for the possibility of a ‘juncture for resistance’ where ‘the probable mischiefs of resistance … appear less … than the probable mischiefs of submission’ he was far from enthusiastic that resistance should be the result.\textsuperscript{350} Rather, he saw the principle of utility as overcoming the tendency for disagreement to spill over into resistance. In the first place he saw the juncture of resistance as impossible to identify – one must simply rely on each participant to assess the matter. In the second place he saw the tendency to resistance minimised if debate is conducted within the framework of utility:

had the debate been originally and avowedly instituted on the footing of utility, the parties might at length have come to an agreement; or at least to a visible and explicit issue … Men, let them but once clearly understand one another, will not be long ere they agree. It is the perplexity of ambiguous and sophistical discourse that, while it distracts and eludes the apprehension, stimulates and inflames the passions.\textsuperscript{351}

This is where, in this text, Bentham leaves the discussion, with the parties largely in agreement with each other. During Bentham’s early period of writing, the revolutionary should look elsewhere to find succour for his passions. The net effect of Bentham’s works to around 1821 tended away from violence. For example, the following is included in a letter written in December, 1821 from Toribio Núñez in Spain after the \textit{liberales} revolution:

The delight I had experienced previously in dispensing good now gave way to the pleasure I expected to take by the extension in my country of those of your principles that teach how to govern and how to introduce useful reforms into a nation without cutting across existing rights. In these principles I saw the reasons why so many evils had arisen from the French Revolution, which had preoccupied us in our younger days, so that I had been finding out ways to free my country from its horrors. It all seemed


\textsuperscript{351} Ibid., 492.
easy to put into effect; but unfortunately these ideas were not well known in Spain, nor are they still, generally speaking. However, in spite of our inveterate preoccupation and our predilection for French-style ideas, they are getting to be more widely appreciated, and among the deputies who will be members of the next Cortes I think there are many who are initiated into your precious mysteries.\textsuperscript{352}

Later, during the early 1820s, after his uncovering of sinister interest, Bentham became more provocative. In \textit{First Principles Preparatory to Constitutional Code} he proposed that where there is misrule:

In this case, every man thus tormented must either lie down as motionless as he can under his torment, or rise up—and in conjunction with as many as he can get to join with him, rise up, and endeavour to rid the country of the nuisance:—to substitute to a form of government having for its effect as well as its object the sacrifice of the universal interest to the interest of the rulers, a government which for its object at least shall have the causing the line of conduct of the rulers to coincide with that marked[?] out by the universal interest and thereby by their official duty.\textsuperscript{353}

He suggested that monarchy must inevitably lead to misrule and that the monarchy and Lords should be ‘abolished’.\textsuperscript{354} Parliamentary reform will otherwise be futile. He proposed that while power is held by one class, by the monarchy and its aristocracy, the ‘governed millions’ will continue to suffer until they ‘rise up in a mass, and take the care of their own welfare into their own hands.’\textsuperscript{355} While this language is provocative, it is not a direct prescription for violence, and the prevailing culture amongst the Benthamite coterie was certainly for change by other means.

The preferred methods for change were illustrated during the campaign leading to the 1832 reforms to parliament. The Philosophical Radicals were strongly associated with


\textsuperscript{355} Burns, ed. \textit{Constitutional Code}, 433.
the agitations, and, while threatening revolutionary violence, the reforms proceeded without it. In relation to the campaign for the Charter, Hamburger notes the difference between the Benthamite radicals and physical force Chartists. The Benthamite radicals were suspicious of the move by some Chartists to impose Charter ideals by physical force. He states:

It is true that [the Philosopher Radicals] themselves had used the language of menace during the Reform bill agitation in 1831-32, but whether they seriously intended to carry out their threats remains very doubtful. In contrast, the Chartists appeared to have meant what they said, and there were outbreaks of violence that seemed to give credence to their words. Place complained of the illegality of some of the Chartists’ proceedings, and even Roebuck was intimidated by their allusions to violence. “Force is the ultima ratio, but fools are ever talking of appealing to force, just as if the use of force did not of itself even at the best retard advance.”

This statement of Roebuck’s in 1841 reflects, in a general way, a statement by Bentham around 1775 in *A Comment on the Commentaries*:

Wisdom is the fruit of experience. Experience accumulates with age. The natural course of things, therefore (unless barred by violent and extraordinary revolutions of which the press has barred for ever the return) is for the world to increase in wisdom as it comes on in age.

The world is more likely to advance (Roebuck) and be wiser (Bentham) where violence is not used. But violence, for Roebuck, just as for Bentham, was an *ultima ratio*. The prevailing wisdom of the group was that violence is retrogressive.

Hamburger suggests that it was James Mill who set the tone for the emerging philosophical radicals during the 1820s. ‘Bentham’s main interest during the late twenties was law reform, whereas the followers of James Mill were more concerned with the movement for reform of Parliament’. Hamburger notes that James Mill rejected violence as a vehicle for change. It is thus probably early Benthamism, and James Mill’s influence that might be seen to underpin the philosophical radicals’

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357 Bentham, "A Comment on the Commentaries,” 212.


commitment to peaceful change. Bentham’s later writings are not inconsistent with peaceful change, though violence remains a possibility for their implementation. James Mill thought the desire to minimize pain would lead to the rational response of granting concessions. The pain should be made sufficient, but not spill over into actual violence, and therein lies the philosophical radical strategy for the campaign for the Reform Bill of 1832, and subsequent democratic reform. A key contribution of Bentham’s was to domesticate democratic change, presenting it within an English philosophy and providing an alternative to the path of violence identified with Continental change. The existing parliament was the most important structural vehicle for change. This idea of using parliament for change can be seen in moral force Chartism.

Several elements of Chartism supported peaceful change and can be identified as Benthamite in outlook, strategy and input. In the first place the concept of rights are almost absent in the Charter. Rights are mentioned once, and only as a legislative right, in relation to eligibility to vote:

> Be it therefore enacted:-

> That, from and after the passing of this Act, every male inhabitant of these realms be entitled to vote for the election of a member of Parliament; subject however, to the following conditions:-

> ...

> 5. That his electoral rights be suspended for bribery at elections, or for personation, or for forgery of election certificates, according to the penalties of this Act.\(^{360}\)

Most notably, the preamble lacks any reference to rights. Contrast this with the rhetoric of rights that is evident in the earlier petition of the LWMA made at the Crown and Anchor in 1837 in which it is declared ‘That the universal political right of every human being is superior and stands apart from all customs, forms, or ancient usage; a fundamental right not in the power of man to confer, or justly deprive him of’, and which continues by declaring such a right ‘sacred’.\(^{361}\)

Lovett’s 1800 word address, appended to the bill for circulation to the nation’s reform groups did mention rights more forcefully than was evident in the Charter. The letter


\(^{361}\) Ibid., 444-5.
to ‘fellow countrymen’ referred to rights twice, with the first reference occurring in the first paragraph, in which it is stated that government by representation was ‘the only true basis of ‘Constitutional Rights’.\(^3\) Even these references were somewhat muted, but rights were clearly a surviving concept within the LWMA. In these circumstances rights might be expected to have had a greater rhetorical presence than they do in the Charter itself, which is, in fact, a sober and rather technical bill.

Additional to this sober formulation, from the beginning the Charter had two further elements that tended towards a non-violent outcome. The first element was the environment in which the Charter was produced. There was a growing use of rules and procedure to govern public meetings. These rules and procedures tended towards meetings being relatively calm, producing peaceable outcomes. This environment was strongly promoted by people such as Place. Secondly, the Charter itself introduced into this system of strongly governed meetings a fixed and clearly defined set of goals.

**Rules and procedure**

Rules for gatherings were an important part of the method for achieving reform. For example, Francis Place developed a set of rules for Sunday lectures instituted by the LWMA to discuss political economy. The rules enabled each voice to be heard, and were framed thus: meetings were to run from 10am to 1pm exactly; each speaker was to speak from his seat to avoid displays of oratory; each speaker was to speak in turn and never out of turn; and the continuation of any topic was to be voted on by all present. The subject for any week was to be displayed during the week prior. Henry Chapman and Francis Place both noted the quality of the debates that resulted.\(^3\)

\(^3\)"Taking Liberties – the Struggle for Britain’s Freedoms and Rights," British Library, available from http://www.bl.uk/onlinegallery/takingliberties/staritems/159peoplescharter.html; [3 January, 2010]. The website appears to be suggesting that the document shown was the Charter itself. This is not correct.

Years later William Hearn, writing in Australia in 1867, agreed with the importance of rules, both for public meetings and in parliament:

Those rigid rules have often a very sobering effect. They give time for the fits of excitement that are incident to large Assemblies to subside or to pass away. They cannot, indeed, exclude errors, but they fix the limit of error.

Hearn argues that so familiar are the rules of parliament that we forget their merit and effects. He observes that de Tocqueville and Lieber had noted their importance. ‘Even’, he suggests, ‘the habitual wrath of Bentham himself is modified when he approaches this part of our polity’. He continues:

There are few Legislative Assemblies in other countries that have not suffered from a want of that elementary knowledge of the procedure of public meetings with which every Englishman and every American are unconsciously familiar. Such a want has been one main obstacle to the establishment of free constitutions on the continent of Europe and in South America. In the great French Revolution the same difficulty, as I have already intimated, was keenly felt.

Hearn observed that Samuel Romilly provided to the French National Assembly a statement of the rules of the House of Commons, and that this was translated by Mirabeau. The assembly did not adopt the rules, and as a result the assembly was filled with abuse and the President disregarded. Hearn quotes Romilly:

Much of the violence,” says Sir Samuel Romilly, “which prevailed in the Assembly would have been allayed, and many rash measures unquestionably prevented, if their proceedings had been conducted with order and regularity. If one single rule had been

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364 William Hearn was Professor of History and Political Economy at the University of Melbourne, first Dean of the Law School, and subsequently Chancellor of the University while pursuing a parliamentary career. He taught, and exercised considerable influence upon, among others, Henry Bourne Higgins.


366 In de Tocqueville, Democracy in America, 390.

367 Hearn’s citation reads: ‘Civ Lib 153’.


adopted – namely that every motion should be reduced into writing, in the form of a proposition, before it was put from the chair, instead of proceeding as was their constant course by first resolving the principle as they called it (décréter le principe) and leaving the drawing up what they had so resolved (or as they call it la rédaction) for a subsequent operation – it is astonishing how great an influence it would have had on their debates and on their measures.371

Here there is an appreciation for the orderly public meeting, and for the generation of fixed resolutions to contribute to that order.372 It is worth noting that Romilly was not the only person to supply to the French a system of rules. Bentham, Romilly’s friend and associate in reform, also submitted to the French a draft of parliamentary procedure. In his ‘Essay on Political Tactics’, Bentham produced what Burns suggests is ‘the first attempt ever made to theorise broadly about parliamentary procedure’. It was ‘argued on utilitarian assumptions’.373 Both Romilly and Bentham were encouraged by Mirabeau, and their works were used by him,374 but their efforts went in vain. The value of rules of meetings – in this instance the meetings of parliament – was a particular concern of Bentham and his ally, Romilly.

Francis Place believed that where the peaceable nature of the public meeting came under threat, so did its usefulness. Wallas, quoting Place, observes the ‘vexed phase’ of Chartism:

Chartism in 1840 was little but an organization for breaking up public meetings. “In London,” says Place, “the interruption is made and sustained by from about 120 to 200 men, many of them youths. They go from place to place where Anti-Corn-Law lectures are given; they there make a disgraceful broil, which is reported in the Northern Star as ‘a glorious victory’. These 150 men call themselves the people, and their impudence and tyranny is without example....” “I have a letter before me from the editor of the Glasgow Argus, in which he says: ‘Nothing is doing here in public. The Chartists have put down public speaking. Nothing could be done now but by tickets of admission.’ ” ... For one moment, he seemed even to fear that, in any rapid advance towards democracy, it might be such a turbulent minority rather than the steady mass of the

371 Ibid., 558. Quoting Romilly, Life, i. 75.
372 The role of the meeting in public life has been discussed in Charles Tilly, "The Rise of the Public Meeting in Great Britain, 1768-1834," Social Science History 34, no. 3 (2010).
374 Ibid., 99.
people who would come to the front. On 1 March, 1841, the Metropolitan Anti-Corn-Law Association held a meeting of the Crown and Anchor Tavern. Next day Place writes to John Collins, the Birmingham “moral force” Chartist, who had been imprisoned with Lovett: “I have seen many uproarious meetings … but I never saw anything which would bear even a distant comparison with what I saw last night. I was very much ashamed of, [sic] the people before me. There I sat thinking of the terrible evils of the French Revolution in its earlier periods, and sure I am that if the men who composed by far the greater portion of the audience were not restrained by ‘their fellow-subjects’, the policemen and the soldiers, all the horrors of the worst scenes in the French Revolution, all its monstrous cruelties and enormous evils of every kind, would be outdone by the men whose heads would readily conceive and whose hands would speedily commit them.”

Romilly, Bentham and Mirabeau’s lessons lurk in the background of Place’s description. Later, Henry Chapman, another Benthamite, displayed a similar interest in procedure in New Zealand and Victoria.

A clear goal

Francis Place, Bentham’s closest political associate, exhibited an especially strong appreciation for having a clear object and orderly meetings in the following passage, introduced by Tilly:

Francis Place took the rise of meetings as evidence of the reform movement’s civilising influence. “Look even to Lancashire,” he declared in a letter to Thomas Hodgskin (12 September, 1819):

Within a few years a stranger walking through their towns was “touted,” i.e. hooted, and an “outcomling” was sometimes pelted with stones. “Lancashire brute” was the common and appropriate appellation. Until very lately it would have been dangerous to have assembled 500 of them on any occasion. Bakers and butchers would at the least have been plundered. Now 100,000 people may be collected and no riot ensue, and why? Why, but for the fact before stated, that the people have an object, the pursuit of which gives them importance in their own

375 Wallas, Life of Francis Place, 376-7, including quote from Place to John Collins, 2 March, 1841. One needs also to keep in mind that Wallas’s biography of Place had a didactic purpose for political action, directed towards the Fabians.
eyes, elevates them in their own opinion, and thus it is that the very individuals
who would have been the leaders of the riot are the keepers of the peace.376

The meeting, potentially a powerful force for peaceful change, responds best to
pursuing a defined goal, as does a social movement generally. Thus, fifteen years later
Place writes of the failed campaign to reduce working hours:

I told you that the scheme would fail, and I told you why it would fail, and nothing be
done… The working people never did agree on any one subject, and no man in his
senses can expect that even a twentieth part of them are at all likely to concur in
anything which requires time for its accomplishment.377

But then the solution – the Charter gave a common cause:

We have now, then, obtained to a considerable extent what we have never before had,
namely, a very large proportion of the working people going on with others for the
common and intelligibly declared purposes set forth in the Charter.

The phrasing suggests Place had been something of a voice in the wilderness in his
appreciation of the value of clear goal-setting for orderly political change. It is
perhaps to Place, then, we can attribute the clear goal setting of the Charter, exercising
his understanding of the important implications of this strategy. Place continued that
the struggle would go on to ‘vex and perplex them,’ with a resort to violence from
frustration, but that the agitation ‘rigidly confined to one proposal’ would eventually
succeed through calm perseverance.378 Out of order would come order. Combine
order and a certain goal and an orderly power is obtained. These tactics might not be
unique to Benthamism, but Bentham and Place display a powerful recognition of their
value. Place located the Charter within the strategy of the defined goal.

The Charter as legislation

376 Tilly, Popular Contention in Great Britain 1758–1834, 260. Tilly is quoting Wallas, Life
of Francis Place, 145-6. See further discussion of the evolving language of political agitation
in Tilly and also Plotz, “Crowd Power: Chartism, Carlyle, and the Victorian Public Sphere,”
Representations, no. 70 (Spring, 2000).
377 Letter, Place to James Turner, 19 October, 1834, in Wallas, Life of Francis Place, 359.
378 Ibid., 369-70.
One more aspect of the Charter was an influence for peaceful change. The Charter was not just a series of six abstract points. It was a physical document that recorded the ambitions of its supporters; it was a bill for parliament. Thus the Charter was integrated into the *lex et consuetudo parliamenti*, understood by Romilly and Bentham to be so important. It was, therefore, already imbued with the qualities of the orderly meeting, being part of the orderly process of legislation.

So powerful was the Charter as a bill for parliament, that the ambitious groups that sought to attach their own additional agendas to it could not displace it. As Pickering observes, they were required to cry ‘The Charter and Something More’.

The nature of the document meant that the points it recorded were privileged in subsequent debates, and almost inviolable. The document itself, the Charter, held them fixed. Insofar as ‘something more’ represented some form of revolution, the two components of the phrase ‘The Charter and Something More’ are incompatible. The revolution would have to involve the retention of parliament, the rule of law, implementation of the Charter points, and the subsequent implementation of policy decided by the majority of adult males.

**Conclusion**

The 1838 Charter is often represented as a document solely of the ‘working classes’, with their ambitions suppressed by an oppressive middle class. The Charter was, however, a document for peaceful change, and its authors expected reform to take some time. They foresaw that a violent strand might emerge and then fade away during the campaign for the points of the Charter.

The Charter was not a document solely of the ‘working classes’. It was a document supported by people at all levels of society. It was written by two Benthamites, Place and Roebuck, and one with strong Benthamite associations, Lovett. It was strongly supported by Benthamite radical reformers in parliament. The document itself has strong resonances with Benthamism and political tactics conducive to peaceful change. These included the six points themselves, the tight focus on these points, the

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379 Pickering, "Chartism in Colonial Australia," 34.
diminution of the concept of rights, the use of rules and procedure at public meetings, and the reinforcement by the Charter of the authority of parliament and parliamentary procedure. The strong Benthamite flavour of the Charter and moral force Chartism has been neglected by scholars. Bentham and his followers were strongly in favour of peaceful change, particularly where there existed faith in the prevailing institutions for implementing that change. The tendency towards violence of 1840s Chartism was in contradiction to the intentions of the authors and the processes they adopted.

Harriet Grote, wife of the utilitarian historian George Grote, sums up the matter, quoting de Lavergne’s 1854 work, The Rural Economy of England:

No one ought to affirm that revolutions find no field in England; on the contrary, revolutions go forward there as elsewhere, only that they proceed silently and in a leisurely way.380

This was the kind of political change the utilitarians sought. ‘The schoolmaster is abroad’, declared Lord Brougham in 1828, referring to the peaceful nature of a shift to liberal and democratic institutions. The phrase became ubiquitous, and the effect of the words was to teach the community a confidence in change by moral force instead of physical force.381

The techniques for peaceful change were imported into Australia along with British settlement. The rules of meetings, including the rules of parliament, a particular language of demonstration and social unrest, the six points of the Charter, a polity based on happiness, and a general (but not complete) absence of the concept of natural rights – all contributed to make up the form and aims of Australian political activity. Benthamites were authors of the Charter, leading figures in the establishment of a culture of the orderly meeting, and helped define the goals of political change. Thus they played an important role in launching and sustaining an ongoing campaign for peaceful change.

Far from being exclusively or necessarily proletarian and revolutionary, the Charter was written by those who rejected revolution. In their turn, the authors of the Charter were rejected by those who sought class conflict and revolutionary change. This

played out in tensions between, for example, the physical force advocates such as O’Connor, and the moral force Chartists. The Charter, however, was useful to all social classes involved in democratic reform, including those people of all classes who believed in the peaceful expansion of democracy. I will argue that in Australia the peaceful strain of democratic reform dominated. The points of the Charter were not implemented in Australia until the 1850s, but there was a long evolution of increasingly democratic reform in the Australian colonies, beginning from the first years of settlement. These will be examined in the next chapter, noting Benthamite involvement. Chapman, Roebuck, and Molesworth, all of whom had an association with the LWMA, appear in the story of Australian democratic reform. Many of their Benthamite colleagues were also important participants.
Chapter 4: Early Australian colonial constitutional change

I am reconciled to the loss of Panopticon when I think of the mass of happiness that is being created there. (Bentham, Bentham’s Conversation, 1843)\(^{382}\)

This chapter examines the contribution of utilitarians to the constitutional development of New South Wales and Victoria. It covers the period from 1830 to the mid-1850s. The chapter does not seek to cover all constitutional developments in those colonies during this period. The purpose of the chapter is to illustrate the central place of utilitarians in the development of the colonial political structures. The focus on New South Wales partly results from the fact that for many years New South Wales was European Australia. New South Wales also serves as a representative case for the themes of the era. Victoria was carved out of New South Wales toward the end of the period, but for the most part formed a part of its territory. As Peter Cochrane observes in *Colonial Ambition*, ‘the struggle to establish self-rule in the Australian colonies began and ended in New South Wales, and it ended with the defeat of the most powerful social class in the land’. \(^{383}\)

As mentioned in the introduction, the role of Benthamism in Australian colonial constitutional development has been underplayed in Australian historical scholarship, at least since Richard Mills’ *The Colonization of Australia* published in 1915. Even Mills does not address the issue fully, not out of lack of awareness, but because his project to write on the philosophical radical contribution to the constitutions concentrates more on their earlier activities during the 1830s. \(^{384}\) This is not to say the contributions of the utilitarians is entirely overlooked in scholarship – it would be virtually impossible to tell the story of Australian colonial constitutionalism without referring to their contributions. It is that, in general, the association with Bentham’s ideas is not pointed out or developed.

This chapter will provide context for the battles of the utilitarians in their search for colonial democracy. It develops an understanding of the place of Benthamism,


\(^{383}\) Cochrane, *Colonial Ambition*, xiii.

including moral force Chartism, in Australian colonial political developments. It helps to provide an understanding of a significant connection between developments in political thought and ambition in England and the implementation of political ideas in Australia.

The first two sections of this chapter are scene setting. The first section looks at the background to the utilitarian input into Australian constitutional matters, including their project of ‘systematic colonisation’. The second section continues with a closer examination of the Wakefield system.

The third section discusses colonial constitutional developments, picking up the story at around 1830 and progressing it to 1837. Agitation for, and development of, constitutional government in New South Wales began early in colonial life. Growth in economic activity, and also of population, brought pressure from governors and colonists for a more accountable government. It also saw some constitutional reforms. The main contributions of the Benthamite utilitarians began around 1830.

In New South Wales this can be seen with the appointment of Charles Buller as Parliamentary Advocate of the Australian Patriotic Association, the topic of the fourth section. For the next fifteen years the Benthamite influence in New South Wales’ constitutional development is profound. The Australian colonies had become the project of the utilitarians, and thus, from this point up to the 1850s, the colonies can be seen as being significantly influenced by their ideas. Section four takes us to 1848, with the creation of a lower elective house, coupled with a broad franchise.

The fifth section discusses the 1848 election that Henry Parkes described as the birth of Australian democracy. This section ends with the departure of Robert Lowe for England in 1850, where he became Chancellor of the Exchequer.

The sixth section, the final section discussing New South Wales, examines the period from 1849 to 1855 with the attainment of responsible government. The remaining two sections briefly examine constitutional development in Victoria. South Australian developments are examined briefly in chapter five with a discussion of George Strickland Kingston.

Generally, chapter four shows how constitutional development can be a slow and incremental activity, which draws upon many sources for its ideas, and responds to local conditions and experience. The idea of representative government was present
from the early days of the colony. It was theorised and developed in Britain. Not only did the ideas arrive from Britain, but the agitation for, and implementation of, such ideas rested on the idea of being British.\textsuperscript{385} The chapter demonstrates that utilitarians played a substantial role in the development of early democracy in Australia. The Charter was a significant influence in the agitation for democracy, and in the shape that democracy took.

\textbf{Utilitarians and systematic colonisation}

In his introduction to \textit{The Colonization of Australia (1829-42)} Richard Mills introduces the reader to the important role of the utilitarians in early Australian constitutional history. In doing so, he throws light on an important fact about researching the origins of the written Australian colonial constitutions – in fact in writing about any written constitution. What really matters is the years preceding their introduction. The documents themselves are condensations of what occurred before. Thus Mills writes:

\begin{quote}
In October, 1912, as a research student at the London School of Economics, I began to study the introduction, in 1855, of responsible government into Australia. Very soon, however, I discovered that this change had been made possible only by a movement for colonial reform which had begun as early as 1829. I then began to examine the work of that extremely able group of men who had then developed theories of colonization, with special reference to Australia, and had succeeded in putting into practice, though imperfectly, many of their theories, of which responsible government for the colonies was one.\textsuperscript{386}
\end{quote}

Mills saw the key figure as Edward Gibbon Wakefield. Creating a niche for himself within the existing literature on Wakefield, Mills observed that Wakefield’s contributions had not been particularly well represented, and that the permanent part of Wakefield’s legacy was political, in support of responsible government.\textsuperscript{387}

\textsuperscript{385} Cochrane alludes to this in Cochrane, \textit{Colonial Ambition}, 54, where he observes that Parkes and his political friends were strong believers in British tradition.

\textsuperscript{386} Mills, \textit{The Colonization of Australia}, vii.

\textsuperscript{387} Ibid., viii.
The intervention by utilitarians in the interests of the colonies began in earnest when, in 1829, Edward Gibbon Wakefield published two influential works, *Sketch of a Proposal for Colonizing Australasia*[^388] and *A Letter from Sydney*.[^389] These works helped change the British attitude towards its colonies, and provided an inspiration for colonial reform. Wakefield’s work, which was an economic analysis of colonisation, attracted the attention of Bentham and other utilitarians, who adopted its precepts and fought for its implementation. With colonisation reassessed as a valuable activity, Benthamites then campaigned for democratic reform in the colonies. Benthamites discussed by Mills who subsequently played a particularly prominent role in colonial matters included Edward Gibbon Wakefield, Charles Buller,[^390] William Molesworth,[^391] Colonel Robert Torrens,[^392] J.S. Mill, George Grote and Robert Rintoul.[^393]

In Australia, during the early period of settlement, pressure for democratic reform was strong. The call for representative institutions in New South Wales was closely aligned with the arrival of free settlers and a growth in the productive capacity of the colony. Governor Phillip made his first request for free settlers in a despatch dated 17 July, 1790, and in that despatch also mentioned the desirability of the creation of a machinery of government other than the arbitrary constitution under which the colony was governed.[^394] Thus he requested the creation of a civil magistracy. Nearly three

Fawcett notes that Molesworth’s family gave him the nickname of "the philosopher", which remained with him through life. The nickname resulted in the term "Philosophic Radicals," the political party with which he was identified on his first entrance into Parliament. (14)
[^393]: Ibid., 144-6. Bentham’s conversion to Wakefield’s system is discussed at 152-3.
years later, on 16 January, 1793, the Bellona arrived, carrying the first free emigrants— all thirteen of them. From then on a steady stream of emigrants arrived, and the magistrate positions were subsequently filled. The Governors ruled autocratically from 1788 to 1823, though not without the most vigorous challenge from time to time.

In 1803 Bentham argued in the pamphlet A Plea for the Constitution that the Governor lacked parliamentary authority to govern. Without his, he was a ‘lawless power’. The ‘subversion of English liberties’ had been ‘the very object and final cause of the foundation of this English colony’, he argued. The colony had no legal basis, and was a ‘Colossus mounted upon a straw’. Atkinson suggests that Bentham’s ideas provided the justification for the Rum Rebellion of 1808.

In 1827, just prior to the more intense intervention by utilitarians in colonial matters, the free population of New South Wales stood at 35,000 plus 20,000 convicts and troops, totalling 55,000. The colony had recently become responsible for the cost of its civil government. If colonists were to be taxed to provide for their own government, they argued, they ought to have an assembly in which to decide the rate and type of taxation, and what the money should be spent on. The colonists petitioned the King, the House of Lords, and the House of Commons for a house of assembly. To counteract powerful families in the colony they suggested a large house of 100.

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395 Ibid., 4.
396 Ibid., 9.
398 Ibid.
399 Ibid., 280.
400 Ibid., 253.
401 Atkinson, "Jeremy Bentham and the Rum Rebellion," 1. In this article Atkinson also notes that David Collins, who led the first settlement in Port Phillip in 1803, dined with Bentham three times in London during January and February that same year. Atkinson notes: 'The link between Bentham and Collins is important as an aspect of Australian penal history which no scholar has yet looked at.' (3)
403 Sweetman, Australian Constitutional Development, 63.
404 For this Sweetman quotes a petition dated 27 January, 1827. The petition suggests that important issues might be decided by a large house of 100.
This was felt by Governor Darling to exceed the capacity of the colony to provide. He called the idea ‘wild and extravagant’.  

Westminster resisted representation in New South Wales, but created a Legislative Council of between ten and fifteen nominated members. This structure was presented to the House of Commons as a temporary measure. Huskisson, Secretary of State for the Colonies, stated ‘This will lead the way in time to the establishment of institutions in those colonies similar to those of the people from whom the colonists spring.’  

James Mackintosh, a keen supporter of representative institutions, spoke in the House of Commons for the creation of an assembly in New South Wales and Van Diemen’s Land, whose combined free population, he stated, now reached between 55,000 and 60,000.  

Even before an assembly was established, powerful voices argued for it and suggested it was just a matter of time. They were responding in part to the strong demands from the colonists themselves. A little after this time the Benthamite utilitarians became more active. The debate took on a new life leading to important practical outcomes. From around 1830, and up to the 1850s or thereabouts, the utilitarians turned their interest to colonisation. They made colonisation fashionable, and they were prominent in colonial reform.  

The Wakefield system  

Prior to the publication of his works, Edward Gibbon Wakefield had not lived an especially illustrious life. His first articles on colonisation were written between 1827 and 1830, when he was in gaol for the abduction of a fifteen year old heiress to make her his wife. He had a lot of time on his hands, and he had a new life to build which might well be in the colonies. He made a study of every book he could lay his hands on about colonisation, particularly in New South Wales. He had found a field in  

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406 Ibid., 67.  
407 Ibid., 68. Mackintosh had also supported representative institutions for New South Wales in the debates on the New South Wales Act, 1823, discussed above. Ibid., 44.  
408 Mills, The Colonization of Australia, 82.
which theory was absent.\textsuperscript{409} His \textit{A Letter from Sydney} described the economic, social, and political conditions of New South Wales and suggested a remedy for its problems. \textit{A Letter from Sydney} was fictional, but it was written in a style convincing enough to be taken as genuine. Disgraced by his imprisonment, Wakefield’s name was not attached to it.

In writing \textit{A Letter from Sydney} Wakefield had relied heavily on Robert Gourlay’s \textit{Statistical Account of Upper Canada},\textsuperscript{410} which argued that the colonisation of Upper Canada was marred by large grants and reserves of land that spread the population too thinly. Markets for produce were distant from the farm door, schools could not be formed, and every settler had to be a master of all trades. Moreover, there was a shortage of labour. Labourers could not be induced to remain in employment when they saw the opportunity of receiving a grant of land. As a result, farms and communities were not viable, and hardship and social degradation ensued. Free land, in fact, was an incentive to the implementation of slavery.\textsuperscript{411} The Swan River settlement of 1829, on the western seaboard of Australia, had been founded on the grant system and had resulted in near starvation. Wakefield’s system was seized upon as a remedy for colonial ills.\textsuperscript{412}

Meanwhile, in Britain, the problem of excess capital had become a matter of political and economic concern.\textsuperscript{413} In 1824 Bentham’s \textit{Westminster Review} ran an article criticising the \textit{Edinburgh Review} for promoting the idea that war was a useful means

\textsuperscript{409} Ibid., 80.


\textsuperscript{411} “Report on the Disposal of Lands – 1836,” 51, 56. Utilitarians were among the strongest opponents of slavery. For the utilitarians the line between convict labour and slavery was thin. See for example Herman Merivale, \textit{Lectures in Colonization and Colonies, Delivered before the University of Oxford, 1839, 1840, 1841} (London: Longman, Brown, Green, & Longmans, 1842), vol. 2, 5.

\textsuperscript{412} For example, see Chapman, “Lord Glenelg and the New Australian Colony,” 10.

\textsuperscript{413} Sydney Webb discusses the relationship between the utilitarians and economics (known then as political economy) in Sidney Webb, "Historic," in \textit{Fabian Essays in Socialism} (London: The Fabian Society, 1931), 41-2.
of soaking up the excess. Nevertheless, the prevailing Ricardian position was that the export of excess capital would entail a loss to the home country. Subscribers to the idea that capital would always find a field at home to employ labour included Bentham, Ricardo, James Mill and McCulloch. Wakefield’s economic theory provided a new model, one in which a colony could use excess capital to generate wealth for both the home country and the colony itself.

While firmly grounded in economic theory, Wakefield’s solution was elegant in its simplicity. Land should be sold by the Crown at a price sufficient to maximise both wages and profits. Wakefield’s key contribution was to identify a paradox – that, in the context of colonisation, where the price of land is high the purchaser’s profits too will be high, and wage levels will be maximised. Wakefield’s system allowed for the money raised from the sale of land by the government to be used to fund immigration. Newly arrived migrants without capital would need to work for several years before being able to afford to purchase land themselves, and settlement would be concentrated.


416 Ibid., 398.

417 Winch observes that J.S. Mill’s later economic writing was also strongly influenced by Wakefield. Ibid., 398-9.

418 Sufficient price was that which provides a golden mean of land availability – not too much and not too little, so as to produce the most desirable economic effect, which is to maximise both wages and capital return. See "Report on the Disposal of Lands – 1836," at para 648. A useful discussion of the scope of Wakefield’s theories is to be found in John David Young, "Response of Historians of South Australia to ‘Wakefield Theory’: 1838–1957" (Honours, University of Adelaide 1967), which also surveys much of the literature surrounding Wakefield.


420 In fact, for Wakefield the core of the issue was disposing of the land by sale at sufficient price. The use of the resultant money to enhance migration was an incidental, but useful, possibility. See for example Winch, Classical Political Economy and Colonies, 102.
On the back of Wakefield’s ideas, the National Colonization Society was formed in London in 1830. Its members included members of parliament and other notable figures – Robert Gouger, Charles Buller, John Stuart Mill, Robert Rintoul (editor of the Spectator newspaper in which Wakefield published his ideas), William Hutt, Colonel Torrens and Charles Tennant. Benthamite interest in emigration and the colonies brought a number of concerns into one program. Emigration served as a solution to Malthusian overcrowding. Colonies also provided a fresh field for capital, a new home for labour, and new markets. They also provided a field for political, economic and social experimentation. Initially the Association gained little beyond ridicule or indifference, and broke up the same year it was formed. However, it was not entirely without effect.

In 1830, the Colonial Secretary, Lord Ripon, and the Under-Secretary for the Colonies, Viscount Howick, were approached by the society and encouraged to introduce a system of land sales and emigration in line with Wakefield’s principles. Ripon’s Rules, which reflected the ideas of both Gourlay and Wakefield, were introduced in New South Wales in January 1831. Under the new system, purchasers bought land at auction based on their own assessment of its productive value. The government set a minimum price to the land and used the money collected to bring out immigrants. Land was not to be settled outside of declared zones around Sydney, although the grant of pastoral leases outside a zone was accepted. Settlement was

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422 For these criteria see, for example, ibid., 93.
423 Ibid., 150, 151, 155.
424 Ibid., 151, 153.
425 Henry George Grey, (1802–1894) later 3rd Earl Grey, known as Viscount Howick from 1807 until 1845. He was a supporter of Wakefield’s ideas. As Earl Grey, he became Secretary of State for the Colonies, from 1846 to 1852.
427 The Rules did not permit pastoralism, though an agreement was reached between Governor Bourke and Lord Glenelg that it should be allowed. Bourke to Glenelg, 10 October, 1835, in C.P. Billot, *John Batman and the Founding of Melbourne* (Melbourne: Hyland House, 1979). While the granting of leases was at variance with the Ripon’s Rules, pastoral activity was accepted by Wakefield on the condition that no improvements should occur on the leased land, and that improvements be confined to freehold land. See Wakefield’s evidence in "Report on the Disposal of Lands – 1836,” 104.
accordingly concentrated in the districts around Sydney. One effect of Ripon’s Rules was the voiding of Batman’s treaty of 1835 with the Aboriginals at Port Phillip. In 1836 Bourke rejected Batman’s claim at Port Phillip in part because it violated the principles of Ripon’s Rules, and Glenelg subsequently rejected the proposal on the same grounds:

Glenelg is friendly to your cause, acknowledges the merits. But he is unwilling or afraid to do anything that should infringe on Lord Ripon’s regulations.

The subsequent official settlement of Port Phillip was undertaken in (rather loose) accordance with Ripon’s Rules. In particular, land was sold, not granted. Although the National Colonization Society folded in 1830 its members continued to communicate, developing the idea of founding South Australia, which was to be undertaken on Wakefieldian principles. Thus the systematic colonisers had a profound effect upon the growth of New South Wales, including the European settlement of Port Phillip, and were the proposers and founders of the Province of South Australia. Their influence did not stop at the practical and social implications of land and immigration policy, but extended to constitutional matters.

Some confusion has developed around the kind of society Wakefield hoped for. For example Pike suggests that ‘The chief purpose of [A Letter from Sydney] was to demonstrate that low-priced land made labour expensive by enabling working men to

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430 For a discussion of the relationship between the subsequent arrangements at Port Phillip and Ripon’s Rules, see Mills, The Colonization of Australia, 211ff.

431 Ibid., Ch VIII.
obtain a cheap independence fatal to the prosperity of employers.  

Soon after this passage he provides a quote that suggests the price to be placed on land in South Australia ‘augments in fact, instead of diminishing the power of the capitalist’. From this he reaches the conclusion that the new immigrants were to be subject to the ‘inescapable bondage of agricultural serfdom’. However, while under Wakefield’s system there might be a group of people who did not own land, the aim was to enable those people to purchase land within a few years. Once workers purchased land they themselves might have their success enhanced by a refreshed pool of labour. The new arrivals would work for the new (and the more established) landowners. The capitalist might be empowered, but the worker too was to be empowered, not only by the prospect of purchasing land, but by gaining the highest attainable wages. Wakefield states:

the sole object of government involvement in controlling the allocation of land should be ‘the greatest prosperity of the colony; to produce that state of things in the colony which would render the colony most attractive to capitalists and labourers coming from the mother country’.

For Wakefield, people’s fortunes will depend on their own efforts. The wealthy might sink and the poor might rise. He saw a levelling tendency in his system, one he considered would work against the establishment of an aristocracy.

Public works also form a part of Wakefield’s system:

With emigration on a large scale, and reduced to a system … [y]ou may, I think, safely employ public money in great works of national improvement; roads, harbours, railroads, here constructed by private individuals, might there be in the hands of Government, care being taken that they are useful works...

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432 Pike, *Paradise of Dissent*, 77.
433 Ibid., 81, quoting C. Mann “An answer to the article in the XLVth number of the Westminster Review” in the *Report of the speeches delivered at a dinner to Captain Hindmarsh* (London: W. Clowes & Sons, 1835), 39. It is unclear whether the italics belong to Pike or the author of the quote, but it would seem to be Pike.
434 Ibid.
436 Wrong, *Charles Buller and Responsible Government*, 181.
It is important to understand the intentions of the Wakefieldian utilitarians, because they had a profound influence on Australian political and cultural development. It is hard to see how a group dedicated to the bondage or enslavement of individuals would also be dedicated, as they were, to the establishment of free institutions. It would be difficult to reconcile Benthamite support for Wakefield’s system with their substantial role in the fight for the Reform Bill, the aims of the Charter, and colonial self-government, if Wakefield’s system was designed to promote the interests of a single class.

In 1831 Wakefield sent his ideas for an economically viable system of colonisation to Jeremy Bentham. After several approaches Bentham was finally convinced of the worth of the ideas. Becoming enthusiastic, he wrote a finely detailed plan for the colonisation of what was to become South Australia. Wakefield was pleased because Bentham’s approval of his ideas gave them an invaluable cachet. We can see the details of Bentham’s ambitions in his notes:

Transferring individuals, in an unlimited multitude from a state of indigence to a state of affluence…

Giving to the immigrants into Australasia not merely the means of existence, as above, but through means of education, the means of well-being in all time to come…

Name of the spot proposed a spot discovered by Capt. Flinders and by him named Gulph Vincent…

To each couple, in return for labour, as above, assurance of subsistence to the same value as at first, for so long as it chooses to serve. In the case of each such couple, as soon as it can obtain any better price for its labour, it is not only the expectation but the desire of the Company, that it should so do…

Assurance of being taken care of in case of illness, and being provided for during life, in case of and in proportion to the loss of capacity for labour, by loss of limb, or the use of it…

To each married man Assurance of being able to purchase land, upon the terms here mentioned, as soon as, out of his savings, with the addition of what, if any thing he has carried with him, he has made up the price set upon it…

works by Alexander Stuart, colonial treasurer of New South Wales, reported in Goodwin, Economic Enquiry in Australia, 82.

438 This coast had been named by the French Terre Napoleon.
The Company (it is supposed) will feel no difficulty as to the engaging to find perpetual employment for all such immigrants as choose to accept it. Not to speak of Buildings, for which skilled labour will on the part of some of the workmen be necessary, the roads and other means of communication will at all times afford an ample demand for ordinary labour. 439

Broad ownership of land and a relatively equal and socially mobile society is there right at the beginning of the South Australia project in 1831. General affluence is the desired goal. Despite Pike’s reservations he does suggest that Bentham should be considered a founder of South Australia and draws attention to Bentham’s democratic hopes for the province:

Bentham was enthusiastic about the benefits to be expected by the English unemployed and by the shareholders. A colony without cost to the mother country impressed him; it might escape patronage, and all other interferences by Downing Street. He warned the colonists to avoid second chambers and federal union with adjacent colonies when the day came for self-government. Their best guarantee of freedom would be simplicity of constitution, and for a pattern he offered his Constitutional Code complete with universal suffrage, vote by ballot, annual parliaments, equal electoral districts and ‘one day elections’. A colony so governed, he declared, should be called Felicia or Felicitania or, the best of all, Liberia – ‘a single word which spoke volumes’. 440

For Bentham, colonisation was to produce a new form of democracy. In England, in 1831, the vote was extremely restricted, and the House of Commons was unrepresentative. The colony was not to reproduce that structure.

Schofield identifies that Bentham’s ideas for the colony were a culmination of his thoughts on colonisation. As noted above, Bentham was inclined against colonial rule except where it produced better government than could be obtained locally. Additionally, he developed into a republican during the 1820s. The colony, under Wakefield’s scheme could go some way to accomplishing independence, though would not be fully republican. Schofield writes:

Bentham’s scheme was, in important respects, consistent with his other writings on colonies: it made economic sense in the special circumstances in question; corruptive

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439 Bentham, “Colonization Society.” These selections are from a transcription by Professor Philip Schofield of University College London, director of the Bentham Project at UCL.

440 Pike, Paradise of Dissent, 57. Referring to Constitutional Code, 1830, Chapter VI.
influence would be excluded; the colony would be emancipated as soon as was practicable; and a representative government of some sort would be established.\textsuperscript{441}

The government which was established retained significant links with England, including with the Crown, so it cannot be said to be republican, but it did offer significant independence, including representative government.

Wakefield’s theories were intended to provide the basis for economic success. The poor would rise from indigence to affluence, trade between Britain and the colony would be free and flourishing, benefitting both.\textsuperscript{442} Wakefield’s system provided for a society without an aristocracy, but which would be attractive to all productive classes. What was of value in British society would be transferred to the colony.\textsuperscript{443} Winch sums up the intentions thus: the new community was to be free of religious and political constraint, provide education for all, be largely self-governing, and implement male suffrage, among other substantial social reforms:

The colonial reform movement was an attempt to put Benthamite ideals into practice in that great arena for social and political experiments, the British Empire. The old justifications for colonies which had been attacked by political economists and utilitarians were to be discarded; in their place a new, liberal conception of empire was to be erected. Colonies were no longer to be merely military outposts or convict dumping grounds; nor were they to be maintained for the sinecures provided for the aristocracy or for the trading advantage of special interest groups. New communities were to be built, free from the political and religious restraints of English life, but possessing some of the attributes of an old civilisation. They would also be young communities, which as Wakefield said, would "present a finer opportunity than has ever occurred for trying what may be done for society by really educating the common people". It was essential that these new communities be given self-government to allow them to experiment with more radical forms of government. This desire is evident in the almost Utopian proposals for establishing a colony in South Australia; the whole of the philosophical radical program seems to have been written into them. Extensive powers of self-government were demanded together with annual parliaments to be

\textsuperscript{441} Schofield, \textit{Utility and Democracy}, 220.

\textsuperscript{442} Ibid., 219-20. See also Edward Gibbon Wakefield, \textit{England and America}, vol. 1 (London: Richard Bentley, 1833), 131, 208. Wakefield argues that colonies can create new fields for capital, providing conditions where ‘there is no idle class, no spending class, … no adoration of wealth, no oppression of the poor, no reason for political discontent.’ (131)

\textsuperscript{443} Schofield, \textit{Utility and Democracy}, 220; Mills, \textit{The Colonization of Australia}, 117.
elected by universal male suffrage, defence by militia, religious freedom and equal educational opportunities. In addition, the colony was to be pledged to free trade and a tax system which would not "interfere with the operations of capital, industry, trade and, commerce".  

Wakefield’s economic and social system combined fruitfully with Bentham’s political structures, his commitment to colonial independence where appropriate, his preference for free trade unsullied by sinister interest, and his advocacy for education.

Colonial constitutional development in New South Wales after 1830

In 1830 colonists in Australia got together a petition calling for ‘legislation by representation’. The petition was forwarded to Britain by the Governor that year, and presented to the House of Commons by Henry Lytton Bulwer in 1832, in his first appearance in the newly created role of Parliamentary Agent for the New South Wales colonists. Lytton Bulwer argued for ‘some species of representative assembly’ and trial by jury. But Viscount Howick, Under-Secretary of State for the Colonies, was implacably opposed to the idea of a representative body for a free population divided into factions – those who had been convicts and were now free, and free settlers. Howick had no intention of allowing for the possibility of transferring power in New South Wales to ex-convicts. Soon after, the campaign began for the passage of the 1832 Reform Act, distracting attention from the colonists’ claims.

The Reform Act was perhaps the most important legislation to be passed by the British parliament during the nineteenth century. It helped break the hold of the aristocracy

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444 Winch, Classical Political Economy and Colonies, 150. See also Young, "Response of Historians to the ‘Wakefield Theory’", 78.
446 Lytton Bulwer was a member of the committee which unsuccessfully promoted the formation of the South Australian Land Company in 1831.
447 Sweetman, Australian Constitutional Development, 78.
448 Ibid., 79.
449 Ibid., 80.
on power, and set the House of Commons, and society, on the course to full representative democracy. The influence of the utilitarians in the passing of the Reform Bill was substantial. Hamburger suggests this small group changed the very discourse itself, promulgating the idea that only two choices were available to those who ruled – prudent change, or revolution. Hamburger lists the Benthamites involved in the campaign as including Place, Roebuck, E.G. Wakefield, Buller, Hume, Grote, Tooke, James Mill, J.S. Mill and Joseph Parkes. Hamburger says their main tactic was to ‘shape the governing classes’ image of public feeling so that there was a sense of revolution in the air, despite a reality substantially less charged. They had several weeklies and reviews at their disposal, good contacts in parliament, and powerful roles in political unions. Wakefield wrote an incendiary piece designed to stoke the fears of both parliament and the middle classes. Place and Parkes, along with Lovett, had the idea to mount a run on the banks, and Place and Parkes coined the widely used slogan ‘To stop the Duke, go for Gold’. The threat was one of civil and economic chaos. The Benthamites thought this the most influential part of the campaigns. Place stated that Hobhouse had said as much, and continued in a letter to Grote:

I told you it would send the country to the Bank of England, and send the Bank of England to the palace of St. James and ‘Stop the Duke’. It has done its duty well.

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450 Hamburger, James Mill and the Art of Revolution, 49.
451 Ibid., 50-51, 114, referring to James Mill’s assessment of the best means to achieve change.
452 Ibid., 50.
453 Ibid., 57.
454 Ibid., 51.
455 Publications included the Westminster Review, The Examiner, the Morning Chronicle, the Spectator, the Birmingham Journal, and included access to the Times. Ibid., 58-9.
456 Ibid., 70-3.
457 Ibid., 102. See also 65.
458 Ibid., 102.
459 Ibid., 111, quoting letter, Place to Grote, 15 May, 1832.
Benthamite radicals were by no means a lonely influence in the fight for the passage of the Reform Bill, but they must be understood as having played not simply an active role in the campaign, but a significant role.

Given their democratic credentials, their role in the passing of the Reform Act, and their demonstrated interest in the colonies, it is not surprising to find Benthamites centrally involved in the constitutional developments of the colonies.

With the campaign for the Reform Act won, the colonists could again hope for attention to their claims. They petitioned the House of Commons and the King for a Legislative Assembly. Signatures were gathered over a period of a year, and the document was forwarded to Britain early in 1834. The petition to the House of Commons addressed the issue of the social environment of New South Wales, rebutting the convict taint. Governor Bourke himself, in a despatch of December, 1833, also communicated the difficulty he was having in implementing liberal reforms in the face of a conservative Council in New South Wales. He proposed the Council be enlarged to twenty-four with two-thirds of members elected, and terms of four years. Coming again to the aid of the New South Wales colonists, Bulwer presented their petition to the House of Commons in July, 1835, and was supported by Maurice O’Connell and Joseph Hume.460 The House of Commons at this time was in the hands of the Whigs, and the Whigs were being wagged by their tail, the radicals. Of the political climate, De Quincey was moved to write:

> the Radicals wear the erect and cheerful air of men confident in their own resources; borrowing nothing, owing nothing; having no exposures to fear, no ultimate defeats to face; the sole question for them being, as to the particular point at which their victories will stop.461

This time Howick spoke in favour of representative institutions. The matter, he said, would be considered seriously.462


Meanwhile, in 1835, the Australian Patriotic Association (APA) was formed to lobby London for New South Wales’ interests, including constitutional matters. One of its first activities was to draw up a table to show fourteen other British colonies that possessed a Legislative Assembly. It pointed out that New South Wales’ population exceeded them all combined, and its imports exceeded all combined, excluding Jamaica. But New South Wales was still marked with the convict stain.

In 1836 the APA sent two constitutions to London for consideration, on the basis that if one was rejected, the other might be found acceptable. The first had two chambers – the upper house with five appointees of the Governor and ten elected by the people, with a lower house of fifty members. The second proposal allowed for a single house of fifty members, ten appointed by the Governor. This latter moved away from the traditional bicameral Westminster system, and towards the solution favoured by Bentham. A single house allowed for a single sovereign voice. The ten appointed members were a compromise within that structure. Moreover, Canada had shown the marked failure of a two house system, as it was currently conceived, where the executive was not responsible to the electorate.

In formulating its constitutions, the APA had referred to Bentham’s 1819 Radical Reform Bill. The radical Sydney Monitor, which for a period had operated under a masthead quotation of Bentham, reported the Association recommended that its qualification sub-committee examine Bentham’s bill in order to determine the

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463 Ibid., 121-2.
464 Ibid., 125-8.
465 Ibid., 111.
466 Bentham, "Radical Reform Bill."
467 The motto at its masthead read, from April, 1831 to December, 1833: ‘By no other means than by making the ruling few, uneasy, can those they oppress obtain redress. – (Jeremy Bentham)’.

I have not been able to confirm that this is in fact a quote of Bentham. However, his Radical Reform Bill refers to the ‘ruling few’ on many occasions. This quote is also referred to approvingly in the Hobart paper, Colonial Times on 11 February, 1840, 4; 18 February, 1845, 3; and 30 May, 1848, 3.

Serle states: ‘The Sydney Monitor exercised a strong influence on public opinion in connexion with the existing form of government. It stood for trial by jury and a popular legislature, and it condemned in unmeasured terms the oppression of convicts, public immorality on the part of officers, and even the conduct of the governor himself’. From the entry for Edward Smith Hall in Percival Serle, Dictionary of Australian Biography, (Melbourne: Angus and Robertson, 1949).
qualification to vote. Bentham’s bill allowed for a wide franchise, including women, but required the capacity to read. Reading had to be of a minimal standard, approximating some two to three months part-time learning. The franchise in the APA’s constitutions did not contain a reading qualification, and was limited only to being a member of the free population. All serving convicts, whether confined or assigned, were excluded. Bentham had included convicted criminals in his franchise, acknowledging that in practice this would be likely only to apply to those not confined. Allowing serving convicts to vote if unconfined would have been politically infeasible in New South Wales. Sweetman suggests the APA’s franchise was taken from the Quebec Act of 1791, in all but the enfranchisement of ex-convicts. However, allowing ex-convicts to vote was to be controversial and an opening for attack by those opposed to democratic expansion.

These two constitutions, and the way they reflected the experience in Canada, highlight the progressive nature of the constitutional debate in the Australian colonies. The constitutions were experimental. The colonies did not have, and would not have, an aristocracy to fill the upper house, and yet generally an upper house was considered desirable as a brake on enthusiasms in the lower house. In the United Kingdom responsible government had been the conventional expectation since the Reform Bill of 1832. Under that system, government is formed in the lower house, and is responsible to the electorate. Power had devolved from the king, who had previously selected his ministers at will, to the House of Commons, where, in reality, the power to select ministers now lay. But the question was how, or whether to duplicate this practice in the colonies. A single house might accomplish this, but a single house was potentially a dangerous thing as it could legislate without restraint.

The constitutional proposals of the APA were opposed by New South Wales conservatives led by a powerful pastoral family headed by James and William

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469 Sweetman, Australian Constitutional Development, 114. Sweetman does not record whether this included women, but there is no reason to suppose that it did so.
470 Most convicts worked on farms and performed other tasks of labour.
471 Sweetman, Australian Constitutional Development, 114.
472 Ibid., 113.
James Macarthur travelled to England to protect the ‘exclusives’ interests. A battle of petitions in New South Wales indicated far greater support for the APA proposal than for the exclusives’. Governor Bourke, as a liberal, was sympathetic to the APA’s position. Several factors lessened the effectiveness of the APA’s efforts. Three books were written that gave a jaundiced view of the colonists’ ability to govern themselves: one by John Dunmore Lang, politician and founder of the Presbyterian church in New South Wales, a second by James Mudie, a magistrate who had been struck off the rolls by Bourke, and a third by James Macarthur. All three authors were in London from 1837 to 1838, and thus able to promote their views there. The convict stain loomed large in their writings. Another important hindrance was that Bulwer was made a diplomat, and thus left parliament, ceasing his role as Parliamentary Advocate of the APA.

**Charles Buller and the Durham Report**

When Bulwer departed parliament in 1837 he recommended Charles Buller as his replacement, and the Association took this advice. But Buller himself was just about to undertake, in April, 1838, a journey that was to become a most important episode in relation to colonial constitution making. The Canadian rebellion of 1837 was attracting the attention of the radicals including William Molesworth, Charles Buller, Edward Gibbon Wakefield, and the radical sympathiser, Lord Durham, in addition to the Canadian representative, John Roebuck. Buller, Wakefield and Durham travelled to Canada in response to the rebellion, and produced a report that

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473 Ibid., 114.
474 Ibid., 118.
475 Ibid.
480 Ibid., 130.
would form the basis for responsible government in colonies throughout the British world.

In a letter to William Lovett, Molesworth expressed his concerns about Canada and asked for assistance from the London Working Men’s Association:

As you have done me the honour of electing me a member of the Working Men’s Society I take the liberty of calling upon you to cooperate with my friends and myself in endeavouring to […] our fellow-citizens of Lower Canada. The present administration intends to violate the constitutional rights which have been granted to that province. We should therefore raise our voices, tell the Minister what we think of their conduct, & prove to the Canadians that we will not patiently see wrong done to them. If we could have a large public meeting in favour of the Canadians it would produce a very beneficial result.\footnote{Molesworth to Lovett, 12 March, 1837, in "Lovett Albums and Papers," (London: British Library Collection, 1838), 51-2. Text in square brackets indecipherable.}

More influential than this, however, was the Durham Report, written directly as a result of the Canadian visit. Durham, who in 1832 had helped draft the \textit{Reform Bill}, was sent to Canada in 1838 as Governor-General and High Commissioner to sort out the mess, and he selected Buller and Wakefield as his chief advisors. Buller’s trip to Canada meant that the APA’s plans for constitutional reform had to be put on hold.

Just prior to his departure, Buller received a proposed constitution for New South Wales, submitted to him by the Colonial Office, which satisfied neither the APA nor the exclusionists. Buller and James Macarthur worked together to draw up an alternative.\footnote{Sweetman, \textit{Australian Constitutional Development}, 143.} It involved dividing New South Wales into six municipal districts, and these into wards, each district having an elected council chosen by the wards, whose powers were to be set by the colonial legislature, the councils having three year elections and a ten pound, one year residence franchise, with the legislature having a one year term. A candidate for election should have 500 pounds of real estate or 1,000 pounds of personal property. The legislature was to be made up of twelve nominees of the Crown, and around twenty-four members elected by the elected members of the councils – a secondary voting system.

Sweetman draws our attention to elements of this constitution that bore the mark of Macarthur, including ‘the double process of securing members, the election of a
Speaker by the House, the opposition to the general nullifying power of the Courts of Justice over Acts deemed repugnant to the laws of England, and the plan to leave the settlement of the Jury law to the local legislature. The district council structure, originating from Bentham, and implemented in Britain during the period of Radical ascendancy between 1832 and 1836, was refashioned and proposed as an alternative to a central directly elected body. Buller did not like the proposal, preferring a system that empowered popular opinion, but in the circumstances of necessary compromise, submitted the constitution to the Colonial Office.

The resemblance of the district structure to Bentham’s *Constitutional Code* is striking, at a time when the code was influential in the creation of municipal districts in the United Kingdom. In part, Bentham’s Code reads:

Art. 3. The whole territory is divided into Districts. Each District is an Election District … sending one Deputy to serve as a member of the Legislature. Subject to alteration by the legislature, by union or division of entire Districts, each District is moreover the territory of a Sublegislature. …

Art. 4. Each District is divided into Subdistricts. Each Subdistrict is, as per Election Code, a Vote receiving, or say, Voting District. Each Voting District sends one Deputy to the Sublegislature of the District.

In the system proposed for New South Wales, the district legislature appointed a representative to the main legislature. This was not Bentham’s intention in the *Constitutional Code*, which proposed the local electoral district as an electorate for the central legislature. Soon after helping to produce the draft, Buller departed for

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483 Ibid., 149-50. The idea for the double election structure, including the creation of municipalities, probably originated with Lytton Bulwer. Ibid. and Melbourne, *Early Constitutional Development*, 235.

484 District councils, referred to by Bentham as sublegislatures, form an important part of his ‘Constitutional Code’. See Bowring, ed. *Constitutional Code*, Chs. xxix, xxx. Also see Burns, ed. *Constitutional Code*, for example at 28, 31, 47.


Canada with Durham and Wakefield. The double election procedure was widely rejected in New South Wales, including by the APA. The Association voiced its concerns in a letter sent while Buller was away in Canada. It drew attention to the parts of the proposal that accorded with Macarthur’s wishes, and which, almost by default, would not satisfy the Association. The view of the Association was that Macarthur wanted control by plutocrats, including keeping emancipists (freed convicts) from sitting in the legislature. The property qualification coupled with the double voting structure would, the Association believed, enhance the power of the wealthy. In 1839 Buller explained to the Association that the constitution was not his preferred option, but a compromise, and that ‘My principles on these subjects are those which are contained in Lord Durham’s report on British North America.’

Lord Durham’s mission produced the Durham Report, widely understood as the foundational document for the implementation of responsible government in the colonies. The Report was Durham’s work, but was strongly influenced by


489 Sweetman, Australian Constitutional Development, 155.
490 Melbourne, Early Constitutional Development, 248.
491 John Ward rejects the idea that Durham’s report introduced responsible government. John Ward, "The Responsible Government Question in Victoria, South Australia and Tasmania, 1851–1856," Journal of the Royal Australian Historical Society 63, no. 4 (1978). The governor, Ward notes, still selected his ministry and acted as a kind of prime minister. This is so, but as argued by Buller in Buller, Responsible Government for Colonies, the Governor cannot look to Britain for support if his ideas conflict with the legislature, the executive must have the confidence of the house, and the executive cannot for a long time differ from the majority of the house. Most importantly, as Buller puts it ‘govern the country according to the views of their party’. Ibid., 6, 17. The evolution to full responsible government, as it is understood today, took a further eight or so years. It was implemented in 1846 in Nova Scotia, and in 1848 in Canada when Lord Elgin removed himself from the affairs of the legislature. In Parliament Papers Relating to the Melbourne Centennial Exhibition, Responsible Government and Other Affairs in Australia, (Shannon: Irish University Press, 1969). Chapman writes, in 1854, in favour of responsible government, that under this system the Governor is to take a position of dignified neutrality. Thus Chapman is writing for a form of responsible government close to or identical with the system as we understand it. For a brief rebuttal of claims that the Durham Report was not supportive of responsible government as we know it, see Buckner, "Thomson, Charles Edward Poulett, 1st Baron Sydenham."
contributions from Wakefield and Buller. Henry Chapman explains the problem in Canada:

The Provincial Parliaments of Upper and Lower Canada consisted each of two chambers. The Houses of Assembly were elected by the people; the upper chambers, called Legislative Councils, were nominated by the Crown, that is, by the respective Governors. For upwards of a quarter of a century before the unhappy disturbances in the two Canadas there was a perpetual conflict between the Representative Assemblies of both provinces and the executive governments on almost every question that can possibly interest or engage a free people. On the part of the Assemblies it was a struggle for constitutional control [sic]. On the part of the executive it was a determination to resist all responsibility to the local legislature. This element of strife in some way or other, directly or indirectly, found its way into nearly every question of public interest.\(^{492}\)

The conflict produced deadlocks. Credit for the solution to this, Wrong suggests, belongs mainly to Durham. Wrong explains that while, for example, Roebuck, Lord Brougham and Buller were supporters of reform in Canada, there was no suggestion in any of their writings that the key to the Canadian deadlock lay in a system of ministerial responsibility. \(^{493}\) The idea had been previously proposed by Gourlay, Wakefield and Robert Baldwin. Durham had interviewed Baldwin prior to his departure for Canada. The idea was also current in Upper Canada and Nova Scotia amongst moderate reformers. Wrong suggests, though, that Durham was the first British politician to push the idea forward, and the first to articulate the idea in a fully developed manner. \(^{494}\) However, Harrop reports that the inscription in a book Durham gave to Wakefield states that everything the British government had accepted from his report had been suggested to him by Wakefield. \(^{495}\)

In relation to the provenance of the Report Wrong notes:

The Report was a Radical document, part of a Radical plan for imperial reform, put forward by men who belonged to the moderate wing of a small Radical group. The


\(^{494}\) Ibid., 33.

\(^{495}\) Harrop, \textit{The Amazing Career of Edward Gibbon Wakefield}, 190.
mission was a success neither for Tory nor for Whig policy, but in reality the greatest Radical achievement between Reform Bill and the repeal of the corn laws.\footnote{Wrong, \textit{Charles Buller and Responsible Government}, 25.}

Buller fought for acceptance of the Report in the House of Commons. It would become, he said, the text book of colonial reform. In August, 1839 Buller declared that it would result in the near future in self-government for Australia.\footnote{Ibid., 39.} As Wrong notes, ‘Bold political forecasts are common: Buller’s were unusual in their complete fulfilment within half a generation.’\footnote{Ibid.} J.S. Mill, too, stood by Durham. Mill and Buller were close political allies, and had together attended lectures in jurisprudence given by the utilitarian legal reformer, John Austin, in 1828 at the University of London.\footnote{The lectures were to become a foundation of English jurisprudence. See G.W. Keaton R.A. Eastwood, \textit{The Austinian Theories of Law and Sovereignty} (London: Methuen, 1929), 7.} Mill thought highly of the results of the Canadian expedition, and saw Durham as a potential leader of the Benthamite radicals. A letter from Mill to Molesworth of November, 1838 illustrates their potential for greater alliance:

The present turn in Canada affairs brings Lord Durham home, incensed to the utmost (as Buller writes to me) with both Whigs and Tories, Whigs especially, and in the best possible mood for setting up for himself; and if so, the formation of an efficient party of moderate Radicals, of which our Review will be the organ, is certain. The Whigs will be kicked out never more to rise, and Lord D. will be head of the Liberal party, and ultimately Prime Minister.

I am delighted with Buller; his letters to his father and mother and to me show him in a nobler character than he ever appeared in before, and he and Wakefield appear to be acting completely as one man, speaking to Lord D. with the utmost plainness, giving him the most courageous and judicious advice, which he receives both generously and wisely. He is the man for us, and we shall have him and make a man of him yet.... There is a great game for you to play in the next session of Parliament. Buller has the

\footnote{Sarah Austin took Buller under her wing, too, suggesting to Harriet Grote in 1832, ‘he is a good lad, and wants nothing but such society as yours and Mr. Grote’s to make him an earnest servant of the public. The more I know him, the better I think of him’. Grote, \textit{The Personal Life of George Grote}, 80-1.}
best cards in the House of Commons, and I think he will play them well, but yours are
the next best.\textsuperscript{500}

Mill defended Durham in the press.\textsuperscript{501} Early in his visit to Canada, Durham had
implemented policies that were reversed by the government in London. Durham
resigned his post, and returned to England in November, 1838. Mill takes up the story:

Lord Durham was bitterly attacked from all sides, inveigled against by enemies, given
up by timid friends; while those who would willingly have defended him did not know
what to say. He appeared to be returning a defeated and discredited man. I had
followed the Canadian events from the beginning; I had been one of the prompters of
his prompters; his policy was almost exactly what mine would have been, and I was in
a position to defend it. I wrote and published a manifesto in the Review, in which I
took the very highest ground in his behalf, claiming for him not mere acquittal, but
praise and honour.\textsuperscript{502}

The Durham Report was completed in January 1839 and officially presented to the
Colonial Office on 4 February. For many in Britain the idea of colonies as self-
governing was unacceptable. For them responsible government would mean
separation from the home country. For the Benthamites, the reverse was true. Since
his first writings, Wakefield had always observed that loosening the bonds would,
paradoxically, strengthen the ties. This assertion is to be found in the Durham
Report.\textsuperscript{503} The opposing view was put by Lord Russell:

\textsuperscript{500} Fawcett, \textit{Life of William Molesworth}, 203-4, from letter, Mill to Molesworth, 19 October,
\textsuperscript{501} Wrong, \textit{Charles Buller and Responsible Government}, 25.
\textsuperscript{502} Mill, “Autobiography,” 223. See also Fawcett, \textit{Life of William Molesworth}, 65. In a speech
in 1865 J.S. Mill noted his early support for Durham's report. He said: "I have sat by the
cradle of all the great political reforms of this and the last generation; and I have not only sat
by the cradle of these reforms, but before I was out of my teens I was up and stirring, and
writing about them. (Hear.) I have stood by these reforms, which now count followers by
millions when their followers did not count tens of thousands, nay, not thousands, nor
hundreds. (Cheers.) When they only counted tens I was amongst them. Nay, I may say, when
their followers only counted units—when that which is now the universally received principle
respecting the government of our colonies was not always so. I can recollect the time when
there were two men amongst the active political writers of this country who recognised it—
two men, Mr. Roebuck and myself. John Stuart Mill, Speech of 3 July, 1865, reported in the
\textsuperscript{503} Mills, \textit{The Colonization of Australia}, 272. See also ibid., 267, quoting Wakefield, \textit{Letter
from Sydney}, where Wakefield has his colonist make the same point.
It is proposed … that the Executive Council should be made to resemble the ministry in this country. I hold this proposition to be entirely incompatible with the relations between the mother-country and the colony…

Many agreed with him.

The Durham report achieved an important shift in thinking. No longer need the colonies be a republic or a mere recipient of law from the colonising power where that colonising power determined it wished to interfere with local affairs. A middle path was found, whereby the Crown and the connections remained, but independence was granted to a substantial degree, with the Crown and Colonial Office adopting a passive role in relation to most legislation that did not affect imperial interests. This system was more consistent with the mixed constitution Bentham had first proposed, rather than the fully republican model he proposed after 1821. Important legislation was still referred back to Britain, for example the secret ballot legislation discussed below. Legislation affecting imperial interests was still to be assessed by Britain. Additionally, appeal to the Privy Council violated an important aspect of colonial independence. The role of the Crown in relation to responsible government was sometimes controversial, as during Governor Hotham’s tenure as Governor in Victoria, referred to below. Broadly, it was this model that prevailed in the colonies.

Republican objections, infrequently used by the main colonial actors discussed in this

505 Ibid., 268.
506 The question of the location of the highest court was to become a matter of very serious disagreement between the Australians and the British during the latter half of the nineteenth century, a period not covered in this thesis. In *Emancipate Your Colonies!* Bentham argued very strongly for a local court to be the highest, with no further avenue of appeal. Bentham, J., ‘Emancipate Your Colonies!’, in Bowring (ed) *The Works of Jeremy Bentham*, (London: William Tate, 1843) vol. 4, 418.

At federation the matter assumed great importance. The result was that appeals were able to be made from decisions by the High Court of Australia to the Judicial Committee of the Privy Council. Subsequently the *Privy Council (Limitation of Appeals)* Act 1968, the *Privy Council (Appeals from the High Court)* Act 1975, and the *Australia Act 1986* have effectively closed off that avenue. While the High Court may still grant permission to appeal to the Privy Council in some circumstances, it has stated it will not do so. *Kirmani v Captain Cook Cruises Pty Ltd* (No 2) (1985) 159 CLR 461, 465. Thus, this aspect of Bentham’s notion of independence took over 100 years to put in place after the 1850s constitutions. The location of the final court of appeal – in the home country or the colony – is an aspect of independence that is specific to the colonial situation. The import of retention of appeal to the home country appears to be strongly antithetical to Bentham’s republican writings, but not inconsistent with his suggestion in 1829 that Australia should wait before gaining full independence. Ibid., Vol.4, 418.
thesis, were most often rhetorical, a strategy to frighten. Durham’s report provided a necessary compromise, and it formed the basis not just for the reforms eventually undertaken, but also the basis for the claims made by the majority of the colonists themselves.

In the Durham Report, the template for colonial self-government and parliamentary structure had been written. It now had to be promoted and implemented. Durham died in 1840, and Buller took over the promotion of responsible government in the colonies, writing in 1840 a series of articles for the Colonial Gazette. These were later republished as his Responsible Government for Colonies.

During his political career Buller had been criticised for being too fond of a joke to be taken seriously. Responsible Government for Colonies conveys both his wit and his seriousness. As Buller describes the workings of the Colonial Office, the anonymous official who actually makes policy for the colonies:

is probably a person who owes his present position entirely to his own merits and long exertions. He has worked his way through a long and laborious career of official exertions; and his ambition is limited to the office that he holds, or to some higher grade of the permanent offices under Government. Probably married at an early age, he has to support and educate a large family out of his scanty though sure income. Once or twice a year he dines with his principal – perhaps as often with some friend in Parliament or high office. But the greater part of his days are passed out of all reach of aristocratic society: he has a modest home in the outskirts of London, with an equally modest establishment: and the colonist who is on his road to “the Office,” little imagines that it is the real ruler of the Colonies that he sees walking over one of the Bridges, or driving his one-horse chay, or riding cheek by jowl with him on the top of the short coach as he goes into town of a morning.

Buller dubbed this hard-working, beleaguered individual, Mr MOTHERCOUNTRY. This lowly official was the person in the Colonial Office with experience and depth of knowledge. The best that the more rapidly rotated higher officials could do was to

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507 McKenna, Captive Republic, 46-7 discusses Parkes and Lowe in this respect. See also Mark McKenna and Wayne Hudson, Australian Republicanism: A Reader (Carlton: Melbourne University Press, 2003), 31.

508 Mills, The Colonization of Australia, 276.

509 Buller, Responsible Government for Colonies, 77-8.

510 The capitals are Buller’s.
avoid doing too much, in the likelihood anything they did would create mayhem. The radicals preferred decision making for the colonies to be made by the colonial population.  

In summary, it can be seen that the key early developments in colonial constitution making, and the critiques of the existing system, were strongly associated with the Benthamite philosophical radicals and reflected their concerns. They represented the colonial populations in the heart of the empire, they created the reports that offered solutions to problems, and in doing so they drew upon ideas developed out of their preferred principle for the formation of society – the greatest happiness principle.

**Utilitarian and convicts**

In 1840 transportation of convicts to New South Wales ceased, following the 1838 recommendation in the Report from the Select Committee of the House of Commons on Transportation, headed by Molesworth. The Patriotic Association had supported convict transportation as a source of labour. Wakefieldians opposed it on the grounds that it disrupted economic and social relations by encouraging the cultivation of otherwise unrewarding lands, and by undermining waged labour. It was also opposed

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511 In 1843 Buller gave an influential speech in the House of Commons on the subject of colonisation. That speech, according to Chapman, was written by Chapman, Wakefield, Rintoul and J.S. Mill. See R.S. Neale, "H.S. Chapman and the 'Victorian' Ballot," *Historical Studies, Australia and New Zealand* 12, no. 48 (1967), 514.

512 For a comment on the Benthamite nature of the reforms see Knight, *Illiberal Liberal – Robert Lowe*, 158. Also Gascoigne, *The Enlightenment and the Origins of European Australia*, 129-33. See also Wood, "Jeremy Bentham Versus New South Wales." In relation to Molesworth and the philosophical radical campaign against transportation see Fawcett, *Life of William Molesworth*, especially at 85-6, 220-1. See also Molesworth, William (1840), “Transportation of Convicts”, speech to the House of Commons, Hansard. *Hansard – England*, 5 May, Vol. 53 cc1236-307. For a suggestion that Molesworth exaggerated the condition of the convicts in order to bolster his anti-transportation stance, see Babette Smith, *Australia’s Birthstain: The Startling Legacy of the Convict Era* (Sydney: Allen & Unwin, 2008). For Bentham’s argument in relation to the panopticon and transportation see Bentham, "Panopticon Versus New South Wales or the Panopticon Penitentiary System, and the Penal Colonization System, Compared. In a Letter Addressed to the Right Honourable Lord Pelham." Bentham considered that the aims of penal justice – prevention by example, reformation, incapacity to offend, compensation or satisfaction, and economy – are best served by imprisonment in a rehabilitative prison rather than by transportation. He also noted other aspects of transportation, such as depravity (217) and drunkenness (230), were in free reign under the transportation system, but could be controlled under the penitentiary system.
by Evangelical groups.\textsuperscript{513} For the Wakefieldians, the problem lay in Ricardo’s law of rent. Low yielding land, available beyond the requirement for production, lowered the rent value of all land and kept wages low.\textsuperscript{514} Wakefield’s ‘sufficient price’ was designed to provide an artificially high minimum value for land, and thus to keep wages and profits higher than they would be without restriction.\textsuperscript{515} Convict labour encouraged dependence on cheap labour and encouraged political pressure to open up land of lower productive capacity than would otherwise occur. To Wakefieldians, convict labour looked much like slavery, and it acted to steer the colony towards a slave-based economy, as had occurred in the southern United States. Wakefield’s system was deliberately and intrinsically anti-slavery. Buller also actively opposed convict transportation. Indicative of Buller’s views, William Bland writes in a letter from New South Wales to Buller:

> You say in your last communication, “you have not convinced me that the continuance of Transportation is not injurious to New South Wales.” And you observe, “in the first place it is most clearly injurious to it in an economical point of view.”\textsuperscript{516}

The citizens of New South Wales were not united in support of convict labour. Instead they divided into two camps: employees, including new settlers arriving in large numbers under the Wakefield scheme, who wanted to be rid of convict labour in order to maintain wages; and more established settlers, now employers, who desired convict labour.\textsuperscript{517} Wakefield’s immigration and land sale system created a momentum away from convict labour. As the number of new migrants increased, many with Chartist ideals, and as the new majority gained a greater voice through the trend towards democracy, transportation became politically unacceptable. Buller, in opposing transportation, argued that only without transportation would the House of Commons

\textsuperscript{513} See Hirst, \textit{Convict Society and Its Enemies}.

\textsuperscript{514} See David Ricardo, \textit{On the Principles of Political Economy and Taxation} (London: John Murray, 1817).


\textsuperscript{517} Melbourne, \textit{Early Constitutional Development}, 262-3.
support representative institutions.\textsuperscript{518} Also, with the cessation of convict transportation, the economic structure could develop away from reliance on cheap, enforced, labour.

By 1840, with the cessation of transportation and with the high rate of immigration, the taint of convictism was fading as an impediment to the implementation of representative institutions. A Bill was brought forward in the House of Commons to grant a measure of representative government to the colony. It included a Legislative Council of thirty-six, twelve of whom were to be appointed by the Governor, with twenty-four elected. The Bill contained Wakefieldian provisions in relation to land policy.\textsuperscript{519} The Bill also contained measures to divide New South Wales to create different zones for the regional application of the Wakefield system. This was viewed unfavourably by the Macarthur camp and the emancipists, in the form of the APA. As they protested against the carve-up of the colony, their rivalry dissolved.\textsuperscript{520} The Bill did not proceed.

In June, 1842, after submissions from many parties, including Grote, Gipps and Macarthur, and petitions from New South Wales and from Viscount Howick, plus substantial input from Buller, a new constitution based on the 1840 Bill gained royal assent.\textsuperscript{521} It provided for the possible division of New South Wales, but did not require it. In the first week of October the first copy arrived in New South Wales on the \textit{Aden}.

On the same ship Robert Lowe, a Benthamite lawyer, arrived to make his fortune.\textsuperscript{522} He quickly became embroiled in local struggles for responsible government and, as will be discussed, ended up leading the liberal element in the Legislature.

\textsuperscript{518} Ibid., 262.
\textsuperscript{519} Sweetman, \textit{Australian Constitutional Development}, 160-1.
\textsuperscript{520} Ibid., 168. The division of the territory would allow for different Wakefieldian fixed prices to be placed on land in each territory. See Melbourne, \textit{Early Constitutional Development}, 254.
\textsuperscript{521} Melbourne, \textit{Early Constitutional Development}, 258-68.
\textsuperscript{522} Knight, \textit{Illiberal Liberal – Robert Lowe}, 24-5. At Oxford, Lowe was lectured in political economy by Herman Merivale, professor of political economy. Merivale was approved of the Wakefieldian approach, and imparted this in his lectures, which survive as Merivale, \textit{Lectures in Colonization}. On his utilitarianism, see Knight, \textit{Illiberal Liberal – Robert Lowe}, 10, 18, 22, 56, 242.
The interests of the new class of wage-earning immigrants were not being served by the APA.\textsuperscript{523} Moreover, the new arrivals were bringing with them a new vision of political empowerment derived from the passing of the Reform Bill, and Chartist agitation.\textsuperscript{524} The days of emancipist politics were over and a new struggle for full responsible government had begun.

The new constitution gave the colonists a representative system. Twenty-four of thirty-six members of the Legislative Council were elected. There was no second house. The governor retained substantial executive power, including substantial power over money. The franchise was set at twenty pounds annual rent value, with a 200 pound per year land and tenement value, to stand for election. The Act provided for the establishment of local elective councils, and maintained Wakefieldian land principles.\textsuperscript{525}

The Act took much from the Canadian Union Act of 1840, but neither one was an Act for responsible government. There was much work to be done by Buller and other radicals to change attitudes before that could come about. Nevertheless, the constitution supported by the APA, and developed by Buller, had come into being. It was never perceived by any party as anything more than transitional – the new standard for colonial government had been set by the Durham Report with its introduction of reforms in Canada. By 1848 the Canadian system had evolved to become responsible government.\textsuperscript{526}

The new constitution soon proved difficult to operate. The Legislative Council tried to gain control of the purse and to expand its powers into areas specifically proscribed by the Act.\textsuperscript{527} The executive carried on its program without reference to the

\textsuperscript{523} Melbourne, \textit{Early Constitutional Development}, 229-30. The APA promoted the interests of those already established in the colony, and was not opposed to transportation as it provided a cheap source of labour. For recent immigrants, however, transportation was a form of artificially cheap competition.

\textsuperscript{524} Ibid., 263.

\textsuperscript{525} Councils were unpopular as they appeared to shift taxation onto local populations. Lowe successfully led a campaign which resulted in the defeat of Gipps’ legislation to implement them. This was, with education, part of a wider campaign to get control of the purse strings. Knight, \textit{Illicit Liberal – Robert Lowe}, 82-96, 102-3, 125-139, 148.

\textsuperscript{526} Sweetman, \textit{Australian Constitutional Development}, 179.

\textsuperscript{527} Knight, \textit{Illicit Liberal – Robert Lowe}, 139.
Council.\textsuperscript{528} The governor retained executive authority and power over legislation passed by the house.

The first New South Wales elections were held in 1843 during a period of depression. There was rancour over the high franchise and riots broke out. Appointed as a member of the Legislative Council, Lowe soon ‘established himself as orator supreme, and emerged as well with the stamp of a radical British Liberal, a man of humanitarian principles who opposed class legislation, upheld popular representation, and advocated Free Trade’.\textsuperscript{529} He supported education to prepare the way for full franchise.\textsuperscript{530} He promoted a \textit{laissez faire} economy, supplemented with government intervention in matters such as education and working hours.\textsuperscript{531} Lowe, in criticising the Colonial Office, adopted Buller’s rhetoric, suggesting that official despatches from the Governor generally ended up in the hands of a lowly clerk, ‘utterly unknown and irresponsible’.\textsuperscript{532}

Lowe’s campaign for responsible government repeated the refrains of Wakefield and Buller. In 1846 he declared that some British statesmen:

\begin{quote}
seem to believe that the time must inevitably come when the colonies must drop off from the parent country. This is their theory, but it is not mine … Give us what we ask – a fair participation in the rights enjoyed by our fellow subjects, and what conceivable reason can arise for divorcing ourselves from the parent state? … The sole remedy lies in one word – responsibility… If this is granted, then indeed will England and her colonies be knit in an iron confederacy, supreme in her strength…
\end{quote}

The 1842 constitution was workable,\textsuperscript{534} but produced repeated collisions between the executive and the legislature.\textsuperscript{535} By 1848 pressure was mounting for a second house,

\begin{footnotes}
\textsuperscript{528} Melbourne, \textit{Early Constitutional Development}, 279.


\textsuperscript{530} Knight, \textit{Ililberal Liberal – Robert Lowe}, 82, 103.

\textsuperscript{531} For example, ibid., 56, 61, 182. See also 296, column 2.

\textsuperscript{532} Ibid., 111.

\textsuperscript{533} Ibid., 116.

\textsuperscript{534} The district council system did not survive. It was not well adapted to the circumstances of the colony and was defunct by 1845. Melbourne, \textit{Early Constitutional Development}, 319.

\textsuperscript{535} Ibid., 326, quoting letter, Macleay to Scott, 21 December, 1844; V. & P., 1845, 210.
\end{footnotes}
although many opposed it, including Bland and Wentworth. Some were suspicious of such a creature – that it might lead to the creation of an aristocratic class, in imitation of the House of Lords. Wentworth, who had become increasingly self-seeking, was not opposed on these grounds.\textsuperscript{536} He simply preferred the existing hybrid council which he saw as serving the colonists’ (and perhaps his) interests well.\textsuperscript{537} On the other side, supporting a second house, stood Governor FitzRoy, the Colonial Secretary, and Lowe. Lowe declared:

The effect … of the constitution of the present Council is to stifle public opinion … A second house may not assent, may amend and alter bills we send to it, but our petitions and resolutions they can not stifle … As opening the eyes of the Government both here and at home, to the real wants and feelings of the community … the Council will be a great gainer by the division.\textsuperscript{538}

For Lowe, a dual house would enhance the voice of the people. The lower house would be comprised only of elected representatives and would control the purse strings, which Lowe understood as essential to British freedom.\textsuperscript{539} By 1848, with the mixed house having won control of the purse, the great political question became who in the colony would control the house.\textsuperscript{540} Lowe supported elected members.

A new voice was emerging on the political scene, galvanised by transportation. The issue of transportation to New South Wales was revived in 1846. In Britain convicts were being pardoned if they would travel to all the colonies, including South Australia.\textsuperscript{541} Convicts sent to the Moreton Bay District still provided a labour force for New South Wales. A surfeit of convicts in Britain and a need for labour in New South Wales prompted the home government to consider the resumption of transportation to the colony. A Select Committee in New South Wales, of which Lowe was a member, inquired into the matter, and supported the reintroduction of transportation. Labourers, tradesmen and mechanics were incensed. Sixty thousand

\textsuperscript{536} Knight, \textit{Illiberal Liberal – Robert Lowe}, 184.

\textsuperscript{537} Ibid.

\textsuperscript{538} Ibid., For Lowe’s views see Supplement to the \textit{Sydney Morning Herald}, 4 May, 1848; \textit{Sydney Chronicle}, 11 May, 1848, 13 May, 1848; \textit{Maitland Mercury Extraordinary}, 17 February, 1848.

\textsuperscript{539} Ibid., 184.

\textsuperscript{540} Ibid., 139, 185.

\textsuperscript{541} Ibid., 159.
people had emigrated to the colony between 1839 and 1846, and three-quarters had had their fares paid for under the Wakefield scheme. Trade unions organised a large meeting at the racecourse. A petition against transportation was signed, and sent to Thomas Duncombe, a member of the House of Commons, who had presented the second petition supporting the Charter to the House in 1842. The New South Wales Legislative Council changed its mind, though Lowe, absent, would most likely have supported the reintroduction. The working people, their numbers swelled by Wakefield’s scheme of emigration, and empowered by Chartism, gained a significant victory.

Electoral happiness

In New South Wales, with the franchise at twenty pounds annual rent, and only six representatives for the towns compared with eighteen representing the rural areas, there was considerable discontent. Revolutionary unrest in Europe, and a downturn in the New South Wales economy, added to the tensions. The Citizen declared ‘Let every district have its “Reform Club”’. In the 1848 election, called hurriedly in the wake of the revolution in France, Lowe stood as a candidate for the city of Sydney. Henry Parkes, who had arrived in Sydney in 1839 as a Wakefield immigrant, addressed a meeting called to nominate Robert Lowe as candidate, and became secretary of the committee to secure Lowe’s election. ‘That’, he later wrote, ‘was

542 Ibid., 165-6.
543 Ibid., 160-9.
544 Melbourne, Early Constitutional Development, 382.
545 Or property valued at 200 pounds. Ibid., 270.
546 Ibid., 269, 282, 286. Of the six members to be returned from towns, two were to come from Sydney, and one was to be from Melbourne. See Australian Constitutions Act (No 1) 1842, 5&6 Vic, C. 76 (Imp).
547 Knight, Illiberal Liberal – Robert Lowe, 188. Taking its name from the Reform Club in London, suggested by Lord Durham, and established in 1836 by William Molesworth. It provided a way for the Radicals to leverage their influence over the Whigs with whom they were, sometimes fractiously, allied.
548 Ibid., 192.
the beginning of my political career. Workers in Sydney resented rural power. Lowe, they believed, was the only man capable of opposing it. In his victory speech he said:

You have this day taken your own case into your own hands, and have gained for yourselves a great victory… The Election that is now over ought to satisfy all minds that that power which the people know how to exercise so rightly, they ought rationally to have… I am proud of being thus indebted to the Mechanics and working men of Sydney…

Lowe’s committee declared ‘the glory of a new era in the political history of New South Wales is ours… Our watchword is “onward to national freedom and happiness”.’ Henry Parkes later stated ‘That was the birthday of Australian democracy.’ Of the two people most remembered for their role, one was a Benthamite, the other a Birmingham moral force Chartist and free trader. The committee itself was largely made up of small business tradesmen. Apart from Parkes, one other had Birmingham origins, and a close associate of the group was also from there. All three had been involved with the Birmingham Political Union which, as its name suggested, united business with workers in the struggle for peaceful political change.

In November, 1848 a Constitutional Society was formed in Sydney. Its members included many of Lowe’s election committee, including Parkes. The economy was doing badly, immigration was high, unemployment and low wages a reality, and the twenty pound franchise was increasingly out of reach of many. The Society initially

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551 Ibid., 204. For a very useful but necessarily brief description of the people who made up the committee, and of Parkes’ associates generally, see A.W. Martin, *Henry Parkes: A Biography* (Carlton: Melbourne University Press, 1980), 47.


553 See for example, Parkes, *Fifty Years*, 266.


556 Ibid., 208-13.
made a heady call for reform of property redistribution, and a full or extended franchise. Quoting Lamartine, the Society declared:

Political economy has hitherto occupied itself about the production of wealth. It must now occupy itself about the distribution of wealth.\footnote{Ibid., 208.}

This was too radical for Lowe, who distanced himself from it. In responding to a call to support public works in a time of financial difficulty, Lowe refused:

Because the revenue (which is principally raised from the wages of the people) ought to be expended for the good of all, and not of a particular class.

Because it is just as improper to spend public money to keep up wages as to keep up rents or profits.

Because I do not think the mechanics of Sydney ought to put themselves in the position of paupers receiving charitable relief at the expense of their equally distressed fellow-colonists.

Because those who anticipated an immediate profit from the intended expenditure are the worst possible judges of its necessity.

Because the attempt to prevent labour finding its level must, in my opinion, be either useless or mischievous.

Because I will never be a party to spending public money in order artificially to raise the price which employers of mechanics in the interior must pay for their services, and thus to arrest the progress of improvement throughout the colony.\footnote{Ibid., 210-11.}

In discussing the franchise, he stated:

It never occurred to me that the working man wanted the franchise for the purpose of saddling themselves on the neck of the public… The franchise is given to the working classes, not to enable them to put money in their pockets, but to prevent its being taken out… I wish to give all classes power, to make each dependent on the other so that they may work for the common good.\footnote{Ibid., 212-3.}

The program put forward for redistribution of wealth in the economically difficult times, has, it should be noted, more of Bentham and Wakefield in it than of Robert Owen – that is, more of public works, than extinction of property. In any case, the
extended franchise and the redistribution of wealth were not what captured the people’s attention.\textsuperscript{560} Parkes knew the time was not yet right for full adult male franchise, though, echoing the sentiments of the authors of the Charter, he stated: ‘We must come to it in the end.’\textsuperscript{561}

The vital point of interest for the Constitutional Association was, instead, transportation. The British were pressed for space in their prisons and convicts were again to be sent to New South Wales. The Legislative Council agreed to it, as long as an equal number of free settlers were sent.\textsuperscript{562} But early in 1849 it was discovered that convicts were to be sent, and no free settlers. Lowe had become a strong opponent of transportation late in 1848. He learned that many landowners were opposed to a high land price only for strategic purposes. Under the Wakefield system a low price would deprive the land fund of money, and thus cut assisted immigration. The gap would be filled with the cheap labour of convicts, and, once transportation was operating again, those who advocated a low price on land would then argue for a higher price. In other words the anti-Wakefield campaign was a ruse to bring in cheap labour and lock up the squatter lands, safe from sale.\textsuperscript{563}

Lowe began to campaign against transportation. With Parkes and twenty-one others he formed a deputation to Governor FitzRoy to insist that a newly arrived convict ship be turned back to England. They were dismissed, but they gave the campaign momentum by linking transportation with responsible government. With responsible government the imposition of convicts on the colony would cease. A ‘monster meeting’ was called to give voice to workers whose wages were under threat by the importation of cheap labour. Parkes invited prominent colonial figures to attend the wharfside meeting. Travers notes ‘[Parkes] recalled how important it had been for the Chartists to have a banker like Thomas Attwood on the same platform as the artisans. Parkes persuaded such respectable citizens as Archibald Michie, young Robert Campbell, John Lamb and James Norton to stand beside him on the great day.’\textsuperscript{564} In his address, Lowe compared New South Wales with North America prior to rebellion

\textsuperscript{560} Ibid., 208-13.
\textsuperscript{561} Ibid., 212.
\textsuperscript{562} Ibid., 214.
\textsuperscript{563} Ibid., 176-7, 215-6.
\textsuperscript{564} Robert Travers, \textit{Henry Parkes – Father of Federation} (Sydney: Kangaroo Press, 2000), 49.
– a highly inflammatory suggestion.\footnote{Knight, \textit{Illiberal Liberal – Robert Lowe}, 220-4. See also Melbourne, \textit{Early Constitutional Development}, 387.} At the height of the struggle, word came of a new bill before the Imperial parliament that would provide the ability for the colonial legislature to alter its own constitution.\footnote{Knight, \textit{Illiberal Liberal – Robert Lowe}, 230.} Thus, the colonial population was to gain a high degree of independence. Of Lowe’s reference to America at the monster meeting, and the inevitable implication of republican sentiment, McKenna writes: ‘His talk of rebellion and independence was merely tactical’. McKenna also notes that any cheering for the idea by the crowd barely portrayed a heady republican sentiment. After all, the crowd of 5,000 was orderly and politely raised a deputation to the Governor on the question of transportation.\footnote{McKenna, \textit{Captive Republic}, 45-6.}

By January 1850, Lowe was tired of Sydney and its politics. He had attempted to simplify and bring land law to legislation but had been rebuffed. He had tried to bring mass education to New South Wales but his efforts went unrecognised. Personal animosities festered. Moreover, he had been seven years in the colony, a period he had initially set for himself, and had, according to his plan, found sufficient financial security to retire back to England. He left the colony and went into politics in England. He became Chancellor of the Exchequer from 1868 to 1873, and, most notably, introduced the \textit{Joint Stock Companies Act 1856}, the world’s first nationwide codification of company law. It allowed those not already wealthy to safely pool their capital and form companies.\footnote{John Micklethwait and Adrian Woolridge, \textit{The Company – a Short History of a Revolutionary Idea} (New York: The Modern Library, 2003), 50-4.}

\section*{A new constitution}

In \textit{The Colonization of Australia}, Richard Mills observed how quickly the Durham Report had changed the perception of the appropriate constitutional arrangements for the colonies. He quotes the \textit{Edinburgh Review} of 1847:

\begin{quote}
\end{quote}
We need not now discuss the question of Responsible Government. Every man who has reflected on the subject sees, that the responsibility of the executive is a necessary part of representative government: – that if we trust the representatives of the people with the power of making laws, and the absolute control of the public purse, it is absurd to expect that the laws made by them can be administered, and the executive business of the country carried on, by any persons except those who possess their confidence. This is a point which Lord Durham’s Report settled once and for ever; and the only point connected with the subject which at all perplexes any one is, how it should have been necessary to send so eminent a man across the Atlantic to discover that the colonies could not be well governed under any other system.  

Echoing Buller’s theme of eight years earlier, in July, 1848 Molesworth gave a long speech in the House of Commons in favour of colonial self-government. His reasons included the generation of better and more appropriate laws for local conditions, and reduced expenditure on administration by Britain. Like Buller, Molesworth described the existing administration of the Colonial Office as suffering from the effects of distance and the inexperience of a succession of Colonial Secretaries. Towards the conclusion of his speech he states:

Hence I come to the conclusion, that we should delegate to the colonies all powers of local legislation and administration which are now possessed by the Colonial Office, with the reservation only of those powers the exercise of which would be absolutely inconsistent with the sovereignty of this country…

A week later Lord Grey’s despatch to Governor Fitzroy echoed Molesworth’s themes. Grey also foreshadowed the separation of Victoria from New South Wales, following a boycott of Legislative Council elections in 1848 by residents of the Port Phillip District. The Australian newspapers drew a connection between the speech

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569 Mills, The Colonization of Australia, 279.
571 Buller, Responsible Government for Colonies, 98.
573 Secretary of State for the Colonies from 1846 to 1852.
575 See Despatch, FitzRoy to Grey, 23 September, 1848, (no. 206) ibid., Vol. 11 (Colonies, Australia), 54, enclosing a memorial by inhabitants of Port Phillip. See also in volume 10 of
and the despatch. The despatch gave to Australian legislatures the power to recommend changes to their constitutions as they deemed appropriate. Lord Grey, as Viscount Howick, had been involved in the Wakefield project since the first days in 1830 when it had been proposed to the Colonial Office, and was now in a position to implement the move towards independence.\textsuperscript{576}

Grey set in motion an inquiry by a committee of the Privy Council – the Committee for Trade and Foreign Plantations. The Committee produced its report a year later, in May, 1849. It supported Grey’s plan. The colonial legislatures might be unitary, or divided into two houses. The legislatures were to have considerable control over finance. Local government councils should be made non-compulsory and only to be created if requested by residents.\textsuperscript{577} The Bill implementing the changes was given Royal Assent on 5 August, 1850.

The Act for the Better Government of Her Majesty’s Australian Colonies\textsuperscript{578} implemented the reforms recommended by the Committee for Trade and Foreign Plantations. It retained the legislative structure already in place in New South Wales, and made provision for changes to be recommended by the New South Wales legislature. The legislature might also change the franchise as it saw fit. However, the Act did not give the legislature ultimate control of finances.

In 1851 the franchise was expanded, as permitted by the Act, to ten pounds annual rent, and 100 pounds rent to stand for parliament. In that same year Victoria was separated from New South Wales. The lowering of the franchise led to political change. An election that year saw Wentworth, who had been hostile to the newly enfranchised, nearly lose his seat.\textsuperscript{579} The vote of ‘operative tradesmen and mechanics’ was enough to change electoral outcomes. Wentworth ‘regretted to find that there was a spirit of democracy abroad, which was almost daily expanding its limits, and which

\textsuperscript{576} For further discussion of the granting to the colonies of power to recommend amendments to their own constitutions see Sweetman, Australian Constitutional Development, 212-3.

\textsuperscript{577} The Report is contained in a circular to Governors of the Australian Colonies, of May, 1849. In Irish University Press Series of British Parliamentary Papers, Vol. 11 (Colonies, Australia), 65, also in Vol. 12, 54.

\textsuperscript{578} 13 & 14 Vic.

\textsuperscript{579} Melbourne, Early Constitutional Development, 381.
he was afraid would result in much mischief to the well-being and tranquility of the country.  

In 1852 a select committee of the New South Wales legislature was appointed to prepare a draft constitution. It provided for a bicameral legislature. The upper house, the Legislative Council, was to be made up of a minimum of twenty-one members, all to be nominated by the existing Council. Two-thirds of these were to have been members of the elected lower house or elected members of the existing Council. There was no property qualification to be a member of the upper house. The lower house, the Legislative Assembly, was to have seventy-two members, and a ten pound franchise. The committee wanted complete legislative independence for the colonial legislature. The design of the upper house proved the sticking point. Neither nomination nor election of members found favour. Robert Lowe, in a letter to Parkes, fell onto the side of an elective upper house. He suggested a longer term for the upper house, a higher age qualification, and that only one third should face election at any time. Influential in the drafting of the new Bill was the requirement by Lord Newcastle that provisions be made for responsible government. Newcastle’s requirement was not that responsible government must be implemented by the Bill, but that the Bill allow for its implementation when appropriate. The despatch in which this requirement is made is described by John Ward as ‘epoch making’. The despatch was distributed from New South Wales to Victoria, South Australia and Tasmania. Newcastle had been influenced by the colonial reformers.

The Bill that went to London from New South Wales contained a model favoured by Wentworth, with a nominated upper house and a two-third majority to pass legislation, with members sitting for life. The Bill arrived in 1854, and was considered

580 Ibid., 382, quoting Empire, 18 September, 1851.
581 Ibid., 393.
582 Ibid., 377, 394.
583 Ibid., 395.
584 Lowe to Parkes, Empire, 13 July, 1853. In ibid., 396.
585 1811–1864. Secretary of State for War and the Colonies, 1852–1854.
in parliament in 1855. Sir Frederic Rogers, Commissioner of Emigration in London, commented that the Bills submitted from New South Wales, South Australia and Victoria were ‘little less than a legislative Declaration of Independence on the part of the Australian colonies’.  

Robert Lowe, now a member of the House of Commons, strongly objected to the idea of a nominated upper house and the rule requiring a two-third majority to pass legislation. The Bill, he argued, had been prepared by members of a Council with a significant property requirement. They represented the interests of the substantial property holders. While the composition of the proposed lower house might be democratic, the composition of the upper house rendered the democratic element of the lower house nugatory. The structure created an ‘oligarchical clique’. The House of Commons, the composition of which rested on a property franchise, was unmoved by Lowe’s appeals. The colonies might catch up to the United Kingdom, but not surpass it – yet. To overcome the problem, the House of Commons inserted a clause that the colonial legislatures might adjust their constitutions. They were not to be writ in stone. Wentworth was not pleased.

Like the Canadian constitution of 1840, the constitutions of Victoria and New South Wales were silent in relation to responsible government. As had occurred in Canada, it was expected that it would be introduced. Hearn observes:

“In the body of the Act, for example, which conferred upon Victoria its present form of government, the words Responsible Minister, or any equivalent terms, never once occur. Were it not for a marginal note, which forms no portion of the Act, not even a hint would be given by this statute of the important change which it was intended to effect.”

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589 Lowe was supported in the House by Gavan Duffy.


591 Ibid., 421. Lord John Russell had backed this alternative, observing that the Bills were, after all, representative of the current house.

592 *An Act to Enable Her Majesty to Assent to a Bill, as Amended, of the Legislature of Victoria, to Establish a Constitution in and for the Colony of Victoria (18 and 19 Victoria, C. 55) (1855).*

Instead it was introduced by despatch from the Secretary of State. 594

The colonies now had full rights of domestic self-government, a large degree of independence. They had a system of responsible government, and were moving towards greater democratic reform. The scene was set for the many bitter struggles, particularly in Victoria, seeking to have the power of the upper house reduced.

These changes to colonial governance owed much to Benthamite intervention. The resulting structure strongly resembled the reforms proposed by Bentham. The Durham report was strongly representative of Benthamite concerns and several key players had strong connections to Bentham and Benthamite thought.

**Victoria**

Settlers at the Port Phillip District demonstrated an interest in separation from the earliest days. The Durham Report became known in the Australian colonies in 1839, and the next year, probably in response, Port Phillip residents sent a petition to Westminster asking for a responsible government, by which they meant local self-government. 595 One of their grievances was that money going into the New South Wales coffers from land sales at Port Phillip was not translating into migrant labour being sent to Port Phillip. Instead the labour was remaining in the Sydney district. Secondly, Port Phillip was relatively convict-free and wished to escape the convict tarnish by separating. 596 The petition gained no recognition.

In 1844 Robert Lowe, in the New South Wales parliament, was the only supporter for another proposal for separation. The remaining members of the Legislative Council rejected the idea. In response, Port Phillip residents petitioned the Queen through Governor Gipps, who was sympathetic. The petitioning process had taken three years, and in 1847 London agreed to separation. Further time elapsed as the Privy Council committee, the Committee for Trade and Foreign Plantations, deliberated, as

594 Ibid., 8-9.
discussed above. In 1850 the *Act for the Better Government of Her Majesty’s Colonies* was given Royal assent.

A Legislative Council was created for Victoria by the Act. The New South Wales Legislature was to fix the number of members, which they set at thirty. Two-thirds were to be elected by the people, the remainder being nominees of the Governor, La Trobe.\(^{597}\) The structure of the government was similar to that which was enacted for New South Wales.

In 1851, only weeks after the Act had arrived in Victoria, gold was discovered at Clunes, and soon after at Buninyong and Ballarat.

In 1853 the Duke of Newcastle invited the Victorians to forward a constitution to Britain for consideration, with the express statement that it could contain an elected upper house, and that it accommodate the possibility of responsible government.\(^{598}\) In 1855, Westminster passed *An Act to establish a Constitution in and for the colony of Victoria*. Governor Hotham wrote that it was effectively the constitution of a republic.\(^{599}\) Public agitation for responsible government had been strong enough that Hotham was moved to write:

> If the new Constitution shall not have arrived, either I must defer to the wishes of the people, prepare for an excitement which will border on revolution, or leave the colony without a Government.\(^{600}\)

The Bill provided for:

- An upper and lower house.
- Thirty members in the upper house, and sixty in the lower house.
- A 500 pound annual rent value, or 5,000 pounds value of property, to stand for the upper house.
- A 200 pound annual rent value, or 2,000 pounds value of property, to stand for the lower house.

\(^{597}\) Ibid., 254.


\(^{600}\) Ibid., 304.
A 100 pounds value of property, or to be a member of nominated professions, to vote for the upper house.

A 50 pounds value of property, or 5 pound annual rent value, or a leasehold estate of 10 pounds, or occupation of a building of value of 10 pounds a year, or an income of 100 pounds per year, to vote for the lower house.

Members of the upper house to retire from the house at a rate of one member for each electoral district per two years.

The lower house to be returned every five years.

By that time, the Eureka rebellion had taken place (in December, 1854), and the population of Victoria waited impatiently for its new constitution to be passed by Westminster and sent out.

**Eureka**

The Eureka Stockade incident, in which some thirty-five people died, is elevated by many as a seminal event in Australian democratic history. A Museum of Australian Democracy has been established at the Eureka site. The national school curriculum teaches that ‘the Eureka Rebellion helped to bring democracy to Victoria’. Some scholars privilege Eureka and the violence associated with it. Politicians adopt it as part of their rhetoric. As it is the only instance of serious and multi-fatal violence associated with democratic change in Australian history, its adoption or rejection as a real force for change assumes a symbolic importance that outweighs the relatively small body count when compared with, for example, the French revolution. It is therefore a useful case history for the assertion in this thesis that moral force was the dominant force producing democratic change in Australia.

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603 Works such as Terry Irving’s *The Southern Tree of Liberty* document riotous behaviour. It is notable the incidents Irving records, being non-fatal, have until recently largely been passed over by historians and rhetoricians elevating the role of violence in Australian democratic change. Eureka is the only incident which can (however weakly) be associated with English and continental democratic agitation involving significant loss of life.
Eureka did not achieve the change frequently ascribed to it. The loss of life was not the spur for significant change. Moreover, violence was not the language of the vast majority present at Ballarat and its surrounds. Stories that elevate Eureka as an important event in the founding of Australian democracy help construct violence as having been necessary for the implementation of Charter principles. Eureka, in fact, provides a useful reminder of the wastefulness and tragedy of physical force. As discussed, the Benthamites were keen promoters of change by moral force, and this was the dominant and successful strategy for democratic change in Australia.

The rebellion at Ballarat, which came to a head on 3 December, 1854, was a response to many complaints, in particular the requirement that miners hold a licence issued by the government for a fee. Complaints had already been made to the new Victorian Governor, Charles Hotham, for a change in the fee system. An enquiry was put in place to examine the matter, but had not yet reported. The Ballarat Reform League, growing impatient, drew up a Charter which included reforms that closely resembled the points of the 1838 Charter. John Molony suggests that “The “political changes” the League saw as necessary were set down in the [1838] Charter. They were to be achieved over a period of time and they reveal the Chartist origins of the Ballarat document.”

The political changes sought were:

- Full representation.
- Manhood suffrage.
- No property qualification for members of the Legislative Council.
- Payment of members.
- Short duration of Parliament.

Among the great majority at Ballarat, peaceful protest was the preferred medium for democratic reform. A deputation made a representation to Governor Hotham that included the Ballarat Charter, but the deputation included the word ‘demand’ for the release of several prisoners. The Governor refused to consider a representation made

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604 See Withers, *History of Ballarat*, 72ff.

in this manner. Unsatisfied, the deputation returned to Ballarat. A week later violence broke out.\footnote{Withers, \textit{History of Ballarat}, 87-95.}

Two of the initial leaders of the campaign, John Humffray and Henry Holyoake, had been involved in the Charter campaigns in England.\footnote{Molony, \textit{Eureka}, 66, 120.} Humffray was a moral force Chartist, who completely rejected violence as a means of political engagement.\footnote{Ibid., 29, 120, 197.} Along with Humffray, much of the leadership rejected violence. Of the lack of desire to rebel, Withers observes that at a key meeting on 11 November, 1854:

> The leaders were in favour of moral force and a purely constitutional agitation; but there were more fiery spirits than they.\footnote{Withers, \textit{History of Ballarat}, 83. See also McKenna, \textit{Captive Republic}, 103.}

An incident just prior to Eureka that brought condemnation from the vast majority of miners provides an indication of the general lack of support for violence. Of an attack on the troops by miners on 28 November, 1854, Withers observes:

> The onslaught upon the troops appears to have been unprovoked and savage, and it excited general disgust in the minds of the colonists everywhere out of Ballarat. At Ballarat, also, the larger portion of the inhabitants regarded the affair as alike inopportune and disgraceful. Indeed the recognised leaders of the reform movement up to that time appear to have known nothing of the collision until it was actually over. Raffaello [Carboni] … calls it a cowardly attack. In illustration of the fact that the general body of the diggers sought only the rights of freemen, and were not marauders or revolutionists, it may be stated that when the Government Camp at Creswick was almost emptied of both officers and men for the support of the authorities at Ballarat, hundreds of the diggers offered their services to Mr. Commissioner Taylor for the protection of the gold deposited at the Camp.\footnote{Withers, \textit{History of Ballarat}, 94.}

As frustrations grew with a lack of immediate reform a physical force presence came to the fore, with the leaders including Peter Lalor, Frederick Vern, and Raffaello Carboni (contrary to his prior position). Dispute exists about whether the physical
force element was merely a defensive posture, or whether some form of armed rebellion was intended with, perhaps, a view to the establishment of a republic.\footnote{See a reference to the contemporary manifestation of the debate at Molony, \textit{Eureka}, 142. See also Withers, \textit{History of Ballarat}, 102, 105, 131, for a reference to those trying to dissuade men from initiating an attack on the government camp. See also Governor Charles Hotham to Sir George Grey, Duplicate Despatch No. 47, 2 April, 1855, VPRS 1085/P0, Public Records Office of Victoria.}

The incident itself was far from a mass uprising. While tens of thousands had participated in mass meetings, of the approximately 40,000 people in the immediate district of Ballarat at the time, only one hundred and twenty or so were armed behind the barricades on the morning of 3 December, 1854 – a tiny proportion. Lalor had sworn in some 500,\footnote{Withers, \textit{History of Ballarat}, 102.} and organisers were confident they could command a force of 2,000.\footnote{Ibid., 105.} But many of these had slipped away.\footnote{Ibid.} Others were not at the stockade because an attack was not expected for a day or so. Not long after the stockade incident, 1,000 armed men were dissuaded from violence in an encounter with troops on the Creswick Road.\footnote{Ibid., 113.} Even amongst the small minority of people willing to profess to it, the commitment to physical force was weak. Meanwhile, at nearby Creswick, 25,000 diggers were administered by three police.

Despite the peaceful intentions, the Ballarat Charter contained divergences from the original Charter. The Ballarat Charter opened with an appeal to natural rights: ‘That it is the inalienable right of every citizen to have a voice in making the laws he is called upon to obey’.\footnote{At http://www1.curriculum.edu.au/ddunits/units/ls3fq3acts.htm; [23 January, 2012], the word ‘inalienable’ is dropped, with an indication of missing text.} The document was a petition to the Governor, not a draft bill for the Legislative Council. Thus it lacked all that a draft bill implied, as discussed in chapter three.\footnote{The Governor was a part of the lawmaking structure, but presenting a petition to him is akin to the Chartists merely presenting a petition to, let us say, the leader of the house, rather than drawing up a bill. In relation to electoral laws, the two-thirds elective Legislative Council was the correct authority to make such laws. The Queen might grant or withhold assent. See \textit{An Act for the Better Government of Her Majesty’s Australian Colonies (13 & 14 Vic, C. 59)} (1850), especially sections 11, 14, and 32.} These two factors may have helped tip the balance to violence. A further
factor was noted by Governor Hotham,\(^{618}\) that a significant ‘foreign’ element was present. This, he suggested, was tied to a revolutionary politics:\(^{619}\)

the eyes of Government must not be shut against what I believe to be the fact; the agitators and promoters of sedition have further objects in view than the repeal of the license fee. The more moderate make a trade of their vocation and subsist upon the money collected from their followers and hearers; the rest hold foreign democratic opinions; they are indifferent as to the precise form of government to be obtained, provided the road to it lay through an overthrow of property and general havoc; foreigners are to be found amongst the most active, and if they abuse the hospitality and protection they obtain here, have no right to expect clemency if convicted.\(^{620}\)

For the more radical, the momentum towards democratic change foreshadowed by Brougham’s schoolmaster, the pervasive influence of moral force Chartism, the democratic agitations of the colonial reformers, the impending arrival of the new constitution, and, more locally, the impending result of an enquiry, were not enough.

Eureka remains a commanding myth and has frequently been associated with the implementation of democratic reform. Steve Bracks, as premier of Victoria stated:

I believe Eureka was a catalyst for the rapid evolution of democratic government in this country – and it remains a national symbol of the right of people to have a say in how they are governed.

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\(^{618}\) Governor Charles Hotham to Sir George Grey, Duplicate Despatch No. 47, 2 April, 1855, VPRS 1085/P0, Public Records Office of Victoria.

\(^{619}\) See also Withers, *History of Ballarat*, 109, 113, 128.

\(^{620}\) Governor Charles Hotham to Sir George Grey, Duplicate Despatch No. 162, 20 December, 1854, VPRS 1085/P UNIT 8, Public Records Office of Victoria. A comment by Peter Lalor is of interest: ‘I must here state, that there were only about thirty foreigners in the movement’. If this is to be taken as the non-British component of those at Eureka itself, it is a substantial proportion of the 120, particularly if it forms a significant part of the leadership. See "Eureka Trials, Peter Lalor, Letter Published in the Argus, 10 April, 1855," available from http://www.prov.vic.gov.au/eureka/lalors_letter.htm; [2 February, 2012]. It would be interesting, too, to have an idea of the Irish representation in the 120. Molony suggests about forty Irish were taken prisoner, but given that the number of prisoners outnumbered participants, it is likely not all these had been behind the barricades. Molony, *Eureka*, 171. For further discussion see ibid., 54, 88, 93, 141, 147, 149, 151, 173, 177, 191, 200, 223. See also Raffaello Carboni, *The Eureka Stockade* (Teddington: Echo Library, 2007), 50, suggesting that there were no divisions of rebels by nationality, at least to 2 December, 1854.
I am not saying there would be no democracy without Eureka. However, I doubt our democracy would have come as quickly – and I suspect our democracy would not be as egalitarian – without Eureka.621

Historian, Professor John Molony, at the Eureka educational website,622 draws a strong connection between English moral force Chartism and Eureka, and then between Eureka and major democratic reform in Victoria.623 Molony first builds up the connection between Chartism and Eureka. He then states that ‘the Chartists left the diggers in the hour of their greatest need when the movement for reform either had to cease or the leadership had to change’. He continues: ‘The leadership automatically fell to those among the diggers to whom moral force was powerless in the face of official intransigence combined with military might.’ Thus, the next heading reads: ‘The League dies in blood.’ He appears to find no reasonable alternative to violence, other than complete cessation of the campaign. He then suggests, with dubious simplicity:

Whenever Australians to this day enjoy the rights and freedoms granted to them by their Constitutions, they can look back to Eureka, to the Ballarat Reform League and to the Charter of Bakery Hill as the wellsprings of their democracy.624

A desire to find blood at the centre of change can also be found in, for example, Sunter and Williams. They quote Lalor:

a British Government can never bring forth a measure of reform without having first prepared a font of human blood in which to baptise that offspring of their generous love.625

They suggest:

621 The Age, 3 December, 2004. McNaughtan discusses the impression that the gold rush was, in significant measure, responsible for the growth of population in Australia, dismissing it as unsupportable. McNaughtan, "Colonial Liberalism,” 102, 107.

622 Molony, "Ballarat Reform League.”


624 Molony, "Ballarat Reform League.”

Had Lalor, full of Irish romance, spleen and passion, exaggerated when he spoke of the necessity of a ‘font of blood’? No other Australian colony had to shed blood at its birth in the way Victoria did, but we would argue that because blood was shed at Ballarat, and because of the memory of that blood, the language of Australian politics would ever more be democratic.\(^{626}\)

In other words, it is implied by Sunter and Williams that Lalor had not exaggerated when proclaiming the necessity for a ‘font of blood’ – even though ‘No other Australian colony had to shed blood at its birth.’ Sunter and Williams do not take into account other motivations for reform by the government, other methods for seeking change available to the populace, nor the fact that the colony was in fact ‘born’ over a long period of time, and the call to violence at Eureka was an exception to the general history.

Peter Lalor is frequently constructed as an unqualified democrat. For example, Newman states:

> colonial Australia, mainly through British newspapers such as the Times and English immigrants, was inevitably exposed to Chartist principles; indeed seventy-nine Chartists were transported to Australia in 1842 alone. Other international immigrants, or gold rushers, from Germany, France and Italy also carried with them the essence of European discussion on the ballot. Indeed many of the miners at the Eureka Stockade, including Peter Lalor were imbued with such democratic principles.\(^{627}\)

However, it might be that Lalor’s aims at Eureka were, in fact, less than fully democratic.\(^{628}\) Lalor’s version of democracy – at least the version he was willing to profess once he had the power to do something about it – was not that of the philosophical radicals or the Chartists, moral force or otherwise. Lalor became a member in the first new parliament in Victoria under the new constitution, which sat on 21 November, 1856, with five additional seats created to represent the miners.\(^{629}\)

Lalor represented a mining electorate. He declared, upon voting for a property franchise for the new Electoral Bill brought in under the new constitution:

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\(^{626}\) Ibid., 21.


\(^{628}\) In terms of the debate at the time, mostly revolving around full adult male franchise and other Charter-like electoral reforms.

\(^{629}\) Withers, History of Ballarat, 166.
I would ask of these gentlemen what they mean by the term “democracy”? Do they mean Chartism, or Communism, or Republicanism? If so, I never was, I am not now, nor do I ever intend to be a democrat. But if a democrat means opposition to a tyrannical press, a tyrannical people, or a tyrannical government, then I have ever been, I still am, and I will ever remain a democrat.\footnote{Ibid., 168.}

In rejecting creeds of revolution, and justifying his stance, he suggested a freehold franchise was not far removed from full franchise. As it turns out then, a key leader of the Eureka physical force contingent was ultimately neither revolutionary nor as democratic in principle as the moral force philosophical radicals at Westminster, the authors of the Charter, nor as democratic as Parkes in New South Wales, Kingston in South Australia, and Chapman in Victoria (the three latter figures to be discussed in chapter five). Lalor was out of sympathy with the aims of the Charter – be it moral force or physical force. Nevertheless, it must be said, his cautious support for a limited democracy was not out of line with contemporary attitudes. For many, education or property were necessary preconditions for the expansion of the franchise. Many were cautious about how this democratic evolution should unfold.

Governor Hotham himself was not against liberal reform. He acknowledged that reform was afoot in Victoria prior to Eureka, and would occur irrespective of the incident:

Although frequently called upon to address the miners, I never made a promise; I required of them patience, and for myself time, to master the complicated difficulties in which I found the colony surrounded. As soon as I understood the general position of their affairs, I appointed a commission to enquire into the administration of the laws which govern that portion of the community. I selected members of the Legislative Council and those only who I believed would be acceptable to them. I entreated them to place confidence in the Commission and await their report, instead of which they flew to arms, and brought about a catastrophe which we must all deplore.

But that which has occurred will in no way militate against the promotion of that policy which I believe necessary for Victoria; under a liberal system of government only can she thrive, and it will be my study and aim to foster and aid it.\footnote{Governor Charles Hotham to Sir George Grey, Duplicate Despatch No. 162, 20 December, 1854, VPRS 1085/P UNIT 8, Public Records Office of Victoria. See the also the Australian Dictionary of Biography which accepts Governor Hotham’s support for democracy. B.A.}
In fact, a new constitution giving substantial independence to the colony, along with responsible government, had been decided in Victoria months before the incident and sent to England for approval and royal assent.\(^\text{632}\) The Colonial Office would not have brooked any interruption to the trend to independence and democracy if the Governor were recalcitrant. Three months prior to Eureka, Sir Frederic Rogers wrote in a private correspondence:

The successive Secretaries of State have been bidding for popularity with [the Australian colonists] by offering to let them have their own way. And in professed pursuance of these offers they (New South Wales, Victoria and South Australia) have sent home laws which may be shortly described as placing the administration of the colony in a Ministry dependent on the representative assembly, and abolishing the Queen's right of disallowing Colonial acts. What remains to complete colonial independence except command of the land and sea forces I don't quite see. I shall be interested to see what comes of it. It is a great pity that, give as much as you will, you can't please the colonists with anything short of absolute independence, so that it is not easy to say how you are to accomplish what we are, I suppose, all looking to – the eventual parting company on good terms.\(^\text{633}\)

In response to failings with Hotham's Governorship, William Molesworth, commencing as Colonial Secretary on 21 July, 1855, sought to intervene:

[Hotham's] post had been raised to a full governorship on 3 February 1855 and the imperial government commended him for suppressing the 'outbreak', though not for his policy towards the ringleaders. His competence was already questioned in the Colonial Office and more so when the colonial reformer, Sir William Molesworth, became secretary of state in July. He rebuked Hotham for high-handed treatment of the Legislative Council over his taxation proposals in June. He also supplied hints on the governor's place in responsible government but Hotham handled awkwardly the inauguration of the new Constitution and ministerial government in November.\(^\text{634}\)


\(^{632}\) The Act sent to England had been passed by the Victorian Legislative Council on 24 March, 1854. The Eureka Stockade occurred on 3 December, 1854.


\(^{634}\) Knox, "Hotham, Sir Charles (1806–1855)," Molesworth was secretary of state for only four months. He died 21 November, 1855.
The passage of the *Victorian Constitution Act* had been delayed by the Crimean War, but it was given royal assent on 16 July, 1855. In any case, responsible government had already been won while Victoria was awaiting the return of its constitution, after something of a coup by the Governor’s parliamentary advisors. Following the arrival of the new constitution, electoral reforms in Victoria were put in place simultaneously with near identical electoral reforms in Van Diemen’s Land and South Australia. For neither of these latter colonies has Eureka been posited as a reason for change. It is possible that fear of dissent as a result of Eureka was important to the introduction of reform in those other colonies, but no historian has yet provided any evidence for this. The key victory of Eureka was the enfranchisement of miners, whose interests differed from existing powerful landholders.

By contrast, an observation by Charles Gavan Duffy made in 1856 in Victoria, shows how Benthamism could be an important intellectual tool for cutting through to a resolution of the core issues for democratic reform in the colony. Duffy states:

I had been cordially received by the leaders of the Liberal Party, and their programme included the measures that seemed most urgent. Opening the public lands to the people, enlarging the basis of political freedom, and the proclamation of complete religious equality. Among the men who had been the most prompt to welcome me were a small sprinkling of squatters who insisted that I who had fought the battle of the tenants in Ireland must necessarily sympathise with the Crown tenants who were menaced in their rights by a new population who had come for gold, and would abandon the country when they had got it. But I retained one guiding axiom of Jeremy Bentham, then and always “the greatest good of the greatest number,” and I found myself imperatively drawn to the other side. But I desired to be fair.

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636 After the incident the miners were offered twelve new seats in the Legislative Council – eight elective and four nominated. They had previously been offered one nominee seat. The franchise in the created seats extended to those holding an annual miner’s right. Governor Charles Hotham to Sir George Grey, Duplicate Despatch No. 47, 2 April, 1855, VPRS 1085/P0, Public Records Office of Victoria.

Duffy’s considerations provide a reason for change arguably more persuasive, given their historical context as outlined in this thesis, than the suggestion that the violence of Eureka provided the spur for democratisation.

Duffy went on to become a leading colonial politician. He had sat in the House of Commons prior to coming to Australia, and he was influential in the importation of parliamentary procedure into the colonial parliament, so important to Bentham, Romilly, and others seeking orderly change. Among other things, Duffy agreed with abolishing the property qualification for members of parliament, sought land reform to break up squatter monopolies, and was a free trader in opposition to his liberal colleagues.638

Conclusion

Both New South Wales and Victoria saw strong advocacy for democratic reform from their earliest days, and were heavily influenced by the intervention of Benthamites. Probably the single most influential document for colonial democratic reform was the Durham Report, which was substantially contributed to by Wakefield and Buller. Durham himself was targeted as a possible leader for the philosophical radicals, but his early death prevented that. After Durham’s death, both Molesworth and Buller continued pushing the findings of the Durham Report, and J.S. Mill contributed. Other radicals both in and out of Parliament also advocated its principles. Democracy for the colonies was, in large measure, a philosophical radical cause. It was equally the cause of the wider British Australian population, which had a useful working document in the Charter upon which to focus their democratic ambitions. In Sydney, a key parliament. Mill declined due to his commitments at India House. See letters Mill to Duffy of 27 March, 1851, 28 March, 1851 and 17 June, 1851 in John Stuart Mill, Collected Works, vol.14, 57-8, 71. In 1865-6 Duffy met with Mill while Duffy was visiting Britain. Soon after, Duffy sought from Mill a recommendation on how to ethically present to his electorate his opposition to a policy which his electorate favours. See letters Mill to Duffy of 10 October, 1865, 11 August, 1866 and 2 October, 1866 in John Stuart Mill, Collected Works, vol.16, 1111, 1191, 1204.

Benthamite was Robert Lowe. He spearheaded the movement towards representative government and democracy in the colonies, particularly as Wentworth grew more self-seeking. Lowe also supported the separation of Victoria from New South Wales when no-one else in the legislature would.

Benthamites fill the pages of books on early Australian democratic development. Their political orientation and association, however, is frequently overlooked. We are left with a jigsaw of facts and people, scattered about with no binding doctrines nor explanation of the origins of their ideas. At least since Richard Mills’ work in 1915, few Australian historians have attempted to assemble the early colonial jigsaw with the Benthamite contribution in mind.639 It does not especially change the narrative, but it certainly changes the meaning. The role of the utilitarians was not unknown to nineteenth century readers. For example Fawcett writes:

In one of Miss Martineau’s concluding chapters, she says: “Next to Ireland, our Colonies continue to be the opprobrium of our empire.” The half-century which has passed since these words were written has converted the “opprobrium of our empire” into its greatest glory and pride. A group of men, represented inside Parliament by Lord Durham, Charles Buller and Sir William Molesworth, and outside Parliament by Edward Gibbon Wakefield and John Stuart Mill, deserve the chief credit of this brilliant transformation. They saw, and gradually educated the public to see, that the true remedy for Colonial discontent could be found only by giving every Colony, as soon as circumstances rendered it possible, self-government and free representative institutions. When the small band of Colonial Reformers began their work they had against them the whole official class who believed that Colonial self-government would be inconsistent with the sovereignty of Great Britain, and also the popular political philosophy of the day, represented first by Bentham, and later by Cobden, which favoured the complete relinquishment of that sovereignty. It says much for their practical sagacity and statesmanship that the Colonial Reformers were able to make way against such odds.640

639 Two authors who do are Pike in Paradise of Dissent, and John Gascoigne in The Enlightenment and the European Origins of Australia. In general, Pike’s description of both Bentham and the philosophical radicals is unflattering. Gascoigne’s treatment is balanced, but his work is not oriented to a discussion of constitutional matters.

640 Fawcett, Life of William Molesworth, 2-3.

Harriet Martineau (1802–1876) was a prominent author, feminist and social theorist, who publicized the principles of political economy in a series of short works between 1832 and 1834.
However, this knowledge has faded in Australia. One feature that emerges from this elision is that the Eureka rebellion has come to be celebrated, but it is hard to know for what exactly. If Eureka sped up the implementation of democratic electoral laws in Victoria it is not likely to have been by much. In the context of Eureka, Gough Whitlam commented:

It is a truism, perhaps, that the importance of an historical event lies not in what happened but in what later generations believe to have happened.641

Eureka has been proposed as a centrepiece for a new ‘civic nationalism’:

Australia needs a ‘new nationalism’, where we fashion a relevant national story from Australia’s past and link it meaningfully to our future. This requires that we find new angles and new approaches to our old national story and make our national symbols unambiguously Australian to reflect and celebrate Australian independence. In this context we propose that the Eureka uprising be made the centrepiece of the new Australian national story: the birthplace of Australian democracy, the earliest exemplar of Australian multiculturalism and witness to the first stirrings of Australian republicanism.642

However, Eureka was not the ‘birthplace of Australian democracy’. Serle’s view does not conform with those who seek to elevate Eureka:

Both historians and propagandists have produced a bewildering variety of explanations for the causes and significance of Eureka which have often been characterized by oversimplification and biased distortion….643 No final conclusions can be drawn on the controversial subject of Eureka’s immediate effects. So many reforms followed so quickly that it is not surprising that many people at the time attributed the series of democratic victories to the men of Eureka, and not all historians of Eureka have recognized the fallaciousness of post hoc, propter hoc arguments.644

But Serle does allow at least one conclusion:

644 Ibid., 184.
All or almost all of the reforms which followed Eureka must in any case soon have occurred.  

For Serle, any suggestion that the Eureka incident represented the birthplace of democracy in Australia was ‘absurd’. Serle points to ‘the long-standing democratic movements in New South Wales and South Australia, especially as expressed in opposition to transportation and in the challenge to Wentworth’s draft constitution’ as indicative of prior democratic sentiment and victories.

As something of a counterbalance to the current tendency to place Eureka as the centrepiece of Australian democracy, the story of electoral reform across the colonies will be discussed in the next chapter. This story, along with the rest of the progression towards democracy told in this thesis, supports the sanguine, not the sanguinary.

Democracy had been an aspiration in the colonies since the beginning, and most certainly since the Durham Report. By the time of Eureka the colonial constitutions were formed to the point where popular participation could further shape them without offshore intervention. The direction of change was all towards the fulfilment of the promise of the Charter. This was achieved by peaceful agitation – by moral force, not physical force – by the tools of the public meeting, the petition, and the acts of radical representatives in office.

In relation to the colonies, the thinking of the philosophical radicals can be summed up in a letter from Charles Austin to William Molesworth. Molesworth’s brother, Francis, was about to depart for New Zealand. There he would find, wrote Austin, ‘New sky, new land, new men, new life, without kings, lords, and priests, and the rest of hell.’

In relation to the philosophical radical contribution, Thornton, in *The Philosophical Radicals: Their Influence on Emigration and the Evolution of Responsible Government for the Colonies*, sums the matter up:

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645 Ibid.
646 Ibid., 184-5.
647 Ibid.
the Philosophic Radicals helped reverse the British attitude toward Empire, an attitude which was the product of the American Revolution and Adam Smith’s ideas. They created in Great Britain a desire to hold on to the colonies, to settle them, and then to permit them to govern themselves.650

And, as Robert Lowe put it, by 1855 Australia had ‘the most advanced democracies in the world’. 651


Chapter 5: Benthamite reformists in the colonies

*the only thorough Benthamite constitution in the Empire (Merivale, 1856)*

Introduction

This chapter examines the contribution of Benthamism to the development of colonial politics by taking as examples the contributions of George Strickland Kingston, Henry Chapman, and Henry Parkes to the political development of South Australia, Victoria, and New South Wales respectively. These three figures illustrate the influence of Bentham’s ideas, as discussed in this thesis, on early Australian constitutional developments, including electoral reform. Kingston adopted the Benthamite political agenda early in his life, and brought it with him to the South Australian colony. The colony was a Benthamite experiment. Chapman played an important role in the implementation of the principles of the Charter in Victoria. He visited the London Working Men’s Association while in London. He also worked with Roebuck publicizing democratic issues, particularly their work for Canadian political reform and a series of pamphlets Roebuck published. While Kingston was too young to have the extensive political involvement of Chapman in London, he did participate in the efforts to make the foundation of South Australia successful. When living in South Australia he played a central role in establishing democracy there, including putting in place the secret ballot. South Australia is a contender as the colony where the secret ballot was first implemented in the world in the form we now recognise, thus making it important in the story of the implementation of the points of the Charter. Both Victoria and South Australia, along with Tasmania, were world leaders in democracy, and a notable achievement in each was the design and use of the secret ballot at nearly the same time.

While in Britain, Parkes had none of the opportunities for being active in reform available to Chapman and Kingston. He was struggling to make a living while in

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Birmingham, and his period in London was one of extreme economic hardship. His political ambitions drew on moral force Chartism, and his opportunity in life resulted from free migration under the Wakefield program. He brought his Birmingham Chartism with him to Australia. He was an early free trader, but had his conviction strengthened after discussions with Cobden. In Parkes’ philosophy we can arguably see the emergence of a politics that Rosen terms security liberalism. Parkes negotiated the path between free trade and an expansion of the role of the state in the provision of such services as education, railways, and the amelioration of poverty. Rosen observes that this approach has a strong Benthamite character. Parkes’ importance to Australian politics lies not merely with his leading role in New South Wales politics, but also for his role in promoting federation.

George Strickland Kingston (1807 – 1880)

A colonist of South Australia remembers meeting Kingston:

Well I remember going to the Government Offices in London, in 1834, to make my first purchases in an unknown country. The young man at the desk, dressed in the Dandy style of those days, high collar the points of which stuck up past his cheeks, could not give me much information about the place but took my money and handed me a receipt. The name was that of G.S. Kingston.

653 On Cobden’s relation to Bentham’s ideas, Francis Hirst states: ‘I would say that the Manchester men were the disciples of Adam Smith and Bentham, while the Philosophical Radicals followed Bentham and Adam Smith’. He continues that Molesworth and Hume were also closely associated with the Manchester School. He continues ‘Bentham's watchword, 'Emancipate your colonies’ is the key to the best part of Molesworth's life’.

From Francis W. Hirst, "Introduction " in Free Trade and Other Fundamental Doctrines of the Manchester School, Set Forth in Selections from the Speeches and Writings of Its Founders and Followers, ed. Francis W. Hirst (London: Harper & Brothers, 1903), xi.

Also refer to Thornton, The Philosphic Radicals and Responsible Government, 14-15.

654 Rosen, "The Origin of Liberal Utilitarianism." Note Rosen is not referring to Parkes, or Australia. Wakefield’s view on public works is discussed in chapter four of this thesis. Wakefield’s system had the benefit of providing money from the sale of land for such works.

Kingston had arrived behind that desk by a rather circuitous route. Born and raised in Ireland, he left school at fifteen, but faced a highly limited job market. In search of a future he travelled to Birmingham and completed a pupilship in civil engineering. In 1834 he responded to an advertisement publicising the newly proposed colony of South Australia.\(^6\) In an exchange of letters with Robert Gouger, Gouger suggested that, if he would work in London in the interests of the South Australian Association, he would be looked upon favourably for a position as surveyor in the new province. Gouger recommended he read Wakefield’s *England and America*, because the province was to be organised in accordance with Wakefield’s principles.\(^7\) Kingston moved to London, helped promote the passage of the *South Australia Act*, and sold land in the new colony to prospective emigrants.

Between 1831 and 1834 the project for the colonisation of South Australia went through three distinct stages. The first, idealistic, sprang from the Colonisation Society ‘with its “philanthropists and clergymen” and “young and ardent intellectuals” which commenced and folded in 1830’.\(^8\) The Society’s members included Robert Gouger, Charles Buller, John Stuart Mill, Robert Rintoul, William Hutt, and Colonel Robert Torrens. Then, in 1831, the South Australian Land Company was formed, in which, according to Pike in *Paradise of Dissent*, ‘philanthropy was superseded by the prospect of profit’.\(^9\) Henry Lytton Bulwer and Torrens were among the members. But, Kingston recalled, ‘the terms of the proposed Charter did not meet the approval of Government, and all questions as to the new colony remained for some time in abeyance’.\(^10\) Finally, in 1834, the South Australian Association was formed, made up of ‘philanthropists and liberals’ and ‘utilitarians

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\(^7\) Langmead, "George Strickland Kingston", 54.

\(^8\) Young, "Response of Historians to the ‘Wakefield Theory”", 108-9, drawing on Pike, *Paradise of Dissent*, 83-89.

\(^9\) Young, "Response of Historians to the ‘Wakefield Theory”", 108-9, drawing on Pike, *Paradise of Dissent*, 86.

\(^10\) G.S. Kingston, "Foundation of South Australia," *South Australian Register*, 30 August, 1869, 3.
and philosophical radicals of the Benthamite school’. Members included William Molesworth, Colonel Torrens, Charles Buller and George Grote.

It took two more years for the plans of the South Australian Association to work through parliament and gain the approval of the Colonial Office. Kingston worked unpaid at the offices of the Association at the Adelphi Terrace on the Strand promoting the interests of the province. With a few others, including Edward Wright, John Morphett and Thomas Gilbert, whose names now grace Adelaide’s city streets, he even paid the office rent as the project dragged on.

Although Kingston probably began with the Association without any particular political beliefs, he took in the ideas of the utilitarians, and was later to implement them during his parliamentary career in South Australia. At the office prospective immigrants were made aware of the kind of society they would be pioneering:

One of his [G. S. Kingston’s] main functions at the South Australian Association’s office was, in the absence of Robert Gouger or Rowland Hill, to interview prospective immigrants, giving information on “the views and objects of the Association, and the principles on which the Colony is founded.”

The Morning Chronicle dyspeptically noted:

We understand that Colonel Torrens, the Chairman of the Commission appointed to establish the colony of South Australia frequently asks the applicants … what are their political principles? The Gallant Colonel, of course, thinks that if the applicants are thorough-going Radicals, they will be fit for colonists…

Pike suggests people were selected for their frugality and industry.

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661 Young, "Response of Historians to the ‘Wakefield Theory’", 108-9 drawing on Pike, Paradise of Dissent, 87, 89.
662 Langmead, Accidental Architect, 22.
663 Ibid., 24.
Representative government was always in view. In 1836 the Colonization Commission wrote to James Fischer, appointed Resident Commissioner of South Australia, that he was to prepare the way for:

laying the foundation of economic, scientific and other institutions, which being in part supported and managed by the working classes will exercise them in the art of self-government and, while preparing them for the reception of their representative constitution will have the immediate effect of making them feel that they belong to a colony of superior order…\textsuperscript{667}

During this period in London Kingston designed the future town of Adelaide, including its park lands.\textsuperscript{668} Parks and open recreation spaces were on the political agenda at the time. For example, Home observes that in Britain a Select Committee of Parliament on Public Walks was conducted in 1833, and in 1838 the utilitarians Roebuck and Hume campaigned for open space provisions in all enclosure bills.\textsuperscript{669}

In November 1835, Kingston finally gained the position of Deputy Surveyor. He also became chairman of the building sub-committee. After frantic preparations for departure, the Cygnet sailed for South Australia on 24 March, 1836, carrying Kingston and his survey party. The ship (which became an unbearable hive of mutiny, conspiracy and vituperation) finally arrived South Australia in September, 1836.\textsuperscript{670}

Kingston identified a site for the city of Adelaide,\textsuperscript{671} and Light, the Surveyor General, confirmed Kingston’s choice on 24 December, 1836. During the first years of settlement error compounded error, personality grated on personality, and manipulative schemes overlaid each other. Work was nevertheless done. Around 150 square miles were surveyed in a frantic attempt to keep up with land sales.\textsuperscript{672} Even while the site of Adelaide was still the subject of bitter wrangling, Kingston surveyed


\textsuperscript{668} See Langmead, \textit{Accidental Architect}, xvi and 28.


\textsuperscript{670} Langmead, \textit{Accidental Architect}, 38-45.

\textsuperscript{671} Ibid., 56-9.

\textsuperscript{672} Ibid., 95. See also 77.
his chosen location with a small team under his supervision. Kingston settled in Grote Street, named after the utilitarian member of parliament and historian of Greek democracy.

On being refused the position of Surveyor-General, Kingston resigned as Deputy Surveyor in October, 1838. He then worked as an engineer, surveyor, and architect. He rapidly gained commissions, including for government house, a Wesleyan chapel, a customs house at Glenelg, a gaol and a hospital. His relationship with the government became stormy, and when Governor Grey arrived in 1841 to slash costs, Kingston’s projects were a casualty. Meanwhile, in 1840, he stood for local council elections, dubbed as “the first exercise of popular representation” in the “ Asiatic and Australasian possessions of the British crown”. He was not elected, but was appointed Collector (of rates) and Town Surveyor that year. While the new expression of the democratic spirit might have been uplifting for the community, the payment of rates was not, and Kingston, having already accumulated many enemies, was not appreciated in his role as Collector. With diminished earnings, Kingston developed his private practice. Following the copper mining boom of 1845, he was appointed surveyor of the Burra mining area, and his fortunes changed for the better with his ownership of shares in a successful copper mine. Now independently wealthy, Kingston continued working as an architect and engineer, and invested in property.

With financial freedom, in 1851 he stood for election to the new Legislative Council (established by the Australian Colonies Government Act). This Council replaced the Executive Council which had been exclusively appointed by the Governor. It comprised twenty-four members in total, sixteen elected, and eight appointed by the

\[673\] Ibid., 65-69.
\[674\] Ibid., 113. See also 120.
\[675\] Ibid., 110, 116.
\[676\] Ibid., 117-119, 125.
\[677\] Ibid., 135 quoting the Register, 31 October, 1840, 3.
\[678\] Ibid.
\[679\] Ibid., 137.
\[680\] Ibid., 140-1.
\[681\] Ibid., 145.
Governor. Kingston won his seat, The Burra, which took in the copper mining district. The property franchise meant only one quarter of males in the electorate could vote. There were 421 voters.\textsuperscript{682} After a torrid campaign, Kingston gained the highest number, with 190 votes.\textsuperscript{683}

Kingston’s democratic stance, including the expansion of suffrage to exclude a property qualification, and the use of the secret ballot, brought him the support of wage earners in his electorate.\textsuperscript{684} Kingston’s activities over the next six or seven years, and later as Speaker of the House, validate his claims on the hustings:

> I will not fatigue you with particularizing the various questions of reform which I consider necessary to be carried in order to make South Australia happy and wealthy, but will briefly state that I yield to no man in the desire and intention to promote by any means in my power the establishment of liberal institutions and laws; that I will not assist or be a party to passing any law which tends to give to one man greater civil rights or social rank than another; and that, in my opinion, the good sense by which we may insure a healthy political status is to frame laws not only just and liberal, but by the appointment of able and upright Judges to ensure us their impartial administration.\textsuperscript{685}

\textit{South Australia’s constitution}

While the colonies of New South Wales, Victoria and Van Diemen’s Land all share to some extent the same constitutional history, having all at one time been administered from Sydney, South Australia is remarkable for its independent origins, and its subsequent innovations in constitutional and social legislation.\textsuperscript{686}

The early years of South Australian settlement were financially and organisationally chaotic. This resulted in the first constitutions permitting little representation by the

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\textsuperscript{682} Ibid., 152.
\textsuperscript{683} Ibid., 157.
\textsuperscript{684} Pike, Par\textit{adise of Dissent}. 109, cited in Langmead, \textit{Accidental Architect}, 162.
\textsuperscript{685} "Kooringa Election," \textit{South Australian Register}, 9 July, 1851.
\textsuperscript{686} See for example Borrow, "South Australian Real Property Act," and Mills, \textit{The Colonization of Australia}. Pike’s Par\textit{adise of Dissent} is an excellent resource, but has a negative tone throughout.
\end{flushright}
people.\textsuperscript{687} The initial constitution allowed the Governor to be advised by a Council of Government, with the Council being comprised of government officials. However, another power centre existed in the position of Resident Commissioner, who had control of land and the money arising from its sale. The situation was unworkable.\textsuperscript{688} In 1838 the Governor was given full control, but in line with Wakefield’s system, all money from land sales was to be used for immigration. The colony appeared to be bleeding money. In 1839 at a public meeting, many residents agreed to forward a petition to the Colonial Office to air their grievances, and seek elected representation in the Council. In response, in 1842 a mild reform allowed the Council to be made up of three persons holding public office, and four who did not. However, a Privy Council inquiry in 1849 into the separation of Port Phillip from New South Wales, and the extension of representative institutions to South Australia and Van Diemen’s Land recommended a representative legislature for South Australia. It allowed twenty-four members in the legislature, two thirds being elected by the people. In 1851 elections were held for this first parliament. The premise that the colony was to be governed by was fundamentally Benthamite, elevating the principle of the greatest happiness to the key object of the polity. In opening the Parliament, Governor Young stated:

\begin{quote}
I feel confident, that it is but an anticipation of your own aspirations, when I invite you to illustrate the commencement of your Legislative career by a practical recognition of the truism, that the powers of civil polity can never better permanently promote the greatest happiness of the greatest number, than by placing within reach of the whole people, inexcusively, the means of having their children taught and trained in, at least, the elements of knowledge and of morals. The more perfect our civil liberty, the more necessary is it to provide for the removal of ignorance, and for the discipline of virtue.\textsuperscript{689}
\end{quote}

In 1852, a Select Committee appointed by the Legislative Council of South Australia recommended two fully elective houses. To sit in the upper house a member would have to have been living in the colony for three years or satisfy a property

\textsuperscript{687} The following summary is largely derived from Dean Jaensch, ed. \textit{The Flinders History of South Australia - Political History} (Adelaide: Wakefield Press, 1986).

\textsuperscript{688} Ibid., 52.

\textsuperscript{689} \textit{South Australia - Votes and Proceedings of the Legislative Council During the First Session of the Year 1851} (Adelaide: Government Printer, 1852), 3. My emphasis.
qualification, and to vote for the upper house a citizen would have to satisfy a one hundred pound property franchise. The lower house would have a six month residency qualification to vote. The ballot was recommended. The ministry was to be chosen by the governor, and did not need to be drawn from the parliament.

In 1853, the Governor announced that, in accordance with a request from the Secretary of State for the Colonies, Sir John Packington, and his successor, the Duke of Newcastle, the Legislative Council should that year draw up a bill that would grant to the legislature of the province the complete control of its internal affairs, and the entire management of the waste lands of the Crown. The resulting bill aroused heated debate, centring on the difficulty of creating an upper house suitably differentiated from the lower. The bill allowed for two houses with members of the upper house to be nominated for life by the Governor, and with no property qualification. The lower house was to have thirty-six elected members. The lower house would be able to amend the constitution of the upper house after nine years with a two-thirds majority. During the Legislative Council debates Dutton and Kingston proposed that the upper house be elective, expressing the wishes of the elected members.

After the bill was sent to England in November, 1853, Kingston chaired a meeting at the Norfolk Arms Hotel in Rundle Street, resulting in a memorial sent to Britain objecting to a nominated upper house. The memorial included 5,000 signatures. Again in 1854 Kingston was responsible for a motion passed in the Legislative Council that called for a delay in proceeding with the bill until after a fresh election. On the same day twelve elected members of the Legislative Council voted for an elective upper house, while two elected members and all six appointed members voted for an appointed house. In Britain, accordingly, the bills were allowed to lapse for lack of support.

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690 Or occupying a twenty five pound rent per annum property with three years remaining on the lease, or occupying a fifteen pound per annum property for greater than six months completed. (Gordon Combe, Responsible Government in South Australia (Adelaide: Government Printer, 1957), 29, quoting Report of Select Committee of Legislative Council, 1852.) Remembering that voting and sitting in parliament was limited to adult males.

691 Ibid., 29.

692 Ibid., 33.

693 Ibid., 41.

694 Ibid., 42.
With the call in 1855 from Britain for submissions for a new bill the new Governor, Richard Graves MacDonnell, publicised an idea for a single house based on the following observations:

Responsible government, in its widest signification, would require very favourable circumstances to ensure its working satisfactorily. Few here seem to understand it as it is understood in England and Canada, or rather, I should say, the mechanical difficulties of bringing it into operation in this small community are so great that its advocates profess to seek its application here in very modified form.\(^{695}\)

In a notice in the *Government Gazette*\(^{696}\) MacDonnell proposed a house of forty, with four appointees who were also the heads of the principle departments, and a third elected by voters possessing ‘high qualifications’.\(^{697}\) The *South Australian Register* summarised MacDonnell’s preference for a single house as resting on the fact that it was simple and cheap.\(^{698}\) But the paper also thought a single house constructed as MacDonnell proposed might merely give primacy to ‘official obstructiveness’ over ‘popular impulsiveness’:

the two so pitted against each one another as not only to provoke perpetual warfare, but to leave victory always on one side. The Government, however bullied and badgered, need never give way…. Only by revolutionary measures could the position be stormed….\(^{699}\)

The 1855 election, in which the dual or single house issue arose, returned to the Legislative Council a large number of those who had supported the 1853 dual house proposal. MacDonnell’s single house was a lost idea. The subsequent popular debate around the proposed Bill (to be sent to London with those of the other colonies) concerned the implementation of two houses, responsible government and the ballot. All were supported by the general population.\(^{700}\) Kingston introduced into the debate amendments encompassing many Benthamite ideals. Amendments included:

- Responsible government.

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\(^{695}\) Ibid., 47, quoting a despatch MacDonnell to Lord Russell [no date provided].

\(^{696}\) Ibid., 48.

\(^{697}\) Ibid., 49.

\(^{698}\) Ibid., 51, quoting *The South Australian Register* [no date provided].

\(^{699}\) Ibid., 50, quoting the *The South Australian Register*, 21 August, 1855.

\(^{700}\) Jaensch, ed. *South Australia*, 82.
• Adult male franchise.
• Term of the upper house to be nine years, with one third to retire every three years, and the lower house to have a five year term.
• All elections were to be by ballot.
• Both houses elective, with same electoral qualifications and no property qualification to stand for election, though with an age restriction to sit in the upper house (35 years).
• Upper house to be elected by all electors in the colony as one electorate.
• Money bills to originate in the lower house. 701

A comment by J. T. Bagot during the debate provides an insight into the radical perspective:

all history would prove that the more power was given into their [the people’s] hands the better would be the Government under which they lived. 702

The alternative view was put by Robert Torrens. What the liberals wanted, he thought, was:

an oligarchy of demagogues – men who would seek to inflame the minds of the public to further their own political ends … these would attempt to mislead the people by their clap-trap speeches … they [the people] would be misled by those who would agitate for agitations sake – who sought to introduce new systems only because they were new – men who could not exist except in an agitated state of the political atmosphere. 703

The Register soberly summarised what it understood to be responsible government:

Responsible Government embodies two leading ideas. In the first place it signifies a Government possessing authority which the head of the Executive cannot take away. In the next place, it means a Government holding office subject to the will of the people, as expressed through their representatives. 704

701 Ibid., 84-5 and Combe, Responsible Government in South Australia, 58, 60.
702 "Legislative Council, Constitution Bill," The South Australian Register 8 December, 1855, 3, col. 2.
703 Jaensch, ed. South Australia, 89 quoting The South Australian Register, 8 December, 1855. Reflecting the Platonic idea that democracy is merely a staging post to tyranny.
704 Combe, Responsible Government in South Australia, 73, quoting the Register, 27 October, 1856.
The main terms of the Act, which received royal assent in 1856, strongly reflected Kingston’s reforms. They were:

- Ministers to be members of either house.
- Adult male franchise for the lower house and a property franchise for the upper house (including twenty-five pound per annum rent).
- Term of the upper house to be twelve years, with one third to retire every four years, and the lower house to have a three year term.
- Both houses elective.
- Upper house to be elected by all electors in the colony as one electorate.
- Amendments to the Act were to be by absolute majority.  
- Money bills to originate in the lower house.

Meanwhile *The Times*, in London, looked on the Australian democratic reforms with something approaching disdain:

> It must be confessed that it is rather an odd position for a new community of rising tradesmen, farmers, cattle-breeder, builders, mechanics, with a sprinkling of doctors and attorneys, to find that it is suddenly called upon to find Prime Ministers, Cabinets, a Ministerial side and an Opposition side, and all the apparatus of a Parliamentary Government – to awake one fine morning and discover that it is no longer a colony but a nation, saddled with all the rules and traditions of the political life of the Mother Country.  

However, Herman Merivale, who had lectured Robert Lowe in political economy at Oxford, and became Under-Secretary for the Colonies, observed approvingly that the South Australian constitution was ‘the only thorough Benthamite constitution in the Empire,’ possessing as it did fully elected houses and full adult male franchise.  

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705 Jaensch, ed. *South Australia*, 91-2. Absolute majority requires greater than one half of all members, not simply all members present.

706 Combe, *Responsible Government in South Australia*, 74, quoting the *Times* [no date provided].


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The Benthamite nature of the constitution should not be too much of a surprise when the origins of the colony are taken into account. South Australia was a Benthamite experiment.\textsuperscript{709}

As Crisp puts it:

[Kingston] sought energetically to exert a far from universally applauded (because notably democratic) Benthamite influence in the initiatives and activity which produced the South Australian Constitution.\textsuperscript{710}

As well as fighting for a democratic constitution, Kingston fought for amendments to the Electoral Bill, including the implementation of the secret ballot for both houses. Up to then elections were usually conducted by a show of hands, with a poll taken only if the election was close enough for the loser to request it. The amendment was carried. In 1856 he also moved for the appointment of a Select Committee to examine electoral district boundaries. This Committee concluded that boundaries of lower house electorates should be fixed according to population. The recommendation was adopted. As a result of his activities, the working class, according to Pike, regarded him as their friend.\textsuperscript{711}

The Constitution Bill received royal assent in 1856, and the first elections were held by secret ballot in 1857. Kingston gained a seat in the House of Assembly, and was unanimously elected to the Speaker’s position, which, apart from one interruption, he held through his entire parliamentary career to 1880. For this he received 650 pounds per year. Payment was limited to members of the Executive Council and the president of the Legislative Council, although in 1887 it was extended to all members. South Australia was one of the first democratic states in the world to pay its members of parliament.\textsuperscript{712} The role of Speaker occupied much of Kingston’s time, and required that Kingston remove himself from the ordinary course of politics. During this period

\textsuperscript{708} In fact, Bentham argued for full adult franchise. See Bentham, \textit{First Principles Preparatory to Constitutional Code}, 98-100.

\textsuperscript{709} For a discussion of this aspect of the origins of South Australia see Mills, \textit{The Colonization of Australia}, and also Pike, \textit{Paradise of Dissent}.

\textsuperscript{710} Leslie Crisp, \textit{The Federation Fathers} (Carlton: Melbourne University Press, 1990), 274.

\textsuperscript{711} Langmead, "George Strickland Kingston", 622, citing Pike, \textit{Paradise of Dissent}. See also in Langmead, 620-2, for details of Kingston’s democratic amendments.

\textsuperscript{712} Langmead, "George Strickland Kingston", 622, and Langmead, \textit{Accidental Architect}, 165. Victoria commenced the payment of the members in 1870.
the parliament was greatly unsettled, with twenty eight governments formed over twenty eight years. Only when Kingston’s son, Charles Cameron, became premier in 1893 was stability brought to the system. This was the first time a strong party element became part of the composition of the parliament.

George Kingston’s reputation as a social reformer has not come down to us untainted. Langmead observes that Douglas Pike in *Paradise of Dissent* diminishes Kingston’s political credentials, relying on a description of him by a bitter political rival. Langmead states:

It is regrettable that some historians have had their view of his real contribution obscured by the flaws in his personality, unpleasant though they may have been. Influential writers have sometimes accepted biased characterisations, which should never have been seriously considered as objective criticisms. For example Douglas Pike has given credence to Henry Mildred, who in 1851 stood against Kingston for the Legislative Council seat of Burra, and claimed in a vituperative speech at the hustings:

*I shall never forget the metamorphosis of the ignorant substitute for a surveyor. When the land fund became available, he, with a red tartan cloak, used to sail along the Strand, without seeing those to whom he often bent, but whom was determined to know no more…. [He was a] vapourising, empty-headed, hollow-hearted, treacherous fellow, whose ravings are only equalled by his imbecility and petty tyranny, characteristics for which he has been notorious from his first transformation from a poverty stricken hanger-on at the scraper of the Adelphi.*

For his part, Kingston painted Mildred as one who, in the days in London, sought to undermine the efforts of the colonisers while posing as a friend.

Crisp provides a more satisfactory perspective:

he sought Responsible Government, election of both Houses by secret ballot on a basis of manhood suffrage, with equal electorates for the Lower House, one electorate of the

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714 Ibid., 125.
715 Ibid.
whole colony for the Upper House (with half its membership retiring in due turn at each subsequent general election), no property qualification for candidature for the Upper House, and Lower House supremacy on Money Bills! In the event, the 1857 Constitution of South Australia as actually drawn was far less democratic than that – a fact of which the Kingstons, father and son, were to be painfully aware of the next forty-three years.  

Only in 1975 did the South Australian Legislative Council finally catch up with Charter electoral reform, replacing the property franchise with universal franchise for those over the age of eighteen.

Benthamism was at the heart of the foundation of South Australia, and its constitutional changes were undertaken in the spirit of Benthamite reform, by those who subscribed to the Benthamite ideal. The implementation was not perfect, but the influence was substantial, and the practical outcomes had strong Benthamite elements.

**Henry Samuel Chapman (1803 – 1881)**

The opening sentence to R. S. Neale’s entry for Henry Chapman in the *Australian Dictionary of Biography* describes him as a ‘judge, colonial secretary, attorney-general and Philosophic Radical’.  

Chapman worked with Roebuck in the campaign against stamp tax on newspapers and on Roebuck's *Pamphlets for the People* (London, 1835-36), in which in 1835 he published a seven-point radical charter which anticipated most of the Chartist programme. He also enrolled at the Middle Temple in 1837, helped J.S. Mill to bring out the *London Review*, assisted (Sir) John Bowring in editing Bentham's works, and often contributed to the political quarterlies.

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The son of a civil servant, Chapman was born in London in 1803. Like Kingston, he left school at fifteen, taking up a position at a bank as a clerk. However, eye trouble caused Chapman to leave this employment and, after a spell, he began working with a bill broker. At eighteen he was sent to Amsterdam for his work, and two years later he went to Canada to establish a commission agency in Atlantic trade. While working in that role he also read for the French bar. Neale observes that this made him one of ‘Wakefield’s “Uneasy Class”’ – a product of non-technical education unsuited to industrial employment, with ability but no capital, no connections, no adequate professional training, and no particular family expectations. For the ‘uneasy class’, with Britain’s growing population and declining rate of profit, the future was bleak.

Chapman became interested in the political issues of the day, adopting a radical perspective common to his age and class. Back in England, following the Reform Act of 1832, he assisted in John Roebuck’s electoral campaign at Bath that won the radicals the seat. This was the first popularly contested election in Bath. The Reform Act had increased the voting population from fifty to nearly 3,000 – around a third of the adult male population. Now tradesmen, artisans and small producers could select their representative.

Returning to Canada in 1833, Chapman took with him a printing press. He and an associate established the Daily Advertiser – the first daily newspaper in Canada. They wrote in favour of the poor and the exploited. ‘All our articles had a Radical tendency.’ Without willing advertisers because of its politics, and despite an improving circulation, the paper lasted only eighteen months. It had supported Wakefield’s systematic colonisation believing it would destroy aristocratic privilege. The paper also supported the secret ballot, believing that open ballots allowed employers to control workers’ votes. ‘Far better do away with the franchise, than to demand its abuse’ Chapman wrote. Like other radicals, he saw the problems in Lower Canada as emerging not from racial differences, as commonly portrayed, but

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720 This brief sketch is taken from Neale, "H.S. Chapman and the 'Victorian' Ballot,” 507.
721 Ibid.
723 Ibid., 509, quoting Montreal Daily Advertiser, 29 October, 1834.
from the clash between an aristocratic principle and the democratic. As he wrote in 1834 in a pamphlet drawn from the *Daily Advertiser*:

> If the Tories could calmly look around them, they would quickly perceive that their darling object, the destruction of the French influence as they call it, but popular influence as we call it, and as it is in fact, cannot under any circumstances within their control be brought about. Let them look to the Southern of the United States, where other than the English language is spoken, where the speakers of such languages bear no such proportion to the Anglo-Americans as the immense body of the French Canadians here do to the English, and say if the legitimate influence, without regard to its nature, could have been destroyed, had there been the inclination, without the most tyrannical proceedings, of which, fortunately, the several constitutions do not admit.⁷²⁴

Chapman was then sent to London by the Assembly of Lower Canada as its representative to engage with sympathisers of the Radical cause at Westminster. He came in contact again with John Roebuck who was also employed by the Assembly of Lower Canada to argue in the House of Commons for representative government in Canada.

Writing back to Canada, Chapman argued that the radicals were in the ascendancy in Britain, thus providing succour to Canadian forces of rebellion.⁷²⁵ However, although the Radicals had been hugely influential from 1832 to 1837, in that last year they sustained a crushing loss at the polls. In Roebuck’s own constituency, for example:

> working class and middle class Radicals were at loggerheads. Moderates wished to associate with Whigs, and artisans were hostile to Roebuck’s support for the Poor Law. Furthermore the revived Tory party was drawing support from liberal defections brought about by Roebuck’s proposals to abolish the House of Lords, and by non-conformist hostility to Roebuck’s opposition to Lord’s Day Observance.⁷²⁶

Back in Canada, some were unhappy with the local trouble the representatives had stirred up:

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Mr. H. S. Chapman, has done more than any man living, not excepting Mr. J.A. Roebuck and Mr. L.J. Papineau, to saddle England with an expense of several millions sterling to put down and keep down rebellion in Canada.\textsuperscript{727}

Canadian Radicals, however, appreciated Chapman’s efforts:

None but men in our situations—subject to daily misrepresentation and calumny … can fully appreciate the value of those services which you and our other friends, in and out of Parliament, have conferred both on ourselves and on Canada.\textsuperscript{728}

In London Chapman was mixing with radicals, including Roebuck and the other authors of the Charter.\textsuperscript{729} He was a member of the Radical Club, and is recorded as having attended a meeting of the London Working Men’s Association at Lovett’s coffee shop to hear a debate between Lovett, Place and Owen. Graham Wallas quotes Francis Place’s letter about the meeting:

Of the discussions … [i]t was remarked by Chapman, and I assent to it, that he never in his life heard so much sense and so little non-sense among so many people in the same time.\textsuperscript{730}

Wallas continues:

The subject discussed on that day was “Will Free Trade reduce wages?” … Place gives the “classical” political economy of mid-century Liberalism, Robert Owen the voluntary communism of Proudhon and Bakounin, and Lovett the “iron law” on which Marx and Lassalle based their social democracy. \textsuperscript{731}

On the subject of the Charter itself, Chapman wrote to Lovett:

You have done the thing most wanted by embodying in a definite shape the demands of the unrepresented – the several items which make up the whole which we call democracy.

\textsuperscript{727} Ibid., 510, quoting one of Montreal Gazette, Quebec Gazette of August, 1838, or Morning Herald, November, 1843. [Reference unclear.]

\textsuperscript{728} Ibid., 511, quoting letter, O’Callaghan to Chapman, 3 October, 1838.


\textsuperscript{730} Place to Thompson, 8 January, 1837 in Wallas, Life of Francis Place, 360.

\textsuperscript{731} Ibid., 360-1.
A post script to the letter gives an indication of his dedication to the cause:

I should have answered your last letter before this but to say the truth I have been short of money for the last week or ten days and shall be so for a week to come until I get my wages. I will however as soon as possible [send] … my contribution.732

Apart from his interest in the Canadian colonies, Chapman wrote an article in favour of the radicals’ scheme to found a new colony in southern Australia. In a small pamphlet published by John Roebuck around 1835, Chapman outlined his views on aristocratic influence on colonisation versus the Wakefieldian principles:

Some years ago a set of persevering men proposed to establish a New Colony at Spencer’s Gulph, in South Australia, on a new, and up to that time, unheard of principle. They proposed to plant a colony, without entailing one single shilling of expense upon the Government and people of this country; and all they asked of Government was to permit them so to do.

A few years before they made this fair proposal, a couple of Sir Robert Peel’s nephews or cousins had obtained the gift of immense tracts of land in another, and not very distant part of the same continent [Swan Bay]. Moreover, to maintain these two young gentlemen in the possession of their lands, and to render those lands more valuable to them, a regular Colonial Establishment was kept up, expensive to this country; and, if it be at all like other Colonial establishments, vexatious to the people of the colony.733

With the advent of the 1837 rebellion in Canada, Chapman’s role in London was no longer required. For an income he wrote for the Edinburgh Review and the Westminster Review, as well as twenty-seven articles for pamphlets published by Roebuck, Pamphlets for the People.734 He also continued his legal studies. Among his writings are several articles in favour of the ballot.735 He states his preliminary requirements for good governance:

1. An extension of the Suffrage to all occupants.

2. Abolition of a property qualification.


735 Ibid. See also Spiller, The Chapman Legal Family, 24-30.
(4) The abolition of the present complicated system of Registration, and the reduction of the expenses of elections; and

(5) A more equal distribution of members, according to population and territory.

(6) A shortening of the duration of parliaments, and

(7) The abolition of the tax on knowledge.  

Neale notes his Benthamite cast of mind:

Following Bentham he wrote, ‘The object of Reform is to obtain good government, that which secures to the great body of the people the greatest aggregate of happiness ... of the several instruments of government, by far the most important in its effects upon the happiness of the community is the body in which the power of making laws resides – in other words, the Parliament.’ Parliament, however, was not representative of the people, and, like all parliaments, was concerned solely to promote the interests of the class by which it was chosen. Thus it followed, ‘that good government cannot be attained but by an extension of the suffrage to the great body of the people’.

By 1841 Chapman was a barrister. With his income still low, he continued writing to pay the bills. In 1843 he gained a post as a judge in New Zealand. His judicial duties were not onerous and, as Neale puts it:

he spent his time as a Benthamite should. He established rules of procedure for the Wellington Court and, in co-operation with Chief Justice Martin, laid down a system of procedure for the Supreme Court of New Zealand, which became the forerunner of the existing Code of Civil Procedure.

In 1852 he moved to Van Diemen’s Land to become Colonial Secretary. He was expected to support the continuation of transportation. In fact, he was opposed to the idea, but thought this would not interfere with his work. Unexpectedly forced to declare his opposition, he lost his job that same year. While in Van Diemen’s Land he published ‘Parliamentary Government; or Responsible Ministries for the Australian Colonies’. This thirty-nine page pamphlet argued for responsible government, describing the principles of the system and its virtues over existing systems of

737 Ibid. quoting Pamphlets no 22.
738 Ibid., 516. Chapman wrote in relation to the rationalization of court procedure he had undertaken: ‘[Bentham’s] spirit animates the procedure of tribunals of a colony unknown to him’. In Spiller, The Chapman Legal Family, 37.
government in the colonies. He compared the system of government in the United States with that of responsible government, suggesting that responsible government was more responsible to the wishes of the people. In the United States the legislature and the executive could oppose each other for years – the confidence of the people’s representatives was not a prerequisite for executive power, and the only check on executive power was a return to the electorate every four years. ‘The election of the head of the executive every four years is their sole expedient to secure responsibility.’ He argued that a strong executive, drawn from parliament, and with sanction of the people, is efficient and effective. He observed that under responsible government the people are, through the electoral system, ‘the ultimate court of appeal on all vital questions’. In opposing aristocratic rule and the rule of power elites as he had found them in Canada, Chapman observed that free trade had the salutary outcome of breaking the power of oligarchies. He attributed Canada’s rise in wealth and political stability since 1840 to the introduction of responsible government following Lord Durham’s ‘justly celebrated’ report:

There can be no doubt that this great constitutional reform … has been the principal means of converting an oppressed and discontented people, disposed to loyalty, but yet often on the verge of, and once in actual rebellion, into a contented, happy, and most loyal and well-governed people.

The governor in such a system comes to occupy a position of ‘dignified neutrality’. Thus Chapman advocated the introduction of responsible government to the Australian colonies. He observed that this system should not be put to legislation.

Lord Durham, who had the advantage of very able legal assistance, pointed out that an enactment would be unnecessary and indeed improper. No local enactment on such a

740 Ibid., 9-10, 36.
741 Ibid., 5.
742 Ibid., 9.
743 Ibid., 9-10.
744 Ibid., 11.
745 Ibid.
746 Ibid.
subject would be binding on the Crown. Its disallowance would be at once advised by the legal adviser of the Colonial Office, or the Law Officers of the Crown. The pamphlet illustrates a variety of issues. It shows Chapman’s deep engagement with the matters of democratic reform and responsible government. It also shows the strong influence of the Durham Report on the colonial constitutional debate. It reveals the elevated level of that debate in the colonies, and an awareness of developments in other jurisdictions, including Britain, Canada and the United States. It shows the continuing push for the principles of responsible government and an empowered executive responsible to the electorate. The pamphlet also discussed free trade, demonstrating the politically radical intention behind the policy. The pamphlet also conveys satisfaction with the retention of the monarch. Discussing the unsuitability of the American system to the English political environment, he includes the observation that ‘the English reader will perceive that it is quite unsuited to an hereditary limited and constitutional Monarchy.’ He supports the English system over the American. Likewise, in relation to the colonies he states:

What we desire to recommend is the English constitutional check of a responsible ministry. It has the recommendation of being in perfect accordance with the British constitution, with which we hope the Australian constitutions will shortly be made to coincide as nearly as our peculiar circumstances and conditions will allow.

It is to Durham’s system he looks. He is not a republican of the later Benthamite mould.

By 1855 Chapman had moved to Victoria where he practiced law. He was elected to the Victorian Legislative Council in 1855. In parliament he supported a national system of education, representative government, closer settlement, government involvement in the building of railways, an amnesty for the prisoners from Eureka, and the introduction of the ballot.

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747 Ibid., 35. See also Buller, Responsible Government for Colonies, 13-14, 17-18.
749 Ibid., 4.
750 Ibid., 6.
Chapman was one of the minority who voted in favour of the secret ballot when the issue was addressed by the Legislative Council, and made a speech accordingly. He also argued for abandonment of the property qualification, a reconstruction of electoral districts to make them fairer, administrative reform to provide surpluses with which to finance development of the colony, law reform, education, and the unlocking of land. (This final idea reflected his disenchantment with the Wakefield system based on his experience in New Zealand.)

As a lawyer, in March, 1855 he defended John Josephs, one of the participants at the Eureka stockade. Josephs was acquitted, as were all the other Eureka defendants.

Chapman’s special contribution to Victoria was to design and write the legislation for the first secret ballot system in the world. The success of his system made it the model upon which, according to historian Ernest Scott, all subsequent secret ballot legislation was based. This claim is contentious, and will be examined in the following pages. Nevertheless, the secret ballot system was adopted internationally, including in the United States and the United Kingdom. In the United States it was referred to as the ‘Australia Ballot’.

As an epochal reform with a strong Benthamite component, it is worthwhile examining the story of the secret ballot in the Australian colonies in some detail. Electoral laws are intrinsic to constitutional reform. This makes practical sense, because a constitution can look as democratic as one may please, but without an appropriate electoral act it is valueless. Thus, in South Australia the Constitution Bill and the Electoral Law Bill were introduced together to the Legislative Council. Governor MacDonnell, in referring to the two bills, called them the ‘Constitution Bills’. The high place of the ballot in constitutional considerations is also evidenced by Kingston’s desire to have the idea of the ballot inserted in the Constitution Bill itself.

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752 Ibid.
753 Ibid., 520.
754 Ibid., 518.
757 Ibid.
The secret ballot

The story of the secret ballot is told in three different states in three different ways. The South Australian and Victorian versions tend to claim credit for the innovation, but each is talking about a different thing. Scott claims for Victoria the first introduction of the secret ballot as an entire system, giving Chapman a key role in the process. Combe, in claiming credit for South Australia, is really claiming credit for the ‘cross-in-the-box’ system. It is this aspect of the system, coupled with previous Australian colonial innovations, that was adopted by both the Commonwealth of Australia, and also by the rest of the world. But, if Newman is correct, Tasmania might well deserve credit over Victoria for the first introduction into parliament of a complete system for the secret ballot, though, despite giving dates that would lead to this conclusion, he does not explicitly push home this claim.

As to whether the secret ballot was first developed in Victoria, South Australia or Tasmania, it is worth noting that Scott’s articles, published in 1920 and 1921, became the accepted history. They elevated the Chartist contribution. According to Neale, this ‘ignored a direct link between the “Victorian” ballot and English Philosophic Radicalism’. Neale sees Scott as minimising Chapman’s radical history and beliefs. McKenna, too, associates the struggles for the secret ballot with philosophical radicalism, observing the tendency for Australian historians to privilege the role of Chartism in the story. McKenna observes:

From an Australian perspective, the political legacy of the ballot debate in England is crucial. Not least because it reveals a working-class and Chartist advocacy of the ballot – the one legacy which Australian historians have been keen to acknowledge, but also

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758 Three important references for the various claims for the various colonies are: Scott, "History of the Victorian Ballot"; Combe, Responsible Government in South Australia.; Newman, "Tasmania and the Secret Ballot."

759 Neale, "H.S. Chapman and the 'Victorian' Ballot,” 506. In a brief account, John Hirst identifies the development of the secret ballot both in England and Victoria with the philosophical radicals, and identifies Henry Chapman as a member of that group. See John Hirst, Looking for Australia: Historical Essays (Melbourne Black Inc, 2010), 101-5.

because it demonstrates that the most developed, articulate and singular campaign for
the ballot was led by liberal intellectuals, many of whom sought to distance themselves
from Chartism.\textsuperscript{761}

Of course, McKenna is referring here to physical force Chartism.

Bentham had supported the secret ballot at the time of the French Revolution. He
considered it of central importance.\textsuperscript{762} In his democratic leanings he was influenced
by, among others, Etienne Dumont and Samuel Romilly. Both were of Genevan
extraction and both drew on the Swiss experience of democracy. Following them,
Bentham provided a utilitarian foundation for democratic reform. He thus helped
provide an alternative to the prevailing justification based on the rights of man.\textsuperscript{763} The
secret ballot was to protect voters from the undue influence of patrons including by
threat, or purchase of votes. It was considered that the secret ballot would thus help
secure the independence of voters.\textsuperscript{764} Bentham noted two arguments circulating
against the secret ballot. The first was that the secret ballot: ‘affords a screen to
cowardice. A free man and an Englishman ought to declare his choice boldly, without
respect of persons, or fear of the consequences to himself.’ He answers this argument
by asking:

If I follow my own judgement and my own will, my father disinherits me, my master
turns me off and my mistress discard[s] me, and my friends abandon me. My vote is
one amongst five thousands. Is it likely that for giving this 5000\textsuperscript{th} chance to a man I
never saw I should forfeit my whole subsistence and the happiness of my life?\textsuperscript{765}

And notes:

\textsuperscript{761} Ibid., 50.

\textsuperscript{762} Schofield, \textit{Utility and Democracy}, 87, 97-9, referring to the essay ‘Considérations d'un
Anglois sur la composition des États Généraux y compris réponses aux questions proposées
aux Notables &c. 1788’ in Schofield, Pease-Watkin, Blamires, (eds.), \textit{Rights, Representation
and Reform}, 63-146, and to ‘Projet de a Constitutional Code for France’ in ibid., 231. In
relation to the debate see Schofield, \textit{Utility and Democracy}, 78-87.

\textsuperscript{763} Schofield, \textit{Utility and Democracy}, 79-80. Referring to the argument by Mary Mack in
Radicalism}, 147-8.

\textsuperscript{764} Schofield, \textit{Utility and Democracy}, 97. See also Michael James; Cyprian Blamires;

\textsuperscript{765} Schofield, Pease-Watkin, Blamires, (eds.), \textit{Rights, Representation and Reform}, 430.
It has been shewn that public happiness, or in other words public interest, is in this instance better promoted in every point of view by keeping votes secret than by rendering them public.\textsuperscript{766}

The second argument he countered was that every elector is ‘a trustee for his Co-electors as well as for himself, ought to act under their inspection that their good or ill opinion may operate as a guard upon him.’ He answers by arguing that the majority vote for self-interest will reflect the interest of the whole, and that any person opposing that interest opposes the interest of the public. Put another way, aggregated self-interest, where it forms the majority, is indistinguishable from the public (majority) interest.\textsuperscript{767}

Bentham continued his support for the secret ballot in writings thereafter. For example he advocates it strongly in his \textit{Radical Reform Bill} of 1819, later referred to in his \textit{Constitutional Code}.\textsuperscript{768} ‘Secresy [sic]’, he states, ‘is of the very first importance, because where there is no secrisy, there can be no assurance of genuiness.’\textsuperscript{769} His reasons include the possibility of inducements, threats, and possibility of ‘Injury to person and property by means of tumults: from forced or bribed declarations of pretended sentiments’.\textsuperscript{770} This last reason became an important consideration in the ballot reform in Australia.

In 1818 Thomas Northmore cautioned Bentham against strong advocacy for the secret ballot as it offended English virtue, and could be a cloak for deceit and hypocrisy. Bentham was preparing a resolution for parliamentary reform for Francis Burdett to present in parliament. Burdett supported the secret ballot, but considered it too controversial to include, considering the prejudice against it. The call for the secret ballot remained in the document, but the resolution was defeated with no votes in favour.\textsuperscript{771} Again, in 1828, in a letter to O'Connell, he emphasised the central importance of the secret ballot to reform, and he observed soon after that O'Connell

\textsuperscript{766} Ibid.
\textsuperscript{767} Ibid., 430-1.
\textsuperscript{769} Bentham, "Radical Reform Bill," 558.
\textsuperscript{770} Ibid., 558-9. See also Schofield, \textit{Utility and Democracy}, 346-7.
might make a motion for the ballot as Bentham knew of some in parliament who would vote for it.\(^\text{772}\)

During the 1830s the secret ballot was something of a lightning rod for the philosophical radicals, though it became more widely accepted as the decade progressed. The ballot was an issue which identified the philosophical radicals, and helped separate them from the Whigs.\(^\text{773}\) Resolutions for the secret ballot were presented to parliament regularly by George Grote. Support grew each time, starting with 106 in favour in 1833 to 216 in favour in 1839.\(^\text{774}\) With much coaxing by the philosophical radicals, the secret ballot had nearly been gained in 1836 under the Melbourne administration.\(^\text{775}\) The secret ballot was used by the philosophical radicals in an attempt to displace the Whigs in parliament. By supporting the ballot they saw that they might force the aristocratic elements in parliament to combine, while leaving the remainder as the foundation for a party to support radical policies.\(^\text{776}\) However, the plans for a powerful reforming party never came to fruition.

Later, some of those radicals who had supported the ballot recanted. As is discussed later, John Stuart Mill argued in the 1850s that its time had passed, and the protections it afforded were no longer necessary. Grote, once a main driving force for the ballot, stated in 1867 ‘Since the wide expansion of the voting element, I confess that the value of the ballot has sunk in my estimation.’\(^\text{777}\)

But by this time the secret ballot had been introduced in some Australian colonies and acted as an example to the world.

**South Australia**

The idea of the secret ballot was not novel, at least in South Australia. Widespread interest in the ballot is covered by McKenna, who gives details of the Ballot

\(^{772}\) Schofield, *Utility and Democracy*, 335.

\(^{773}\) Hamburger, *Intellectuals in Politics*, 30. See also ibid., 192 where their fear of being grouped as ‘reformers’ with the Whigs is discussed.

\(^{774}\) Ibid., 160.


\(^{777}\) Ibid., 274.
Association which was active from 1851. According to Johns, members of the Association regularly asked candidates for election whether they would vote for the secret ballot.\textsuperscript{778}

George Strickland Kingston had been a leader in the battle for the ballot in South Australia in 1851, along with Francis Dutton after the \textit{Act for the better government of Her Majesty’s Australian Colonies} was passed in 1850 by the Imperial Parliament. Scott relates:

The old Legislative Council, about to be abolished, had to make provision for the election of a Council under the new Constitution, and it set about its task in the middle of February, 1851. A very vigorous public opinion was stirred to demand a programme of reforms relative to the method of securing the representation of the people. Amongst these was the ballot…. Meetings, societies, committees, petitions, and discussions occupied the attention of the public in Adelaide … But the effort was a failure, and the Act of Council, dated 28\textsuperscript{th} February, 1851, to “establish the Legislative Council and to provide for the election of members to serve in the same,” was passed without provision for the ballot being made. The old nominee council would have none of it. The Act provided for votes being recorded “in a book to be kept for that purpose,” in the open-voting fashion.\textsuperscript{779}

That the secret ballot was on the minds of many South Australian colonists immediately prior to November, 1855 can be confirmed from the following speech by Governor MacDonnell at the opening of the Legislative Council on 1 November, 1855. He refers to:

\begin{quote}
a topic much discussed of late, viz. voting by ballot. Although that mode of voting for the election of Members to serve in the new Parliament is not adopted in the Bills about to be submitted to you, because it seems to me very doubtful how such a change in the system, hitherto followed, would operate in this country, I do not wish any person to suppose that its omission from those Bills implies that the propriety of voting by ballot
\end{quote}

\textsuperscript{778} Johns, \textit{The Australian Ballot}. 2. Johns’ pamphlet does not provide references to back his claims, though where verifiable from parliamentary records it is accurate. The pamphlet is in the State Library of South Australia. Newman puts the date of the South Australian organisation, the Electoral Franchise Association, at 1850, but is ambiguous about whether the formation of the Ballot Association belongs to the same year. Newman, “Tasmania and the Secret Ballot,” 95.

\textsuperscript{779} Scott, ”History of the Victorian Ballot (Part 1),” 5-6.
is a question which cannot be safely dealt with by those who have most local
experience as to the wants and wishes of the community.\textsuperscript{780}

The Governor is effectively passing the baton on to the likes of Kingston and Dutton
to seek the ballot as representatives of the people. This was not a struggle in an
adverse environment. There was broad political support for the introduction of the
secret ballot in South Australia.\textsuperscript{781} Accordingly, Kingston and Dutton were quick to
act.

The day after the Governor opened the Legislative Council, Dutton gave notice to the
house that the secret ballot would be sought. On 7 November, Kingston gave notice of
a series of amendments he would seek to the Constitution Bill, including the
introduction of the secret ballot.\textsuperscript{782} After winning agreement that the secret ballot
would be included in the \textit{Electoral Act}, Kingston withdrew his amendments to the
Consitution Bill on 21 November, 1855.

The \textit{Electoral Law Act}, incorporating the secret ballot, was passed in the South
Australian parliament on 12 February, 1856.\textsuperscript{783} Newman has it that the Bill was
introduced to parliament on 2 November, 1855,\textsuperscript{784} and Combe has it that the clauses
were added to the Bill during December, 1855.\textsuperscript{785} The clauses were for a system
where the names of the candidates were printed on a ballot form, and the voter struck
out the names of those for whom he did not want to vote.\textsuperscript{786} Richard Hanson is given
the credit for the clauses. Having gained the Governor’s assent on 22 April, 1856, \textsuperscript{787}
the bill was despatched to England for the Queen’s assent, and was not returned to the
colony until 24 October, 1856. At that time significant acts of colonies were sent to

\textsuperscript{780} \textit{Votes and Proceedings of the Legislative Council During the First Session 1855-6 with
Copies of the Documents Ordered by the Council to Be Printed}, vol. 1 (Adelaide: W. C. Cox,
Government Printer, 1856), 8.

\textsuperscript{781} Johns, \textit{The Australian Ballot}, 3.

\textsuperscript{782} Combe, \textit{Responsible Government in South Australia}, 58, 67.

\textsuperscript{783} Newman, "Tasmania and the Secret Ballot," 96.

\textsuperscript{784} Ibid.

\textsuperscript{785} Assuming the bill went through the committee stage at the same time as the Constitution
Bill, from 27 November, 1855 to 28 December, 1855. This is unclear from Combe. But there
is a strong implication that both bills had passed through the committee phase by 28

\textsuperscript{786} Johns, \textit{The Australian Ballot}, 2.

\textsuperscript{787} Ibid.
England to gain approval of colonial officials and cabinet members prior to recommendation that the Queen sign them.\(^{788}\)

Elections were held on 9 March, 1857. Subsequently the system was amended to include the cross-the-box system. This was drafted by Boothby and introduced to parliament by Kingston. The amendment was assented to on 27 January, 1858.\(^{789}\)

Combe observes that the ‘British and Canadian methods, inaugurated in 1872 and 1874 respectively, were essentially South Australian.’\(^ {790}\) The unique aspect was that of the cross-the-box system.

**Victoria**

After Victoria separated from New South Wales in 1850, and a new electoral bill was to be drafted in 1851, some stirrings for the ballot occurred. A meeting was held at the Mechanics’ Institute in Melbourne, presided over by the mayor, and petitions were forwarded to the parliament in Sydney. A motion for the secret ballot was put in a half-hearted way to the Legislative Council in Sydney, and failed against strong opposition. In Sydney itself there was no sign of agitation for the secret ballot for the New South Wales parliament.\(^ {791}\)

According to Scott, with the new Victorian constitution of 1855, the matter came up for consideration. The existing Victorian Legislative Council prepared an Electoral Bill for the two houses about to be created. On 19 December, 1855, after a bitter two-day debate in the Council, a vote was taken for the motion proposing the ballot, put by William Nicholson. The motion succeeded, 33 votes to 25. The government headed by W.C. Haines resigned, as they had opposed the measure. Unlike South Australia, where support for the ballot was relatively widespread and uncontentious, in Victoria it caused dispute. A series of political crises followed, added to by the death of Governor Hotham on 31 December, 1855. On 16 January, 1856, when the House met again, Haines was conciliatory. The Bill was to go ahead. Scott suggests that the only problem was that now this victory had been won, no-one had any idea what the design


\(^{791}\) Scott, "History of the Victorian Ballot (Part 1)," 8.
of a secret ballot might be. Scott appears to be overlooking the long experience of agitation for the ballot in South Australia, including the recent introduction of a ballot bill, and, as will be seen, the experience in Van Diemen’s Land. Scott alludes to the problem of designing a ballot system that can accommodate illiteracy. According to Scott, many in Victoria tried to come up with a system that guaranteed both secrecy and accuracy, but all the available schemes fell short. \(^{792}\) He continues:

It was, therefore, fortunate that a well-trained lawyer came to the rescue in the person of Henry Samuel Chapman. The law officers of the Crown gave no assistance. The Attorney-General, Stawell, was a strong opponent of the ballot… It would have suited him and his colleagues very well if Nicholson had brought forward a plan which could have been laughed out of the Council as being unworkable. But the cause of the ballot was saved by the timely intervention of Chapman. \(^{793}\)

The *Victorian Electoral Bill* was introduced into parliament on 6 February, 1856, and secret ballot clauses were introduced to the Bill by Nicholson on 23 February, 1856. The Bill passed through the house, surviving a scathing attack by Stawell, and received the Governor’s assent on 19 March, 1856. Victorians did not see the need to send the bill to England for the Queen’s assent, and so the new system passed its first trial with great success during elections in Victoria in August, 1856, ahead of South Australia and Van Diemen’s Land.

Later legislation implemented further reforms that accorded with the 1838 Charter. In 1857 manhood suffrage was introduced and the property qualification for the lower house was removed. In 1859 elections were set for every three years, at variance with the Charter which called for annual elections. Payment of members was introduced in 1870. \(^{794}\)

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\(^{793}\) Ibid., 53.

Van Diemen’s Land

In Van Diemen’s Land (VDL) the secret ballot makes an appearance in the *Parliament Bill*, introduced into the Legislative Council on 1 December, 1855. Newman suggests that ‘through his continued association with Tasmanian MLCs Chapman-like clauses appeared in Tasmania’s *Electoral Bill*’. For example, both VDL and Victoria had a system where the desired candidate’s name on the paper was left untouched while the undesired candidates’ names were to be struck through with a line. As we have seen, so did South Australia’s initial system.

Other similarities referred to by Newman imply Chapman was in communication with MLCs in VDL prior to December, 1855, unless the Chapman-like clauses were inserted sometime between 1 December, 1855 and 4 February, 1856, when the VDL bill was enacted. Another possibility is that Chapman used the VDL bill as a template, and that the VDL system preceded that of Chapman’s. There may also have been cooperation between South Australia and VDL. Neither of these jurisdictions required the voting paper to have the voter’s registration number written anywhere on the slip. In Victoria this was a requirement – thus the Victorian ballot was not truly secret.

Inter-colonial cooperation in relation to the implementation of the secret ballot appears to be an untold historical story. Newman suggests that ‘none of the interstate bills were completely similar, indicating that they were prepared independently of each other’. However, there are strong signs of an inter-colonial influence, even amounting to substantial cooperation. For example, all colonies

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795 Later renamed the *Electoral Act* 1856.


797 Ibid., 99.

798 Ibid., 97.

799 Tom and Malcolm Crook provide some insight to the development of the secret ballot at the international level, including a discussion of the three Australian colonies, however, they do not explore the issue of potential co-operation between the colonies, leaving the matter with the two colonies of South Australia and Van Diemen’s Land following the lead of Victoria, but with slight amendments. See Malcolm Crook and Tom Crook, "Reforming Voting Practices in a Global Age: The Making and Remaking of the Modern Secret Ballot in Britain, France, and the United States, C.1600-C.1950," *Past and Present*, no. 212 (2011), 221. A general discussion of the implementation of the secret ballot in the Australian colonies appears at 217-22. The English radical contribution, including that of James Mill and George Grote, is discussed at 212-5.

adopted a pen and paper system. This was by no means inevitable as many other devices had been proposed, such as using coloured slips or balls. All colonies initially adopted a strike-out-the-unwanted-candidate system. Also all colonies had a government-printed ballot system. Moreover, in the three colonies serious legislative attempts to introduce the secret ballot appeared within a few days of each other in December, 1855. Pre-existing models must surely have existed for Chapman’s use. It is inconceivable that a Ballot Association should have existed in South Australia for years without casting its thoughts to a viable system, and it is unlikely that, having done so, this knowledge was not shared outside South Australia. While Newman’s research adds considerably to our understanding of the process of the introduction of the electoral reforms, the main story of implementation and likely cooperation between the colonies prior to December, 1855 remains untold, as has the strong utilitarian component.

As Brent notes, the secret ballot was not unknown prior to the 1850s. Examples can be found in the ancient world, North America, and Europe. However, Brent states the ‘defining features’ of the Australian ballot were:

the government-printed ballot slip, which an electoral official initialled before giving to the voter, who took it into a secret compartment to make his choice, and then placed it folded into a ballot box under the eye of an official.

In seeing the state claim such active and detailed responsibility for the integrity of the voting procedure, it can reasonably be called ‘Benthamite’.

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801 Scott, "History of the Victorian Ballot (Part 1)," 11, 12. See Peter King, *Utilitarian Jurisprudence in America – the Influence of Bentham and Austin on American Legal Thought in the Nineteenth Century* (New York: Garland Publishing, 1986), 13. For mention of Bentham’s design of ballot slips and boxes see Bentham, "Radical Reform Bill," 558-97, 571-4. While there is not a complete correspondence between Bentham’s apparatus for the secret ballot and that developed in Australia, three important similarities are that the ballot papers should be provided by the voting co-ordinators (i.e. the state), that they should be ‘stamped’ with the relevant information, and that the ballot papers should be identical.

802 Although in Scott’s rendering of the story Victoria was not possessed of a system for voting until after 16 January, 1856, unlike VDL and South Australia.


Brent observes that the Australian system was seen as superior to other systems, and
thus widely adopted.\textsuperscript{807} American systems, for example, involved the voter supplying
their own paper, an individual’s vote therefore being identifiable to a person watching
the ballot box.\textsuperscript{808} Nevertheless, there were other systems of secret balloting available
to the reformers to study and refine. Scott may be right in suggesting the Victorian
system was invented \textit{de novo}, but it need not be the case. The Benthamites were great
adaptors. Bentham himself had provided some guidance in his \textit{Radical Reform Bill} of
1819 in which he proposed, among other things: single day voting, polling officials,
voter registration, printing presses for card printing, pre-printed voting cards, and a
voting box to receive the cards. However, Bentham’s system is different from that
finally adopted. His involved the secret selection of a card with the candidate’s name
already printed – a system designed to avoid the necessity of using a writing
implement.\textsuperscript{809} In 1837 Harriet and George Grote, too, designed a ballot system. They
distributed around Britain some fifty wooden models of a ballot box, receiving ‘shoals
of letters expressive of delight’ in return.\textsuperscript{810} They also commenced a ‘Ballot Union’ to
publicise the ballot. The Grotes’ system involved the use of printed cards\textsuperscript{811} –
uniformity of the voting slip being an important component of the ballot system – but
used a hole-punch system which meant the voter never actually held the card.\textsuperscript{812} As a
member of their broader circle, it is likely that Chapman would have been aware of
the Grotes’ system. It is also highly likely that others in Australia, too, were aware of
it. For example, the system was publicised in Robert Rintoul’s \textit{Spectator} in 1837.\textsuperscript{813}

In addition, a model for the ballot was provided by the London Working Men’s
Association. An illustration of a secret ballot system was included in the Charter

\begin{footnotes}
\item[806] Ibid., 48. See Bentham, "Radical Reform Bill," 573-9, where Bentham outlines the printing
requirements for ballot slips and involvement of the state in the secret ballot process
generally.
\item[807] Brent, "The Australian Ballot," 42-3.
\item[808] Ibid., 43-4.
\item[809] Section 5: ‘Election Apparatus’, Bentham, "Radical Reform Bill," 571-4.
\item[811] Ibid., 125.
\item[813] \textit{Spectator}, 25 February, 1837.
\end{footnotes}
Adapting prior ideas is typical of Benthamite reform. In 1831, Henry Warburton sought advice from George Grote about the use of the secret ballot by the ancient Greeks, in Florence, and in America, and notes its mention in Harrington’s *Oceana*. Warburton asked Grote to seek advice on his behalf from Joseph Parkes, who, Warburton believed, had made a study of the ballot in America. Frequently it is not the pure originality of Benthamite ideas that is noteworthy, but bringing together of existing ideas to a new philosophical platform. Thus old ideas can be renewed and given greater viability.

It is of little moment which state first legislated for, or implemented, the secret ballot. But how the ideas for the new system evolved among the Australian colonies is of significant interest, as is the intellectual and political environment that existed in a distant pocket of the world that allowed three contiguous colonies to embark on the same project at a near identical moment, designing an improved ballot system later adopted by the rest of the world.

Benthamites were at the centre, providing theoretical, practical, and political support for democratic change. Kingston and Chapman were key contributors in South Australia and Victoria respectively, and Chapman and others may have had an association with VDL’s reforms as well. With the secret ballot, one of the six points of the Charter had been both implemented and improved, and one of the central figures in that development was Chapman, who, during his period in London, had been a friend and political ally of the three authors of the Charter, Lovett, Roebuck and Place.

J.S. Mill was interested in the development of the ballot. Writing to Chapman after its introduction in Victoria he observes: ‘The adoption of the ballot in Victoria has made

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816 Bentham is quoted alluding to this aspect of his work in F. Cutler, "Jeremy Bentham and the Public Opinion Tribunal," *Public Opinion Quarterly* 63, no. 3 (1999), 322.
some noise here, and has been a good deal appealed to by its advocates in parliament." By this time Mill opposed the ballot, but did not regret his earlier support for it. Echoing one of the early objections to the secret ballot, Mill thought that having to justify one’s vote under the gaze of public opinion would enhance democracy. He believed that the time had passed where intimidation could alter that vote. As it has transpired, the secret ballot has become a standard of fair elections.

Rounding off the story of Chapman’s career and contribution to constitutional development, in 1856 he argued for an abandonment of the property qualification, making the franchise dependent upon residency. He also expressed scepticism about the value of a second chamber. Chapman ran for election three times in the newly created Legislative Assembly, finally winning a place in 1857, and served as attorney-general for the next two years. Neale gives us this summary of his later career:

Chapman, lampooned by Melbourne Punch as a conceited, pedantic bore, attempted to push through a Reform Bill creating equal electoral districts, initiated a bill providing for triennial parliaments and in 1858 amended the Audit Act of 1857, thereby establishing the basis of existing audit legislation in Australia. Although Chapman was again defeated at the poll in 1859 he acted as a judge at Ballarat. He also lectured in law at the University of Melbourne and although he was returned for Mornington to the Legislative Assembly in 1861, he resigned in 1862 to accept appointment as a temporary judge in the Supreme Court. In 1864 he was appointed puisne judge in Otago, New Zealand.

The secret ballot, in the form we understand it today, was first implemented in Australia. It was a system adopted by the world. That only a few days separated the introduction to their respective parliaments of the originating legislation suggests a

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817 Letter, J.S. Mill to H. S. Chapman, reproduced in R.S. Neale, "John Stuart Mill on Australia: A Note," Australian Historical Studies 13, no. 50 (1968). In this letter, J.S. Mill makes a very strong appeal for women’s voting.

818 A useful discussion of Mill’s position is found in Bruce Kinzer, "J.S. Mill and the Secret Ballot," Historical Reflections 5, no. 1 (1978).


close connection between the colonies of Victoria, South Australia and Van Diemen’s Land on the matter. In at least South Australia and Victoria the legislation was effectively the brainchild of Benthamites. Moreover it sought to implement a key demand of that Benthamite document, the Charter of 1838, and also Chapman’s own writings published by one of the authors of the Charter, John Roebuck. The long-standing commitment of the Benthamites to democratic reform gained a significant victory with the implementation of the secret ballot.

**Henry Parkes (1815 – 1896)**

In his autobiography Parkes briefly mentions the early influence of Chartism on his political outlook, when he would listen with rapt attention to speakers such as O’Connell, Attwood, Lawless, Shiel, Thompson, Cobbett and Pemberton, with his ‘whole being stirred by the solemn strains of the Union hymn’. John Hornblower, a friend, provides some more details in *Letters*. This little book was published, at Parkes’ request, after his death, and thus the letters themselves might be seen to supplement his autobiography. Hornblower wrote to Parkes’ son while Parkes was still alive:

He was a most ardent and enthusiastic reformer, a member of that great and powerful association the Birmingham Political Union, which carried the Reform Bill of 1832. While that important measure was in jeopardy by the opposition of the House of Lords, the Council of the union issued an edict that every member and every man who wished it passed should wear upon his heart the Union Jack of Old England! Jewellers, silversmiths, steel and gilt toy makers vied with each other in making these insignia of the people’s will as pretty and attractive as possible, and I well recollect the one worn by your father was of ivory, the carving and painting being his own work. He was one of the multitude who assembled at New Hall Hill, and the impassioned eloquences of Thomas Attwood, Joshua Scholefield, Geo. Edmunds and others must have had great influence in the formation and growth of those political convictions which he brought with him to Australia. From 1832 to 1838 your father was in the turmoil of political excitement; the Reform Bill was a failure, and the excitement of the disappointed

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culminated in the adoption of the ‘national petition’, which demanded all those political privileges which are now enjoyed by the people of England and Australia.\textsuperscript{823}

The Birmingham Political Union, of which Parkes was a member, was formed in 1830 by a wealthy banker, Thomas Attwood. The Union sought political reform and an end to economic mismanagement.\textsuperscript{824} Like Place and Hume’s National Political Union, the BPU rejected the notion of class,\textsuperscript{825} and was established to create ‘a general Political Union between the lower and middle classes of the people of this town…’.\textsuperscript{826}

Parkes was ambitious. Born in 1815, his father was a tenant farmer, who later spent time in debtor’s prison. In a letter of 1839 from London to his sister in Birmingham, Parkes describes his parents as ‘A father and mother bowed down with years of affliction, and steeped in poverty and wretchedness.’\textsuperscript{827} The letters show Parkes, his wife, sister, and parents in a near constant state of illness. Illness, poverty, and their battle against adversity are uniting features of these early letters. As a child Parkes received little education, and began work when he was ten years old.\textsuperscript{828} After several labouring jobs, he was apprenticed to a bone and ivory turner.\textsuperscript{829} He had few close friends, but possessed a predilection for reading and writing poetry.\textsuperscript{830} Upon completing his apprenticeship, in an attempt to avoid becoming a journeyman turner, he tried to set himself up in business, but failed for lack of capital and from stiff competition.\textsuperscript{831} Parkes married in 1836, and by 1838 his wife, Clarinda, had borne and

\begin{itemize}
\item \textsuperscript{823} Ibid., 146-7.
\item \textsuperscript{825} Ibid., 132. ‘This is not a Union of the Working Classes, not of the Middle Classes, nor of any other Class, but of all Reformers, of the masses and of the millions’. Hollis is quoting Sir Francis Burdett, Bart., M.P. chairman; placard in Place, British Museum, Add. Mss. 27791, f. 46, 31 October, 1831.
\item \textsuperscript{826} Ibid., 127, quoting from 1830 pamphlet ‘Resolutions of a meeting of the Birmingham Political Union’.
\item \textsuperscript{827} Parkes, \textit{Letters}, 57.
\item \textsuperscript{828} John Wright, "The Philosophy of the Australian Constitution" (Ph.D., University of Melbourne, 1999), 51. Lyne says at eight years old. C. E. Lyne, \textit{Life of Sir Henry Parkes} (London: T Fisher Unwin, 1897), 1.
\item \textsuperscript{829} Parkes, \textit{Letters}, 145.
\item \textsuperscript{830} Ibid., 146.
\item \textsuperscript{831} Ibid., 148. Later, in Australia, wages for a turner were little more than for a labourer. (92)
\end{itemize}
lost, two children.\textsuperscript{832} They moved to London in November, 1838, where the conditions nearly killed him. Over that Christmas they did not eat for two or three days. He did, however, manage to write a song for the London Working Men’s weekly paper \textit{The Charter}. Seeing an opportunity for advancement, Parkes decided to emigrate to Australia, taking advantage of the free fares available under the Wakefield scheme. He and Clarinda, arrived in Sydney with a new-born daughter in July, 1839.

Settling into Australia proved difficult. Good work was scarce at the time. After living in penury for two years doing labouring work and supporting his family, Parkes finally landed on his feet with a Customs job. He now had time to write poetry, and had it published in a successful edition. By 1841 he found himself occasionally dining with the Sydney elite. After four years he could declare ‘Australia has afforded me a better home than my motherland, and I will love her with a patriot’s love.’\textsuperscript{833} He continued his interest in Chartist developments. In 1842 he wrote back to England, asking:

\begin{quote}
You must let me know how the Chartists are getting on, and if you should see anything in the papers respecting William Lovett, who was imprisoned with John Collins in Warwick gaol, be pleased to send me the paper containing it. I am very desirous to know as much as I can about him. He appears to me to be one of the best men in England.\textsuperscript{834}
\end{quote}

In 1845 Parkes opened a turned ivory and importing business in Hunter Street, Sydney.\textsuperscript{835} Parkes could be seen inside the window of the shop working at his lathe, with a newspaper beside him, reading as he worked.\textsuperscript{836} While rapid expansion brought financial difficulty,\textsuperscript{837} he was also becoming known as an author and as a radical. David Blair remembered:

\begin{quote}
A few months after my arrival in Sydney, in 1850, I was walking along Hunter Street in company with Dr. [J. D.] Lang. He stopped suddenly before a little shop, the window
\end{quote}

\begin{footnotes}
\item\textsuperscript{832} Ibid., 58, 151.
\item\textsuperscript{833} Ibid., 136.
\item\textsuperscript{834} Ibid., 121. Letter from Parkes to his sister, dated 23 January, 1842.
\item\textsuperscript{835} Lyne, \textit{Life of Sir Henry Parkes}, 6.
\item\textsuperscript{836} Ibid., 6-7.
\item\textsuperscript{837} A.W. Martin, "Parkes, Sir Henry (1815–1896)," in \textit{Australian Dictionary of Biography} (Carlton: Melbourne University Press, 1974).
\end{footnotes}
of which was filled with children’s toys and said, ‘Come in here; I want to introduce you to somebody’. Stepping into the shop, we found a young man of about 30, as I judged, and of strikingly remarkable appearance, with his coat off, engaged in the task of unpacking a case of toys. The introductions were exchanged, and at once the Doctor and the remarkable shopkeeper fell to talking politics. I had not listened for many minutes before I felt myself impressed with the conviction that here were two real statesmen of Nature’s own making.\textsuperscript{838}

Men met at Parkes’ shop to discuss politics. Martin suggests ‘They were transferring to a new but remarkably similar situation political ideas and methods they had learnt in their youth.’\textsuperscript{839}

During the 1840s Parkes wrote for several newspapers. For a short time he was the Sydney correspondent to the \textit{Launceston Examiner}. He also contributed poems and articles to the \textit{Sydney Morning Herald}, the \textit{Australasian Chronicle} and the \textit{Atlas}. He published his book of poems, \textit{Stolen Moments}, in 1842. He also took part in the discussion of local issues.\textsuperscript{840} He then became associated with Robert Lowe’s election campaign of 1848. ‘That’, he said, ‘was the beginning of my political career.’\textsuperscript{841} Parkes supported the universal franchise, education,\textsuperscript{842} free trade and, from an early date, federation. His first brush with federation came with his short-lived association with John Dunmore Lang. Lang also supported an independent republic, a position which Parkes adopted in 1850, but from which he withdrew after a few months, sensing it had little support.\textsuperscript{843} Previously, in 1849, when Robert Lowe had raised the idea of an American style rebellion in relation to transportation, Parkes had distanced himself from the allusion. ‘It would be wise and well to cherish a feeling of true loyalty towards Great Britain’ he said.\textsuperscript{844} Parkes believed not only that the Australian

\textsuperscript{838} McKenna, \textit{Captive Republic}, 42.

\textsuperscript{839} Martin, \textit{Henry Parkes: A Biography}, 48. See also 47.

\textsuperscript{840} Martin, "Parkes, Sir Henry (1815–1896)."

\textsuperscript{841} Parkes, \textit{Fifty Years}, 10.

\textsuperscript{842} See for example David Blair, ‘Introduction’ in Henry Parkes, \textit{Speeches on Various Occasions Connected with the Public Affairs of New South Wales, 1848–1874} (Melbourne: George Robertson, 1876), xii.

\textsuperscript{843} McKenna, \textit{Captive Republic}, 51-62.

\textsuperscript{844} Ibid., 47.
character was not yet ready for full independence, but that trade would suffer if Australia were to separate. 845

Parkes set up the newspaper, Empire, in 1850. Through the title he made clear his position on Australia’s relationship with England. 846 The paper was to be, as Parkes described it:

an advocate of a wide extension of the franchise, the reconstruction of the representative system on a population basis, a more comprehensive system of education, suited to the circumstances of the colony; and it declared against all taxation except such as was necessary to meet the expenses of Government. 847

Or, in sloganised summary: ‘COLONIAL RADICALISM – OUR OWN CREED’. 848 To the paper Parkes attributes the creation of the ‘first distinct party with a Liberal creed and the means of vigorous action’. 849 He continues ‘A strenuous public opinion, embodying the most advanced views of the leaders of thought in England, took root in the land, threw up rapid growth, and spread widely.’ 850 Parkes was now a part of the political scene in New South Wales. Martin suggests that ‘It is difficult to separate the Empire’s developing elaboration of the practical side of [its] program from Parkes’ personal career in politics.’ 851 The politics of the paper reflected the politics of the man.

Martin observes that it is of ‘great importance’ to note that Parkes’ brand of radicalism was influenced by the timing of his departure from Britain. Emigration had meant he had not had to choose between physical force and moral force Chartism. This, in Martin’s view ‘left him, for good, a Birmingham man of 1832 rather than of

845 Ibid.
846 For Parkes’ view on the British Empire see Henry Parkes, Federal Government of Australasia (Sydney: Turner & Henderson, 1890), 134-5, ‘My whole being trembles with an unuttered prayer of that kind, that the whole of the British possessions may remain for ever forming parts of one beneficent Empire such as the world has never yet seen’. (Speech, 1890.)
847 Parkes, Fifty Years, 84.
848 Parkes’ emphasis. Martin, Henry Parkes: A Biography, 76.
849 Parkes, Fifty Years, 94.
850 Ibid., 94-5.
851 Martin, Henry Parkes: A Biography, 63.
1839: a radical, but dedicated to middle and working class cooperation as the key to reform and progress.852

Parkes became involved with the campaign for a constitution for New South Wales, allowing for responsible government, and the full franchise. In his autobiography Parkes discusses the 1853 campaign against the new constitutional bill, referring to a speech in which he ‘quoted Bentham against Mr. Martin’s notions of the value of property qualifications in securing political fitness...’.853 In this sequence in the autobiography, Parkes first directs the reader to a letter from Robert Lowe, now a member of the House of Commons, opposing the Constitution Bill, in part for its provision for a nominated upper house.854 He reproduces a newspaper report of his own speech in relation to the Constitution Bill before several thousand people.855 Having listened to speeches by James Martin and others, in which they used authorities to back up their position for a nominated house, Parkes argued:

The first authority he would trouble them with was Jeremy Bentham, and he ventured to think that he was almost as great a philosopher as James Martin... Bentham, then, said, ‘Property, it is continually said, is the only bond and pledge of attachment to country. Not it, indeed. Want of property is a much stronger one. He who has property can change the shape of it, and carry it away with him to another country whenever he pleases. He who has no property can do no such thing. In the eyes of those who live by the labour of others, the existence of those by whose labour they live is indeed of no value; not so in the eyes of the labourers themselves. Life is not worth more to yawners than to labourers; and their country is the only country in which they can so much as hope to live.’856

Later in 1853, the Empire ran an article against a rhetorical device that had been used against a Mr. Darvall in the Legislative Council during a debate on the nominee system for the Upper House. Mr. Darvall had opposed the nominee system, and had been attacked as a Yankee republican for his efforts. The Empire leapt to his defence,

852 Ibid., 17. See also Travers, Henry Parkes – Father of Federation, 20.
853 Parkes, Fifty Years, 39.
855 For number of attendees see Maitland Mercury & Hunter River General Advertiser, 14 September, 1853, 4.
856 Parkes, Fifty Years, 41-2. The quote is included in Bentham, "Radical Reform Bill," 560. See also news report of the meeting in the Maitland Mercury & Hunter River General Advertiser, 14 September, 1853, 4.
quoting extensively from ‘Matchless Constitution’ in Bentham’s *Book of Fallacies*, suggesting that if Jeremy Bentham might uncover some fault in the English system, so might Mr. Darvall. Criticism of the ‘matchless constitution’ did not make Mr. Darvall a Yankee republican, the *Empire* argued. Any republican sentiment of Bentham’s is overlooked in this article.\textsuperscript{857}

Political debates such as these in Sydney and London resulted in a new constitution with immediate provision for an appointed upper house, but with the capacity to introduce alterations according to the prevailing wishes of the electorate. It was, effectively, a victory for the democrats, with Parkes at the helm in New South Wales, and Robert Lowe in a like position in England. In Australia, liberal radicalism, Chartism, and Benthamism were not simply acting in concert, they can be seen as one and the same thing. Wright characterises Parkes’ contribution to the debate over the new constitution bill as Benthamite, emphasising the concordance of Parkes’ ideas with Benthamite notions of democracy,\textsuperscript{858} and with the Charter.\textsuperscript{859}

In 1854 Parkes gave a speech in which he stepped down somewhat from the lofty Benthamite argument about the vote and ‘want of property’. Instead he noted that in Australia want of property was not an issue of concern in implementing the franchise:

> There are very few persons amongst us who do not possess some stake in the country, or who have not the power to acquire that stake. Seeing then that the means of obtaining property here are within the reach of every man of industrious habits; seeing here that every man here can pursue a course which must lead to competence or, at least, a position of comfort, I believe that the only danger which can accrue to the country will and must result from withholding that political power and those full privileges to which the people are entitled as free born Britons.\textsuperscript{860}

While this is something of a retreat from Parkes’ abstract quotation of Bentham in relation to property, both statements are directed to full adult male enfranchisement in New South Wales.

In the same speech, reflecting his Birmingham Political Union origins, he declared:

\textsuperscript{857} *Empire*, Friday 16 September, 1853, ‘Our “Matchless Constitution”’.

\textsuperscript{858} Wright, "The Philosophy of the Australian Constitution", 64.

\textsuperscript{859} For example at ibid., 62.

I would support the rights of the richest among you, but at the same time, with the same vigour, the same determination, the same energy. I would support the rights of the humblest and poorest…. I have ever set myself against class legislation of every kind… I would no more truckle to the working classes than to the highest; and at the same time I believe that among the lowest classes there is often to be found the largest share of those energies which are most valuable to a young country, and on which every institution of the country must depend.  

In New South Wales, in 1857, the fight to gain the points of the Charter reached its peak. That year the Cowper ministry announced its intention to introduce a land bill that Parkes saw as favouring squatters to the detriment of city people aspiring to gain land for small farming. The land bill was to be introduced prior to an amendment to the Electoral Act, expanding the franchise. Parkes argued instead for an expanded franchise to be introduced at once. He called and chaired a public meeting on 16 November. Lang spoke in favour of waiting until the franchise was expanded before passing a bill amending land law. The gathering supported his stance. A second meeting of several thousand people, held on 7 December, again chaired by Parkes, reached a similar conclusion. On 9 December, Parkes stood for election but lost. However, he was elected to parliament only one month later. With Parkes and other radicals gaining seats at the expense of conservatives, the land legislation was deferred. Instead, an electoral bill allowing for universal male franchise, the ballot, and proportional seats, introduced in March, was passed with a massive majority in August, 1858. Parkes played a leading role in these events, and Gascoigne thus observes that it was Parkes’ leadership that brought manhood suffrage to New South Wales. In 1892, Parkes, reflecting on the democratic system, gave special place to the ballot, describing the ballot box as the ‘sacred urn’.

In 1861 Parkes travelled to England. He found a quite different democratic atmosphere from the one he had come to know in New South Wales. The radical spirit had evaporated. Capital and labour were divided. The newly wealthy middle class were keen to separate themselves from labour. Labour, for its part, had allied itself

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861 Lyne, *Life of Sir Henry Parkes*, 34.
862 Wright, "The Philosophy of the Australian Constitution", 67-72.
864 Parkes, *Fifty Years*, 641.
with the aristocracy. In Birmingham, Parkes’ mention of the universal franchise brought silence. Elsewhere he heard the universal franchise derided.865 Australian democracy, a victory for the moral force campaigners, had leapt ahead of Britain. Men from the Birmingham Political Union, with their commitment to the union of capital and labour, occupied a central place in New South Wales politics.

Over the years Parkes held positions that both supported and rejected an interventionist state. While in England, Parkes’ commitment to free trade was strengthened by Cobden.866 Free traders argued that industry should not be supported by government handouts or tariff protection. Philosophical radicals had fought for this position since the 1830s as a foil against oligarchy. Both Wakefield and J.S. Mill recognised, in relation to the colonies, that fledgling communities might need some state intervention to carry out works too great for private capital, and also might need to protect young industry.867 The issue of protection versus free trade was dominant during the second half of the nineteenth century, and was an important theme in the federation debates.

From 1859 to 1860 Parkes chaired a committee into the conditions of the working classes in Sydney. Lyne called the report ‘so shocking that it cannot be read without a feeling of horror’.868 The committee recommended a policy of protection.869 Lyne


Marx, in 1864, noted that many of Chartism’s most energetic members had left England to participate in the hunt for wealth in the goldfields. Inaugural Address and Provisional Rules of the International Working Men’s Association, 1864, in Fredrich Engels and Karl Marx, Marx & Engels Collected Works (London: Lawrence & Wishart, 1975), Vol. 20, 10.

Pickering, in ‘Chartism in Colonial Australia’, identifies six Chartists in Australia who, he suggests, retained a rhetoric of class conflict and/or socialist aspirations from their earlier British activism. Nevertheless, Pickering does not report any events aside from Eureka that might be classed outside of the established language of protest developed by, among others, Francis Place, as discussed in chapter three. On analysis of Pickering’s evidence, most seem more inclined towards moral force activity than physical force while in Australia, and show little commitment to socialism or ‘something more’. See Pickering, "Chartism in Colonial Australia," 39-43.

866 Parkes, Fifty Years, 141-2.


868 Lyne, Life of Sir Henry Parkes, 172. Parkes provided to J.S. Mill a copy of the report while Parkes was in England in 1861. They attempted to meet but Mill’s departure for France in that
observes that Parkes at this time was a part-time politician, whose political education was sketchy. Lyne states:

His political knowledge had been chiefly acquired in the intervals of a busy life, which did not afford him too many opportunities for reading and reflection. In his youth and early manhood, he had experienced all the hardships attendant upon want of employment or low wages. Moreover, he had imbibed to a certain extent the fiscal doctrine apparent in a well-known passage in the writings of John Stuart Mill.870

After his discussions with Cobden, Parkes still found a role for the state in maximising public utility.871 Prior to 1861, Parkes had supported causes such as state-run schools,872 sponsored immigration and land settlement,873 the eight hour day,874 a publicly owned international steamship service,875 and a meritocratic career public service.876 After 1861, he continued to support public education and sponsored immigration,877 and added to these such issues as state provision of nurses training,878 industrial training for abandoned children,879 and reformatories.880 While supporting the building of railways by the state, he also acted, in 1888, to prevent corrupt allocation of these funds.881 He provided assistance to industry where he thought it

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869 Ibid., 174-5.
870 Ibid., 175.
871 For Cobden’s use of the word ‘utility’ for general welfare or happiness, see Cobden’s letter to Parkes of 21 November, 1861 in Parkes, Fifty Years, 142.
872 For example speeches dating from 1866 to 1873. See James Curran, Power of Speech, Australian Prime Ministers Defining the National Image (Carlton: Melbourne University Press, 2006), 217, 276, 316, 374. Also Parkes, Fifty Years, 166, for reference to a speech of 1854 in support of public education.
873 Parkes, Speeches 1848–1874, 135.
874 Ibid., 70. See also Parkes, Fifty Years, 561-2.
875 Parkes, Speeches 1848–1874, 87. For subsidies to private shipping operators conducting a mail run, discussed in 1871, see Parkes, Fifty Years, 219-24.
876 Parkes, Speeches 1848–1874, 463.
877 Parkes, Fifty Years, 113. Speech in favour of sponsored immigration.
878 Ibid., 178.
879 Ibid., 163.
880 Ibid., 164-5.
881 Parkes, Federal Government of Australasia, 1. See also Parkes, Speeches 1848–1874, 255.
strategically appropriate. Nevertheless his position was broadly one of free trade. Referring to his brief period of protectionism, Parkes said:

I started in life as a free trader. I dare say that much of my opinions was [sic] caught up from those around me. I dare say that I imbibed my free trade opinions very much as many persons imbibe their religion. I admit that in the year 1859 or 1860, I was misled by that fatal, that mischievous, passage in John Stuart Mill’s book, in which he lays down the doctrine that protectionist duties are pardonable to support new industries in a new country. And, about the same time, I read one or two American economists who confirmed that view. Mine was a case of pure backsliding…

_Parkes and utilitarianism_

Parkes is the first person examined in this thesis who had not directly been part of the London radical movement. Parkes’ experience of London was not one of lobbying the colonial office or conspiring change with radical members of parliament. Instead, Parkes’ London was one of bad drinking water, smog, cheap boarding houses, heavy work, and occasional starvation. But Parkes did benefit from early radical reform – such as taking the free fare to Australia – and he also embraced many of the radicals’ ideas for further political change.

In London Parkes was far from the political circles of Place, Roebuck, James Mill, J.S. Mill, Wakefield, Molesworth, Buller, Grote, Chapman or even the relatively junior partner, Kingston. During the 1830s these people all shared a similar political milieu. Parkes is different. He was half a generation younger than third generation Benthamites, and was born into poverty in a provincial town far from the halls of power.

882 Lyne, _Life of Sir Henry Parkes_, 176.
883 Sawer reminds us that an acceptance of free trade does not preclude the possibility of other state intervention in the economy. In Sawer, _The Ethical State?_ 56.
884 Lyne, _Life of Sir Henry Parkes_, 180.
886 Ibid.
887 Ibid., 44.
888 Ibid., 34.
889 It is notable that Place and Parkes shared similarly deprived backgrounds.
Evidence of an influence of Benthamite utilitarianism is mostly circumstantial and diffuse. He had absorbed Benthamite ideas without necessarily recognizing their association. The 1832 Reform Act was passed when he was seventeen. Chartism began its march when he was twenty-three. By the 1850s he was a significant part of the movement that implemented several points of the Charter, and responsible government in New South Wales. Both had a strong Benthamite component. Additionally, Parkes absorbed the Benthamite approach of legislation as a tool for social change. The state could utilise its resources for the betterment of humanity, and legislation was its primary tool. As a moral force Chartist, Parkes decried the use of violence. He toyed with Mill’s new state protectionism, but fell towards Cobden’s views on free trade. These accorded with Mill’s more general views too.

Parkes used Bentham from time to time in his rhetoric, and it appears he was somewhat familiar with his ideas. But, as the Empire put it in September, 1853 in its defence of Mr. Darvall, it takes but a cursory glance at Bentham’s works to find a relevant passage. Did Parkes read Bentham more deeply? If he did, we do not find evidence of it. In addition Parkes appears not to have absorbed any tilt towards republicanism from Bentham. Rather, it is the structure of government recommended in the Durham Report that appears paramount.

When the time was finally ripe for Australian federation, Parkes fought for a constitution structured around universal male suffrage, proportional constituencies, non-plural voting and regular parliaments. While Parkes raised the United States as an example to draw upon for a federal model, he cautioned against the creation of a presidential system. He wrote: ‘this lodgement of sole power is sure to run into riot and abuse’. The US system was modelled upon the British monarchy ‘at its worst epoch, in the arbitrary days of George III’. He pointed out that the Crown had refrained from vetoing bills for centuries, whereas in the USA the American president had vetoed over 100 bills. He warned against putting executive power into the hands of one man, and recommended a Privy Council to hold executive power, in imitation

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891 Empire, Friday 16 September, 1853, ‘Our “Matchless Constitution”’.
894 Ibid., 174.
of Britain. His views, however, were not unique on these matters. In expressing scepticism about the United States’ system, he was in accord with most delegates to the constitutional conventions.

By the 1860s, with the gradual increase of democracy in England and its swifter progress in the Australian colonies, the ideals of the Charter and its techniques for peaceful agitation for reform could be seen in action. Parliaments were empowered to deliver, as best they might, the greatest happiness. A small group of radicals had played a substantial role in sweeping away an entire way of thinking, and helped replace it with a new culture – one of social mobility, work, education and government responsive to the needs of the people.

As for the nation so under the sway of utilitarian influence, Parkes pointed out in 1890 that not only did Australia have on average the highest private wealth in the world by a substantial margin, but that:

The real standard of civilization is the wide diffusion of wealth over the population to be governed; and, judged by that test, Australasia stands at the head of the nations of the world; not only so, but a long way at the head.

In relation to the British influence, which, as we have seen, was in significant measure the influence of the utilitarians, Parkes stated ‘So far from arbitrary or unsuitable conditions being imposed upon us from the seat of supreme authority, we have had planted in the colonies institutions as free, as open, as much in our own hands to mould to our own advantage, as the human mind could devise or conceive. Our liberties are absolutely in our own keeping.’

Conclusion

895 Ibid., 176-7.
896 Only Andrew Inglis Clark supported the idea of a presidency. See Michael Roe, "Reviewing Clarkiana and Clark at Federation’s Centenary," in A Living Force: Andrew Inglis Clark and the Ideal of Commonwealth, ed. Richard Ely (Hobart: Centre for Tasmanian Historical Studies, University of Tasmania, 2001), 12.
898 Parkes, Fifty Years, 637.
Parkes, Kingston and Chapman all played a substantial role in the political development of their respective colonies. The Australian colonies were world leaders in democratic innovation. This innovative tendency is in substantial part attributable to Benthamism, expressed through electoral and parliamentary reform, legal reform, and a society free from aristocratic interest. Especially Benthamite is the commitment to peaceful political change.

Australian society was being rapidly erected on a new kind of foundation. Hancock characterises Australian utilitarianism as deriving from the mass immigration of mechanics and labourers, particularly after the introduction of the Wakefield scheme. These, with professionals and owners of business, used political ideas garnered from Britain to gain ascendancy over the existing power holders. The eventual result, Hancock writes, was that after federation ‘Australian democracy has come to look upon the State as a vast public utility whose duty it is to provide the greatest happiness for the greatest number.’

The great change of the age was from an agricultural to an industrial society. Utilitarianism was a political philosophy of the new industrial society, of the city dwelling artisan. Philosophical radical policies, including free trade, were designed to accord with the new society. Australian civil society emerged with a politics designed for an urban, commercial, industrial-oriented society, despite the early power of pastoralists.

It might fairly be argued that Australia as a society was designed by tradesmen in cooperation with reformist lawyers. For example, Place, Lovett, and Parkes were tradesmen. Bentham, Roebuck, and Chapman were lawyers. The influence of these tradesmen and lawyers was pervasive. It is the very strength of Benthamism that, as Collins points out, it seeped into the corners of the souls of the emerging generations, and has come down to us as a psychology so ubiquitous that it almost escapes notice. As the Empire states:

The successful establishment of the principles which have been embodied in the political constitutions of the Australian colonies, and in the amendments of the

899 Hancock, Australia, 72. See also 214.
901 See also Cochrane, Colonial Ambition, 249.
Criminal Law of the British Empire, is in great measure traceable to the labours of Jeremy Bentham.\footnote{Empire, 4 June, 1872, 4.}
Chapter 6: Positive Liberalism and Responsible Government in the Colonies

The history of the growth of Liberalism ... is one of the most thrilling historical developments to be found in the annals of any State... (Neilson, 1945, 285)\textsuperscript{03}

Introduction

The purpose of this chapter is to explore aspects of the nature of Benthamite liberalism and its expression in Australia. Having uncovered a Benthamite influence in the establishment of Australian colonial political institutions, it is useful to examine the kind of society that was built. Australia is considered by most commentators to have an almost continuous heritage of liberalism in one form or other. Rowse, for example suggests that ‘Australia has long been recognised as an almost uniquely successful “fragment” of European liberalism; it is one of the few nations whose evolution to liberal democracy has been linear and relatively non-violent.’\textsuperscript{04} Scholars have differed in their characterisation of Australian liberalism. Hartwell suggests that in Australia the minimally interventionist liberal state was never achieved, but Australia came close during the late nineteenth century.\textsuperscript{05} On the other hand, Macintyre talks of the late nineteenth century colonial liberal who would willingly interfere with the liberty of the individual.\textsuperscript{06} Marian Sawer finds Australia around the turn of the twentieth century influenced by New Liberalism, a political culture in which private pleasure was subordinated to common good.\textsuperscript{07} Sawer is writing against what she considers something of a consensus among Australian historians that Australia is fundamentally Benthamite, with an emphasis on individualism.\textsuperscript{08}

\textsuperscript{03} Neilson, "The Decay of Liberalism," 285.
\textsuperscript{05} Max Hartwell, ‘Introduction’ in Gregory Melleuish, A Short History of Australian Liberalism (St Leonards: Centre for Independent Studies, 2001), vi.
\textsuperscript{07} Sawer, The Ethical State? 15.
\textsuperscript{08} Citing W.K. Hancock, Paul Kelly and Hugh Collins. Ibid. 3, 34.
Nevertheless, she points to a strong Benthamite influence in Australia prior to the 1880s, which she considers strongly individualistic.\textsuperscript{909}

Meanwhile, Benjamin Jones, in \textit{Republicanism and Responsible Government}, argues that many historians have portrayed Australian political culture during the early to mid-nineteenth century as expressing Lockean liberalism – a liberalism of the small, unobtrusive state. In contrast, Jones contends that the primary influence in the Australian polity leading up to the 1855 constitutions and beyond was civic republicanism, which encouraged collectivism and working for the common good – including a political system based on positive liberty. Jones proposes that civic republicanism was dominant over both Lockean negative liberalism, evident in the United States, and Tory conservatism, which he identifies as the two other dominant paradigms of the era.\textsuperscript{910}

Melleuish suggests that the emphasis on the interventionist state in much scholarship has had a political motivation. With reference to Macintyre’s \textit{A Colonial Liberalism}, and Rowse’s \textit{Australian Liberalism and National Character}, among others, Melleuish suggests that:

\begin{quote}
The dominant theme of [studies of Australian liberalism] has been to trace the history of liberalism from the protectionists of 19th century Victoria to the Deakinites of the early 20th century and then via Menzies into the current Liberal Party. Hence it has been assumed that in Australia some version of what has been generally termed social liberalism has been the predominant form of liberalism. According to this view, the ‘normal’ practice of Australian liberals is to use the state to pursue something called ‘social justice’. Recent developments in Australian liberalism, such as economic rationalism, can be defined as aberrant and not in line with the best traditions of Australian liberalism.\textsuperscript{911}
\end{quote}

Sawer takes exception to Melleuish’s characterisation of late nineteenth century New South Wales as laissez-faire.\textsuperscript{912} Sawer instead sides with those who have suggested

\begin{footnotes}
\item[Ibid., 34.]
\item[Jones, \textit{Republicanism and Responsible Government}, 7-11.]
\item[Melleuish, \textit{A Short History of Australian Liberalism}, vii.]
that so interventionist was government in Australia after around 1880 that it might best not be taken as sharing a genealogy with liberalism at all. Nineteenth century commentators who doubted the connection were ‘rightly skeptical’ she suggests:

The new liberals were very interested in demonstrating their liberal descent, providing an idealist account of the evolution of liberalism, whereby the liberals of each historical era were engaged in the struggle for liberty characteristic of their epoch. The preoccupation of earlier liberals with sanctity of contract could be explained by the corrupt nature of the aristocratic state and the natural distrust of state action engendered by such corruption. Once the ‘old corruption’ had been cleared out of the way and the state had become subject to the democratic will, the new tasks of liberalism were to identify the obstacles to individual freedom and choice posed by the industrial system.

In this genealogy, the new liberalism was simply confronting the issues that became more clearly revealed once the older liberalism had done its work in freeing up competition. The will to liberty was the same, whether abolishing archaic state regulation or introducing new regulation adapted to the conditions of modern industry. Given the somewhat drastic shift from the freely contracting autonomous individual of older liberal theory to the interdependent citizens of new liberalism requiring state interference for self-realisation, some commentators were rightly skeptical of this genealogy.913

Sawer identifies Australian political development with ‘New Liberalism’, which emerged from the works of T.H. Green.914 Sawer is not alone in the view that Green’s thought bore little resemblance to liberalism. For example Freeden states: ‘The immediate generation of liberal thinkers to succeed Green took liberalism into areas considered to this day by many to be so close to socialist thought as to render a clear distinction impossible.’915

Australia – a Study in Intellectual and Cultural History (Cambridge: Cambridge University Press, 1995); and Melleuish, A Short History of Australian Liberalism.

914 Ibid., 3, 11, 13, 41 and generally.

Taken together scholars have cast Australia throughout the nineteenth century both as strongly supporting the freedom of the individual and as strongly collectivist. Similarly Australia has been characterised as Benthamite, or far removed from Benthamism. With all that, the detailed study of the influence of Benthamism in nineteenth century Australia has been lacking.

This chapter explores the idea that the Benthamite polity can provide a basis for various shades of liberalism, including a positive liberal environment, while it can also provide the basis for either laissez-faire or collectivist economic principles. These systems can be consistent with the higher principle of the ‘greatest happiness’. In Australia this has tended towards the creation of a hybrid that, as Collins notes, satisfies neither the left nor the right, and looks like false consciousness to both. The chapter concentrates on uncovering how Benthamism, which is often characterized as a negative liberal doctrine, can also be understood in terms of positive liberalism. The Lockean liberal state, with its emphasis on strong constitutional restraints on the exercise of power, as evident in the United States Constitution, was not established in Australia. Rather, consistent with Benthamism, those constraints were removed to a significant extent by moving towards a system which Bevir casts Webb’s socialism as requiring that ‘individuals have a duty to act for the social good rather than their own.’ Note also that the theme of the individual versus the collective was discussed in the influential essay Paul Bourget, "Psychologie Contemporaine; Notes Et Portraits: Charles Baudelaire," Nouvelle Revue 13 (1881), part IV ‘The Theory of Decadence’.

916 See also Weinstein, Utilitarianism and the New Liberalism, 4 who argues against this idea. ‘The new liberalism’, he suggests, ‘absorbed more utilitarianism than the received view acknowledges.’

917 This can be contrasted with a virtue-based society or with a society based on power. The latter is supported by Foucault, drawing on Nietzsche, in Fons Elders, Reflexive Water - the Basic Concerns of Mankind (London: Condor, 1974), 174, 182-185, which should be read in conjunction with Michel Foucault, "On Popular Justice," in Power/Knowledge: Selected Interviews and Other Writings 1972-1977, ed. Colin Gordon (Brighton, Sussex: The Harvester Press, 1980), especially at 12, 13, 28, 31, 33, 36. Virtue and power-based societies may still have an interest in (earthly) happiness, but it is not their primary focus.

918 Collins writes that for the supporters of laissez-faire ‘Theirs are the certainties and disappointments of scriptwriters for a production they will never direct, in ’Collins, “Political Ideology in Australia,” 158. On the other hand ‘the economic and political history that so offends the neoconservative proves scarcely more tractable for the neomarxist.’ (159.) See also Hancock, Australia, 223 for a similar point. Russel Ward has suggested that Australia in 1977 had socialistic tendencies that were designed to regulate and ameliorate the functioning of laissez-faire capitalism. See Ward’s introduction to Albert Métin, Métin: Socialism without Doctrine, trans. Russel Ward (Chippendale, NSW: Alternative Publishing Co-operative, 1977), 6.
where the interests of the executive and the legislature were combined, control of the legislature was imposed by an enfranchised public who voted directly for their representatives, and metaphysical limits, such as natural rights, were not imposed on government capacity to act.  

By the 1850s, when the colonial constitutions discussed in this thesis were put in place, over sixty years had passed since the federation of the United States. Much had changed in constitutional thought during the period. Harrison Moore, writing in 1910, identified the key reason for the difference between the United States’ model and the Australian:

The American Constitution was born in distrust. To possess power was to abuse it; therefore in devising the organs of government the first object was less to secure their cooperation than to ensure that each might be a check upon the natural tendencies of the other.  

Harrison Moore finds that the Australian federal constitution, on the other hand, ‘bears every mark of confidence in the capacity of the people to undertake every function of government’.  

The colonial constitutions were not so confident, as they included upper houses which lacked important Charter elements. Nevertheless, they went some considerable distance towards the ultimate goal.

This chapter first examines positive and negative liberalism, drawing on standard definitions and noting the development of the idea of positive and negative liberalism in prominent accounts. It moves on to relate these ideas to Bentham’s notion of liberalism. It observes that while Benthamite liberalism has by some been cast as negative liberalism, it has by others been cast as providing a platform for positive liberalism. At an extreme, Benthamism has been criticised for a tendency to permit a society where happiness is derived from, or even enforced through, oppressive restrictions on individual action. The chapter then draws on the work of scholars, including Frederick Rosen, to find a middle path, where the interventionist aspects of positive liberalism are restrained through democratic practice. The discussion leads to

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920 Ibid., 612.

921 Ibid., 613.
the finding that it is this middle path that can be identified in Australian liberal practice, reconciling, or at least accommodating, the opposites of positive and negative liberalism, creating what might be considered a hybrid polity.

This proposition is contrasted with the attribution of Australian colonial positive liberalism to civic republicanism, as proposed by Benjamin Jones in *Republicanism and Responsible Government*. It is also discussed in the context of second reading of civic republicanism in Australia provided by L.J. Hume in his article "Foundations of Populism and Pluralism,” and with Hume’s proposal that early Australian utilitarianism bore the hallmarks of populism.

**Positive and negative liberalism, and democracy**

The term ‘liberal’ is an old one in English, referring in general terms to freedom from interference, including interference from the state. At core liberalism is based on liberty. In the *Oxford English Dictionary* liberty is defined negatively as ‘exemption or freedom from arbitrary, despotic, or autocratic rule or control’.

The dictionary also identifies a second idea within liberalism – civil liberty. Civil liberty is ‘natural liberty so far restricted by established law as is expedient or necessary for the good of the community’.

‘Liberal’, however, has a third meaning – one which emphasises the capacity of a population to choose their form of government, with subsidiary implications in relation to the quality of that government itself. Thus the dictionary provides the definition:

Of political opinions: Favourable to constitutional changes and legal or administrative reforms in the direction of freedom or democracy. Hence used as the designation of the party holding such opinions, in England or other states; opposed to conservative.

According to Friedrich Hayek, this British ‘democratic liberal’ represents a shift from earlier English liberalism. For Hayek, the term democratic liberal might be derived from the European usage of the term – a European liberal being one who primarily sought self-determination in relation to the form of government, in particular associated with democratic reform, with the prior English use of the term liberal
referring to one who primarily sought protection by law from arbitrary coercion.922 In Britain, the sense of the word as applied to a political movement was derived from the Spanish *Liberales* party of 1812.923 The term gained usage during the early 1800s to denigrate the democratic radicals.924 Bentham had been a supporter of the Spanish *liberales* since at least 1820.925 It is likely, then, that Bentham and his followers were among the first in England to whom the term, in this sense, was applied.

The three senses of the word ‘liberal’ may be summarized as follows. In the first instance, the concept of liberty is largely directed towards lack of interference in personal freedoms. The second directs us towards the limits to freedom, and provides for a field in which government might make laws, with the guiding principle being ‘the good of the community’. In the third, the focus is on the design of the constitution to allow for government of choice. Thus, the first provides the key ambition of the society – that is, the freedom of the individual; the second provides for the idea that those freedoms might need curtailing to an extent to create common good; and the third provides the method by which this might be achieved – that method being some form of law-making body – a government – which has not been arbitrarily imposed, but actively agreed to by a majority in the society whose behaviour is to be limited.

**Positive and negative liberalism**

In relation to the tension between individual freedom and ‘the good of the community’, Winsome Roberts points to an observation by Berlin, that ‘traditional liberals want “freedom from” undue interference by the state, while progressive liberals want some intervention to create conditions so all have the “freedom to”

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923 Ibid., 120-3.

924 See the entry for ‘liberal’ (definition B.1.a and b.) in the *Oxford English Dictionary*.

achieve independence and nurture capability’. The first is generally referred to as negative liberalism, the second as positive liberalism. Negative liberalism provides space for the individual to act with minimal state interference, while positive liberalism provides a redistribution of social resources to help maximise the individual’s potential, and can include an emphasis on the ‘good of the community’. Critics of the first suggest that such a society is one in which, as Alfred Deakin put it, ‘the devil takes the hindmost’. Critics of the second are concerned by, among other things, state appropriation of the resources of one individual to benefit another, potentially oppressive limits placed on individual action, and potential economic inefficiency resulting over time in an overall decline of well-being. The two sides are not infrequently sloganised as ‘freedom’ versus ‘fairness’.

**Bentham as a ‘security liberal’**

Frederick Rosen suggests that characterisations of Bentham as a negative liberal, or alternatively as the harbinger of a society oppressive of individual freedom, are inaccurate. For Rosen, Bentham initially considered liberty as an absence of coercion. Bentham discovered for himself ‘that the idea of Liberty, imported nothing in it that was positive: that it was merely a negative one’. In this Bentham followed Locke. Nevertheless, following Montesquieu, he shifted his ground to accommodate civil liberty, as opposed to merely considering individual liberty. For Montesquieu:

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928 Alfred Deakin, ‘What is Liberalism?’, *The Age*, 19 March, 1895, possibly referring to Carlyle, *Past and Present*, book 3 chapter 9: ‘all this Mammon-Gospel, of Supply-and-demand, Competition, Laissez-faire, and Devil take the hindmost, begins to be one of the shabbiest Gospels ever preached; or altogether the shabbiest.’ See also book 3, chapter 6.


The political liberty of a citizen is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is necessary that the government be so constituted that a citizen need not fear another citizen.931

Freed from Locke, Rosen suggests that Bentham was further able to develop his ideas within a framework of a security-oriented liberalism:

[Bentham’s] commitment to political democracy, to gradual reform based on security of expectation and to an extension of suffrage and participation to as many members of society as possible may have involved a rejection of some ideas traditionally associated with liberty, but in their place he developed new ideas... within a framework of liberty conceived in terms of security... Bentham’s concentration on security - on the instruments of good government - enabled him to move beyond the Lockean conception of the minimal state towards one more appropriate for a modern democratic society where security would be conceived more widely in terms of education, health, and welfare as well as real property and wealth.932

In accordance with this characterisation, Paul Kelly notes that the idea that maximum social-well-being ought to be the ultimate object of any legislator pervades Bentham’s works.933 For Dicey utilitarianism swept away old abuses, and helped create the conditions for human flourishing:

[Utilitarianism] was a principle big with revolution; it involved the abolition of every office or institution which could not be defended on the ground of calculable benefit to the public … as in any State the poor and the needy always constitute the majority of

931 Ibid., quoting Charles Secondat, Baron de Montesquieu, L'Esprit des lois, xi, 6.
932 Ibid., 67-8. See also, for example, Stark, "Jeremy Bentham as an Economist," 589-90; Coates, "Benthamism, Laissez Faire, and Collectivism," 358; Neilson, "The Decay of Liberalism,” 294. In 1870 Thomas Cliffe Leslie cited Bentham’s idea of security liberalism, applying it not just to include the political system, but to rational policy-making, in this instance in relation to the appropriate distribution of land to provide security for producers. Leslie, Land Systems and Industrial Economy of Ireland, England, and Continental Countries, 336. With security they would flourish, without it they would become torpid he suggested, citing Bentham for the general principal that economic insecurity produces torpor. Ibid., 342. Liberty is not a direct product of law, Postema observes. As law must necessarily restrict, law could provide security and thus a liberty to act without interference from others. This secure liberty is an indirect creation of law. Postema, Bentham and the Common Law Tradition, 170-1, 174-5. Note that my discussion is confined to law that restricts, in particular that of the legislature. (See ibid., 179ff.) The focus of the discussion is the potential for a legislature to become despotic. Bentham’s answer to these concerns is discussed in ibid., 367-76.
the nation, the favourite dogma of Benthamism pointed to the conclusion - utterly foreign to the English statesmanship of the eighteenth century - that the whole aim of legislation should be to promote happiness, not of the nobility or the gentry, or even the shopkeepers, but of the artisans and other wage-earners. 934

As a result of this shift, during the nineteenth century there was a change in expectation as to what government should do, how it should be formed, and how liberty could be realised. Dicey argued that when Bentham had commenced his legislative reforms he had found ‘the world encumbered by a mass of laws which certainly did not promote human happiness’. 935 In 1878 Dicey accepted that ‘few persons will now doubt that [the principle of the greatest happiness for the greatest number] supplied the only satisfactory test which can be provided of good legislation’. 936 Thus Dicey found that the years of reform of the nineteenth century after the 1832 Reform Bill had resulted in enormous change. These included:

The emancipation of the West Indian slaves, the Factory Acts, the amendment of the Poor Law, the reform of municipal corporations, the mitigation of the criminal code, the foundation of a system of national education, the repeal of the Corn Laws - these and a host of minor improvements, such as the establishment of the penny post or the abolition of the press gang, were all the more or less direct fruits of Parliamentary reform.

Many other reforms were introduced, resulting in the provision of services and interference in economic life. In Britain, even by 1844, John Hill Burton, in his introduction to Benthamania, could mention many state reforms associated with Bentham. Just a few are: education of the poor; postage; registration of births, marriages and deaths; the census; circulation of parliamentary papers; prison reform; electoral reforms; and a register of real property. 937 Edwin Chadwick, a secretary to Bentham during the 1820s, later promoted sanitation, the gathering of statistics, and inspection of public services. 938 The design of the public service also has a

935 Austin, Lectures on Jurisprudence, 352.
936 Ibid.
938 Ibid., 395; and McCalman, An Oxford Companion to the Romantic Age, 447. In McCalman, Gregory notes that Chadwick’s career provides a useful example of the tension between Benthamite laissez-faire inclinations, and the value of state action.
considerable Benthamite influence, as does regulation of working hours. Hume suggests that:

Since the publication of Werner Stark's edition of Bentham's economic writings, it has been very difficult to interpret Bentham as a consistent supporter of laissez faire. … [Bentham’s] description of the health minister's functions, for example, clearly implied that there would exist a body of regulations relating to the sale of drugs, the sale of goods unfit for human consumption, the state of burial grounds, unhealthy employments such as mining, and the pollution of the air by factories, and that the regulations would apply indiscriminately to public and private establishments. In these passages, and in the closely related passages dealing with the preventive service minister, he gave no hint that there existed an economic mechanism that could be relied on to produce favourable results and that ought not to be disturbed.

In Australia the changes were felt. Despite a commitment to a laissez-faire economy, state action was evident. For example, this thesis has noted that Robert Lowe, while in New South Wales, promoted publicly funded education and regulation of working hours. Following in the footsteps of Lowe, Parkes, who was strongly in favour of a market economy, was not opposed to state intervention where he considered it necessary. Kerry Mills, writing about New South Wales, suggests that Bentham’s ideas loomed large in the New South Wales legislature. In discussing the period of the legislative council from 1843 to 1846, in which there were twelve nominated members and twenty-four elected, she first identifies a clash between the ideas of laissez-faire and government intervention, suggesting that elected members were prominent in making moves towards interventionist reforms, while creating a conflict between themselves and nominated members as to ‘whether the legislature ought to take pervasive action in managing society and the economy.’ She suggests that the major figures in the press and government ‘knew about Bentham and perceived the

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939 Letter, Place to James Turner, 19 October, 1834, in Wallas, Life of Francis Place, 359. A detailed discussion of Bentham’s proposed structures for government is contained in Hume, Bentham and Bureaucracy.


941 Speech at Federation Conference, Melbourne, 10 February, 1890, Parkes, Federal Government of Australasia, 89-90.

942 Kerry Fraser Mills, "Of the People, by the People, for the People: Law-Making in New South Wales, 1843–1855" (Ph.D., University of New England, 2006), 84.
need either to invoke his policies or to demonstrate their inapplicability when advancing their own legislative schemes….’ She continues:

that utilitarianism could lead to extensions of both laissez faire and state intervention, by the testing of policy against its effect on human happiness or the greater public good, appears apposite for New South Wales...

Apart from the constitutional reforms discussed in this thesis, Bentham’s ideas played a leading role in, for example, the anti-transportation movement, the provision of education, state-built infrastructure, codification of law, and land law. Perhaps the most striking early example of the operation of free-market economics alongside government intervention in Australia is that of Wakefieldian land policy, a policy promoted by the philosophical radicals. Ripon’s Rules, discussed in chapter four, put an end to the grants system – a system which favoured the well-connected and distorted social growth. Ripon’s Rules were designed to enhance the quality of civilization, particularly to prevent a decline into the barbarism observed by Robert Gourlay in Canada. The design of the system flowed from the Ricardian law of rent. The free-market operated within a set of government-imposed rules derived from economic theory. Wakefield also recognized the need for additional state interference in colonial economies. As noted in chapter four, in 1836 Wakefield referred to the use of public money – substantially gained from the sale of land – for use in ‘great works of national improvement’, including roads, harbours, railroads. While in Britain these

943 Codification was advocated, and to some extent undertaken, by reformers such as Victorian Chief Justice, Charles Higinbotham. See W. Harrison Moore, "A Century of Victorian Law," Journal of Comparative Legislation and International Law 16, no. 4 (1934), 184-5. Edward Morris writes of Higinbotham critiquing a code produced by Charles Hearn from the perspective of Higinbotham’s ‘full acquaintance with the writings of Austin and Bentham.’ In Edward Morris, A Memoir of George Higinbotham: An Australian Politician and Chief Justice of Victoria (London: MacMillan, 1895), 293. Codification is strongly associated with Bentham. For example in 1868 the Adelaide Observer noted Bentham’s relationship to the codification movement. (14 March, 1868, 12); Justice Kirby referred to Bentham’s influence on codification in 1999 in Michael Kirby, "Freeing the Law - Beyond the Dark Chaos," University of New South Wales Law Journal 22, no. 2 (1999); Gregory refers to Bentham as the only person mentioned in the introduction to the Napoleonic Code, written 1804-1810, in Gregory, "Bentham and the Codifiers," 353. In writing in 1834 of the creation of a Commission to codify the criminal law in Britain, the Launceston Advertiser states ‘The seed which [Bentham] employed his life in sowing, promises to bring forth fruit,’ The commission included John Austin, Benthamite legal reformer. The article points out that Bentham coined the term ‘codification’. (30 January, 1834, 4.)

In relation to education see Gascoigne, The Enlightenment and the Origins of European Australia, 105-9.
were in the hands of private individuals, in Australia they might be built and operated by government.\footnote{Report on the Disposal of Lands – 1836,” 2. See also Bland, William Bland – Letters to Charles Buller, Junior, Esq. M.P., from the Australian Patriotic Association, Sydney, 171.}

Enhanced government action, however, made many nineteenth-century observers nervous. Harriet Grote, social commentator and wife of utilitarian historian George Grote, provided a lucid demonstration of the shift to greater centralized control in Britain from the 1850s to the 1860s, and, as she saw it, in the decline of English liberty. First, in 1856, she wrote celebrating English liberty:

> The distinguishing, and in fact the most valuable attribute of the English Government, is its non-interference with individual action: that is to say, it suffers its subjects to produce at their discretion; protecting the results of such industry by law, taking for State purposes but a fraction of them, and this only with the consent of the Commons House of Parliament…. No one but a native Englishman comprehends how infinitely small is the direct action of the executive government of this kingdom.\footnote{Harriet Grote, ‘Review of M. Lavergne’s Essay on the Rural Economy of England’, Grote, Collected Papers, 1842-1862, 26-7.}

But six years later she regretted that things had changed, and that Government interference was on the rise. Education was costing 800,000 pounds a year, village schools were coming under the management of government officials, teachers were to be ‘certificated’, schools were to be subject to inspection, and ‘pupil teachers’ were to be maintained at public cost. Mrs Grote lamented the expense and the loss of local independence. With so many social and technological changes bringing increased wealth, she suggested, the public had become impatient with the old, perhaps inefficient ways in many fields of life. ‘at this point of public sentiment, a lively conception of the comparative advantages of centralization lays hold of the imagination, and so gradually allows this principle to take root in our institutions’.\footnote{Ibid., 41.}

As a result of this tendency, Dicey expressed concern for the potential for despotism:

> The omnipotence of Parliament, which Bentham learned from Blackstone, might well, considered as an abstract doctrine, command the acquiescent admiration of the commentator. But the omnipotence of Parliament - turned into reality, and directed by bold reformers towards the removal of all actual or apparent abuses - might well alarm,
not only adventurers who found in public life a lucrative as well as an honourable profession, but also statesmen, such as Pitt or Wilberforce, uninfluenced by any sinister interest. Parliamentary sovereignty, in short, taught as a theory by Blackstone and treated as a reality by Bentham, was an instrument well adapted for the establishment of democratic despotism. 947

Herbert Spencer, too, had misgivings about the new interventionist state, attributing its modern incarnation to John Austin, the Benthamite legal philosopher:

The divine right of parliaments means the divine right of majorities. The fundamental assumption made by legislators and people alike, is that a majority has powers which have no bounds. This is the current theory which all accept without proof as a self-evident truth. 948

Like Dicey, Halévy also cautioned against potential despotism. 949

Rosen provides an answer to the concerns of those who feared the state might become despotic. He argues: ‘Where Halévy saw [in Bentham’s system] legislative supremacy and potential despotism, Bentham saw legislative dependence, security against misrule, and hence liberty.’ 950 Rosen suggests Halévy, and by implication others, misinterpreted Bentham, and, in brief, overlooked the safeguards that Bentham included in his plan for a legislature, in particular the high levels of publicity accorded to public action, the disciplining effects of democracy on government, and the educative effect of democracy on the populace. Postema notes that Bentham recognised that his system might be criticised for the possibility of mob rule. After all, as Kelly notes, the legislator’s task is limited to the pursuit of the greatest happiness of the greatest number, a potentially oppressive position for a minority. 951 Postema draws attention to Bentham’s identification of enlightened public opinion as the answer to the problem. Free flow of information was central to his system. Postema suggests that, for Bentham, ‘Utility is the language of public accounting. According to Bentham, it is the practical language of all rational beings – only prejudice and

950 Ibid., 65.
951 Kelly, Utilitarianism and Distributive Justice, 110.
Publicity allows the public forum to act as a sphere of education, and encourages participation in public life. Debate is conducted using reason guided by utility. Postema continues:

This point is made most clearly in his discussion of the election of parliamentary representatives. It is the need for concerted collective action – for example, garnering a majority of votes for a favoured candidate – that forces a person to focus on issues of common concern around which he can rally others. These practical demands of collective action train up the moral aptitudes of electors and candidates alike…

Thus, Bentham wrote:

In his endeavours to secure himself against depredation and oppression, each man finds all others in general disposed to become co-operators and supporters: for against depredation and oppression to his own prejudice, no man can find any means of security but such as cannot but afford the like security to other individuals in general.

Nevertheless, Postema observes, Bentham did not fully answer the charge of the potential for the majority opinion of the moment, perhaps ill founded, finding expression in his system. Postema writes: ‘It is safe to say that as [Bentham] progressed into his more radically democratic period in the early decades of the nineteenth century he tended to minimize the worry rather than attempt to answer it.’

Reflecting concerns that the utilitarian polity may threaten liberalism, descending into a form of mob rule or democratic despotism, L.J. Hume is sceptical that utilitarianism can be characterised as a form of liberalism at all. Addressing questions about the relationship between liberalism and utilitarianism, Hume identifies several streams of thought in Australian political culture operating alongside each other. Populism, utilitarianism and civic republicanism each had a presence during the period he

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953 Ibid., 372.
955 Postema, *Bentham and the Common Law Tradition*, 373. Postema also notes that Bentham’s system was designed with the idea that the general populace was ‘unapt’ to govern, and its role was only to locate and dislocate the legislature but not to give it direction. (ibid., 376) This overlooks the fact that the legislature is elected according to the policies its individual members propose to the electorate, and each member is held to account at the end of their term.
discusses, to the late 1850s. For Hume, populism and utilitarianism were closely associated. Populism, represented by, among others, E.J. Hawksley in the People’s Advocate, promoted a critical approach to the power of wealth, and sought as a remedy the Charter reforms. This populism, he finds, is closely associated with the utilitarian theory of democracy, which, for Hume, is ‘a relatively sophisticated form of populism’. Utilitarianism finds society divided into the governing few and the oppressed, and the principle form of oppression is legislation and a corrupt or inefficient administration. Hume characterises the utilitarian solution:

[I]ts principle remedy is good legislation; that political action should be directed to making legislation and government conform to their ‘true end’; and that in the first instance this must be achieved through the substitution of ‘responsibility’ for ‘irresponsibility’ at all points in the system…

Hume notes that while some radicals quoted Bentham or appealed to the greatest happiness formula, in fact the most important element was ‘their sharing with Bentham and his immediate disciples a common cast of thought’. Rights, for example, were rarely invoked, and instead replaced by ‘some utilitarian test of public interest’. Hume, however, differentiates the character of mid-nineteenth century liberalism in Britain, and its association with utilitarianism, with the expression of liberalism and utilitarianism in Australia. He first notes that for both polities:

Utilitarianism and liberalism were combined in an alliance or joint venture, not a merger. Although utilitarianism was capable of generating liberal components for its program, and in practice did so (for example, an insistent demand for freedom of the press), it was not fundamentally committed to the promotion of liberty. The liberal elements in its program were means, not ends. In its theory it shared with the mid-century liberalism a set of individualist assumptions, but it developed and evaluated these in a different way. The difference can be seen in the attitudes of these two wings

956 Hume, "Foundations of Populism and Pluralism," 47. He describes ‘classical republicanism or civic humanism’ as appealing to ‘a settled constitution within which rights may be enjoyed, which may countenance some form of monarchy but not a sovereign, and which looks for the protection of rights through a balancing of different elements within the government and the community.’ Virtue is an important component. (48)

957 Ibid., 42 quoting People’s Advocate, 3 February, 1849.

958 Ibid., 45.

959 Ibid.

960 Ibid., 46.
of radicalism to the market economy. Utilitarianism valued markets in so far as they appeared to be efficient in satisfying the wants and choices of individuals. The more market-oriented forms of liberalism valued them in so far as they contributed to the making of relationships and obligations voluntary throughout society... The former element was indeed present in the Australian populism of this period, although it did often lead to judgments entirely favourable to unrestricted markets. The latter was rare, if not altogether absent.\footnote{Ibid., 47.}

Hume suggests that liberalism was more overtly present in civic republicanism which ‘sought to limit executive power and thus safeguard individual rights’, something populism and utilitarianism failed to do.\footnote{Ibid.} Civic humanism (or civic republicanism) sought to balance radical principles of democracy with the requirements of virtue and wisdom in government.\footnote{Ibid., 51.} W.A. Duncan summed the matter up in 1856, suggesting that the popular element, empowered by a wide expansion of the suffrage, needed to be balanced by a conservative element: ‘I maintain that the conservative element is just as necessary to correct the rashness of the democratic element, as the latter is to check the overbearing selfishness of the former.’\footnote{Ibid., quoting W.A. Duncan,\textit{ A Plea for the New South Wales Constitution}, Sydney: Waugh & Cox, 1856.} Thus the second chamber, at least, could act a foil against democratic excess, if the second chamber was comprised of members holding a respected status in the society and selected by nomination, perhaps by the lower house, or where eligibility to stand for election was governed by rules such as a property qualification.\footnote{Ibid., 53-5.} In Hume’s model, civic republicanism, and hence liberalism, was largely placed in a defensive position against the more vigorous utilitarian influence.

Kelly disagrees that utilitarianism and liberalism are separate, noting that:

the subordination of liberty within a utilitarian framework by rendering an account of freedom in terms of security, does not preclude a defence of Bentham’s utilitarian political morality as substantively liberal. He rejects the presumptive argument for liberty, and it is this which is responsible for the view that he cannot have been a liberal. … the substance of any commitment to liberty is a pattern of rights which
provides the framework of personal inviolability within which freedom obtains. This suggests that the provision of security is a necessary condition of liberty and that the two concepts are connected.\footnote{Kelly, Utilitarianism and Distributive Justice, 103.}

Nevertheless, Kelly’s argument is dependent upon whether one sees the ‘personal inviolability’ provided by rights in the Lockean negative sense, or in the more modern conception of positive rights. If rights are merely a space in which to operate, providing the individual with freedom from interference, then the security they provide does not run to a positive liberalism. Linking liberty to utilitarianism via security provided by negative rights does not answer Hume’s argument.

Michael James notes that the Benthamite influence has acted powerfully on the way constitutional command theory has informed constitutional practice in Australia. This fundamentally affects the attitudes of politicians and the population in their perception of what government is for, and their attitude to liberty.\footnote{James, “The Constitution in Australian Political Thought,” 13-5.} James notes that British constitutional theory and practice underwent a profound revolution between ‘the seventeenth and eighteenth centuries, when Britain was colonising America, and ... the nineteenth century, when the Australian colonies were being formed’.\footnote{Ibid., 11.} James argues that Australian constitutional practice:

was based on Jeremy Bentham’s revival of Hobbes’ command theory of law, according to which laws were to be understood solely as expressions of the will of the sovereign. Bentham found himself, consequently, in agreement with those who argued that the constitution did not prescribe the separation of powers; the whole idea of such a separation was nonsense, since there must ultimately exist a unitary source of law which was itself above the law.\footnote{Ibid., 13.}

And thus:

When Bentham was converted to the cause of radical parliamentary reform, then, it was not out of any concern for individual liberty. Rather, his aim was to ensure that the unlimited powers of the sovereign would be used to promote the welfare of the community as a whole rather than the ‘sinister interests’ of the ruling elites. This required, he argued, the transfer of sovereignty to the House of Commons alone, and an
extension of the suffrage to a point not far short of universality; only if the members of the sovereign body were made fully dependent upon the people for their tenure of office could they be trusted to govern in the public interest.  

For James individual liberty was subservient to the welfare of the community, as expressed through the legislature, informed by the enfranchised adult population.

Fears of mob rule, despotism, a dilution of liberalism, or detachment from liberalism are in part predicated upon a sense of what might be the practical outcome of Bentham’s system. In the nineteenth century, Dicey reported a substantial change in social cohesion as a result of constitutional reforms:

[The indirect consequences of the change which identified the sentiment of Parliament with the sentiment of the bulk of the nation have been even greater, though less immediately notable than its obvious results. The policy of 1832 was at bottom a policy of conciliation. From that date to the present day English statesmanship has seriously attempted to reconcile every class of the nation by obliterating the distinctions or divisions caused by unjust or impolitic legislation. Churchmen and Dissenters, Protestants and Catholics, manufacturers and artisans, the Church and the people, have drawn nearer and nearer to one another, partly through the destruction of the legal barriers of privilege by which they were divided, partly through the spread of sentiments which were, so to speak, hemmed in by walls of legal and social difference. The work is not complete, it will not be completed for years. But no one who is not a confirmed pessimist can deny that a policy of justice, of humanity, and of sympathy has assuaged the bitter passions of class hatred which, by the universal testimony of persons belonging to every kind of religious or political school, distracted English society from, say, 1815 to 1850.]

Social cohesion might act as a buffer against majority oppression of one class or group over another. Coupled with Bentham’s view that utilitarianism encourages rational debate, there is a potential foil against oppressive state action.

The rise of the Benthamite polity, with its tendency towards state action cast as positive liberalism, has also been characterised as enabling a move towards state

970 Ibid., 14.
socialism later in the nineteenth century. J.S. Mill was inspired to write ‘On Liberty’ as a caution for the majoritarian potential for democracy, but he acknowledged that, with the expansion of the franchise, new and useful political philosophies were being forged that might overtake older ideas. Thus, Mill wrote of a mixed system, adopting the best arrangements from both the negative liberal and socialist political philosophies. Butlin has recognised that by the late 1800s the Australian economy had, indeed, become a mixed system of socialism and free-enterprise.

As noted in the introduction to this chapter, Sawer has observed that by the end of the nineteenth century Australian politics had moved towards a ‘new liberalism’ that some scholars have painted as having little or no genealogical relationship with liberalism as it was previously understood. This system emerged with the use of political tactics noted by J.S. Mill in 1873. Mill suggested that, for a population ‘habituated to the use of legal and constitutional machinery’, change will be brought about by use of ‘the press, public meetings and associations, and the return to Parliament of the greatest possible number of persons pledged to the political aims of the working classes’. But this tendency may know limits in a population attuned to liberty. Despite his serious misgivings about collectivism, and his concerns about the potentially despotic power of the legislature, Dicey suspends judgement:

On a movement which has not yet reached its close, it is impossible to pronounce anything like a final judgment. It may be allowable to conjecture that, if the progress of socialistic legislation be arrested, the check will be due, not so much to the influence of

972 McNaughtan, "Colonial Liberalism,” 111. McNaughton’s timeline for this shift begins with the 1850s constitutions, progressing over three decades. Roberts points to the role of the legislature in bringing reform in colonial Australia. He also includes a discussion of ‘republican virtue’. In Roberts, "Liberalism: The Nineteenth Century Legacy,” 45-50.


978 Mill, "Chapters on Socialism, 1879," 707. The essays were written in 1873, just prior to Mill’s death.
any thinker as to some patent fact which shall command public attention; such, for instance, as that increase in the weight of taxation.979

**Conclusion**

Post-convict Australia was effectively born with the dual concept of the active state, coupled with the idea of individual and economic freedom. These have operated in tandem. Hugh Collins refers to the institutional means developed by Bentham (and substantially implemented in Australia), that ‘reconcile[s] the pursuit of individual interest with the achievement of the sovereign interest or greatest happiness’.980 For Collins, this Benthamite influence was substantially introduced through the early success of Chartism in Australia.981 The net result is a society that values individualism, but will impose restrictions for the common good, and consequently a political environment that looks like false consciousness to both those who seek collective action and those who value the freedom of the individual.982 Accordingly, in 1930 Keith Hancock observed the possibility of a hybrid polity in which Benthamism might operate:

> To the Australian the state means collective power at the service of individualistic rights. Therefore he sees no opposition between his individualism and his reliance on government.983

What appear as contradictions in ideological principles in Australia can be conceived as the expression of a single underlying political philosophy, but it is difficult to characterise it as an advanced form of positive liberalism bordering on socialism, or

981 Ibid., 151.
982 Collins writes that for the supporters of *laissez-faire* ‘Theirs are the certainties and disappointments of scriptwriters for a production they will never direct, in ’ibid., 158. On the other hand ‘the economic and political history that so offends the neoconservative proves scarcely more tractable for the neomarxist.’ (159.) See also Hancock, *Australia*, 223 for a similar point. Russel Ward has suggested that Australia in 1977 had socialistic tendencies that were designed to regulate and ameliorate the functioning of *laissez-faire* capitalism. See Ward’s introduction to Mètìn, Mètìn: *Socialism without Doctrine*, 6.
983 Hancock, *Australia*, 72.
populism which only appropriates from liberalism what it needs, or again, negative liberalism supplemented by limited state action. Scholars have found all these in the Benthamite polity. Utilitarianism in practice in Australia appears to defy neat categorisation. There is no reason why the will of the majority should accord with any particular ideology, and it is likely that the prevailing expression of utilitarianism shifts over time, emphasising varying aspects of select political ideologies. Experience and prevailing circumstances have, and will continue to dictate which aspects are emphasised at any one time. The concept of positive liberalism is a useful tool by which to assess those shifts, but so are the concepts of socialism, negative liberalism, civic republicanism, and populism. In practice, any attempt to hold the utilitarian polity to one of these concepts will likely fail. Similarly, attempts to define the polity by the tenets of one of these concepts has also failed to produce an analysis that satisfies all observers. Scholars have proposed widely divergent characterisations of the Australian polity.

Benthamism has been described as ‘security liberalism’, a form of positive liberalism. While Jones’ proposition, in his work *Republicanism and Responsible Government*, that positive liberty had an important place in colonial development is probably accurate, the theory and implementation of Australian positive liberalism can be traced more readily to the Benthamite utilitarians than to his collectivist version of civic republicanism. As Jones points out, the term civic republicanism and its ‘ancient advocates’ was largely absent from the discussions of the era.984 Meanwhile, references to the ideas of the utilitarians were ubiquitous, and the activities of the utilitarians themselves were profoundly influential. Despite the prominent place of Benthamite utilitarianism in Australian history, Jones overlooks it in his discussion. The tendency towards positive liberalism that Jones identifies can be attributed, to some considerable degree, to utilitarianism. L.J. Hume’s argument in relation to the presence of civic republicanism in Australia is more convincing. He places it as a competing doctrine against a populist utilitarianism. The major structural effect that Hume identifies as emerging from civic republicanism is the presence of upper houses that defy key principles of the Charter. These were introduced to create a balance

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between democratic and conservative forces and tended towards classic liberalism rather than security liberalism.\footnote{Hume, "Foundations of Populism and Pluralism," 52.}

Characterising the expression of liberalism in Australia during the nineteenth century is difficult. There was a shift towards greater state action during the century and thus liberal characteristics of the polity were in constant evolution. Also, the Australian colonial forms of government were undergoing rapid change during the first half of the century, and were still evolving during the second. Additionally, the expectations of a democracy with a powerful state to express its will were still developing. Rosen’s suggestion that Bentham developed a form of security liberalism is useful, but by the end of the century this had shifted far enough into socialism that it has been painted by some scholars as unrecognisable as liberalism at all. Nevertheless, the labels used to indicate various political ideologies should be weighed against actual government action. When Jones, Sawer, and other commentators refer to positive liberalism, New Liberalism, or socialism as dominant forces during periods of the nineteenth century, they are referring to systems which, at 1900, involved total government taxation of roughly five percent of gross domestic product. Including the incomes of state owned enterprises such as post and rail, the total comes to some twenty per cent.\footnote{Today the figure stands between thirty and forty percent. See Sam Reinhardt and Lee Steel, "A Brief History of Australia’s Tax System," in APEC Finance Ministers’ Technical Working Group Meeting (Khanh Hoa, Vietnam, 2006), 2 and Julie Smith, Taxing Popularity: The Story of Taxation in Australia (Canberra: Federalism Research Centre, 1993), 10. See also “Taxation During the First 100 Years of Federation,” Australian Bureau of Statistics, http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article472001?opendocument&tabname=Summary&prodno=1301.0&issue=2001&num=&view; [22 February, 2015]. This puts the figures for total taxation revenue per head as a percentage of GDP per head at six percent at 1901 and thirty percent at 1999.}

Moreover, the books of legislation were vastly thinner at that time than they are today. What appeared as positive liberalism or socialism to a generation during the second half of the nineteenth century could easily be painted by commentators of a later generation as an almost unbridled and dangerous expression of negative liberalism, should they be so minded. Melleuish’s observation that the characterisation by some scholars of late nineteenth century Australia as highly state-centred reflects those

\footnote{Butlin puts the total figure for government expenditure in 1901 at 20 per cent of GDP. See Butlin, Government and Capitalism: Public and Private Choice in Twentieth Century Australia, 5. Text at 13 and 17 suggests that this includes government enterprises such as rail and post. These would also have produced an income to offset cost.}
scholars’ political motivations probably has some merit. There is little question, however, that utilitarianism was an important element in the ideas of the times, and that this was often expressed through legislative interventions and state projects in a manner consistent with Rosen’s idea of positive liberalism.
Chapter 7: Conclusion

that prince of Liberals, the founder almost of the modern democratic system. (Sydney Morning Herald, 17 June, 1859, 4)\textsuperscript{987}

This thesis has discussed the importance of Benthamites and Benthamism to Australian colonial political development during the first half of the nineteenth century. In chapter two the thesis outlines some aspects of Bentham’s constitutional thought, and the adoption of his ideas by his followers. It finds that Bentham’s’ ideas shifted over time, and that the philosophical radicals adopted many of his democratic ideals. They took on electoral reforms, in particular the secret ballot, which informed his earlier and later writing, constitutional reforms consistent with his earlier writings, and adopted a view about the use of violence that is most readily found in his earlier writings, but is not inconsistent with his later writings. In the next chapter, the thesis examines the Benthamite influence on one of the most important documents of British political reform during the nineteenth century, the 1838 Charter. The Charter reflects many aspects of the Benthamite political program and method, and its effects were felt in Australia for at least the following twenty years as a program for change, including the pursuit of change by peaceful means.

After canvassing this background material in England in chapter three, the thesis shifts its focus to Australia, where the influence of Benthamites and Benthamite ideas is examined in relation to the evolution of the colonial constitutions in Australia. Members of the Benthamite circle had a profound role to play in the establishment of these constitutions, as well as in the foundation of Australian political culture in general. This influence was apparent both in Britain and in Australia. The move towards democracy, with its expression of the Charter and the Durham Report, is traced. Having established the general Benthamite tenor of political change in the colonies, chapter five examines the role of three individual politicians, and their relationship to the Benthamite circle and Bentham’s ideas. Their role included theorising and implementing responsible government for the colonies, as well as drafting world-leading ballot legislation in Victoria and South Australia. Chapter six

\textsuperscript{987} Sydney Morning Herald, 17 June, 1859, 4, acknowledging the place of Bentham in liberal democratic reform, and associating liberalism with democracy.
has assessed the Benthamite contribution to Australian political ideological expression. It finds the Benthamite polity consistent with government interference in the lives of citizens in order to increase happiness. The characterisation of that expression in analytical literature includes references to concepts such as positive and negative liberalism, socialism, and civic republicanism. The chapter finds these analytical concepts problematic when applied to the Benthamite influence on the Australian polity.

In total, the thesis has examined the important place of Benthamism in the set of political ideas settlers brought with them to Australia during the first half of the nineteenth century. It has examined the influence of these ideas on the political changes those settlers wrought. Benthamites were personally associated with the development of democracy in colonial Australia. The effects of their intervention arguably include the diminution of natural rights as a focus for political change, the elevation of legislation as a tool for social change, the formal equality of individuals in Australia, an empowered legislature, and, more generally, Australia’s world-leading innovations in democracy. Perhaps the most important contribution of all to Australian politics has been the use of Benthamite mechanisms for peaceful political change. That a society is able to change itself by peaceful means is one of its most valuable attributes.

An acknowledgement of Bentham’s influence in nineteenth century Britain is found in the constitutional lawyer Albert Venn Dicey’s *Modern English Law*:

> The history of modern English law is the history of a gigantic revolution produced by the ideas of one man. Under the influence of Bentham, half a century or more of stagnation has been followed by half a century of innovation... Hardly a single portion of English law has escaped the influence of reform. The constitution of Parliament has been changed. ... For half a century the thoughts of Bentham have been working in the minds of men, many of whom have forgotten or have never known the name of the great jurist. The fruit of his ideas has been a movement of which the last generation saw the beginning and of which the present generation will not see the end.988

This thesis has sought to show how this influence was strongly felt in the Australian colonies.

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988 Dicey, "Modern English Law," 273.
The thesis challenges some interpretations of the origins and development of democracy in Australia. If one adopts an Anglocentric view, the 1838 Charter arguably failed, though its points were eventually implemented. If one adopts an Australian nationalist view, the embracing of the principles of democracy can be something of a mystery, and events such as Eureka gain a status the evidence suggests is unwarranted. But if the stories of the Charter and Australian democratic development are linked together, and the involvement of the Benthamite radicals is included, the story becomes a coherent whole. The Charter was implemented with important contributions by radicals associated with Bentham, some of whom were associated with both campaigns. The results of this and other Benthamite campaigns and ideas are still felt in Australia, as identified by Hugh Collins.

**Future research**

The topic of Benthamism in Australia is full of potential. It is noted in chapter one that Richard Mills began his thesis at the London School of Economics with the hope of tracing the philosophical radical influence up to the implementation of the 1850s colonial constitutions. He got as far as 1842. This thesis was intended to reach federation. It hardly reached beyond the 1850s. As implied by Dicey, there is much in the topic.

Useful further research could include tracing the influence of Benthamism upon the Australian constitution and into federated Australia generally. For example, Charles Cameron Kingston, in a speech to his electorate after first being elected to the South Australian parliament, stated that he sought the greatest happiness for the greatest number.989 George Kingston, his father, brought with him from London a philosophical radical commitment to democracy, which his son carried forward. Dicey, too, had a substantial influence on the framers of the constitution. The works of John Austin, a key Benthamite, were important to Dicey’s conceptualisation of sovereignty, and Dicey took much else from Bentham.

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989 The *South Australian Register*, 18 March, 1881, 7.
The expression of liberalism in the Australian colonies during the second half of the nineteenth century, with reference to Bentham, would also reward a book-length study. The question of the balance between the state and the individual, and the most effective economic system to achieve positive outcomes was an important intellectual issue during the latter half of the nineteenth century. In 1879, Charles Pearson identified seven economists with particular influence on the colony of Victoria. He stated:

J.S. Mill, Fawcett, Thorold Rogers, Cliffe Leslie, Bagehot, Freeman, Cornwell Lewis, &c., are perhaps not as well known or as judiciously estimated in Victoria as in England, but they here exercise incomparably more influence.

These economists were engaged in a discussion of the means by which the poor may be lifted with minimal restraint upon ambitions for liberty. Of the seven names selected by Pearson as having particular influence in Victorian liberal ideas at least four – Mill, Bagehot, Cornwell Lewis, and Fawcett – had strong links with Benthamite utilitarianism. Further, the ideas of Cliffe Leslie and Rogers were in strong accord with the ambitions of the utilitarians. Pearson himself acknowledges the influence of Bentham’s ideas when discussing the place of the intellectual in Parliament:

Bentham’s thoughts are the source of a great deal that is best on subjects of such engrossing political interest as the framing of constitutions and judicatures, codification, the simplifying of the rules of procedure and evidence, the reform of criminal law, and even some economical matters.…

A close study of Pearson, the economists he names, and other British and Australian participants, would help identify the relationship of Bentham’s ideas to the expression (or various expressions) of liberalism in the Australian colonies during the second half of the nineteenth century.

In conjunction with such a study, the influence of the works of J.S. Mill and T.H. Green, amongst others, in the adoption and growth of ‘new liberalism’ would be a useful extension to the observations of Marian Sawer in her book on Green, Ethical State. While Sawer appears to draw a divide between ‘new liberalism’ and

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Bentham’s influence, in fact it is likely that there is a significant overlap between the two. For example, Sawer claims Charles Kingston as having been influenced by the ‘new liberalism’ of Green.\textsuperscript{992} Yet, as the son of George Kingston, and as the product of a state built on Benthamite lines, he might also be understood as representing a strong Benthamite heritage.\textsuperscript{993} As Davies observes:

That the ‘greatest happiness principle’ could be used to justify a much wider and more extensive degree of government intervention than Bentham had conceived of was something many of his followers, as personified in the work of Edwin Chadwick, clearly recognised. They certainly did not believe they were departing from utilitarian principles by sponsoring government interference in the economy, and they began to see the state as having a pivotal role to play in promoting the welfare of the people and, as a consequence, their general happiness.\textsuperscript{994}

And Crisp states in relation to Charles Kingston:

if not quite a State Socialist all the time, he was certainly a distinctly more radical and interventionary Benthamite than his father. He worked steadily in the economic and social spheres for ‘the greatest good of the greatest number’. Kingston’s political objectives, like not a few of his statutorial and constitutional achievements, rested on a view of Government as having – and properly having – an active, caring, cleansing, compassionate and nourishing role.\textsuperscript{995}

The topic of the evolution of Benthamism and a possible overlap with ‘new liberalism’ in Australia during the approach to, and following federation, merits further investigation. John Stuart Mill’s influence, for example, might be usefully examined in relation to the evolution of Benthamism, ‘new liberalism’, and the rise of the interventionist state.\textsuperscript{996}

\begin{itemize}
\item \textsuperscript{992} Sawer, "The Ethical State: Social Liberalism and the Critique of Contract,” 80.
\item \textsuperscript{993} The \textit{South Australian Register}, 18 March, 1881, 7. Note that this is not exactly the Benthamite formula, and it would be of interest to examine the use of the word ‘good’ in the place of ‘happiness’ in some repetitions of the formula.
\item \textsuperscript{994} Axel Kirk Davies, \textit{The Utilitarian Foundations of Collectivism}, Libertarian Heritage (London: Libertarian Alliance, 1995), 6. Chadwick belongs to an earlier period than Kingston, and worked in England. Nevertheless, the observation holds true for the influence of Bentham beyond the 1850s.
\item \textsuperscript{995} Crisp, \textit{The Federation Fathers}, 279.
\item \textsuperscript{996} Sawer refers to J.S. Mill as having a role during the period during which ‘British liberalism evolved new conceptions of liberty...’ Sawer, "The Ethical State: Social Liberalism and the Critique of Contract,” 69.
\end{itemize}
As Collins hints, too, the limit of Green’s approach, and its subsequent decline might also be understood within the Benthamite tendency to resist extremes of either the left or the right.\footnote{For acknowledgement of the decline see ibid., 89.} Aside from the influence on democratic institutions, there may be many other aspects of the Benthamite influence in Australia beyond those already referred to above: social mores have been attributed to Benthamism;\footnote{O’Neill, "Tall Poppy Syndrome: Bentham’s Utilitarianism in Australia;” Collins, "Political Ideology in Australia,” 157.} the Australian understanding of rights is arguably shaped by the Benthamite influence;\footnote{Collins, "Political Ideology in Australia,” 161.} important aspects of the design of the federal system can be attributed to Benthamite democratic theory;\footnote{Nicholas Aroney, "Imagining a Federal Commonwealth: Australian Conceptions of Federalism, 1890-1901," Federal Law Review 10 (2002), 15-18; Collins, "Political Ideology in Australia,” 151.} even the politically potent idea of the ‘fair go’.\footnote{O’Neill, "Tall Poppy Syndrome: Bentham’s Utilitarianism in Australia,” n.p.}

A full examination of the implementation of electoral laws during the mid-1850s across the Australian colonies would be useful. The seriously flawed default to Eureka as an explanation for Australia’s political freedoms should be examined alongside such a study.

The influence of Benthamism on the question of women’s franchise would make an interesting topic. While women’s voting had been introduced in some states of the United States, in each case it lapsed. Women’s voting continuous to the present was first introduced in New Zealand, and women’s voting plus the capacity to stand for parliament were first introduced in South Australia. Of all polities in the world, these two were perhaps the most influenced by Benthamite ideas and Benthamite politicians. Further, a study of the role of women in the promulgation of utilitarian ideas could be rewarding. Women such as Millicent Fawcett, Catherine Helen Spence, Harriet Taylor, Harriet Grote, Harriet Martineau, Sarah Austin, and Frances Wright all played a part. The writings of Harriet Martineau, for example, were substantial, and her readership extended as far as the young Princess Victoria.\footnote{Wheatley, The Life and Work of Harriet Martineau (Fair Lawn: Essential Books, 1957), 103.}
At the international level, there are interesting topics to pursue with a direct relationship to this thesis. For example, it might be useful to examine the difference between the United States and Australia in relation to the Lockean influence on the USA, and the Benthamite influence on Australia, especially with regard to negative and positive liberty.\footnote{See for example the curriculum by Tim O’Neill, in O’Neill, "Tall Poppy Syndrome: Bentham’s Utilitarianism in Australia."} It might be worthwhile examining the differences of opinion between Hamilton and Jefferson in relation to virtue and the worth of urban life, compared with the urban-friendly politics of the Benthamites.

In the UK, a study of the life of the utilitarians in Queen’s Square in London might be rewarding. Some of the most influential people in the nineteenth century lived next door to each other – Bentham, the Mills, the Bullers and the Austins. In this small stretch of real estate substantial elements of post-convict Australia were invented.

There is a useful in-depth and internationally-flavoured biography waiting to be written about Henry Chapman and his times in London, Canada, New Zealand, Tasmania and Victoria. Some of his papers are held in the Rosenberg private collection in New Zealand.\footnote{The existing biography, Spiller, The Chapman Legal Family, is an excellent beginning, but there is much more that could be done to create not just a life, but a portrait of an era.}

A student of the common law might be piqued by an article in the Hobart paper The Courier, recording the tensions between an old school judge and a Benthamite reformist puisne judge.

The Chief Justice [of Van Diemen’s Land], imbued with the utility and correctness of those strict and exact forms with which the wisdom of our ancestors invested the operations of the law, adheres with tenacious pertinacity to their advocacy, while the Puisne Judge favours the extension of those new lights, refulgent in the temple of justice, as well as elsewhere, with which the advance of the schoolmaster, propelled by Jeremy Bentham, has illuminated mankind.\footnote{The existing biography, Spiller, The Chapman Legal Family, is an excellent beginning, but there is much more that could be done to create not just a life, but a portrait of an era.}

\footnote{The Courier (Hobart), 19 February, 1841. Referring to Algernon Montagu, Puisne Judge of the Supreme Court of Van Diemen's Land. Of Montagu, P.A. Howell notes that his father, Basil Montagu, Q.C. had been ‘a leader of the English law reform movement in the first decades of the nineteenth century’ Howell continues: ‘[Algernon Montagu] had steadily gained popularity because of his zeal in sweeping a clean broom through the law's unnecessary quirks, sophistries and superfluous verbiage. He was hailed as “the disciple of Jeremy Bentham and Lord Campbell”’. P.A. Howell, "The Van Diemen's Land Judge Storm,” University of Tasmania Law Review 2(1966), 254. In the final sentence, Howell is}
The puisne judge, Algernon Montagu and his father Basil were both Benthamites and legal reformers. The judgments of Algernon Montagu in Hobart deserve examination to help trace this reforming influence. Currey, too, makes reference to Benthamite reform, but in the New South Wales system:

The first President of the Legislative Council and, for many years, its ablest member, was Sir Francis Forbes, the first Chief Justice of New South Wales. Being a Benthamite, he naturally followed closely the movement for law reform initiated by his master, and saw to it that such statutory changes as were made during his lifetime were adopted by the local Council. Sir James Dowling and Sir Alfred Stephen, his successors in the Chief Justiceship, emulated his example.\textsuperscript{1006}

This thesis has already noted the influence of Henry Chapman in New Zealand and Victoria. The broader influence on colonial and English common law by these and other reforming judges who looked to Bentham for inspiration would make an interesting study.

The manifestation of a rights discourse in Australia is another topic that might bear examination in relation to Benthamism in Australia. As noted by Collins, the doctrine of natural rights has had little play in Australia. Yet, Helen Irving observes in relation to a Bill of Rights:

That Australia is unique in not having a Bill or Charter of Rights is held up by proponents as a defect, even a matter for shame. But unless and until Australia’s record in protecting rights is manifestly and consistently weaker than in other comparable countries, there is no cause for shame. Currently we have a robust, complex system of rights protection, and an effective separation of powers. We should work on improving them, not supplanting them.\textsuperscript{1007}

Human rights, it should be noted, are often thought of as natural rights, however, rights may have several origins. The use of common law customary rights (which quoting from the \textit{Launceston Advertiser}, 16 August, 1884. The father, Basil Montagu, is also described as a Benthamite reformer in John McLaren, \textit{Dewigged, Bothered, and Bewildered: British Colonial Judges on Trial, 1800-1900} (Toronto: Francis Forbes Society for Australian Legal History, 2011), 160.

\textsuperscript{1006} Currey, "Influence of the English Law Reformers," 235.


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Bentham disliked) has doubtless had an influence in Australia. Further research into the place of legal rights, customary rights and natural rights, and the interplay of the last two with Australian democracy and legal positivism may well be rewarding.

Modern Times

Happiness has become a voguish, and much discussed policy objective. David Cameron, a Conservative Prime Minister of the UK, has argued that improving people’s happiness is an important goal for government. This is not only a conservative phenomenon. In 2002 the strategy unit of the British Labour government had researched the idea in its report Life Satisfaction: the state of knowledge and implications for government. The UK Office of National Statistics in 2010 planned to include questions about happiness in future surveys. In the US, Ben Bernanke, Chairman of the Federal Reserve, has argued for the importance of considering happiness in government policy, and that happiness is not related only to income. Derek Bok, recent president of Harvard, echoes the point in The Politics of Happiness: What Government Can Learn from the New Research on Well-Being. Meanwhile, his wife, Sissela Bok, visiting fellow at Harvard, wrote the book Exploring Happiness. A book by the noted US legal academic, Richard Posner, is entitled Law and Happiness, further emphasising the current place of happiness in

1013 Sissela Bok, Exploring Happiness (New Haven: Yale University Press, 2010).
thinking at the highest levels. In Australia, Professor Nilss Olekalns says we need a measure of quality of life in national measurements.

Australia has been running on the political foundation of happiness for nearly two centuries. According to data collected from independent surveys by R. Veenhoven at Erasmus University, Australia is the fifth happiest nation in the world, equal with Finland, after Denmark, Switzerland, Austria, and Iceland. The International Commission Of Jurists – Australia, in its Submission to the Australian National Human Rights Consultation, describes Australia as ‘one of the most harmonious yet culturally diverse societies in the world’. It is not unreasonable to suggest that one reason for this is the long tradition in Australia of the government acting as a powerful servant of the people, fulfilling the Benthamite model. Benthamite utilitarianism significantly informed many or most important aspects of colonial development. Land, immigration, democracy, legislation, capitalism, socialism and liberalism, and many other important aspects of Australian cultural, political and economic development bear the hallmarks of Benthamite utilitarianism. Utilitarian policies, legislation, and political movements, came to Australia unlabelled. Their origin in the idea of the promotion of the greatest happiness was often obscured. But they were introduced by people motivated by this aim and implemented within a framework governed by this intention. Utilitarianism has quite possibly contributed to Australia more than any other single political, social, or cultural influence.

That Benthamism continues to inform policy makers in Australia was confirmed by Terry Moran on his appointment as head of the Commonwealth Public Service in 2008. He commented:

I have had a fortunate career, having often been in jobs where I have been able to make a difference. It’s not been about boring administration, but about improving things – the Benthamite concept that the role of government is to achieve the greatest good for the greatest number.¹⁰¹⁸

Few people outside of academia, and perhaps the upper echelons of the public service, are aware of the role of Benthamism in Australia, and, given the paucity of literature on the subject, perhaps fewer are aware of the breadth and depth of the influence. Bentham’s influence is so ubiquitous as to be ‘in the air’ – helping provide Australia with its well-ordered state, and the means that make the society one of the most content and successful in the world.

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