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Jeremy Bentham's Law Reform Networking around *The Jurist*, c. 1827–1833

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Abstract

In March 1827, young lawyers Henry Bickersteth (1783–1851), Joseph Parkes (1796–1865), and Sutton Sharpe (1797–1843) established a legal periodical titled *The Jurist* without Jeremy Bentham (1748–1832)'s knowledge. However, the journal bestowed upon Bentham the title of the leader of the law reformers. The journal attracted a multitude of contributors, primarily lawyers, and published 97 articles from 1827 to 1833. This paper identifies 19 individuals involved in the publishing project and reconstructs the networks surrounding Bentham, the milieu they inhabited, and their interactions with him. By the late 1820s, Bentham had emerged as a significant source of inspiration for a considerable group of young lawyers dedicated to reform. In their writings, Bentham's utilitarian legal philosophy intersected with various political discourses, contributing to the partial popularization of the Enlightenment concept of a rational legal system. *The Jurist* elicited responses from renowned newspapers and legal writers regarding the optimal methods for enhancing the common law. This examination of the journal's membership and its public impact suggests that Bentham's influence on law reformers was more substantial than usually estimated in current historiography.

Keywords: Jeremy Bentham, *The Jurist*, the common law, law reformers, networks

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Preface

The Jurist was a legal periodical published in the late 1820s and early 1830s by a group of young law reformers who were closely associated with Jeremy Bentham. Although it was established without Bentham's knowledge, *The Jurist* cordially recognized the esteemed philosopher's leadership. The journal was aimed to become England's first scientific legal periodical and make a substantial contributions to the reform of English law. The journal attracted a multitude of contributors, primarily lawyers, and published 97 articles on various legal topics, establishing a public platform for disseminating innovative and foreign ideas on law and politics. *The Jurist* aligned with Bentham in advocating for the codification of common law and popularized his arguments through accessible language. The journal also embraced a relatively moderate rhetoric to mitigate political controversy. However, it still displeased conservative lawyers and provoked hostile reactions. The conservatives were apprehensive about the growing popularity of *The Jurist* among young professionals, particularly the allure of the Benthamite interpretation of legal science.

Bentham opposed the notion that the common law could serve as a valuable legal fiction and advocated for its complete replacement with a

comprehensive legal code known as Pannomion.[1] Furthermore, following the failure of his Panopticon prison scheme in 1803, Bentham developed a personal animosity towards the English judiciary, regarding them as corrupt, oppressive, deceitful, and arbitrary. Bentham even coined a unique phrase, "sinister interests," to describe the advocates of the common law.[2]

There are two key aspects of Bentham's critique of the common law that contribute to a foundational understanding of his reception during that time. First, in theoretical terms, Bentham refuted the idea that the law was a privileged or divine knowledge accessible only to a select few. Common law theorists had contended that law could not be created but could only be discovered and comprehended through specialized training. On this basis, they advocated for limited access to the law. Bentham regarded this argument as an inherently flawed since he was adamant that law should be accessible to all individuals and that justice should be made available to the general public, particularly the underprivileged, with the aim of maximizing the overall happiness of the mankind.

Second, to persuade people to accept his form of jurisprudence, Bentham made great efforts in exposing the flaws in judicial administration rooted in common law reasoning. From *Truth versus Ashhurst* in 1793 to *Rationale of Judicial Evidence, specially applied to English Practice* in 1827, Bentham meticulously reported his observations, which he shared with his friends and target audiences. He argued that the common law was a system crafted by English judges and professional lawyers to serve their own nefarious interests, and elaborated on how the contemporary common law procedures facilitated corruption. In *Rationale of Judicial Evidence*, Bentham asserted the existence of

1 Philip Schofield, *Utility & Democracy: The Political Thought of Jeremy Bentham* (Oxford: Oxford University Press, 2006), p. 240.

2 Schofield, *Utility & Democracy*, p. 111.

at least 12 prevailing rules that perpetuated corruption.[3] Bentham provided contemporary reformers with extensive arguments, terminology, and information to substantiate the claim that the absurdities of the common law revealed not just intellectual shortcomings but also moral deficiencies among officials and professionals.

The extent of Bentham's influence on opinions about English law reform in the 1820s and 1830s has been the subject of substantial scholarly debate. At one time, Bentham's ideas were regarded as the dominant ideology in an "age of law reform" until the publication of David Lieberman's interpretation of the Baconian tradition, specifically the "statute consolidation" approach in 1989.[4] Lieberman, Michael Lobban, Philip Handler developed a new interpretation that tends to downplay the significance of Bentham's influence.[5] They argue that

3 John Bowring, ed., *The Works of Jeremy Bentham* (Edinburgh: William Tait, 1838–1843), hereafter Bowring, vol. 7, p. 225.

4 The "age of law reform" is the influential Whig law reformer Henry Brougham's description. See Henry Brougham, Baron Brougham and Vaux, *Speeches of Henry lord Brougham, upon Questions Relating to Public Rights, Duties and Interests*, vol. 2 (Edinburgh: A. and C. Black, 1838), p. 287; David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-century Britain* (Cambridge: Cambridge University Press, 2002). It should also be noted that William Thomas's monograph in 1979 played a key role in re-evaluating Bentham's impacts in the historiography of politics in early nineteenth-century England, and Thomas' study encouraged historians to identify more traditional reformist approach, but his interpretation of Bentham's utilitarianism remains controversial. See William Thomas, *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817–1841* (Oxford: Clarendon Press, 1979); Boyd Hilton, *A Mad, Bad, & Dangerous People?: England 1783–1846* (Oxford: Oxford University Press, 2008), pp. 328–332; Fred Rosen, "Review of William Thomas, *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817–1841*," *The Bentham Newsletter*, no. 5 (1981, London), pp. 61–63.

5 David Lieberman, "The Challenge of Codification in English Legal History" (Presentation for the Research Institute of Economy, Trade and Industry, 2009), pp. 1–15. Michael Lobban, *The Common Law and English Jurisprudence 1760–1850* (Oxford: Clarendon Press, 1991), pp. 185–222; Lobban, "'Old wine in new bottles': the concept and practice of law reform, *c*.

Francis Bacon (1561–1626), a seventeenth-century jurist, exerted a stronger influence on Bentham's contemporary lawyers. Bacon's recognition of the superiority of common law over statutes, as well as the simplification and rationalization of statutes, already had been studied and endorsed through legislative practices in the eighteenth century.[6] Furthermore, with this context taken into consideration, Bentham's disagreements with prominent contemporary law reformers like Henry Brougham (1778–1868) have been thoroughly examined and highlighted.[7]

While previous studies primarily were focused on Bentham's intellectual output, the present paper is an attempt to reconstruct Bentham's networking, which represents the lived aspect of the dissemination of the issues and the reform ideas. According to Philip Schofield, Bentham employed a dual strategy of publishing his projects and engaging in private networking. Frequently, Bentham accessed prominent politicians and lawyers based on information obtained through his private networking. Conversely, networking through correspondence and conversations offered reliable channels for Bentham to engage in lobbying and mobilize his political connections.[8] Schofield demonstrates that

1780–1830," in *Rethinking the Age of Reform: Britain 1780–1850*, ed. Arthur Burns and Joanna Innes (Cambridge: Cambridge University Press, 2003), pp. 114–135; Lobban, "Theories of Law and Government," in *The Oxford History of the Laws of England,* vol. 11, *1820–1914 English Legal System*, ed. William Cornish et al. (Oxford: Oxford University Press, 2010), pp. 72–84. Philip Handler, "James Mackintosh and Early Nineteenth-Century Criminal Law," *The Historical Journal* 58, no. 3 (September 2015, Cambridge), pp. 757–779.

6 The early nineteenth century saw the upsurge interest of Bacon as a national intellectual hero. See Joanna Innes and Arthur Burns, "Introduction," in Burns and Innes, eds., *Rethinking the Age of Reform: Britain 1780–1850*, pp. 37–38.

7 Michael Lobban, "Henry Brougham and Law Reform," *The English Historical Review* 115, no. 464 (November 2000, London), pp. 1184–1215; Chris Riley, "The Hermit and the Boa Constrictor: Jeremy Bentham, Henry Brougham, and the Accessibility of Justice," *American Journal of Legal History* 60, no. 1 (November 2019, Philadelphia), pp. 1–26.

8 Schofield, *Utility & Democracy*, p. 306; Riley, "The Hermit and the Boa Constrictor," p. 5.

in the late 1820s, Bentham became very impatient with the ruling elites, particularly such figures as Robert Peel (1788–1850) and Henry Brougham. He then turned his attention towards radical politics, placing high expectations on figures like Daniel O'Connell (1775–1847) as well as emerging pressure or lobby groups such as the Law Reform Association. Furthermore, Janet Semple, Mary Sokol, and Emmanuel de Champs have published their accounts of Bentham's networking in relation to various phenomena, including the Panopticon prison scheme during 1788 and 1811, the 1828 real property commission, and the engagement with French reformers.[9] These studies have demonstrated that by the late 1820s, Bentham had attained the status of a cultural icon of the Enlightenment among the younger generation of reformers.[10] However, there is still room for research concerning Bentham's influence on contemporary lawyers, as most emphasis has been placed on Bentham's relationship with politicians. Therefore, this article is focused on *The Jurist* as a way to examine how Bentham's ideas were received within the English legal profession during the late 1820s and early 1830s.

Several scholars have mentioned Bentham's connection to *The Jurist*. In 1829, John Diwinddy observed that *The Jurist* provided support to Bentham when his codification idea came under attack.[11] Based on various sources,

9 Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford: Clarendon Press, 1993); Mary Isobel Sokol, "Jeremy Bentham and the Real Property Commission of 1828" (PhD diss., University College London, 1994); Emmanuelle de Champs, *Enlightenment and Utility: Bentham in French, Bentham in France* (Cambridge: Cambridge University Press, 2015).

10 The idea of Bentham as a cultural icon stresses the different receptions of Bentham's theory and the ideology driven from his reputation. See Fred Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought* (Oxford: Clarendon Press, 1992), p. 7.

11 J. R. Dinwiddy, "Early-Nineteenth-Century Reactions to Benthamism," *Transactions of the Royal Historical Society* no. 34 (December 1984, London), p. 56.

David Ibbetson summarized the contributions of Joseph Parkes and Sutton Sharpe. Ibbetson suggests that the journal's clear political standing was largely shaped by Parkes' bold personality and strong convictions, as the journal "did not fight shy of advertisement of its friends' causes."[12] As to Sharpe's role, Ibbetson attributed the journal's internationalism to him. Subsequent legal historians have generally adopted Ibbetson's perspective, but they have not offered additional details.[13] The present article is aimed to provide additional details about Parkes and Sharpe, as well as discuss other contributors who have been identified, while placing Bentham at the center of this network.

1. Members

19 persons have been identified as relating to the network of *The Jurist*: Jeremy Bentham, Henry Bickersteth, Joseph Parkes, Sutton Sharpe, James Mill (1773–1836), John Arthur Roebuck (1802–1879), Henry Roscoe (1800–1836), John Samuel Martin Fonblanque (1787–1865), Edward Strutt (1801–1880), John Romilly (1802–1874), John Stuart Mill (1806–1873), James Humphreys (1768–1830), John Reddie (1805–1851), Southwood Smith (1788–1861), Edwin Chadwick (1800–1890), Jabez Henry (1775–1835), Henry Wheaton (1785–1848), Alphonse Honoré Taillandier (1797–1867), and Adèle-Gabriel-Denis Bouchené-Lefer (1796–1872). Notably, the last three individuals include one American and two French members. The formation of this network will be discussed in the following sections.

12 David Ibbetson, "Legal Periodicals in England 1820–1870," *Zeitschrift für Neuere Rechtsgeschichte*, no. 28 (June 2006, Vienna), p. 180.

13 Stefan Vogenauer, "Law Journals in Nineteenth-Century England," *Edinburgh Law Review* 12, no. 1 (January 2008, Edinburgh), pp. 26–50; Cornish et al., *The Oxford History of the Laws of England,* vol. 11, p. 1203.

The foundation of *The Jurist* network can be attributed to Henry Bickersteth and Joseph Parkes. Bickersteth contributed £500 to the project, while Parkes served as the chief editor and manager.[14] By the time the first issue of *The Jurist* was published in March 1827, Bickersteth had already established himself as a successful Chancery lawyer and was soon to be appointed as King's Counsel within two months. His career had greatly benefited from the shifting political climate. In the early 1810s, Bickersteth faced challenges with clients and colleagues due to his association with radical movements. On October 22, 1814, Bickersteth expressed his concerns to his parents, stating, "Business has, of course, been slack…. I am frequently put to considerable difficulties, and have very often occasion to think anxiously of my situation."[15] Furthermore, during the Westminster election of 1818, Bickersteth supported the radical candidate Francis Burdett (1770–1844), which garnered disapproval from the legal community at large. He wrote:

> I soon felt the effects of my imprudence—not only did my business diminish, but persons with whom I had up to that time lived on terms of courtesy and good-fellowship, at once grew cold to me. I cannot forget the feelings which I experienced in going up Lincoln's Inn Hall the first time after the election was over: some of my fellow barristers whom I had liked, and many with whom I had always been on good terms, absolutely turned away from me. I felt this treatment severely.[16]

Nonetheless, Bickersteth persevered and gradually earned recognition for his professional competence, garnering positive responses to his reformist ideas. In August 1824, Bickersteth was interviewed by John Herman Merivale (1779–

14 Thomas Duffus Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol. 1 (London: Richard Bentley, 1852), p. 371.

15 Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol. 1, p. 290.

16 Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol. 1, p. 327.

1844), a Chancery commissioner appointed to investigate the administration of the Court of Chancery. The commission, established in 1824 and chaired by Lord Chancellor Eldon (1751–1838), aimed to dispel the public criticism of the court. Despite the predominantly conservative composition of the commission, Michael Lobban characterizes Merivale as one of the "liberal" lawyers who gained "the upper hand" during the investigation, ensuring that progressive witnesses like Bickersteth were summoned to address broader issues and shape the agenda.[17] Initially, Bickersteth's responses were met with criticism, being regarded as "wild and visionary schemes." However, following the publication of the commission's report in 1826, he acquired a degree of authority.[18] Upon receiving instructions to draft a bill addressing the issues highlighted in the report, Attorney General Sir John Copley (1772–1863) promptly sought advice from Bickersteth. In May 1827, when Copley assumed the position of Lord Chancellor, succeeding Lord Eldon, he elevated Bickersteth to the status of King's Counsel. In June 1827, he was appointed to the Bench of the Inner Temple.[19] These advancements facilitated his financial support for *The Jurist*. Concurrently, Bickersteth's testimony before the Chancery commission served as an indication that radical perspectives could find expression within official channels. According to Chris Riley, certain statements made by Bickersteth reflect a distinct adherence to Bentham's principles.[20] For instance, Bickersteth contended, "I apprehend that all partial improvements would leave the principal defect without remedy," advocating for "a complete alteration of the whole

17 Michael Lobban, "Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery, Part I," *Law and History Review* 22, no. 2 (Summer 2004, Cambridge), p. 410.

18 Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol.1, p. 357.

19 Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol. 1, pp. 367–369.

20 Chris Riley, "Jeremy Bentham and Equity: The Court of Chancery, Lord Eldon, and the Dispatch Court Plan," *The Journal of Legal History* 39, no. 1 (January 2018, Abingdon), p. 55.

constitution of the court."[21] This radical stance aligns with Bentham's characterization of Chancery as "an open delay-shop" in *The Rationale of Judicial Evidence* (1827).[22]

Regarding personal connections, Bickersteth had longstanding affiliations with Bentham's radical circles. In January 1818, Bentham commended Bickersteth's "virtuous" character owing to his support in promoting the sale of Bentham's books.[23] Additionally, in February 1818, Bickersteth acted as an intermediary for Burdett, seeking Bentham's aid in drafting a bill for parliamentary reform.[24] Furthermore, Francis Place (1771–1854), the leader of London radicals, corroborated Bickersteth's dedication to democratic endeavors in a letter to Bentham during the same month, describing him as "a very promising fellow."[25] Bickersteth, along with Bentham and Place, provided financial assistance to support John Wade (1788–1875)'s establishment of *The Gorgon*, a radical newspaper focused primarily on trade union matters.[26] Upon learning about Bickersteth's interview with the Chancery commission, Bentham requested a copy of Bickersteth's testimony. In February 1825, he extended an invitation to Bickersteth to dinner at Queen Square Place, expressing his

21 *Chancery Commission Report. Presented pursuant to Address dated March 2d, 1826* (The House of Commons Parliamentary Papers Online), Appendix (A.) Evidence, p. 181.

22 Bowring, vol. 7, pp. 216–217.

23 Bentham to John Herbert Koe, January 7, 1818, in *The Correspondence of Jeremy Bentham*, vol. 9, *January 1817 to June 1820*, of *The Collected Works of Jeremy Bentham*, ed. Stephen Conway (Oxford: Oxford University Press, 1989; hereafter *The Correspondence of Jeremy Bentham*), p. 143.

24 Bickersteth to Bentham, February 25, 1818, in Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol. 1, p. 322.

25 Place to Bentham, February 26, 1818, in *The Correspondence of Jeremy Bentham*, vol. 9, p. 168.

26 Peregrine Bingham to Bentham, August 16, 1818, in *The Correspondence of Jeremy Bentham*, vol. 9, p. 249 n.

eagerness to see the evidence in print. Additionally, Bentham urged Bickersteth to introduce a bill for legal codification in Parliament, expressing his desire to witness Bickersteth's parliamentary endeavors with the "Codification Bill in hand."[27]

Joseph Parkes became part of Bentham's network in 1820. While working as a clerk at a law firm on Throgmorton Street near the Bank of England, Parkes was introduced to Bentham by John Bowring (1792–1872), also a Unitarian, sometime during August and September 1820. Shortly thereafter, Parkes, along with Bowring and Bentham, organized a social gathering to celebrate the liberal revolutions in Spain, Naples, and Portugal. Bentham imparted networking skills to Parkes. Numerous radicals and Whigs attended the meeting, including some individuals known for their bad temper who were friends of Francis Burdett and John Cartwright (1740–1824). Anticipating potential conflicts arising during the occasion, particularly due to the presence of alcohol, Bentham foresaw the possibility of verbal or physical altercations. Consequently, he made arrangements for the radicals to serve as stewards, with the expectation that this role would facilitate a more restrained interaction and help mitigate their hostile attitudes.[28] Prior to this event, Parkes had already formed associations with several of Bentham's acquaintances, including George Grote (1794–1871), James Mill, and Francis Place. Later, Parkes fondly referred to Place as his "political father."[29]

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27 Bentham to Bickersteth, February 9, 1825, in Hardy, *Memoirs of the Right Honorable Henry Lord Langdale*, vol. 1, p. 357.

28 Bentham to Bowring, September 30, 1820, in *The Correspondence of Jeremy Bentham*, vol. 10, *January 1820 to December 1821,* of *The Collected Works of Jeremy Bentham*, ed. Stephen Conway (Oxford: Oxford University Press, 1994), p. 112; Bentham to José Joaquín de Mora, September 26, 1820, in *The Correspondence of Jeremy Bentham*, vol. 10, p. 102.

29 Quote in Philip J. Salmon, "Parkes, Joseph (1796–1865), election agent and reformer," in *Oxford Dictionary of National Biography* (Oxford University 2004; hereafter ODNB), online

Parkes made a significant contribution to law reform with the publication of his book, *A History of the Court of Chancery*, in 1828. The book received high praise from Henry Brougham in the House of Commons, who described it as "one of the ablest and most instructive books published of later years."[30] This book may have been influenced by Bentham's ideas. On August 30, 1822, Bentham wrote a letter to Parkes in which he mentioned that he had learned about Parkes' research on the Court of Chancery through Bowring. It appears that Parkes had sought Bowring's consultation on the subject and Bowring, with Parkes' approval, forwarded the letter to Bentham seeking his advice. Bentham's letter indicated that Parkes expressed interest in either the 1824 Chancery commission or the bankruptcy commission. Bentham expressed his strong desire to see Parkes obtain the commission and offered to leverage his network to assist him. He mentioned that his friend and formal literary assistant John Herbert Koe (1783–1860), a Chancery lawyer, was currently in France and would not return until October. Bentham also suggested that he could establish a connection between Parkes and his friend Henry Maddock (*d*. 1824), an equity draftsman, if it proved necessary and beneficial.[31] Bentham's letter might have played a role in Parkes' acquaintance with Maddock, who was cited as an influential figure in *A History of the Court of Chancery*.[32] The book hailed Bentham as an authoritative figure. Moreover, when proposing certain measures

ed., 2004, https://doi.org/10.1093/ref:odnb/21356.

30 *Hansard Parliamentary Debates*, 2nd series, House of Commons, no. 18 (February 7, 1828), col. 243.

31 Bentham to Parkes, August 30, 1822, in *The Correspondence of Jeremy Bentham*, vol. 11, *January 1822 to June 1824,* of *The Collected Works of Jeremy Bentham*, ed. Catherine Fuller (Oxford: Oxford University Press, 2000), pp. 146–147.

32 Joseph Parkes, *A History of the Court of Chancery: with Practical Remarks on the Recent Commission, Report, and Evidence, and on the Means of Improving the Administration of Justice in the English Courts of Equity* (London: Longman, Rees, Orme, Brown, and Green, 1828), p. ix.

to enhance the management of real property relations, Parkes endorsed Bentham's idea of implementing a unified national registry system.[33]

In 1822, Parkes relocated to Birmingham and embarked on a career as an election agent. In 1826, the Whigs widely recognized Parkes' social skills and legal expertise, particularly following a legal battle concerning the Warwick mayoral election.[34] Parkes adeptly capitalized on this legal victory to bolster his reputation as a liberal figure, publishing a pamphlet entitled *The Governing Charter of the Borough of Warwick, with a Letter to the Burgesses on the Past and Present State of the Corporation* in February 1827. In this pamphlet, Parkes employed the language of ancient constitutionalism, asserting, "the political institutions of our Saxon ancestors were undoubtedly of a POPULAR character; that is to say, their civil magistracy, from the King to the lowest municipal officer, was *elective*…elected by the People at large, although many of our historical writers have denied the fact, and endeavored to conceal its truth."[35] This demonstrates Parkes' acquaintance with reformist discourse beyond utilitarianism. Parkes displayed not only an interest in rigorous utilitarian logic but also a keen understanding of the voters' emotional connection to local history and liberal values.

Parkes' Unitarian upbringing offers crucial context for comprehending the formation of *The Jurist* networking. Parkes' father, John Parkes, served as a trustee at Warwick High Street Unitarian Chapel and maintained a close

33 Parkes, *A History of the Court of Chancery*, p. 397.

34 Nancy Lopatin-Lummis, "'With All My Oldest and Native Friends'. Joseph Parkes: Warwickshire Solicitor and Electoral Agent in the Age of Reform," *Parliamentary History* 27, no. 1 (February 2008, Gloucester), p. 99.

35 Joseph Parkes, *The Governing Charter of the Borough of Warwick, 5 William & Mary, 18 March, 1694. With a Letter to the Burgesses on the Past and Present State of the Corporation* (London: Baldwin, Craddock and Joy, 1827), p. 3.

friendship with Samuel Parr (1747–1825), an advocate for education reform.[36] Parr had been acquainted with Bentham since 1803. Furthermore, in 1824, Parkes' marriage to Joseph Priestley (1733–1804)'s granddaughter, a prominent figure within the Unitarian community, contributed to his enhanced social status among Unitarians. Priestley was renowned for his adherence to rational dissent.[37] In 1827, during his quest for associates to contribute to *The Jurist*, Parkes promptly enlisted two Unitarians, Sutton Sharpe and Henry Roscoe, to serve as co-editors. The Sharpe family regularly attended the Newington Green Unitarian Church located in north London. Edwin Field (1804–1871), the son of Parkes' family minister William Field (1768–1851) and a lawyer and reformer himself, joined forces with Sharpe's brothers to establish the law firm of Sharpe & Field, situated on Bread Street, Cheapside, in 1827. Furthermore, Edwin Field wedded Mary, the sister of Sharpe, in 1830.

William Roscoe (1753–1831), the father of Henry Roscoe, was a prosperous attorney at King's Bench and a self-taught historian renowned for his internationally acclaimed biography *Life of Lorenzo de' Medici*. Additionally, William played a prominent role in organizing various learned societies in Liverpool and London.[38] Moreover, William had affiliations with Bentham's Whig associates, including Samuel Romilly (1757–1818) and Étienne Dumont (1759–1829), in their efforts to advocate for reform in criminal law. In 1819, 1823, 1825, he released a three-part publication titled *Observations on Penal Jurisprudence, and the Reformation of Criminals*, encompassing comprehensive analyses of English and American prisons. In

36 Thomas, *The Philosophic Radicals,* pp. 244–245.

37 Anthony Page, "Rational Dissent and Blackstone's *Commentaries*," in *Blackstone and His Critics*, ed. Anthony Page and Wilfrid Prest (Oxford: Hart Publishing, 2018), p. 87.

38 Jon Mee and Jennifer Wilkes, "Transpennine Enlightenment: The Literary and Philosophical Societies and Knowledge Networks in the North, 1781–1830," *Journal for Eighteenth-Century Studies* 38, no. 4 (November 2015, Oxford), p. 607.

1825, he dedicated the third part to James Mackintosh (1765–1832), another prominent Whig advocate for legal reform. Concurrently, he corresponded with Dumont, expressing, "[A] wiser policy and a better spirit is rapidly diffusing…your own labours as by the extension you have given to those of Mr. Bentham, to whom every friend of improvement must feel the highest obligations…. I consider myself as a humble associate."[39] The letter was accompanied by a copy of William's book, which was subsequently received by Bentham.[40] In 1819, Henry Roscoe moved to London to pursue legal studies and possibly encountered Parkes and Sharpe during a Unitarian meeting.

Sutton Sharpe also came from a literary family. His influential uncle, Samuel Rogers (1763–1855), was a banker-poet active in London literary circles.[41] Starting in the 1790s, Rogers established a wide network of politicians and dissenters through his regular salons held in Paper Buildings, which were located near the Middle Temple where Sharpe was registered. He maintained close relationships notable individuals such as Charles James Fox (1749–1806), Richard Brinsley Sheridan (1751–1816), and John Horne Tooke (1736–1812).[42] Additionally, Sutton Sharpe's father was a brewer who had numerous connections with painters. Growing up in such a literary and artistic environment, Sharpe's initial career inclination was towards chemistry rather than law.[43] Similar to Bentham, even after entering the legal profession, Sharpe

39 Henry Roscoe, *The Life of William Roscoe*, vol. 2 (London: T. Cadell and W. Blackwood, 1833), p. 226.

40 Bentham to Henry Wheaton, December 31, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, *July 1824 to June 1828,* of *The Collected Works of Jeremy Bentham*, ed. Luke O'Sullivan and Catherine Fuller (Oxford: Oxford University Press, 2006), p. 415 and note 7.

41 Martin Blocksidge, *The Banker Poet: The Rise and Fall of Samuel Rogers, 1763–1855* (Eastbourne: Susses Academic Press, 2013).

42 Richard Garnett, revised by Paul Baines, "Rogers, Samuel (1763–1855), poet," in ODNB, online ed., 2004, https://doi.org/10.1093/ref:odnb/23997.

43 Doris Gunnell, *Sutton Sharpe et Ses Amis Francais* (Paris: H. Champion, 1925), pp. 8–9.

dedicated a substantial amount of time to his scientific hobbies. He socialized with young lawyers and bankers who shared his literary preferences and political inclinations. Frequently, he accompanied Parkes to attend salons hosted by Harriet Grote (1792–1878), where they were warmly welcomed by James Mill, George Grote, and their associates. Their discussions primarily revolved around such topics as political economy, utilitarianism, atheism, as well as the ideas of Jeremy Bentham and Thomas Malthus (1766–1834).[44]

Sharpe was fluent in French, had a keen interest in French literature, and developed numerous friendships in France. Prior to the establishment of *The Jurist*, Sharpe had collaborated with French lawyer A.H. Taillandier to set up a legal periodical in France.[45] Regarding his interest in law reform, on June 7, 1827, Sharpe expressed to Bentham, "[W]hen I first became a reader and admirer of your works and as I may say a *convert* to their principles I little expected to have ever had the honor of such attention from the author."[46] Another letter from Sharpe implies the growth of his network, consisting of young lawyers with reformist inclinations. In a letter dated August 22, 1832, Sharpe expressed his satisfaction to his friend George Goff regarding the recent career advancements and political achievements of Robert Rolfe (1790–1868), John Romilly, and Henry Warburton (1784–1858). Rolfe, after being appointed Queen's Counsel, was elected as a MP for Penryn and Falmouth in 1832. Romilly and Warburton were both elected as representatives for Bridport during the same year.[47]

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44 Gunnell, *Sutton Sharpe et Ses Amis Francais*, pp. 14–16; Joseph Hamburger, "Grote [née Lewin], Harriet (1792–1878), woman of letters," in ODNB, online ed., 2008, https://doi.org/10.1093/ref:odnb/11678.

45 Ibbetson, "Legal Periodicals in England 1820–1870," p. 180.

46 Sutton Sharpe to Bentham, June 7, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 369.

47 Sharpe to George Goff, August 22, 1832, Sharpe Papers, MS. 81, University College London

Two additional editors have been identified thus far: John Romilly and Edwin Chadwick. Romilly's role as an editor is disclosed in Bentham's letter dated June 14, 1830. Bentham corresponded with the American law reformer Edward Livingston (1764–1836), stating, "A few days ago I saw John Romilly, Barrister, Son of the late Sir Samuel Romilly—Being one of the Co-Editors of the Jurist."[48] At the age of 16, John was left under the care of the well-connected Whig lawyer John Whishaw (1764–1840) following the death of his father in 1818. Whishaw played a significant role as Bentham's intermediary during his Panopticon negotiations with the government.[49] Starting in 1818, John Romilly pursued his studies at Cambridge University, where the presence of a rationalist movement influenced by William Paley (1743–1805) made students especially receptive to Bentham's principles.[50] Among those students, several went on to become lawyers with reformist inclinations, including Thomas Babington Macaulay (1800–1859), Charles Austin (1799–1874), Edward Strutt and Charles Buller (1806–1848). In London, Romilly enrolled at Gray's Inn, where his father held a high reputation, and he associated with Bentham's followers in the city. John Stuart Mill expressed his satisfaction with Romilly's victory in the 1832 election, stating "[S]o the Elections are over. Almost all the candidates in whose success I took any personal interest, have succeeded. Among them are three men who, I expect, will *do* something: these are, Grote, Roebuck, & John Romilly."[51]

Library.

48 Bentham to Edward Livingston, June 14, 1830, in *The Correspondence of Jeremy Bentham*, vol. 13, *July 1828 to June 1832*, of *The Collected Works of Jeremy Bentham*, ed. Philip Schofield, Tim Causer, and Chris Riley (London: UCL Press, 2024), p. 397.

49 Alexander Bain, *James Mill: A Biography* (London: Longmans, Green, and Co., 1882), p. 75.

50 George L. Nesbitt, *Benthamite Reviewing: The First Twelve Years of The Westminster Review 1824–1836* (New York: Columbia University Press, 1934), p. 26.

51 J. S. Mill to Thomas Carlyle, December 27, 1832, in *The Earlier Letters of John Stuart Mill*

Following Henry Roscoe's resignation from *The Jurist* in 1832 due to health reasons, Chadwick became a member of the publication. Bickersteth reached out to him with a request to oversee the planned new series.[52] S. E. Finer supports this narrative and also highlights Bentham's role in facilitating this collaboration. Finer states, as a result, a committee comprising the Mills, Sutton Sharpe, Bickersteth, and John Romilly, was formed to select an editor for *The Jurist*, and they unanimously chose Chadwick for the position.[53] Finer's mention of Bentham's involvement is accurate. At the time Bickersteth approached Chadwick, he was already working for Bentham and residing in Queen Square Place. In 1837, Chadwick wrote:

> Jeremy Bentham…was my most attached friend, I lived with him a whole year…he named me his second executor. A few years ago, Mr. Bickersteth…proposed with Mr. John Romilly…and several other lawyers who are zealous in favour of scientific reform of the law, to establish a quarterly publication called *The Jurist* for the advancement of legal science. They applied to me to conduct the work and I should probably have been supported by the most rising young men of the bar.[54]

The other 12 members, including Bentham, either wrote articles or supported *The Jurist* in different ways. Bentham had been not aware of the journal until he had read the first issue of March 1827. On March 15, 1827, *The Morning Post* advertised *The Jurist*.[55] On May 5, 1827, he wrote a letter entitled "J. B. to the editor of the Jurist Letter II" to Sutton Sharpe. Bentham used the words

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1812–1848, ed. Francis E. Mineka (Toronto: University of Toronto Press, 1963), p. 134.

52 Hardy, *Memoirs of the Right Honourable Henry Lord Langdale*, vol.1, p. 371.

53 S. E. Finer, *The Life and Times of Sir Edwin Chadwick* (London: Methuen, 1952), p. 36.

54 Chadwick to Gulson's letter of July 15, 1837, Chadwick Papers, MS. 907, University College London Library.

55 *The Morning Post*, March 15, 1827, p. 2.

"inexpressibly delighted," to encourage the young "Jurists." Also, he provided several materials to inspire them: his review of James Humphreys' book on land law, a supplement to the *Codification Proposal*, and three Spanish translations of his works: *Plan de provision de empleos*; *Declaración o protesta de todo individuo del cuerpo legislativo al tomar posesión de su destino*; and *Principios que deben server de guía en la formación de un código constitucional para un estado*. And he promised to send the *Rationale of Evidence* and *Constitutional Code* soon.[56]

Furthermore, Bentham actively promoted *The Jurist* within his transnational network. Shortly after sending the letter to Sharpe, Bentham corresponded with the Marquis de Lafayette (1757–1834), stating, "Item the first N[umber] of an excellent periodical work which you will have the goodness to hand over to M. Rey: who I am sure will be delighted with it."[57] The French military leader Lafayette acted as an intermediary for Bentham to establish contact with Joseph Rey (1799–1850),[58] a French radical lawyer. The friendship between the two Frenchmen and Bentham had been cultivated since the early 1820s. In 1821, Rey sought refuge in London due to his radical political views. Upon Lafayette's recommendation, Rey was welcomed by Bentham at Queen Square Place, where he utilized Bentham's library to conduct a comparative study of English and French law.[59] The study resulted in the publication of two volumes in Paris in 1826 and 1828, attracting citations and

56 Bentham to Sharpe, May 5, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 358.

57 Bentham to Lafayette, May 11 and 21, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 365.

58 Michael Drolet and Ludovic Frobert, "The Making of Egalitarian Utilitarianism: The Case of Joseph Rey (1779–1855)," *Revue d'études Benthamiennes*, no. 23 (March 2023, Paris), pp. 42–53.

59 Lloyd S. Kramer, *Lafayette in Two Worlds: Public Culture and Personal Identities in an Age of Revolutions* (Chapel Hill: The University of North Carolina Press, 1996), p. 79.

praise for Bentham.[60] In September 1827, Bentham sent Rey the second issue of *The Jurist* (published in June) and provided a description, stating, "The Jurist is a work projected and edited without my knowledge by a set of men who all profess themselves my disciples."[61] Bentham also encouraged the Irish leader Daniel O'Connell to read *The Jurist*. In November 1829, O'Connell informed Bentham: "*The Jurist* I read and like—I have got six numbers of it."[62] In February 1830, Bentham wrote to Livingston, revealing that he had enlisted the services of an English physician named Southwood Smith to write a review of Livingston's penal code for *The Jurist*. Bentham described the publication as one that "has Law Reform and Improvement for its object, and pursues that object with the best intentions and distinguished talent."[63]

Bentham also actively sought authors to contribute to *The Jurist*. Southwood Smith, a former Unitarian minister, became part of Bentham's circle in 1821, offering expertise on medical and sanitary matters during the composition of the *Constitutional Code*.[64] Smith was interested in Livingston's Louisiana penal code. In January 1830, upon discovering that Smith had edited Livingston's book, Bentham encouraged Smith to write a review of it for *The Jurist*: "to whose Editors Dr. Bowring mentioned the matter and they are prepared to receive it from you."[65] On January 26, Smith accepted the

60 Joseph Rey, *Des institutions judiciaires de l'Angleterre comparées avec celles de la France*, 2 vols. (Paris: Charles-Béchet, 1826 and 1828).

61 Bentham to Joseph Rey, September 3, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 383.

62 O'Connell to Bentham, November 4, 1829, *The Correspondence of Daniel O'Connell*, vol. 8, *1846–1847*, ed. Maurice R. O'Connell (Dublin: Blackwater Dublin, 1980), pp. 222–223.

63 Bentham to Livingston, February 23, 1830, in *The Correspondence of Jeremy Bentham*, vol. 13, p. 270.

64 R. K. Webb, "Smith, (Thomas) Southwood (1788–1861), Unitarian minister and physician," in ODNB, online ed., 2009, https://doi.org/10.1093/ref:odnb/25917.

65 Bentham to Smith, January 19, 1830, in *The Correspondence of Jeremy Bentham*, vol. 13, pp.

proposition; however, the intended article did not come to fruition.[66]

The article "American Law" in the January 1828 issue was also a product of Bentham's networking. The article itself was a conversation in the form of "Queries and Answers" between the English lawyer Jabez Henry and the American lawyer Henry Wheaton.[67] Bentham was the organizer of the conversation, which had occurred at his house. During a trip to Denmark for a diplomatic mission in 1827, the former New York law reformer had visited Bentham. At about the same time, Henry had been introduced by Bowring into Bentham's circle. On July 30, 1827, Bentham had invited Henry for "a Hermit's dinner."[68] Henry was a senior commissioner of inquiry into the administration of justice in the British West Indies and South American Colonies, and had returned to London from his inspection trip. At Bentham's house, Wheaton and Henry had met and started the conversation. Later, on December 31, Bentham wrote to Wheaton, "Thanks for your remembrance of me on the occasion of Your answer to Mr. Henry's queries."[69] Wheaton also left the following note in his diary: "November 10, 1827…. Sent to London my amended Answers to Mr. Henry's questions on American Law. Wrote Mr. Bentham."[70]

James Mill contributed at least one article, judging by the fact that on August 1, 1828, Parkes wrote to Sharpe: "[W]e should send Mill twenty guineas directly for credit's sake."[71] This article might be "Administration of Justice in

249–250.

66 Smith to Bentham, January 26, 1830, in *The Correspondence of Jeremy Bentham*, vol. 13, p. 251.

67 "American Law," *The Jurist* 3 (January 1828, London), pp. 430–445.

68 Bentham to Henry, July 30, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 374.

69 Bentham to Wheaton, December 31, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 417.

70 Kurt H. Nadelmann, "Henry Wheaton on 'American Law' in 'The Jurist' (London)," *New York Law Forum* 4, no. 1 (January 1958, New York), p. 63.

71 Parkes to Sharpe, August 1, 1828, Parkes Papers, MS. 31, University College London Library.

the East Indies," published in January 1829, because Mill had been a well-known expert on Indian affairs since the publication of *The History of British India* in 1818. Mill later also expressed an interest in writing an article on forgery. Parkes wrote to Sharpe on December 11, 1828:

> J. Mill would do a capital article on a subject just now upmost this on the punishment of death for Forgery. Shall I ask him. He would take for his text his treatise in the Scotch Supplement Encyclopaedia, & do it excellent, and to attract some attention. Shall I ask him? As the Law Magazine started, we must come out in force.[72]

Mill published several influential articles on law, government, education, the colonies, liberty of the press, and prison discipline for the *Encyclopaedia Britannica* in 1825. Parkes was planning to use Mill's article on forgery to compete against *The Law Magazine and Quarterly Review of Jurisprudence* (hereafter *The Law Magazine*) which had recently published its first issue in the same year.

Mill's interest in forgery was related to a recent political event. In December 1828, public attention to criminal law reform was raised by the execution of Joseph Hunton (1770–1828) at Newgate prison for a series of forgeries. Hunton was a Quaker merchant and had mobilized dissenting networks to lobby the government for mercy. Many influential businessmen had signed petitions for Hunton's pardon. *The Times* had reported on the case closely and demanded reforms of the laws relating to forgery. However, Hunton was executed on December 8, and this further stirred reformist opinions. The Society for the Diffusion of Information on the Punishment of Death soon set up committees in London, Edinburgh, and Dublin, to arrange lectures and press campaigns and to encourage members to lobby their local MPs.[73] Two of the

72 Parkes to Sharpe, December 11, 1828, Parkes Papers, MS. 31.

73 Phil Handler, "Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century

leading organizers of the Society, William Allen (1770–1843) and Basil Montagu (1770–1851), were friends with Bentham, Parkes, and Mill. In this network of dissenters, merchants, and Benthamite lawyers, James Mill might have been encouraged to write an article against the death penalty for forgery. Apparently, Mill shared this idea with Parkes. Five days after Hunton's execution, Parkes asked for Sharpe's permission to contact Mill. Later, the article seems to have been published in February 1833 under the title "On the Punishment of Death," because this article discussed Hunton's case and started with a lengthy quotation from Mill's *History of British India*.[74]

John Arthur Roebuck might have been the author of the article "The Reformation of Criminals" in the July 1832 issue.[75] The evidence for this is Parkes' letter to Sharpe on May 3, 1829. Parkes wrote, "I have half done a paper on Livingston and the Louisiana Penal Code, but as Roebuck is doing a criminal article I thought I would adopt another American subject."[76] In 1829, Roebuck was a law student who did not get much family financial support, and thus searched for literary jobs in London, writing for the *Westminster Review*, *Tait's Edinburgh Magazine*, and the *Edinburgh Review*.[77] Clearly, Roebuck's literary talent was appreciated by Parkes. On an earlier occasion, Roebuck might have been solicited by Parkes to summarize Bentham's *Rationale of Evidence* for *The Jurist*. Parkes wrote to Bentham on May 4, 1828:

> I can get no one to reduce the Rationale of Evidence for a Jurist article. We sadly want it done & will pay. I asked *John* Mill but he felt rather awkward as having been the *Redacteur*. I have not time to do it, nor

England," *The Historical Journal* 48, no. 3 (September 2005, Cambridge), pp. 692–693.

74 "On the Punishment of Death," *The Jurist* 4, no. 10 (February 1833, London), pp. 44–65.

75 "The Reformation of Criminals," *The Jurist* 3, no. 8 (July 1832, London), pp. 188–198.

76 Parkes to Sharpe, May 3, 1829, Parkes Papers, MS. 31.

77 S. A. Beaver, "Roebuck, John Arthur (1802–1879), politician," in ODNB, online ed., 2004, https://doi.org/10.1093/ref:odnb/23945.

> indeed should I do it well. I have scarcely looked into the last Westminster but where it seems to be done excellently.[78]

The said review in the *Westminster Review* of January 1828 was written by Roebuck, a fact that would have been known in Bentham's circle.[79]

James Mill's son John Stuart Mill contributed at least one article, "Corporation and Church Property," published in February 1833.[80] The article's authorship was later revealed in Mill's *Dissertations and Discussions* (1859), when it was republished under the title "The Right and Wrong of State Interference with Corporation and Church Property."[81] Also, a letter of October 1831 to his Scottish friend John Sterling (1806–1844) suggests that young Mill (aged 25) was visualizing a radical political change when preparing the article: "the Reform Bill shall have past…to write an article or two for the Jurist (now about to be revived) on some abstract questions of general legislation."[82] This article was completed before September 1832.[83] Mill had contemplated a legal career in the early 1820s. He had read William Blackstone (1723–1780) with John Austin (1790–1859) for three or four hours during the daytime, and Bentham in the evening.[84] Later, Mill recalled the experience of reading Bentham as "an epoch in my life; one of the turning points in my mental

78 Parkes to Bentham, May 4, 1828, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 477.

79 [John Arthur Roebuck], "Bentham's Rationale of Judicial Evidence," *Westminster Review*, no. 9 (January 1828, London), pp. 198–250.

80 "Corporation and Church Property," *The Jurist* 4, no. 10 (February 1833, London), pp. 1–26.

81 J. S. Mill, *Dissertations and Discussions*, vol. 1 (London: John W. Parker and son, 1859), pp. 1–41.

82 J. S. Mill to John Sterling, October 20–22, 1831, in *The Earlier Letters of John Stuart Mill 1812–1848*, p. 80.

83 J. S. Mill to Thomas Carlyle, September 17, 1832, in *The Earlier Letters of John Stuart Mill 1812–1848*, p. 117.

84 J. S. Mill to James Mill, Autumn, 1822, in *The Earlier Letters of John Stuart Mill 1812–1848*, p. 13.

history."[85] Between 1824 and 1827, Mill also undertook the task of editing Bentham's manuscripts for the *Rationale of Evidence*.

Edward Strutt contributed at least one article, entitled "Grand Juries," and published in the June 1827 issue, a fact revealed by Bentham's letter to the real property commissioner John Tyrrell in 1831.[86] In 1827, the 26-year-old Strutt was a law student of the Inner Temple, a Cambridge MA, and former president of the Cambridge Union debating society. He came from a dissenting family which was very successful in the cotton-manufacturing business. His grandfather, Jedediah Strutt (1726–1797), was an inventor of cotton-spinning machinery, and the business partner of Richard Arkwright (1732–1792).[87] In September 1827, Bentham assigned Strutt to deliver a cargo of books, including the second issue of *The Jurist*, to Lafayette. Bentham's description of Strutt suggests that the sort of qualities that were valued by the reforming network of Bentham and Lafayette:

> He agrees with us, I believe, entirely on the subject of government as well as that of religion. He belongs, for form sake to the profession of the Law, as being one of the main avenues to Parliament and Office: but without intention because above all need of making pecuniary profit in it.[88]

Bentham also mentioned that Strutt was writing for *The Jurist*, and interpreted the fact as evidence of Strutt's literary talent.

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85 John M. Robson and Jack Stillinger, eds., *Autobiography and Literary Essays by John Stuart Mill* (Toronto: University of Toronto Press, 1981), pp. 67–68.

86 Bentham to John Tyrrell, April 19, 1831, in *The Correspondence of Jeremy Bentham*, vol. 13, p. 536.

87 J. J. Mason, "Strutt, Jedediah (1726–1797), inventor and cotton manufacturer," in ODNB, online ed., 2011, https://doi.org/10.1093/ref:odnb/26683.

88 Bentham to Lafayette, September 2, 1827, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 381.

James Humphreys and John Reddie's articles were the only two which were not anonymous. Humphreys' article, in the form of a letter to the editors of *The Jurist*, was published in August 1828.[89] By then, he had become a famous and controversial legal writer, with his *Observations on the English Laws of Real Property: With the Outlines of a Code* having been published in 1826. This book stimulated much criticism from Humphreys' fellow conveyancers.[90] In this context, Humphreys used *The Jurist* as a platform to respond to two critics, John Reddie and Charles P. Cooper (1793–1873). *The Jurist* was delighted to receive Humphreys as a friend of reform: "It is with the greatest pleasure we insert a communication from so able a correspondent."[91] Humphreys' article was read by Reddie, who then wrote a reply, and asked *The Jurist* for it to be published. In the next issue (January 1829), Reddie's reply was published. However, *The Jurist* was clearly not supportive of Reddie's opinion, and wrote: "Having published the letter of Mr. Humphreys, we feel ourselves bound to insert the answer of Dr. Reddie, although its general tenor is directly opposed to our avowed opinions."[92] This episode suggests the ascendancy of *The Jurist*'s impact among lawyers.

The two French authors, Alphonse Honoré Taillandier and Adèle-Gabriel-Denis Bouchené-Lefer, have been identified by David Ibbetson. Sharpe contacted them to write or provide materials. Two articles are linked to

89 The date of the digital version of the fourth issue *The Jurist* is wrong as it is dated in May 1828 whereas in Humphreys' letter the date is July 12, 1828. Moreover, on August 3, *The Examiner* advertised *The Jurist*, claiming that it's fourth issue was "[j]ust published". "Advertisements & Notices," *The Examiner*, August 3, 1828, p. 511.

90 Sokol, "Jeremy Bentham and the Real Property Commission of 1828," pp. 51–105.

91 "Letter from Mr. Humphreys in Reply to Dr. Reddie and Mr. Cooper," *The Jurist* 2, no. 4 (August 1828, London), p. 125.

92 "Dr. Reddie's Observations on Mr. Humphreys's 'Reply,'" *The Jurist* 2, no. 5 (January 1829, London), p. 307.

Taillandier: "Abolition of the Code Napoleon in the Rhenish Provinces" from June 1827, and "State of Crime in England and France" from January 1828. Bouchené-Lefer is linked to the article "The Judicial Establishments of France," of which part one was published in July 1832, and part two, in November 1832.[93] Both men were lawyers born in the late 1790s, and were therefore of the same generation as Sharpe and Parkes.

The last identified person is a bankruptcy commissioner, John Samuel Martin Fonblanque. The evidence for this is John's obituary in *The Gentleman's Magazine*.[94] John was close to his younger brother, the famous radical political commentator for *The Examiner*, Albany Fonblanque (1793–1872). Like Albany, John also admired Bentham, and wrote a complimentary essay in *The Examiner* to praise Bentham's decision to give up a profitable legal career for the sake of furthering law reform.[95] Moreover, John was a founder of the Cambridge Union, which brought him into contact with other Cambridge admirers of Bentham. John also co-wrote *Medical Jurisprudence* with the physician John Ayrton Paris (1785–1856), published in 1823. *The Jurist* favorably reviewed this work in January 1828.[96]

2. Articles

This section will discuss the abovementioned members' attitudes towards reform through an analysis of their identified articles. Editor Joseph Parkes' two

93 Ibbetson, "Legal Periodicals in England 1820–1870," pp. 180–181.

94 "Obituary," *The Gentleman's Magazine*, no. 219 (December 1865, London), p. 801.

95 "Plunderage of the Chancery Suitors," *The Examiner*, February 27, 1831, p. 139. The essay is anonymous, and the authorship is revealed in George Wheatley, *A Visit (in 1831) to Jeremy Bentham*, ed. Kris Grint (London: Bentham Project, 2015), p. 20.

96 "Medical Jurisprudence," *The Jurist* 1, no. 3 (January 1828, London), pp. 378–405.

articles will be discussed first: "Codification of the Laws of the United States," published in August 1828, and "Jurisprudence of Louisiana," published in April 1829.[97] Both articles supported codification and spread the optimistic view that law could be written in a language intelligible to all. In "Codification of the Laws of the United States," Parkes carefully selected extracts from American legal debates. The first extract was from the resolutions of law reform approved by the South Carolina Legislature in 1826. The ideal of plain legal language was recognized as the first duty of a legislator and a right of ordinary citizens: "[T]he rules of the common law, and the indigested condition of the statutes, render it impossible for the citizen, without professional assistance, to conform to the laws." The next extract was from Senator John Wilson (1773–1828)'s speech, which proposed preparing a digest of both the statutes and common law, and stipulated that the digest "should be printed and put in the hands of the citizens." Furthermore, Wilson claimed that codification was a civilized project; that every nation which was experimenting with codification had already made progress in the state of civilization. This claim was emphasized by Parkes as one that "historically refuted the asserted '*impossibility for the human intellect to form the laws into a code*.'"[98]

Parkes also reviewed New York lawyer William Sampson (1764–1836)'s pamphlet *An Anniversary Discourse, delivered before the Historical Society December 6, 1823, shewing the Origin, Progress, Antiquities, Curiosities, and Nature of the Common Law*, suggesting that it had greatly influenced the American people's attitude towards the common law. Sampson's correspondence with the French jurist André Marie Jean Jacques Dupin (1783–

97 Parkes to Bentham, May 4, 1828, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 476; Parkes to Sharpe, May 3, 1829, Parkes Papers, MS. 31.

98 Highlighted in "Codification of the Laws of the United States," *The Jurist* 2, no. 4 (August 1828, London), pp. 50–51.

1865) was quoted to show how arguments for abolishing the common law were shared transnationally, and how American lawyers had updated their knowledge about the application of the *Code Napoleon*.[99] Then, Parkes quoted a report of the "Revisers of the Laws of the State of New York" (1827) to convince British reforming lawyers that public opinion was on their side. Parkes anticipated that the New York State Legislature would soon discuss codification. He mentioned a series of American supporters of codification, including Edward Livingston. Overall, Parkes believed that by referencing more official statements from the United States, more British lawyers might be persuaded to accept codification.

Parkes highly praised Bentham in "Codification of the Laws of the United States of America." He wrote, "If we have not the merit on this side the ocean of affording to the New World an example and practical recommendation of this great desideratum, we have at least the credit, through our distinguished countryman Mr. Bentham, of exciting the particular attention of the North American jurists and legislatures." To Parkes, legal codification was part of a large and transnational intellectual movement, carried out by the policies of enlightened legislatures. It was a movement of improvement, but Britain appeared to be behind the rest of the civilized nations. Therefore, Bentham's personal efforts should be more widely publicized and praised. Parkes also mentioned Bentham's correspondence with American President James Madison as an example of the English philosopher's intellectual superiority. On the other hand, Parkes was aware of the controversial character of Bentham's reputation. He mentioned that Bentham's language of "codifying" had been severely attacked by the influential conveyancer Edward Sugden (1781–1875) (appointed King's Counsel in 1822 and Solicitor General in 1829) as "those

99 See also Sylvain Soleil, "'Superseded and lost sight of?' The Argument of the Code Napoleon during the Anglo-American Controversy of the Codification of Common Law (1820–1835)," *American International Journal of Social Science* 9, no. 2 (June 2020, Houston), pp. 71–81.

who, like Mr. Sugden, believe the whole legal profession to be impregnated with the virus of *Code-mania*, and to wear their heads ornamented with the craniological bump of revolutionary destructiveness."[100]

In "Jurisprudence of Louisiana," Parkes introduced the history of the Civil Code of Louisiana, showing that the relationship between codification and the common law could be conciliatory. Louisiana had been occupied by France and Spain, and its legal system combined elements from French and Spanish law. The cession of Louisiana to the United States in 1803 had introduced common law procedures such as trial by jury and the writ of habeas corpus. However, these common law procedures were resisted by those who were accustomed to Spanish and French law. In 1806, the Louisiana State Legislature had appointed two lawyers to prepare a civil code to unify the laws in more authoritative language. In their code, there was a clause to repeal the ancient laws which were considered contrary to "the dispositions" of this project. Parkes feared that this clause would be misinterpreted by the unwritten law apologists so as argue that codification was a destructive and tyrannical force. Accordingly, he explained that the clause was a tactic: "the code came to be considered *principally* as a declaratory law; and, instead of introducing a new system to stand by itself, and to be constructed by its own context, it was regarded as an imperfect index to" the unwritten laws which "still continued in full vigour" when absorbed into the code.[101]

Another major editor, Sutton Sharpe, worked with Alphonse Honoré Taillandier and Adèle-Gabriel-Denis Bouchené-Lefer, and produced three identified articles, "Abolition of the Code Napoleon in the Rhenish Provinces" (June 1827), "State of Crime in England and France" (January 1828), and "The Judicial Establishments of France" (part one published in July 1832, and part

100 "Codification of the Laws of the United States," pp. 48, 65.

101 "Jurisprudence of Louisiana," *The Jurist* 2, no. 6 (April 1829, London), pp. 436–437.

two published in November 1832). The first article discussed the reception of the French civil code in Prussia, with a clear preference for the arguments supporting the code. The supporters argued that the code increased the publicity of judicial proceedings and encouraged popular participation, which helped to realize social justice. Meanwhile, the preservation of the French code was not "in any degree inconsistent with, or derogatory to, the national honour." Moreover, the supporters used history to persuade the Prussian government that it was wise to admit and learn from a foreign code: "The Romans were so far from disdaining to be taught by their enemies, that they boasted of the instruction in the art of war which they derived from their campaigns against Pyrrhus and the Carthaginians."[102]

The opponents of the French civil code argued that the publicity of trials delayed judicial administration, affected the impartiality of the judges, and exposed the private affairs of individuals to the curiosity of the public. As for the jury institution introduced by French, they viewed it as empowering unqualified amateurs to interfere with the judges: "Shoemakers and tailors…were…incapable of forming a sound opinion of the nature of a criminal charge."[103] These arguments were criticized in the article as underestimating the people's intellect and overstating popular dislike of the codes: "Public opinion is decidedly opposed to any alteration of the French codes."[104]

The "State of Crime in England and France" discussed what should be considered as the "real" scientific method for identifying the causes of crime and preventative measures. At the beginning, it attacked the former Lord Chancellor, Eldon. Eldon's speech in the House of Lords on May 30, 1810 was

102 "Abolition of the Code Napoleon in the Rhenish Provinces," *The Jurist* 1, no. 2 (June 1827, London), pp. 246–247.

103 "Abolition of the Code Napoleon in the Rhenish Provinces," p. 248.

104 "Abolition of the Code Napoleon in the Rhenish Provinces," p. 251.

quoted as an example of an outdated and flawed understanding of the concept of "science"; in the speech, Eldon had criticized William Blackstone's support for mitigating penal statutes "as the offspring of an eager, rather than a well-informed mind."[105] Then, the article discussed and compared the recent official reports produced by a British parliamentary commission and the French Garde des Sceaux (the Keeper of the Seals of France, the *ancien régime* counterpart of the minister of justice). In contrast to Lord Eldon's opinion, the article viewed the investigative commissions as the correct way to realize scientific legislation. It argued that the government methods of collecting, managing, and analyzing large-scale statistics should withstand the scrutiny of public opinion. Meanwhile, by means of the comparison, the article suggested that the French practice was more rational and could serve as a good example for Britain. Such an open attitude to foreign legislative experience, especially that of France, was unusual. The article reviewed British legislation critically, in contrast to the Tory opinions of men such as Eldon and journals such as the *Quarterly Review*. It sharply defined the Tory invocation of "science" as a "hollow spirit." Meanwhile, the praise for the quality and sophistication of French social statistics contained a strong belief in science. Or, as David Eastwood has observed, "reformers in the eighteen-thirties regarded scientifically-derived knowledge disseminated under the imprimatur of official reports as a precondition of the rational reordering of the English state."[106]

"The Judicial Establishments of France" was intended to be an introduction to Bentham's *Draught of a new plan for the organisation of the judicial establishment in France*, which had been considered for reprinting by

105 "State of Crime in England and France," *The Jurist* 1, no. 3 (January 1828, London), pp. 459–460.

106 David Eastwood, "'Amplifying the Province of the Legislature': the Flow of Information and the English State in the Early Nineteenth Century," *Historical Research* 62, no. 149 (October 1989, Oxford), p. 277.

Sutton Sharpe in 1828.[107] Bentham's work was a reformist plan, which assumed that readers had already mastered a certain knowledge of French judicial administration. However, Bentham tended to overestimate the knowledge and intellect of his audience. By contrast, Sharpe expressed a different opinion in "The Judicial Establishments of France": "[Of] the mode in which the tribunals of foreign countries are constituted, we are absolutely ignorant."[108] Then the article introduced the French courts by the order of their functions, not according to the history of their evolution. The nature of this introduction was mechanical and analytical, and its language was descriptive and factual. This writing style might have been influenced by the diffusion of scientific discussions among legal writers, but it might also have been designed to make readers familiar with this sort of analytical language, as a preparation for reading Bentham.

James Mill's "On the Punishment of Death" popularized Bentham's theoretical analysis of the same topic. In comparison to Bentham's *Rationale of Punishment* (1830), Mill used simpler language and different political discourses. First, Mill made a straightforward objection against capital punishment at the start, whereas Bentham's opinion came after a detailed exposition concerning the definition of the measure, as well as its advantages and disadvantages. Second, Bentham used only utilitarian reasoning to evaluate capital punishment, whereas Mill supplemented utilitarianism with such popular concepts as "civilization."[109] While Bentham was overoptimistic in thinking that his readers would accept the concept of "utility" as the most desirable and

107 Joseph Parkes to Bentham, May 4, 1828, in *The Correspondence of Jeremy Bentham*, vol. 12, p. 476.

108 "The Judicial Establishments of France," *The Jurist* 3, no. 8 (July 1832, London), p. 198.

109 Of the concept's Scottish background, see Bruce Buchan, "Enlightened Histories: Civilization, War and the Scottish Enlightenment," *The European Legacy* 10, no. 2 (April 2005, Cambridge), pp. 177–192.

practical rule of action, Mill saw a different reality. The reputation of philosophy or rationalism after the French Revolution was much worse than Bentham estimated. As an experienced journalist, Mill tactically searched for a synthesis of utilitarianism and civic humanism. The latter was essentially a language of morality, and had a longer history and wider influence in British political debates.[110] Mill wrote: "Barbarians seek to gratify their spirit of vengeance by the infliction of pain on the offender: a civilized legislature desires no such satisfaction."[111] This contains a moral accusation that some existing laws were irresponsible and discriminatory, and failed to protect the rights of the convicted. Mill also described a rational civilized legislator who had good qualities such as skill, patience, and disinterestedness, and who could guide the moral reformation of the convicted. Third, Mill selected better examples to attract attention. As mentioned above, Mill wrote the article in the context of Joseph Hunton's trial and thus in a favorable political climate for law reform. In the article, Mill mentioned the Hunton case to show that capital punishment was too severe, and argued that since many prosecutors and witnesses were driven by a similar belief to give up prosecution, the certainty and credibility of the law suffered damage.

"The Reformation of Criminals," presumably written by the lawyer John Arthur Roebuck, appealed for prison reform. The article discussed two

110 Iain Hampsher-Monk, "Civic Humanism and Parliamentary Reform: The Case of the Society of the Friends of the People," *Journal of British Studies* 18, no. 2 (Spring 1979, Cambridge), pp. 70–89; J. G. A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge: Cambridge University Press, 1985); Donald Winch, "The Science of the Legislator: the Enlightenment Heritage," in *The State and Social Investigation in Britain and the United States*, ed. Michael J. Lacey and Mary O. Furner (Cambridge: Cambridge University Press, 1993), pp. 63–91.

111 James Mill, "On the Punishment of Death," *The Jurist* 4, no. 10 (February 1833, London), p. 44.

questions: Was it necessary to help the convicted? Was the aim practical? Regarding the first question, the article criticized the fact that English public opinion tended to be indifferent to the welfare of the convicted. By comparison, the American public was more optimistic about the reformation of criminals. As for the second question, the article argued that American prison management provided a valuable model. English prison management was influenced by a prevailing attitude which treated the convicted as an outcast of society, so that the purpose of imprisonment was not the reformation of criminals, but rather to make prison a deterrent. However, the recent development of prison discipline in America was thought to prove that the aim of reformation could be achieved without sacrificing the deterrent effect: "*The prison was probably never before so great a terror to evil doers as it is now. Good men look upon it with complacency; bad men with abhorrence till they become good* [*sic*]."[112] The article also discussed the financing of prisons in America to encourage English reformers to demand greater publicity for the management of public money. It mentioned that the Auburn prison in New York had even managed to finance itself. Less successful examples, which used a modest amount of public money, were also referred to as evidence to reveal the poor state of English prisons.

John Stuart Mill's "Corporation and Church Property" was written during the summer following the Reform Act of 1832. The first general election after the Reform Act was held between December 8, 1832 and January 8, 1833. Mill expected the article to be published before the election so that his friends who were contesting seats might benefit. As he wrote to Thomas Carlyle (1795–1881) on September 17, 1832, "This will appear in the Jurist…carried on by several friends of mine, radical-utilitarians of a better than the ordinary sort,"[113]

112 Highlighted in "The Reformation of Criminals," *The Jurist* 3, no. 8 (July 1832, London), p. 193.

113 Mill to Thomas Carlyle, September 17, 1832, in *The Earlier Letters of John Stuart Mill 1812–*

and in the article he romanticized the Reform Act as the start of a rationalization movement for all public institutions, implying that utilitarians were the best reformers to lead the movement.

Mill adopted Bentham's strategy of division. By idealizing the Reform Act, he distinguished parliament from other public institutions. Mill urged the public to scrutinize "unreformed" public institutions, including the Church of England. To convince his audience of the necessity of reform, Mill analyzed officeholders' common arguments and argued that they were designed to deceive the public, and conceal their corrupt practices. For example, officeholders argued that their right to manage an institution was justified by history, as they were maintaining the initial founders' control over the disposition of the property belonged to the institution, and such control should be absolute and permanent. Mill argued, however, that "this is to make the dead judges of the exigencies of the living," and argued that "this is not even following the wisdom of our ancestors; for our ancestors did not bind themselves never to alter what they had once established."[114] In other words, Mill thought that officeholders were distorting the will of institutions' initial founders for their own interest.

Mill argued that the reformed parliament should ensure that officeholders were accountable in public for their acts and omissions. In his view, such interference would be in accordance with the principle of utility: "We would prescribe but one rule…. When a resolution has been taken…to alter the appropriation of an endowment; let the first object be to employ it usefully."[115] To ensure the usefulness of a policy, government must be open-minded and impartial. Meanwhile, Mill supported the idea of an enlightened bureaucracy.

1848, p. 117.

114 "Corporation and Church Property," p. 4.

115 "Corporation and Church Property," p. 15.

He admitted that the progress towards intellectual maturity was uneven among individuals, and that some would become enlightened earlier than the rest. In the article, Mill quoted Samuel Taylor Coleridge (1772–1834)'s concept of "clerisy" to describe a group of intellectual elites who could lead the utilitarian reformation of society: "the *lettered* class…who were appointed generally to prosecute all those studies, and diffuse all those impressions, which constituted mental culture…which fitted the mind of man, for his condition, destiny, and duty, as Man." On another occasion in the article, Mill expressed such elitism more clearly. He argued that rational reforms were always led by intellectual elites, and that those elites were minorities in any society. Admitting that the superiorities they acquired might lead to corruption and self-serving, Mill wrote that "sinister interest indeed is often found in a minority, but so, it must also be remembered, is truth: at her original appearance she must be so. All improvements, either in opinion or practice, must be in a minority at first."[116]

Strutt's essay "Grand Juries" was praised by Bentham as "an excellent paper" which could be read together with Bentham's writing on the Quasi-Jury in his *Constitutional Code*, as a source of inspiration for reform.[117] "Grand Juries" starts with a critical questioning of the prevailing opinion which identified the jury as an effective guardian of the individual freedoms of Englishmen. It ends with a radical suggestion to abolish grand juries in criminal cases. The main reason the article provided was that the institution's effect in protecting the innocent was much outweighed by "its tendency to protect committing magistrates in the abuse of their power; and thus cause the imprisonment of the innocent."[118] Relating Strutt's article to Bentham's proposal

116 "Corporation and Church Property," pp. 21, 24.

117 Bentham to John Tyrrell, April 19, 1831, in *The Correspondence of Jeremy Bentham*, vol. 13, p. 536.

118 "Grand Juries," *The Jurist* 1, no. 2 (June 1827, London), p. 200.

to establish a Quasi-Jury system to replace the existing jury system, one feels that Strutt's simpler language might have helped readers to understand the logical fallacies of William Blackstone's mystification of the common law:

> So tender is the law of England of the lives of the subjects, that no man can be convicted at the suit of the king of any capital offence, unless by the unanimous voice of twenty-four of his equals and neighbours; that is, by twelve at least of the grand jury, in the first place, assenting to the accusation; and afterwards, by the whole petit jury, of twelve more, finding him guilty upon his trial.[119]

For example, in the "General Preliminary Observations," Bentham classified the problems with the existing jury system into two categories. The first category included six problems contrary to the direct ends of justice. The second category included three problems contrary to the collateral ends of justice, namely, the "maximization of expense of justice, in the shape of delay, vexation, and pecuniary expense."[120] However, the nine problems listed by Bentham were concise. They were logical deductions without concrete examples for the sake of easy comprehension. In this respect, Strutt's article helps modern scholars as it helped contemporary readers. For instance, Bentham's first point, "the corruptness of the situation of the persons locating in this case," was much more vividly described by Strutt, who discussed a recent poaching case to show that the selection of a grand jury could easily be influenced. The poachers from laboring classes had been charged for an assault upon the gamekeepers of a gentleman of large fortune and extensive connections. The gentleman himself was a grand juror, and being both an interested party and a judge, he interfered in the process of prosecution. "It is well known," wrote Strutt, "that the members of Grand Juries, in general, belong to what is called the *landed*

119 "Grand Juries," pp. 190, 200.

120 *Constitution Code* (London, 1830), in Bowring, vol. 9, p. 555.

interest; that, consequently, their sympathies and prejudices must usually be enlisted in favour of that class."[121] Strutt was in line with Bentham in thinking of the grand jury as a political tool rather than as a rational system. Strutt then suggested some ways to rationalize the institution if it were to be preserved, and argued that assistance from a responsible legal adviser was necessary. This suggestion echoed Bentham's idea of the Quasi-Jury, which would consist of three members, two ordinary locals and one selected expert.[122]

In August 1828, *The Jurist* published James Humphreys' letter in reply to criticism by John Reddie and C. P. Cooper. Humphreys' book *Observations on the English Laws of Real Property* proposed that property laws and the Court of Chancery needed some radical reform measures, including codification. His severe criticism of the existing system stirred combative responses. Scottish lawyer John Reddie published *A Letter to the Lord High Chancellor on the Expediency of the Proposal to Form A New Civil Code for England* in early 1828.[123] Reddie suggested that Humphreys' publication was a dangerous sign for the established order:

> Men of talent have declared that the present system of Law is no longer to be tolerated; and they have been listened to. They have proposed to establish an entirely new Civil Code, to serve as a universal rule for the future; and to abrogate all Laws, not comprised within that Code.[124]

The English lawyer C. P. Cooper published *An Account of Parliamentary Proceedings Relative to the Defects in the Court of Chancery, the House of*

121 "Grand Juries," p. 196.

122 Bowring, vol. 9, p. 559.

123 The exact month is unknown, but it should be earlier than July 12, 1828, which is the date Humphreys reviewed Reddie's work, and mentioned that Reddie's work was a recent publication.

124 John Reddie, *A Letter to the Lord High Chancellor on the Expediency of the Proposal to Form A New Civil Code for England* (London: J. & W. T. Clarke, 1828), p. 3.

Lords, and the Court of Commissioners of Bankrupt earlier in 1828 as well. In this book, Cooper stated that Humphreys was unfamiliar with foreign codes.[125]

Humphreys disagreed with the two men's reviews. First, he interpreted Reddie's criticism as the reflection of an irrational fear of codification caused by ignorance and political standing. This fear had not only been expressed by a Scottish lawyer (Reddie), but also by an influential English lawyer, KC Edward Sugden. Humphreys observed that Reddie followed Sugden to discredit the term "code" as foreign and revolutionary. However, Humphreys argued that their arguments against codification were products of their imagination, and influenced by the political sentiment against French ideas. He then claimed that when he had published the first edition of his book with the subtitle "the Outlines of a Code," he had anticipated a strong sentimental objection from unenlightened minds. The word "Code" had been a strategy to attract more attention. Before long, however, he felt that the book had brought him more controversy than expected. Accordingly, he published a second edition which removed the word "Code." He claimed that his second edition contained more "practical" suggestions. However, he found that Reddie had ignored the second edition, and concentrated on attacking the first edition. After a textual analysis of Reddie's mistakes in quotation and interpretation, Humphreys argued that Reddie's criticism had been motivated by personal interest.[126] By attacking a famous but controversial author, Reddie had sought to gain more publicity in order to increase his literary status. Humphreys dismissed this attention-seeking behavior as contrary to the ideal of a disinterested public writer.

Humphreys felt that Cooper was too opinionated to examine the utility of

125 C. P. Cooper, *An Account of Parliamentary Proceedings Relative to the Defects in the Court of Chancery, the House of Lords, and the Court of Commissioners of Bankrupt* (London: J. Murray, 1828), p. 429.

126 "Letter from Mr. Humphreys in Reply to Dr. Reddie and Mr. Cooper," pp. 131–132.

codification rationally. There were many negative connotations about codification in Cooper's mind which prevented him from looking at the question impartially. Meanwhile, as Cooper had already established an admirable reputation as a reformer of the Court of Chancery, Humphreys thought that prejudice must be the only explanation for Cooper's objection. He asked: "[With] what consistency can the propounder of such uncompromising, such radical corrections in the *dispensation* of equitable justice object to a systematic amendment of the laws themselves?…*c'est par humeur*."[127] By contrast, Bentham was quoted and mentioned as a reliable authority. Humphreys defended Bentham's knowledge of the Roman laws and described Reddie's criticism as "discourteous." He also recommended Bentham's recent publication *De la Codification* to Reddie. Moreover, Humphreys emphasized that Bentham had wisely designed the measures to make a code flexible and easily updatable.

In the next issue of *The Jurist* (January 1829), Reddie's response to Humphreys was published. Reddie explained that had Humphreys' attack been anonymous, he would have ignored it. However, he viewed Humphreys' recent lectures in the London University (later University College London) as the sign of a rising reputation, so that the criticism from such a public figure could be very damaging to his own reputation. Therefore, Reddie claimed, he was forced to reply. However, he emphasized that the main purpose was not to save his personal reputation, but to help the public to take notice of Humphreys' mistakes: "I wrote not for Mr. Humphreys, but for those who might be carried away by the plausibility of his reasoning on a very abstruse and difficult department of science."[128]

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127 "Letter from Mr. Humphreys in Reply to Dr. Reddie and Mr. Cooper," p. 136.

128 "Dr. Reddie's Observations on Mr. Humphreys's 'Reply,'" *The Jurist* 2, no. 5 (January 1829, London), p. 309.

However, Reddie's real aim was to discredit Humphreys and codification. Humphreys was accused of being an "unscrupulous partisan" for being blind to the merits of the English legal system. Reddie argued that it "will, indeed, be difficult to make this nation believe, that the laws and institutions—the steps by which civilization has hitherto advanced—have suddenly, not in particular instances, but as a whole, lost their former active and beneficial power."[129] Although a Scotsman, Reddie was an Anglophile and paid tribute to Francis Bacon and Matthew Hale, and he argued that Humphreys and Bentham's notions of codification were too different from the English tradition, and thereby unsuitable for England. In making this argument, Reddie simply followed most common law writers' suspicion of deductive reasoning, and felt that there was no need to look into the details of the proposals of Humphreys and Bentham because codification was purely founded on abstract principles. As he wrote, the "discussion of the particular specific changes in detail proposed by Mr. Humphreys, I distinctly waived, from a sense of the deference due to the English bar and to Mr. Sugden."[130] Reddie was marginalizing Bentham and Humphreys. He linked them with the French theorists before the Revolution. Codifiers were conspirators who attempted to "wrest the laws from the hands of the nation at large, and to wield them for personal aggrandizement, or the degrading purposes of party."[131] By contrast, he described himself as a patriotic Scottish lawyer who closely allied with Sugden and other patriotic English lawyers.

Humphreys and Reddie spoke two very different languages. They differed in attitudes towards legal reasoning (deductive or inductive), the legacy of the French Revolution, and the exceptionalism of English tradition. To those with a

129 "Dr. Reddie's Observations on Mr. Humphreys's 'Reply,'" p. 315.

130 "Dr. Reddie's Observations on Mr. Humphreys's 'Reply,'" p. 315.

131 "Dr. Reddie's Observations on Mr. Humphreys's 'Reply,'" pp. 315–316.

more nationalistic approach, Bentham was an eccentric thinker who had a foreign character associated with the terrors of the French Revolution. But to those with a more liberal or universalistic approach, Bentham's insights epitomized a progressive cultural reformation. In short, the conflicts between them were more than judicial issues, for political ideologies also played a significant part. This tendency to read Bentham from contrasting angles was so pronounced that it causes one to wonder whether Bentham became an ideological symbol which made professional conflicts more intellectually contentious.

3. Public Impact

The legal profession's interest in reform was growing. Most identified authors were working lawyers. The abovementioned analysis of the identified articles shows that these lawyers viewed Bentham as their intellectual leader, and were spreading Bentham's ideas in plain language. They also defended Bentham against his critics, such as Reddie, Cooper, and Sugden. From 1827 to 1833, *The Jurist* hosted a continuous debate on law reform, pressing conservative lawyers and politicians to clarify their opinions. They also continued Bentham's strategy of romanticizing reform-minded politicians and MPs, and dividing them from the government lawyers and high court judges. In July 1832, *The Jurist* distinguished between "reformers of the law" and "opponents to change in it…. Mr. Bentham, at the head of the one party…Lord Eldon, at the head of the other party."[132] This clear division between reformers and anti-reformers was provocative, and intended to influence public opinion, so as to draw a response from the identified anti-reformers. On the other hand,

132 "Law Manuscript Reports and Privy Council Papers," *The Jurist* 3, no. 8 (July 1832, London), p. 230.

their divisive language also suggests an anxiety that the purity of utilitarian reform might be damaged by those who pretended to be reformers and were influencing public opinion.

On December 11, 1828, Parkes wrote to Sharpe:

> "A Contre-Projet to the Humphreysian Code etc. by John James Park [1795–1833], Esq. Barrister at Law" full of stuff, and which should by all means be noticed in the Jurist. I have no doubt but that the gentleman in p. 88 hits you a little in "a visit to Paris during the next long vacation, and a month's residence amongst the French advocates, etc." In p. 89 he turns the Jurist. If you wish a review of it I will do it at once…. Who or what is Park? Is he a Conveyancer? Drop me a line whether it should be done. The volume is open to March…he may be very well trained by a short article.[133]

Park's *A Contre-Projet to the Humphreysian Code* was published in the autumn of 1828. On page 89 of the book, Park described *The Jurist* as "very clever, but not always very sound."[134] On the same page Park also warned his readers not to be misled by the discussion of codification in *The Jurist*.

In 1828, Park was a studious 35-year-old conveyancer. Before writing *A Contre-Projet to the Humphreysian Code*, he had built up a reputation as a scholar of land and its laws by the publications of the *Topography and Natural History of Hampstead* (1814; 2nd ed. 1818) and *A Treatise on the Law of Dower* (1819). He had drafted a bill on tithes, which was introduced into the House of Commons in 1817 by Robert Newman. In 1823, he had published the treatise *Suggestions on the Composition and Commutation of Tithes*, based on the bill. Obviously, he viewed himself as an expert on the subject. He also

133 Parkes to Sharpe, December 11, 1828, Parkes Papers, MS. 31.

134 John James Park, *A Contre-Projet to the Humphreysian Code* (London: J. and W. T. Clarke, 1828), p. 89.

wanted to develop contacts with leading conveyancers. *A Contre-Projet to the Humphreysian Code* was dedicated to John Hodgson, one of the eight members of the real property commission of 1828. Park's dedication suggests a combative character: he described Hodgson as "a mind…unfettered by mere prejudice," and implied that the other commissioners and some famous writers failed to reach the same standard when recommending measures for reform.

Park argued that the adoption of Humphreys' code "would, next to revolution, be one of the greatest national calamities that could be inflicted on this country."[135] He noticed and criticized Humphreys' public letter in *The Jurist* in August 1828. Park claimed that in the letter Humphreys misunderstood the *Code Napoleon*. Then he offered a textual analysis of the code. He viewed *The Jurist*'s support for Humphreys as evidence that *The Jurist* had become an accomplice in a conspiracy to destroy the common law. Although Park claimed that his criticism was academic, his points were directed against them personally. As Mary Sokol has observed, Park could be "disingenuous" in his use of other people's arguments. For example, he called on Bentham's *Rationale of Judicial Evidence* in support of anti-reform arguments.[136]

Park used *The Jurist*'s reports on the history of codification in the United States to oppose codification. He claimed that *The Jurist*'s reports were influential but misleading. "Not having yet received from America the printed documents respecting this operation, I can only obtain my information from those extracts which have been published in this country," that is, in the fourth issue of *The Jurist*.[137] Park was referring to the article "Codification of the Laws of the United States of America." He accused *The Jurist* of selecting sources which exaggerated the popularity of codification. *The Jurist* had

135 Park, *A Contre-Projet to the Humphreysian Code*, pp. vii–viii.

136 Sokol, "Jeremy Bentham and the Real Property Commission of 1828," pp. 74–75.

137 Park, *A Contre-Projet to the Humphreysian Code*, p. 165.

reviewed the *Speech of the Hon. John L. Wilson, Senator in the Legislature of South Carolina, on the Propriety and Expediency of reducing the Laws of the State into a Code* (1827). Park claimed that Wilson's speech contained "numerous fallacies," and that his plan "would, like that of the English redactionists, strip the law of all its historic and dialectic development; for to embrace in such a digest the arguments and comments of the judges would be impossible."[138] The description "redactionists" suggests a strong moral accusation against the supporters of codification. Park thought that they were deceiving the public. Moreover, *The Jurist* had published the correspondence between the American lawyer Sampson and the French lawyer Dupin on the application of the Napoleonic Code after the Revolution. Park dismissed the French experience, and argued that the lawyers and senators of the United States "should not content themselves with writing letters to M. Dupin" because all French lawyers were biased in their obsessive national sentiment in favor of codification. Instead, the real history of codification could only be learnt from the example of an impartial and enlightened country: "They should…go to the fountain heads, and draw their views from an extensive and sound acquaintance with the legal literature of the Continent, and above all with that of Germany."[139]

Park was competing against *The Jurist* for popular support. He divided reform into two approaches. The correct version was practical reform, "which the public are not yet fully instructed enough to appreciate," so he feared that "*The Jurist* has therefore thrown the weight of professional suffrage and erudition into the scale of rash and theoretic reform, and has thereby given a passing support and importance to the crudities of half-witted reformers and

138 Park, *A Contre-Projet to the Humphreysian Code*, p. 166.

139 Park, *A Contre-Projet to the Humphreysian Code*, p. 170.

'bookish theoriques' which they will not fail to repay."[140] In January 1829, *The Jurist* published an article titled "Written and Unwritten Law," which contained a review of Park's book. According to Parkes' letter, the review was his work. Parkes started by mocking Park's title:

> [W]e can readily conceive; for never, since the royal pedant's "*Counterblaste to Tobacco*," [King's James I's treatise against tobacco smoking, 1604] has a more exquisitely tragi-comical performance issued from the press. This hint, we flatter ourselves, will not be thrown away upon Mr. Park; for, considering that the *Projet* itself, compared with the tempestuous outpourings against codification, is "as two grains of wheat in two bushels of chaff," it deserves his attention, whether in the second edition, the title may not be advantageously transmuted into "*A Counterblaste to Codes, by an Operative Lawyer*."[141]

Parkes argued that Park's words could also be interpreted as evidence of the growing influence of *The Jurist*:

> [Park] has given us credit for talent, information, and spirit, with some small seasoning of profligacy—four as popular qualifications, as could well go to the composition of a public writer. In return, we would willingly dwell with lingering admiration upon the minutest of his many beauties; but then, where would be the end? We must be satisfied alas! with culling a few specimens; such, however, as will give the reader a tolerably correct notion of the whole work.[142]

Parkes then analyzed Park's 13 points against codification, arguing that his objections were a vivid example of a lawyer's manipulative use of language for selfish interest, which perfectly fitted Bentham's concept of "opinion-trade." In

140 Park, *A Contre-Projet to the Humphreysian Code*, p. 175.

141 "Written and Unwritten Law," *The Jurist* 2, no. 5 (January 1829, London), p. 217.

142 "Written and Unwritten Law," p. 217.

the *Rationale of Judicial Evidence*, Bentham had explained that lawyers deliberately made the common law and statutory law uncertain and confusing so that their services could be more indispensable and expensive.[143]

In January 1829, *The Law Magazine* published an article titled "Codification Controversy—Mis-statements and Mistakes of Mr. Humphreys," which commented on Humphreys' letter in *The Jurist*. *The Law Magazine* was in tune with Park's opinion. Whereas Park cited the French law journal *Thémis ou Bibliothèque du jurisconsulte* in French, *The Law Magazine* translated his quotation into English. The editors of the French journal "express themselves as 'far from approving the ardour of the editor of the Jurist, or subscribing to the sentence of condemnation passed by him on the national institutions of his own country.'"[144] On the other hand, *The Law Magazine*'s language was more contentious. It quoted Humphreys' words in *The Jurist* to question Humphreys in the sort of tone that suggested he was the accused in a trial:

> You, Mr. Humphreys…. Tell us at once that you did not mean "new," and then there will be something to talk about but do not play the "auceps syllabarum," [a person who quibbles over words] unless, at least, you have a chance of gaining by it.[145]

There is some similarity between this criticism and Bentham's concept of "opinion-trade," but this time supporters of codes were attacked for having deceived the public for sinister motivates. In 1829, the editors of *The Law Magazine* were an Inner Temple law student named Abraham Hayward (1801–1884) and a conveyancer named W. F. Cornish. Abraham was an active

143 Bowring, vol. 7, pp. 316–318.

144 "Codification Controversy—Mis-statements and Mistakes of Mr. Humphreys," *The Law Magazine*, no. 1 (1828–1829, London), p. 628; Park, *A Contre-Projet to the Humphreysian Code*, pp. 178–179.

145 "Codification Controversy—Mis-statements and Mistakes of Mr. Humphreys," p. 631.

member of the London Debating Society and had established a reputation as a steady Tory lawyer who "could hold his own against John Stuart Mill and the other young philosophic radicals who ruled the society."[146]

Park and *The Law Magazine*'s attacks on *The Jurist* reflected the conservative lawyers' anxiety that their professional credibility might be destroyed by a changing public opinion. As David Lemmings has observed, the bar and the common law's reputation as the safeguards of the people was in crisis in the early nineteenth century.[147] The emergence of *The Jurist* escalated this tendency by providing the ammunition for leading radical newspapers. On September 23, 1827, *The Examiner* described *The Jurist* as infusing "a little of the breath of life into the dry bones of 'Father Antic, the Law.'"[148] The "dry bones" referred to those lawyers who accepted the established system. *The Examiner* criticized them being enslaved by the "shackles of routine and precedent," and therefore too narrow-minded to embrace the age of Enlightenment. On the other hand, *The Examiner* observed that before *The Jurist*, some public writers had started to investigate "the abuses and absurdity of" the "vicious" legal system. Now, with *The Jurist*, "a rising disposition in the profession itself" aspired to "reject a miserable jargon emanating from that blind enmity to social improvement."[149] *The Jurist* made the future of reform more promising.

The Examiner welcomed the fact that *The Jurist* discussed a wide range of topics, and argued that these discussions provided intellectual support for "all

146 Philip Harling, "Hayward, Abraham, (1801–1884), essayist and translator," in ODNB, online ed., 2004, https://doi.org/10.1093/ref:odnb/12793.

147 David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford: Oxford University Press, 2000), pp. 326–327.

148 "The Jurist, or Quarterly Journal of Jurisprudence and Legislation. No. II," *The Examiner*, September 23, 1827, p. 593.

149 "The Jurist, or Quarterly Journal of Jurisprudence and Legislation. No. II," p. 593.

the leading branches of British jurisprudence, civil, military and ecclesiastical." Then it reviewed the articles in the second issue of the journal. Of the first article, "Military Law," *The Examiner* wrote that:

> The remarks on the inadequacy and inefficiency of the present office of Judge-Advocate General, in particular, merit attention. Our Journalists would place the law of the army under its control, and exalt it in dignity and authority, which cannot be the case while rendered a mere political appointment, with little advertence to knowledge or capability.[150]

This quotation suggests that *The Examiner* developed *The Jurist*'s research into political criticism. Its review of the other articles, "Grand Juries," "Corporation and Test Acts," "Game Laws," and "The Dramatic Censorship," all of which were about domestic laws and institutions, expressly supported the radical weekly's political radicalism. For example, *The Examiner* argued that the "Corporation and Test Acts" showed that before the Act of Uniformity 1662, the Church of England had been a liberal institution. This argument echoed the radical view that the religious freedom of Englishmen had been ruined by a previous tyrannical parliament which had passed a law "which turned 2000 Ministers out of the Church, that completed the injustice and consummated fraud by oppression."[151]

On August 31, 1827, another leading newspaper, *The Morning Chronicle*, acknowledged the intellectual superiority of *The Jurist*. Its praise for *The Jurist* came alongside the criticism that traditional lawyers had failed to produce a science of legislation. It described England as "behind several of the Continental nations…. In matters of legislation, considered as a science, it is impossible to doubt that it is hardly possible for any people to be in a more

150 "The Jurist, or Quarterly Journal of Jurisprudence and Legislation. No. II," p. 593.

151 "The Jurist, or Quarterly Journal of Jurisprudence and Legislation. No. II," p. 594.

backward state than the English are at this day."[152] This statement suggested that the common law was irrational. Then, *The Morning Chronicle* reviewed the article "Grand Juries," and disputed the writer's opinion that the institution was "evidently mischievous in the present day," and that its popularity "seems undeserving." *The Morning Chronicle* also supported codification. On August 5, 1828, it advertised the article "Codification of the Laws of the United States." The correspondence between Sampson and Dupin was recommended as a just description of the progress of codification in the two nations. Dupin's opinion that "without a Revolution France could never have obtained such an inestimable advantage" in legislation, was commended. *The Morning Chronicle* was suggesting that a revolution in the law was necessary because "our Judicial Establishments are barbarous and unsuited to the wants of the country, our laws are not a rule of action, for even the most skillful practitioners are unable to grope their way through the maze of contradictory cases."[153]

Conclusion

The Jurist revealed several interesting features of the reception of Bentham's ideas in the legal profession. The younger generation of lawyers was fascinated by the charms of reform and science. In August 1828, these lawyers described Bentham "as our leader in the march of improvement," and claimed in November 1832 that "we have on our side the great philosophic lawyer of the age, the father of law reform. But not he—not Mr. Bentham alone—the commissioners, whether of the common law or the equity bar, or those who

152 "The Jurist, Or Quarterly Journal of Jurisprudence and Legislation—No. 2," *The Morning Chronicle*, August 31, 1827, p. 1.

153 "London: Tuesday, August 5, 1828," *The Morning Chronicle*, August 5, 1828, p. 2.

devote themselves to the practice of conveyancing, are all of one mind."[154] In an atmosphere of solidarity, they boldly advocated radical ideas and competed for popular support. They were eager to distinguish themselves from previous reformers. Samuel Romilly was criticized for underestimating "the many gross blemishes and abuses that disfigured the proceedings of" the Court of Chancery.[155] Brougham, in his speech in favor of law reform in February 1828, was criticized for having spoken "more tenderly than" the editors of *The Jurist* had expected about the question of the evidence of parties.[156] Their effort to consolidate a triple alliance between Benthamism, scientific inquiries into the law, and reform, was acknowledged by the press. *The Morning Chronicle* wrote on August 5, 1828:

> [W]e expect little from such a Legislature as ours; but it is of importance that the public should be adequately impressed…. We agree with an able writer in *The Jurist*, that "the first thing to be done for reform, in a country where you have an unwilling Legislature, from which everything is to be dragged by a sort of force, is to educate the public mind, which is the dragging power."[157]

A radical alliance was being formulated under the influence of Bentham's networks and *The Jurist*. Bentham's expanding networks and his friendship with O'Connell from the summer of 1828 were encouraging signs to lawyers who really believed in the possibility of democracy. As Bentham's approval of Strutt's public spirit showed, the members of *The Jurist* thought highly of each other. These lawyers encouraged each other to pursue high political positions

154 "Cooper's Account of the Court of Chancery," *The Jurist* 2, no. 4 (August 1828, London), p. 99; "Registration," *The Jurist* 3, no. 9 (November 1832, London), p. 331.

155 "Criminal Code," *The Jurist* 1, no. 1 (March 1827, London), p. 5.

156 "Mr. Brougham's Speech on the Present State of the Law," *The Jurist* 2, no. 4 (August 1828, London), p. 25.

157 "London: Tuesday, August 5, 1828," *The Morning Chronicle*, August 5, 1828, p. 2.

and believed in their moral integrity, in contrast with lawyers outside their networks. That is why Bickersteth and Parkes independently founded the journal, and why they had a good working relationship with Bentham. In general, however, they could sustain and enlarge their own networks without Bentham's direct assistance. This suggests that the younger generation of reformers, from different religious and professional backgrounds, were unified by Enlightenment beliefs in science and by a more democratic vision of social justice. At this stage, Bentham's role was more of a cultural icon than a teacher. His measures such as codification, transparent procedure of evidence, and district courts, received different responses in *The Jurist*. Some articles were more reserved, expressing concerns about the economic cost of Bentham's reforms. But a greater proportion of articles defended and clarified Bentham's ideas so as to refute objections.

The different attitudes towards Bentham within *The Jurist* can be explained by the wider political environment. *The Jurist* observed in April 1832 that the waters of reform were muddied whenever a topic attracted reluctant public attention.[158] The reformers were greatly divided. Tory reformers often accused radical reformers of being unrealistic and unpatriotic, whereas Bentham distrusted both Tory and Whig reformers. In 1829, he prepared material for the article "Reformists Reviewed." Although this was unfinished and unpublished, Bentham spread his views of reformers in his private networks. The article started with three types: "As in Parliamentary so in Law Reform 1 Radical Reformists 2 Moderate do 3 Anti reformists [*sic*]," and then expanded the "Anti reformists" into two categories: the "pseudo Reformist" and the "dubious Reformist." Robert Peel was considered to be of the former category, while Henry Brougham was considered to be of the latter.[159]

158 "History of Law Reform," *The Jurist* 3, no. 7 (April 1832, London), p. 56.

159 Sokol, "Jeremy Bentham and the Real Property Commission of 1828," p. 120.

Bentham's attempts at purification inspired *The Jurist* to speak in a combative and divisive language so as to invite debate. Although some articles complained about Bentham's indiscriminative and unsparing attitude towards lawyers, *The Jurist* agreed with his judgement about the existence of sinister interest in the profession:

> It is only in proportion as men are known to be free, and emancipated from the influence of professional habits, that they can be more or less fit for the great duty of examining into and redressing the abuses of a system which is become a second nature to the mass of practitioners.[160]

Thus, real reformers should form a close bond under the leadership of Bentham, a proven radical reformer. By this logic, *The Jurist* was asking for a purification movement in the profession to distinguish between the friends and enemies of real utilitarian reform. Accordingly, commitment to Bentham's ideas, manifested by membership of his private networks, became both a unifying force to strengthen the bonds between radical reformers, and a divisive force that compelled those who preferred to hesitate or disguise their views to clarify their real intentions in public.

Lobban has argued that many lawyers were aware of the flaws of the common law long before the 1820s because of the pressures they felt in legal practice, particularly with the rapid increase of litigation since the 1790s. Law reform was largely perceived as a technical or administrative topic.[161] Lobban's explanation of the conservative nature of law reform in the 1820s is convincing. However, he perhaps underestimates the progress that utilitarian discourse achieved in the press, and the energy with which a group of reform-minded lawyers tried to mobilize public opinion. *The Jurist*, in this context, might enrich our understanding of the associational culture among reformers.

160 "Cooper's Account of the Court of Chancery," p. 92.

161 Lobban, "'Old wine in new bottles,'" pp. 117–119.

Moreover, the language of *The Jurist* illuminates the motives of reformers. Lobban's argument tends to suggest that rationalization of the law was driven by the profession's own interest in making their business more efficient. Although reformers were certainly motivated by material interest, this view might ignore other factors, such as Enlightenment beliefs, as reflected in the pages of *The Jurist*.

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邊沁的法律改革網絡：以《法學家報》（*The Jurist*）為中心（1827–1833）

李　誠*

提　要

1827 年 3 月，青年律師亨利・比科斯特斯（Henry Bickersteth, 1783–1851）、約瑟夫・帕克斯（Joseph Parkes, 1796–1865）和薩頓・夏普（Sutton Sharpe, 1797–1843）在英國哲學家邊沁（Jeremy Bentham, 1748–1832）不知情的情況下，創辦了法學期刊《法學家報》（*The Jurist*），該期刊稱邊沁是法律改革者的領袖。《法學家報》吸引了以律師為主的諸多投稿人，並在 1827–1833 年間發表了 97 篇文章。本文確認了 19 位參與這項出版工程的人士，還原邊沁周圍人員的社交網絡、生活背景以及與邊沁的互動。本文認為，到 1820 年代末，邊沁已經成為許多年輕改革派律師的思想導師。在他們的作品裏，邊沁的功利主義法律思想與其他派別的政治語言相融合，在一定程度上促進了啟蒙時代理性法理想的流行。《法學家報》也刺激知名報紙和法律作者回應如何有效改進普通法。考察這份期刊成員和公共影響力，顯示邊沁對法律改革者的影響大於目前史學界的評估。

關鍵詞：邊沁　《法學家報》　普通法　法律改革者　社交網絡

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