GLOBALIZING JEREMY BENTHAM

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Abstract: Jeremy Bentham's career as a writer spanned almost seventy years, from the Seven Years' War to the early 1830s, a period contemporaries called an age of revolutions and more recent historians have seen as a world crisis. This article traces Bentham's developing universalism in the context of international conflict across his lifetime and in relation to his attempts to create a 'Universal Jurisprudence'. That ambition went unachieved and his successors turned his conception of international law in a more particularist direction. Going back behind Bentham's legacies to his own writings, both published and unpublished, reveals a thinker responsive to specific events but also committed to a universalist vision that helped to make him a precociously global figure in the history of political thought.

Historians of political thought have lately made two great leaps forward in expanding the scope of their inquiries. The first, the 'international turn', was long-heralded and has been immediately fruitful.[3] Histories of international thought have idiomatically reconstructed the norms that regulate (or have been supposed to regulate) the relations among states, nations, peoples, individuals and other corporate actors in the international arena. Over the course of barely a decade, this lively historiography has already established a robust canon of thinkers and problems.[4] Meanwhile, the second move, towards what might be called a 'global turn' in the history of political thought, is for the moment more speculative and less well developed. Political theorists, historians of philosophy and others have recently called for a transnational intellectual history and, more broadly, for what might be called the globalization

[3] For two early assessments of the field's prospects, see Duncan S.A. Bell, 'International Relations: The Dawn of a Historiographical Turn', *British Journal of Politics and International Relations*, 3 (2002), pp. 115–26; David Armitage, 'The Fifty Years' Rift: Intellectual History and International Relations', *Modern Intellectual History*, 1 (2004), pp. 97–109.

[4] For recent work mapping the field, see Edward Keene, *International Political Thought: A Historical Introduction* (Cambridge, 2005); *Classical Theory in International Relations*, ed. Beata Jahn (Cambridge, 2006); *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge, 2007); *British International Thinkers from Hobbes to Namier*, ed. Ian Hall and Lisa Hill (Basingstoke, 2009).

of the history of political thought.[5] Quite what such a global history of political thought will look like, or even what its subject-matter will be, is still far from clear. What is certain is that the possibilities for such a global history — or even for multiple histories under this rubric — remain enticingly open-ended. It could be a history of the convergence of intellectual traditions from around the world or of the global circulation of ideas.[6] It will have to include the history of political and other forms of thinking about world community, global connectedness and the various phenomena subsumed under the umbrella term 'globalization'.[7] And past thinkers who attempted to conceive the world, its peoples and its polities holistically will surely be indispensable to any globally expansive history of political thought.

This article tackles one such figure, Jeremy Bentham. Unlike many of his distinguished predecessors and contemporaries, such as Smith, Kant, Turgot, Burke, Paine, Herder or Goethe, Bentham has not generally been considered in such global terms.[8] This omission is odd not least because it ignores

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[5] J.B. Schneewind, 'Globalization and the History of Philosophy', *Journal of the History of Ideas*, 66 (2005), pp. 169–78; Allan Megill, 'Globalization and the History of Ideas', *Journal of the History of Ideas*, 66 (2005), pp. 179–87; Emma Rothschild, 'Arcs of Ideas: International History and Intellectual History', in *Transnationale Geschichte: Themen, Tendenzen und Theorien*, ed. Gunilla Budde, Sebastian Conrad and Oliver Janz (Göttingen, 2006), pp. 217–26; Duncan Ivison, 'The Nature of Rights and the History of Empire', in *British Political Thought in History, Literature and Theory, 1500–1800*, ed. David Armitage (Cambridge, 2006), p. 191.

[6] David Armitage, *The Declaration of Independence: A Global History* (Cambridge, MA, 2007); John Dunn, 'Why We Need a Global History of Political Thought' (unpublished lecture, Helsinki Collegium for Advanced Studies, May 2008), http://www.helsinki.fi/collegium/events/dunn_collegiumlecture.pdf, accessed 14 July 2010; Andrew Sartori, *Bengal in Global Concept History: Culturalism in the Age of Capital* (Chicago, 2008); *Giuseppe Mazzini and the Globalization of Democratic Nationalism, 1830–1920*, ed. C.A. Bayly and Eugenio Biagini (Oxford, 2008); *Cosmopolitan Thought Zones: South Asia and the Global Circulation of Ideas*, ed. Sugata Bose and Kris Manjapra (Basingstoke, 2010); 'Forum: The Bhagavad Gita and Modern Thought', *Modern Intellectual History*, 7, ed. Shruti Kapila and Faisal Devji (2010), pp. 269–457.

[7] David Armitage, 'Is There a Pre-History of Globalization?', in *Comparison and History: Europe in Cross-National Perspective*, ed. Deborah Cohen and Maura O'Connor (London, 2004), pp. 165–76; Jan Aart Scholte, 'Defining Globalisation', *The World Economy*, 31 (2008), pp. 1471–1502; Jens Bartelson, *Visions of World Community* (Cambridge, 2009); Duncan Bell, 'Writing the World: Disciplinary History and Beyond', *International Affairs*, 85 (2009), pp. 3–22.

[8] Ian Dyck, 'Local Attachments, National Identities and World Citizenship in the Thought of Thomas Paine', *History Workshop*, 35 (1993), pp. 117–35; Sankar Muthu, *Enlightenment Against Empire* (Princeton, 2003), Ch. V; Emma Rothschild, 'Global Commerce and the Question of Sovereignty in the Eighteenth-Century Provinces', *Modern Intellectual History*, 1 (2004), pp. 3–26; Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, 2005); Sankar Muthu, 'Adam Smith's Critique of International Trading Companies: Theorizing "Globalization" in the

Bentham's own extravagant self-conception as a global philosopher.[9] In 1786, he had expressed his ambition in this way: 'The Globe is the field of Dominion to which the author aspires. The Press the Engine and the only one he employs — The Cabinet of Mankind the Theatre of his intrigue.'[10] Forty-five years later, on the day before his eighty-third birthday in 1831, Bentham pronounced himself 'the most ambitious of the ambitious. His empire — the empire he aspires to — extending to and comprehending the whole human race, in all places — in all habitable places of the earth, at all future time . . . Limits has it no other than those of the earth'.[11] These were the dimensions William Hazlitt argued that Bentham had already attained by 1825: the prophet-philosopher may have been without honour in his own country, but

> [h]is reputation lies at the circumference; and the lights of his understanding are reflected, with increasing lustre, on the other side of the globe. His name is little known in England, better in Europe, best of all in the plains of Chili and the mines of Mexico. He has offered constitutions for the New World, and legislated for future times.[12]

This was the Bentham whom the Central American reformer José del Valle hailed in 1826 as the 'legislator of the world' (*Legislador del mundo*);[13] and this was the Bentham his American editor, John Neal, praised in 1830 for

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Age of Enlightenment', *Political Theory*, 36 (2008), pp. 185–212; Chenxi Tang, *The Geographic Imagination of Modernity: Geography, Literature, and Philosophy in German Romanticism* (Stanford, 2008); Paul Cheney, *Revolutionary Commerce: Globalization and the French Monarchy* (Cambridge, MA, 2010).

[9] However, three recent studies have pointed towards this 'global' Bentham: Jennifer Pitts, 'Jeremy Bentham: Legislator of the World?', in *Utilitarianism and Empire*, ed. Bart Schultz and Georgios Varouxakis (Lanham, MD, 2005), pp. 57–91; Peter Niesen, 'Varieties of Cosmopolitanism: Bentham and Kant on International Politics', in *Kant's Perpetual Peace: New Interpretive Essays*, ed. Luigi Caranti (Rome, 2006), pp. 247–88; Michihiro Kaino, 'Bentham's Concept of Security in a Global Context: The Pannomion and the Public Opinion Tribunal as a Universal Plan', *Journal of Bentham Studies*, 10 (2008): www.ucl.ac.uk/Bentham-Project/journal/Kaino.pdf, accessed 14 July 2010. Eric Hobsbawm seems to have been the first to use the term 'global Bentham': E. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge, 2nd edn., 1992), p. 27 n. 33.

[10] Jeremy Bentham, 'Pac. & Emanc. — Introd.' (1786), Bentham Papers, University College London (hereafter, UCL), XXV. 26; *The Works of Jeremy Bentham*, ed. John Bowring (11 vols., Edinburgh, 1838–43) (hereafter, *Works*), II, p. 546.

[11] Jeremy Bentham, 'Memorandum-Book' (1831), in *Works*, XI, p. 72, quoted in William Twining, *Globalisation and Legal Theory* (London, 2000), pp. 15–16.

[12] William Hazlitt, *The Spirit of the Age; or, Contemporary Portraits* (London, 1825), p. 3.

[13] José del Valle to Jeremy Bentham, 21 May 1826, in *The Correspondence of Jeremy Bentham*, ed. T.L.S. Sprigge, *et al*. (12 vols. to date, London and Oxford, 1968–), XII, pp. 217–18; also in Bentham *'Legislator of the World': Writings on Codification, Law and Education*, ed. Philip Schofield and Jonathan Harris (Oxford, 1998), p. 370.

being 'circulated in chapters throughout every quarter of the globe — the north striving with the south, the new world with the old, to give them simultaneous publicity'.[14]

By the time of Bentham's death in 1832, his acolytes had indeed spread his ideas from the Americas to Bengal and from Russia to New South Wales, by way of Geneva, Greece and Tripoli.[15] They did so mostly in their own translations and redactions of his notoriously recalcitrant manuscripts, foremost among them the versions produced by his two leading editors, Étienne Dumont and John Bowring.[16] They fashioned Bentham as a universal legislator with potentially global reach partly by excising traces of the particular events and concerns that informed or inspired his arguments. This decontextualized Bentham was the one best known in the wider world, and would also be the figure championed by John Stuart Mill, among others. Recovering a more idiomatic and authentic Bentham from his vast manuscript *Nachlass* has been the major project for Bentham scholarship in recent years.[17] That effort has made it possible to assess the often quite specific occasions and arguments against which Bentham elaborated his unfolding universalism.

Universalism and particularism are usually treated as opposing and incompatible paradigms, especially in the realm of legal theory where Bentham's intellectual legacy has been most strongly felt. Universalism assumes that a public order defined by law is possible on a global scale, potentially including all peoples and societies; particularism, by contrast, holds that such order can only be achieved within the kinds of bounded communities we call states. Each paradigm raises questions of the locus of authority, the source of legislation, the presence (or absence) of sanctions and the relations between differ-

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[14] John Neal, 'Biographical Notice of Jeremy Bentham', in Bentham, *Principles of Legislation: From the MS. of Jeremy Bentham . . . By M. Dumont*, ed. and trans. John Neal (Boston, 1830), p. 11.

[15] Jeremy Bentham, *Securities Against Misrule and Other Constitutional Writings for Tripoli and Greece*, ed. Philip Schofield (Oxford, 1990); F. Rosen, *Bentham, Byron, and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought* (Oxford, 1992); Ian R. Christie, *The Benthams in Russia, 1780–1791* (Oxford, 1993).

[16] On Dumont, see Emmanuelle de Champs, 'La postérité des idées de Jeremy Bentham: la notion d'influence à l'épreuve', *Cromohs*, 11 (2006), pp. 1–17; Richard Whatmore, 'Étienne Dumont, the British Constitution, and the French Revolution', *The Historical Journal*, 50 (2007), pp. 23–47; Cyprian Blamires, *The French Revolution and the Creation of Benthamism* (Basingstoke, 2008); *Bentham et la France: fortune et infortunes de l'utilitarisme*, ed. Emmanuelle de Champs and Jean-Pierre Cléro (Oxford, 2009), Pt. II: 'Bentham et Dumont: les premières traductions françaises'. On Bowring, see Stephen Conway, 'John Bowring and the Nineteenth-Century Peace Movement', *Historical Research*, 64 (1991), pp. 344–58; David Todd, 'John Bowring and the Global Dissemination of Free Trade', *The Historical Journal*, 51 (2008), pp. 373–97.

[17] Philip Schofield, *Bentham: A Guide for the Perplexed* (London, 2009), pp. 19–43.

ent forms of law — municipal and international, positive and natural — to which humans are subject both individually and collectively.[18]

There is, of course, a spectrum from a thorough-going universalism on the one hand to a rigid particularism on the other, as well as a hierarchy of legal regimes under which we all now live. How wide that spectrum might be, and how the distinct levels within that hierarchy of regimes might be negotiated, were questions that Bentham faced across the whole extent of his philosophical career from the 1770s to the 1830s. That career coincided with what his contemporaries were already calling an 'Age of Revolutions' and what more recent historians have seen as a 'World Crisis' spanning the decades from the Seven Years' War to the eve of the Opium War.[19] In this article, I hope to show that Bentham was an active participant in shaping those conjunctures and that his own developing universalism was, in turn, shaped by his response to the challenges of the period. More specifically, I trace Bentham's universalist ambitions from their roots in his earliest writings to their culmination in one of the last projects of his life, an abortive attempt to codify what he had been the first to call 'international law'.[20] The global Bentham who emerges was engaged in a lifelong dialogue between universalism and particularism which neither he nor his followers in the nineteenth century (and beyond) were ever able finally to resolve.

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Bentham was born in 1748 into perhaps the first generation of Europeans who possessed a comprehensively global vision of their place in the world. He was six years old when the first sparks of what began as the French and Indian War on the Ohio frontier in North America kindled what became the Seven Years' War, a titanic conflict among the great powers of Europe that was widely recognized as a world war, in the range of its theatres and its impact on the fate

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[18] Armin von Bogdandy and Sergio Dellavalle, 'The Paradigms of Universalism and Particularism in the Age of Globalisation: Western Perspectives on the Premises and Finality of International Law', in *Collected Courses of the Xiamen Academy of International Law*, 2 (Leiden, 2009), pp. 45–127.

[19] C.A. Bayly, *The Birth of the Modern World, 1780–1914: Global Connections and Comparisons* (Oxford, 2004), Ch. III: 'Converging Revolutions, 1780–1820'; John Darwin, *After Tamerlane: The Rise and Fall of Global Empire* (London, 2007), Ch. IV: 'The Eurasian Revolution'; *The Age of Revolutions in Global Context, c. 1760–1840*, ed. David Armitage and Sanjay Subrahmanyam (Basingstoke, 2010).

[20] H.B. Jacobini, 'Some Observations Concerning Jeremy Bentham's Concepts of International Law', *American Journal of International Law*, 42 (1948), pp. 415–17; Hidemi Suganami, 'A Note on the Origin of the Word "International" ', *British Journal of International Studies*, 4 (1978), pp. 226–32.

of transoceanic empires.[21] The precocious Bentham was up at Oxford during the latter years of the war, from 1760 to 1763, and one of his earliest literary productions treated its closing stages. In search of a topic for some Latin verses in 1763, Bentham settled on the British siege of Havana the year before. Samuel Johnson himself had earlier urged the young scholar to tackle some other British victory in the conflict, but Bentham noted that 'the Conquest of North America did not suggest to me any Thoughts', nor was he 'better able to find Matter on the subject of the Manilla's [*sic*]'. He decided instead 'upon the Havannah for the Subject of my Verses' in which he argued that Britain should restore its conquests to Spain, 'and moreover that commerce will afford it [Florida] us by a more peacefull method'.[22] The verses no longer survive but Bentham's later memories of the war, and his assessment of its consequences, did. Together they provide an object lesson in the way later editing turned reaction to particular events into a universal statement.

Bentham recalled the aftermath of the Seven Years' War in his manuscript, 'Cabinet No Secresy' (1789): 'true enough it is that a man who has had his leg cut off, and the stump healed, may hop faster than a man who lies in bed with both legs broke can walk. And thus you may prove that Britain was put into a better case by that glorious war, than if there had been no war, because France was put into a still worse'.[23] When Bentham's pacifist editor, Bowring, redacted this material as part of a work he entitled 'Plan for an Universal and Perpetual Peace', he struck out most of the historical references in the surrounding text and rendered Bentham's reference to war general rather than specific in application.[24] Bentham's image as a universal legislator and global philosopher of peace could thereby be affirmed, but only at the cost of suppressing the successive contexts — in the 1760s and in the 1780s — that informed Bentham's reflections.

The interplay between the particular and the universal, the circumstantially local and the potentially global, became more evident in the next great international conflict of Bentham's life, the American War. This was the first such conflict in which Bentham himself participated as a philosophical combatant. His first major published work, the *Fragment on Government*, appeared

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[21] H.V. Bowen, 'British Conceptions of Global Empire, 1756–83', *Journal of Imperial and Commonwealth History*, 26 (1998), pp. 1–27.

[22] Bentham to Jeremiah Bentham, 6 May and 29 June 1763, in *Correspondence of Jeremy Bentham*, ed. Sprigge, *et al*., I, pp. 72, 78–9.

[23] UCL XXV. 58; compare UCL XXV. 29, fol. 12, for a similar judgment on the outcome of the war.

[24] Bentham, 'Plan for an Universal and Perpetual Peace', in Bentham, *Works*, II, p. 560: 'And thus you may prove that Britain *is* in a better case *after the expenditure of a* glorious war, than if there had been no war; because France *or some other country*, was put by it into a still worse condition' (my emphases). On the editing of these manuscripts see Gunhild Hoogensen, *International Relations, Security and Jeremy Bentham* (Abingdon, 2005), pp. 40–54.

(anonymously) in April 1776, just before the crisis of the war precipitated by the American Declaration of Independence in July 1776.[25] Later that year, Bentham co-authored the official British government response to the Declaration (again, anonymously) with his friend the lawyer John Lind and over the course of his life he returned at intervals to his ambivalent assessment of the American cause, which he thought rationally justifiable even though the 'American colonies themselves said nothing to justify their revolution. They thought not of *utility*, and *use* was against them'.[26] It was during the American War that Bentham had introduced utility as the fundamental principle of his universalist project and it was also then that he first attempted to create a 'Universal Jurisprudence'. The questions at stake in the transatlantic constitutional debates informed this larger project, which in turn fortified his published interventions during the war. As Bentham noted in his 'Preparatory Principles — Inserenda' (*c*.1776), 'A great part of the merits of the American controversy as far as concerns the matter of right, centers on the signification of the words Give, grant, consent, on representation, taxation, legislation, constitution', as well as on the definition of fundamental concepts such as liberty and sovereignty.[27]

Such questions decisively informed the *Fragment on Government*, a work that Bentham self-consciously promoted as the product of a global moment in British and human history. He published it in the wake of James Cook's return from his second voyage around the world in 1775. As Bentham noted on the work's first page,

> Ours is a busy age; in which knowledge is rapidly advancing towards perfection. In the natural world, in particular, every thing teems with discovery and with improvement. The most distant and recondite regions of the earth traversed and explored . . . are striking evidences, were all others wanting, of this pleasing truth.

[25] On Bentham and the American War see especially Lea Campos Boralevi, *Bentham and the Oppressed* (Berlin, 1984), pp. 121–3; Monica Valentini, 'Bentham sull'independenza delle colonie americane', *Il Pensiero Politico*, 24 (1993), pp. 356–81; Marco Olivieri, 'Bentham, Lind e il dibattito sulla Dichiarazione d'Independenza degli Stati Uniti', *Il Pensiero Politico*, 39 (2006), pp. 36–48; Paola Rudan, 'Dalla constituzione al governo: Jeremy Bentham e le Americhe', unpublished PhD dissertation, Università di Bologna, 2007.

[26] 'Bentham's Conversation' (1827–8), in *Works*, X, p. 584; H.L.A. Hart, 'The United States of America', in H.L.A. Hart, *Essays on Bentham: Jurisprudence and Political Theory* (Oxford, 1982), pp. 53–78.

[27] Jeremy Bentham, 'Preparatory Principles — Inserenda' (*c*.1776), UCL LXIX. 176; compare UCL LXIX. 177, quoted in Douglas G. Long, *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to his Utilitarianism* (Toronto, 1977), p. 235 n. 3. The Bentham Project has published an online transcription of these manuscripts by Douglas G. Long and Oliver D. Harris: http://www.ucl.ac.uk/Bentham-Project/online_pub/ppi_ind.htm, accessed 14 July 2010; see also Long, *Bentham on Liberty*, pp. xiii–xiv, 65–83.

He argued that discovery was similarly possible in the moral world and proposed a novel axiom he claimed to be of his own devising, which here appeared for the first time in print: '*it is the greatest happiness of the greatest number that is the measure of right and wrong*'.[28] For Bentham, this was a genuinely universal principle, especially when placed in the service of what he termed a 'censorial' jurisprudence dedicated — unlike the more pragmatic 'expository' jurisprudence — to generating normative propositions: 'That which *is* Law, is, in different countries, widely different: while that which *ought to be*, is in all countries to a great degree the same. The *Expositor*, therefore, is always the citizen of this or that particular country: the *Censor* is, or ought to be the citizen of the world.'[29]

Bentham's target in the *Fragment* was another jurist with universalist ambitions, Sir William Blackstone. Blackstone had grounded his *Commentaries on the Laws of England* (1765–9) on the universalism of natural law: 'This law of nature, being co-eval with mankind and dictated by God himself, is of course superior to any other. It is binding all over the globe, in all countries, and at all times; no human laws are of any validity, if contrary to this.'[30] However, for Bentham the law of nature was 'nothing but a phrase', a purely speculative, non-binding fiction which could provide no solid basis for legal obligation.[31] What was needed instead, and more particularly to replace Blackstone's *Commentaries*, was 'a treatise giving an account of such rights, powers, duties and restraints as subsist or are liable to subsist in every or any state', a work Bentham variously entitled 'A Treatise on Universal Law' or the 'Principles of Universal law — applied chiefly to the Law of England' which Bentham never completed.[32] In the surviving manuscripts of the project he elaborated his criticism of natural law as 'a contradiction in terms' which signified nothing and revealed only the confusion of those authors who had written at such length upon it:

> Grotius and Puffendorf, and Heineccius and Vattel, Burlamaqui and the many others who have hitherto professed to give treatises on Natural Law, or Universal Law, or on Public Law, Civil Law, on Political Law, not having settled with themselves which of these several objects they had in view, have written large books that have contained every thing and nothing. Here they tell us what men have done or do or would do in an ungoverned state; next of something men ought to do, as they are pleased to say, without telling us why or wherefore; then of something men actually do in all governed states; then of something men do in the governed state in which the writer

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[28] Jeremy Bentham, *A Fragment on Government* (1776), ed. J.H. Burns and H.L.A. Hart, with an introduction by Ross Harrison (Cambridge, 1988), p. 3.

[29] *Ibid.*, p. 8.

[30] William Blackstone, *Commentaries on the Laws of England* (4 vols., London, 1765–9), I, p. 41.

[31] Bentham, *Fragment on Government*, ed. Burns and Hart, p. 95.

[32] UCL LXIX. 126; UCL LXIX. 227.

lives; then of something they ought to do in all states; then of something they ought to do in that particular state.[33]

In place of 'the old rubbish' peddled by Grotius, Pufendorf, Burlamaqui and the like, Bentham proposed a positive factual basis for universal law: 'Utility will reign sole and sovereign arbitress of all disputes.'[34]

The *Fragment on Government* treated only what Blackstone distinguished as municipal law. It might therefore appear to have marked a retreat in Bentham's ambitions for a universal jurisprudence. To be sure, his project in the *Fragment* was more modest than the all-encompassing treatise whose foundations he was laying at the same time, but in the context of the American War, matters of municipal law could not firmly be separated from those relevant to the law of nations. For example, Blackstone famously defined the rights of sovereignty in political society as 'a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summa imperii . . .* reside' and had argued in the House of Commons for Parliament's right to tax the American colonies during the Stamp Act crisis: 'If the colonies reject a law of taxation, they may oppose any other, and they will become a more distinct separate dominion under one head. All the dominions of this country have been subject to Parliament', even if only Calais had ever sent representatives to Westminster.[35] Bentham agreed with Blackstone that the supreme power should be unbounded, that sending American members to Westminster was impractical, and even with the view that the King in Parliament had the right to tax the colonies. In May 1775 he contributed a set of queries to his friend John Lind's *Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain* (1775) in which he judged the colonial charters to be but 'useless parchments' and concluded that there could be no question but that the King in Parliament had the right to tax the colonies.[36] *Contra* Blackstone, he argued that 'express convention' could allow divisions of authority in a political society; to assert otherwise 'would be saying there is no such thing as government in the

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[33] UCL LXIX. 126, 127.

[34] UCL LXIX. 232.

[35] Blackstone, *Commentaries*, I, pp. 39–46, 49, 156; 'Parliamentary Diaries of Nathaniel Ryder, 1764–7', ed. P.D.G. Thomas, *Camden Miscellany*, XXIII, Camden Society 4th series, 7 (1969), p. 268; Wilfrid Prest, *William Blackstone: Law and Letters in the Eighteenth Century* (Oxford, 2008), pp. 225–6.

[36] [Jeremy Bentham,] 'The Design', in [John Lind,] *Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain* (London, 1775), pp. xv–xvi; Bentham's annotations to [Edmund Burke,] *Observations on the Late State of the Nation* (London, 4th edn., 1769), pp. 98–101, British Library (hereafter, BL) pressmark 08138. dd 50 (1); UCL LXIX. 156. Bentham returned to the question of the Crown's right to legislate independently for its colonies in 1803: Bentham, *A Plea for the Constitution: Shewing the Enormities Committed to the Oppression of British Subjects, Innocent as well as Guilty . . . in and by the Design, Foundation and Government of the Penal Colony of New South Wales* (London, 1803), pp. 30–6.

German Empire; nor in the Dutch Provinces; nor in the Swiss Cantons; nor was of old the Achaean league'.[37] By implication, it was also to deny one conceivable solution to the Atlantic crisis of the 1760s and 1770s: a federal distribution of powers between Parliament and the colonial assemblies.[38]

By the time the *Fragment* appeared, any federal solution to the problems of Britain's Atlantic empire was a rapidly vanishing option. Secession was a much more likely outcome to the crisis. That possibility may have been on Bentham's mind when he tested Blackstone's account of the origins of political society by asking:

> . . . suppose an incontestable political society, and that a large one, formed; and from that a smaller body to break off: by this breach the smaller body ceases to be in a state of political union with respect to the larger: and has thereby placed itself, with respect to the larger body, in a state of nature — What means shall we find of ascertaining the precise juncture at which this change took place? What shall be taken for the *characteristic mark* in this case?

Bentham took as his example the defection of the Dutch from the Spanish monarchy to become 'independent states'. Exactly when they had ceased to be part of that monarchy and had entered a state of nature with regard to it and every other state 'will be rather difficult to agree upon'. (In a footnote, he suggested that 'the defection of the Nabobs of Hindostan' from the Mughal empire might have been a more exact historical illustration of the same conundrum, though less well known to his readers.) 'When is it, in short', he went on, 'that a *revolt* shall be deemed to have taken place; and when, again, is it, that that revolt shall be deemed to such a degree successful, as to have settled into *independence*?'[39] The question mattered for quite specific reasons in the summer of 1776, should the American colonies secede from the British empire; it also mattered more generally, in that any such passage from dependency to independence marked a transition for a political society from submission to municipal law to action as a sovereign body under the law of nations.

Bentham first publicly treated the law of nations in his first major missile from the press after the *Fragment on Government* and his *View of the Hard Labour Bill* (1778), the *Introduction to the Principles of Morals and Legislation*, originally printed in 1780 but held back until 1789, partly in response to William Paley's *Principles of Moral and Political Philosophy* (1785).[40] This

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[37] Bentham, *Fragment on Government*, ed. Burns and Hart, p. 101.

[38] On the various proposals for a federal solution to the imperial crisis, see Alison LaCroix, *The Ideological Origins of American Federalism* (Cambridge, MA, 2010), pp. 104–26.

[39] Bentham, *Fragment on Government*, ed. Burns and Hart, pp. 46–7.

[40] Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (1780/89), ed. J.H. Burns and H.L.A. Hart, with an introduction by F. Rosen (Oxford, 1996), p. li;

was a more thoroughgoing application of the principle of utility than he had attempted before, as well as a more comprehensive system of jurisprudence. It was in this work that he introduced one of his most enduring neologisms: the word 'international' to denote 'that branch of jurisprudence' dealing with 'the mutual transactions between sovereigns as such'. Bentham acknowledged the term to be a 'new one, though sufficiently intelligible and analogous', and chiefly useful as an alternative to the traditional 'law of nations', which he judged to be better as a literal description of the law applied to members of the same state rather than to those of different states: that is, what he called 'internal' rather than 'international jurisprudence'.[41] In this regard, it is curious that Bentham did not call this branch of law 'interstate' or even 'interstatal' law. The explanation may be that he was drawing on an earlier distinction made by the French chancellor D'Aguesseau between '*le Droit des Gens* (*Jus Gentium*)' and '*le Droit entre les Nations* (*Jus inter Gentes*)', as he acknowledged in a footnote.[42]

The distinction between the internal and the international would have been especially salient in 1780 — perhaps even more so than in 1789 — at the height of the American War, before British defeat seemed inevitable as it did after 1781. If the colonists' claims to independence were refutable and ignorable, then relations between them and Great Britain were strictly matters of internal jurisprudence; only with the achievement (and recognition) of independence would they come under the rubric of international law as transactions between distinct peoples inhabiting separate states.[43] Bentham attacked the naturalistic universalism of the American Declaration ('. . . all Men are created equal . . . they are endowed by the Creator with certain unalienable Rights . . . among these are Life, Liberty, and the Pursuit of Happiness') in the 'Short Review' he contributed to Lind's *Answer to the Declaration* (1776).[44] He argued that all penal laws must affect life or liberty; to take these rights to be unalienable would be to argue 'that thieves are not to be restrained from theft, murderers from murder, rebels from rebellion'.

Philip Schofield, *Utility and Democracy: The Political Thought of Jeremy Bentham* (Oxford, 2006), p. 187.

[41] Bentham, *Introduction to the Principles of Morals and Legislation*, ed. Burns and Hart, pp. 6, 296.

[42] Henri François D'Aguesseau, 'Essai d'une institution au droit public', in D'Aguesseau, *Discours et oeuvres mêlées de M. Le Chancellier D'Aguesseau* (2 vols., Paris, 1771), II, p. 337; Bentham, *Introduction to the Principles of Morals and Legislation*, ed. Burns and Hart, p. 296 n. x.

[43] David Armitage, 'The Declaration of Independence and International Law', *William and Mary Quarterly*, 3rd series, 59 (2002), pp. 39–64; Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge, 2010).

[44] Jeremy Bentham, 'Short Review of the Declaration', in [John Lind and Jeremy Bentham,] *An Answer to the Declaration of the American Congress* (London, 1776), pp. 119–32.

Government provided security through coercion, he had argued in a slightly earlier manuscript: 'Liberty without security is that which is possessed by Hottentots and Patagonians. Liberty by security is thus the possession of which is the pride of Englishmen.'[45]

The criticism of naturalism as a foundation for law or rights which Bentham had begun during the American War of course continued to be one of the defining features of his political and legal thought. This was despite the fact that, during the American Revolution, he wrote in defence of Britain's right to retain its American colonies, while during the French Revolution, he would write urging the French to emancipate theirs.[46] To derive rights from nature, and then to deem such rights imprescriptible, was doubly incoherent, 'rhetorical nonsense, nonsense upon stilts', as he notoriously called it in his demolition of the French Declaration of the Rights of Man and the Citizen.[47] Defensible rights could only be derived from the positive acts of identifiable sovereign actors. Likewise, in the relations between states, the only positive acts were the transactions of sovereigns that made up a body of positive 'international law'.

Bentham's assault on natural rights in the cause of utility is better known than his campaign to reform and codify international law. However, that effort at codification sprang from similarly fundamental concerns about the proper foundations for a universal system. Bentham stated his basic objection in an unpublished draft preface for the *Introduction to the Principles of Morals and Legislation*:

> The Books that have been written on the subject of what is called the Law of Nature are a sort of dull Romance. The business of them is to lay down rules concerning either what is done or what ought to be done in an imaginary state of things, the state of nature. Do they give them as proper to be observed in any one place upon earth? No, that they don't. Rules that are proper to be enacted — where? In the moon perhaps: not any where upon earth.[48]

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[45] Jeremy Bentham, 'Key: What Things Exist' (*c.*1774–5), UCL LXIX. 55.

[46] 'Little did I think at that time that I was destined to write, within fifteen or sixteen years thereafter, an address to the French Commonwealth, for the express purpose of engaging them, by arguments that applied to all mother countries, to emancipate their colonies': Bentham to John Bowring, 30 January 1827, in *Correspondence of Jeremy Bentham*, XII, pp. 307–9.

[47] Jeremy Bentham, 'Nonsense upon Stilts' (1792), in Bentham, *Rights, Representation, and Reform: Nonsense upon Stilts and Other Writings on the French Revolution*, ed. Philip Schofield, Catherine Pease-Watkin and Cyprian Blamires (Oxford, 2002), p. 330.

[48] Jeremy Bentham, 'Introduction to Morals and Legislation, C. Prefat.', UCL XXVII. 143; compare UCL XXVII. 174, 'Difference between this work & one on the Law of Nature'. On Bentham's invocation of the moon in a parallel context see Pitts, 'Jeremy Bentham: Legislator of the World?', p. 82 n. 5.

The only basis for a truly cosmopolitan, universal law of nations would be the common and equal utility of all nations ('l'utilité commune et égale de toutes les nations'), subject to the expedient constraints of particular circumstances.[49]

Bentham's earliest attempt to imagine the reform of international law came in the second half of the 1780s, when he drafted a series of proposals under the general headings of 'Law Inter National 1786' and 'Pacification and Emancipation' (*c*.1786–9). These were the texts that were 'dismembered, reconfigured and arbitrarily sewn together in the sort of "Frankenstein" creation' known as the 'Principles of International Law' fabricated by John Bowring and his co-editor Richard Smith in the 1830s.[50] Bentham's peace proposals have attracted more attention from pacifists (especially in the League of Nations moment after the First World War) and from later international relations theorists than have his writings on international law from this period.[51] The writings on international law provide evidence of Bentham's developing conception of the legislator, and hence derived from the legal philosophy elaborated earlier in the *Fragment on Government* and the *Introduction to the Principles of Morals and Legislation*, while his peace proposals had more contingent applications arising from Bentham's criticism of the younger Pitt's foreign policy in 1789.[52] As early as 1782, Bentham had already drafted a brief 'Projet Forme — Entre-gens' on the codification of duties and rights between sovereigns under international law, the last of his writings on the subject to derive from the period of the American War.[53]

Bentham's international legal writings of the later 1780s applied the principle of utility not only to the relations between sovereigns *as* sovereigns but also to the relations of sovereigns with the rest of humanity taken as an aggregate. This extension of the greatest happiness principle to encompass all nations was essential, Bentham argued, if the legislator's duty to promote the welfare of his own people was not to be prosecuted at the expense of the well-being of all others: 'Expressed in the most general manner, the end that a

[49] Bentham, 'Projet Matiére — Entregens' (1786), UCL XXV. 1; 'Introduction to Morals and Legislation, C. Prefat'. (*c*.1780), UCL XXVII. 143.

[50] Bentham, 'Projet Matiére — Entregens', UCL XXV. 1–9, 26–49; 'Principles of International Law', in *Works*, II, pp. 537–60; Hoogensen, *International Relations, Security and Jeremy Bentham*, p. 44 (quoted).

[51] Though see Georg Schwarzenberger, 'Bentham's Contribution to International Law and Organisation', in *Jeremy Bentham and the Law: A Symposium*, ed. George W. Keeton and Georg Schwarzenberger (London, 1948), pp. 152–84; Hoogensen, *International Relations, Security and Jeremy Bentham*, pp. 94–100.

[52] Stephen Conway, 'Bentham versus Pitt: Jeremy Bentham and British Foreign Policy 1789', *The Historical Journal*, 30 (1987), pp. 791–809; Conway, 'Bentham on Peace and War', *Utilitas*, 1 (1989), pp. 82–6.

[53] Bentham, 'Projet Forme — Entre-gens' (1782), UCL XXXIII. 81–2; *Works*, III, pp. 200–1; for the dating see Conway, 'Bentham on Peace and War', p. 100 n. 112.

disinterested legislator upon international law would propose to himself, would therefore be the greatest happiness of all nations taken together.' The resulting international code would have as its 'substantive' laws the laws of peace, while the laws of war 'would be the adjective laws of the same code'.[54] Wars could be prevented by dealing more systematically with the various causes of dispute — such as uncertain succession, civil war, boundary disputes or religious hatred — by making unwritten customs explicit, by elaborating new international rules where uncertainities exist and, more broadly, '[b]y perfecting the style of the laws of all kinds, whether internal or international'.[55] Though Bentham saw internal and international jurisprudence as equally ripe for reform along utilitarian lines, he firmly separated the two realms and saw no further homology between them. In that separation he was of course definitively distancing himself from the natural jurisprudential conflation of the law of nations with the law of nature which he so frequently denounced in all his legal and political writings.

The distinctiveness of Bentham's conception of international law in the 1780s can be briefly illustrated by comparing it with two near-contemporary works on the law of nations produced in Britain within a decade of Bentham's writings, Robert Ward's *Enquiry into the Foundation and History of the Law of Nations in Europe* (1795) and Sir James Mackintosh's *Discourse on the Study of the Law of Nature and Nations* (1799).[56] Bentham owned Ward's book and Mackintosh acknowledged Bentham's invention of the term 'international law', but there any resemblances ended.[57] For both Ward and Mackintosh, the law of nations was an extension of the law of nature applied to states and sovereigns as international persons in a state of nature. It was thus for them a branch of moral philosophy rather than, as it was for Bentham, a distinct science of legislation. They both adopted a historicist and developmental account of the law of nations found elsewhere in Europe in German surveys of the public law tradition such as Ompteda's *Litteratur des gesammten* and von Martens' *Summary of the Law of Nations*.[58] These works

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[54] Bentham, 'Projet Matiére — Entregens' (1786), UCL XXV. 2–4; *Works*, II, pp. 538–9.

[55] UCL XXV. 4; *Works*, II, p. 540.

[56] Robert [Plumer] Ward, *An Enquiry into the Foundation and History of the Law of Nations in Europe, From the Time of the Greeks and Romans, to the Age of Grotius* (2 vols., London, 1795); James Mackintosh, *A Discourse on the Study of the Law of Nature and Nations, &c.* (London, 1799). On Ward see especially Diego Panizza, *Genesi di una ideologia: Il conservatorismo moderno in Robert Ward* (Milan, 1997) and on Mackintosh, James Mackintosh, *Vindiciae Gallicae and Other Writings on the French Revolution*, ed. Donald Winch (Indianapolis, 2006).

[57] BL Add. MS 33564, fol. 39ᵛ; Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, p. 6.

[58] D.H.L. von Ompteda, *Litteratur des gesammten sowohl natürlichen als positiven Völkerrechts* (2 vols., Regensburg, 1785); Georg Friedrich von Martens, *Summary of the*

offered an account of the law of nations as an aspect of the history of natural jurisprudence found especially in the great eighteenth-century German histories of morality;[59] it was from just those histories that Mackintosh drew his narrative in the *Discourse*, as amply revealed by Mackintosh's working notes for the public lectures to which his *Discourse* was the introduction.[60] Ward's *Enquiry* similarly traced the law of nations from its barbarous infancy under the Greeks and Romans, through its decline in the feudal era prior to a gradual revival under the combined influences of Christianity and chivalry and thereby linked the history of moral philosophy to a broader Enlightened narrative of the progress of manners.[61]

Bentham wrote before the French Revolution, of course, and Ward and Mackintosh after it and in the wake of the wars of the Directory, so that their moral and civilizational narrative was deliberately counter-Revolutionary in intent.[62] Counter-Revolutionary fervour also encouraged a search for new foundations of international obligation in an age of evident secularization of morality. Ward and Mackintosh both appealed to Christian civilization, and narrowed the scope of the law of nations to betoken that law of 'the Nations of our own SET, that is, of EUROPE', derived from a defence of embattled orthodoxy in the face of atheistical French republicanism and a consequent nostalgia for the integrative maxims of a united Christendom. Ward argued 'that what is commonly called the Law of Nations, falls very far short of *universality*; and that, therefore, the Law is not the Law of *all* nations, but only of particular classes of them; and thus there may be a *different* Law of Nations for *different* parts of the globe'.[63] The only foundation for an obligatory law of nations was revealed rather than natural religion; the only revealed religion worthy of the name was Christianity; therefore, the only binding law of nations was the law of Christendom. Similarly, Mackintosh concentrated his lectures on the law of nature and nations on 'that important branch of it which professes to regulate the relations and intercourse of states, and

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Law of Nations, Founded on the Treaties and Customs of the Modern Nations of Europe (1789), trans. William Cobbett (Philadelphia, 1795).

[59] T.J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge, 2000).

[60] James Mackintosh, 'Extracts for Lectures on the Law of Nat: & Nations Begun Cambridge Augt 7th 1799', BL Add. MS 78781; Add. MS 78784A, fols. 1–7, contain notes for some of the early lectures, none of which was published and the rest of which are lost.

[61] Ward, *Enquiry into the Foundation and History of the Law of Nations in Europe*, II, pp. 614–15; compare [Robert Brown,] *An Essay on the Law of Nations as a Test of Manners* (London, 1790), pp. 11, 20–1, 23–4, 25–7.

[62] On this general tendency in shaping an account of the European states-system see Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge, 2002), p. 16.

[63] Ward, *Enquiry into the Foundation and History of the Law of Nations in Europe*, II, p. 161, I, p. xiv.

more especially, both on account of their greater perfection and their more imme-
diate reference to use, the regulations of that intercourse as they are modified by
the usages of the civilized nations of Christendom'. This was manifestly not the
law of 'the brutal and helpless barbarism of *Terra del Fuego* . . . the mild and
voluptuous savages of Otaheite . . . the tame, but ancient and immoveable civili-
zation of China . . . the meek and servile natives of Hindostan . . . [or] the gross
and incorrigible rudeness of the Ottomans'.[64] In this, both Ward and Mackintosh
were characteristic of a 'widespread and self-conscious, if still incipient and
never completed, development in theories of the law of nations' in the late eight-
eenth century, away from genuinely global universalism and 'toward a more
restricted regional and positivist view'.[65]

Bentham would have disagreed with almost every aspect of the account of
the law of nations found in Ward's *Enquiry* and Mackintosh's *Discourse*. He
owned Ward's work and lent it to his disciple, Étienne Dumont, in 1806; in
1829, Dumont offered a judgment that was impeccably Benthamite in its dis-
missal of Ward's naturalist foundations:

> The English work of Mr Ward on the law of nature and nations, is an histori-
> cal portrait of the revolutions that have taken place in international prac-
> tices. This way of conceiving the subject would be curious and instructive if
> the author had borrowed the philosophy of Hume and the elegance of Rob-
> ertson. However, he argues like Grotius and Vattel on natural law and moral
> obligations.[66]

Bentham's own charge in the 1820s against Grotius, Pufendorf, Vattel and their
ilk was that they were merely visionary, and hence impractical, universalists:

> Behold the professors of natural law . . . What the Alexanders and the
> Tamerlanes wished to do by moving over a part of the globe, the Grotiuses
> and the Pufendorfs achieve each one sitting in his armchair: what the con-
> queror wants to achieve with the stroke of the sword, the Jurisconsult will
> do more quietly with a stroke of the pen.[67]

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[64] Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, p. 25.

[65] Jennifer Pitts, 'Boundaries of Victorian International Law', in *Victorian Visions of Global Order*, ed. Bell, p. 71.

[66] 'L'ouvrage anglais de Mr. Ward sur le droit de la nature et des gens, est un tableau historique des révolutions qui ont eu lieu dans les coutumes internationales. Cette manière d'envisager le sujet seroit curieuse et instructive, si l'auteur eût emprunté la philosophie de Hume, et l'élégance de Robertson. Mais il raisonne comme Grotius et Vattel sur le droit naturel et les obligations morales': Étienne Dumont, review of Jean Jacques Burlamaqui, *Principes du droit de la nature et des gens*, nouvelle edn. (1820), *Bibliothèque Universelle, des Sciences, Belles-Lettres et Arts*, 40 (Geneva, 1829), p. 23 (my translation). Bentham lent Dumont a copy of Ward's *Enquiry* (along with Vattel's *Droit des gens*) on 3 February 1806: BL Add. MS 33564, fol. 39ᵛ.

[67] 'Voilà professeurs de la droit naturel . . . Ce qui les Alexandres et les Tamerlan voulaient faire en traversant une parte du la globe, les Grotius et le[s] Puffendorf faisaient assis chacun dans son fauteuil: ce que le conquerant voulont faire à coup d'epée, le

In this regard, he was as disillusioned as Kant regarding the allegedly amelio-rating force of the traditional law of nations. He would also have agreed with Kant that, because they confounded empirical and normative judgments, 'Hugo Grotius, Pufendorf, Vattel and the rest' were 'sorry comforters' (*leidige Tröster*) who gave succour to the modern proponents of reason of state.[68] He returned to his assault in his last years, and in the *Auto-Icon* (1831–2) he imagined Francis Bacon congratulating him for rigorously distinguishing

> between that which ought to be, and that which is. By Grotius, by Puffendorf, by their predecessors, by their successors the Burlamaquis, &c., that which ought to be, and that which is, were continually confounded: observing what had been the practice of men in power, they inferred, or rather took for granted, that it was right.[69]

In these remarks, Bentham was not simply reprising an *idée fixe* from his earlier years as a legal reformer. He was also responding to the evident failure of positivist law to supplant natural jurisprudence. One sign of the irrepressible vigour of naturalism in the law of nations was the global prominence of Vattel, whose *Droit des gens* (1758) enjoyed new popularity during the 'Vattel Renaissance' of the late 1820s and 1830s.[70] That resurgence of inter-est, evidenced in new editions and translations of Vattel throughout Europe, may have put Bentham on the defensive; Vattel's enduring reputation was certainly a reminder that no positive code had yet replaced his compendium. 'Few things are more wanting than a code of international law', Bentham reportedly said in 1827 or 1828:

> Vattel's propositions are most old-womanish and tautological. They come to this: Law is nature — Nature is law. He builds upon a cloud. When he means anything, it is from a vague perception of the principle of utility; but more frequently no meaning can be found. Many of his dicta amount to this: It is not just to do that which is unjust.[71]

Jurisconsulte le faisoit tout doucement a coups de plume': Bentham, 'Pannomial Frag-ments' (1820s), BL Add. MS 33550, fol. 92; *Works*, III, p. 220.

[68] Immanuel Kant, 'Perpetual Peace: A Philosophical Sketch' (1795), in *Kant: Politi-cal Writings*, ed. Hans Reiss (Cambridge, 2nd edn., 1991), p. 103. For more extensive comparisons between Bentham and Kant in these regards, see Peter Niesen, 'The "West Divided"? Bentham and Kant on Law and the Ethics in Foreign Policy', in *Rethinking Ethical Foreign Policy: Pitfalls, Possibilities and Paradoxes*, ed. David Chandler and Volker Heins (London, 2007), pp. 93–115; Niesen, 'Varieties of Cosmopolitanism'.

[69] [Jeremy Bentham,] *Auto-Icon; Or, Farther Uses of the Dead to the Living* (1831–2) (n.p., n.d. [London, 1842?]), p. 14.

[70] Eugenio di Rienzo, 'Decadenza e caduta del cosmopolitismo: Francia/Europa, 1792–1848. Note per una ricerca', in *L'idea di cosmopolitismo: circolazione e metamorfosi*, ed. Lorenzo Bianchi (Naples, 2002), p. 449, cit. Maurizio Isabella, *Risorgimento in Exile: Italian Émigrés and the Liberal International in the Post-Napoleonic Era* (Oxford, 2009), pp. 99–100.

[71] 'Bentham's Conversation', in Bentham, *Works*, X, p. 584.

Bentham wanted instead to see 'International law as it ought to be' with its 'leading principle the Greatest Happiness principle'. He chose for the task Jabez Henry, a barrister of the Middle Temple who had followed a transnational legal career that had taken him from three years in the Presidency of the court of Demerara and Essequibo to being chief judge of Corfu and the Ionian Islands.[72] Bentham's attention had initially been captured by Henry's treatment of an international bankruptcy case that raised important issues in the conflict of laws.[73] Henry reciprocated that interest by sending Bentham his *Outline of a Plan of an International Bankrupt Code for the Different Commercial States of Europe* (1825?), in which he rigorously followed the Benthamite conception of an international code for bankruptcy.[74] Bentham sent Henry transcriptions of a plan entitled 'International Law' (11 June 1827) in which he proposed a legislative alliance among 'all civilized Nations', which he admitted 'at present is as much as to say, all Nations professing the Christian Religion', each to be represented by an envoy at a congress with both judicial and legislative authority. He rejected the abbé de St Pierre's plan for such a system as unworkable and likewise judged Vattel to be inadequate as the foundational work for a new international order: only one 'grounded on the greatest happiness principle . . . would, if the plan and execution be more moral and intellectual than Vattels ,[*sic*] possess a probability of superseding it, and being referred to in preference'.[75] The subjects of international law would be states, rather than individuals, but all were considered as equals and their relations would be founded on mutual recognition of their forms of government, their religion and their customs: a system implicitly designed to secure peace against both revolutionary universalism and legitimist interventionism.[76]

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[72] Jeremy Bentham to Jabez Henry, 15 January 1830, BL Add. MS 30151, fol. 19 r. On Henry see David Graham, 'Discovering Jabez Henry: Cross-Border Insolvency Law in the 19th Century', *International Insolvency Review*, 10 (2001), pp. 153–66; David Graham, 'In Search of Jabez Henry — Part II: The Readership of *Foreign Law*', *International Insolvency Review*, 14 (2005), pp. 223–34; *ODNB*, *s.v.*, 'Henry, Jabez (1775–1835)'.

[73] Jabez Henry, *The Judgment of the Court of Demerara, in the Case of Odwin v. Forbes, On the Plea of the English Certificate of Bankruptcy in Bar, in a Foreign Jurisdiction* (London, 1823).

[74] Jabez Henry, *Outline of a Plan of an International Bankrupt Code for the Different Commercial States of Europe* (London, [1825?]), presentation copy to Bentham, BL pressmark C.T. 55 (1); Kurt H. Nadelmann, 'An International Bankruptcy Code: New Thoughts on an Old Idea', *The International and Comparative Law Quarterly*, 10 (1961), pp. 70–82.

[75] Jeremy Bentham, 'International Law' (11 June 1827), BL Add. MS 30151, fols. 15v–16r; Ernest Nys, 'Notes inédites de Bentham sur le droit international', *The Law Quarterly Review*, 1 (1885), pp. 225–31.

[76] Jeremy Bentham, 'International Law Code' (11 June 1827), BL Add. MS 33551, fol. 124r.

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Bentham's plans for what he told Henry would be 'a new Edition of Vattel' or 'a General Code of International Law' never came to fruition, but the effort to codify international law nevertheless remained a leading aspiration of many of his disciples.[77] James Mill had projected such a code in an article on the 'Law of Nations' for the *Encyclopedia Britannica* on which Bentham took notes, though without any apparent valuation, either positive or negative.[78] Étienne Dumont pointed out the manifold failings of the existing traditions of the law of nations before attempting his own inconclusive and abortive codification of international law. Dumont argued that such a code could be founded on only two forms of sanction: public opinion and the threat of war.[79] The lack of a positive legislator, and of agencies able to enforce punishments for breaches of the code, was however not a deterrent to codification for him, as it was not for Bentham. It would take another of Bentham's disciples, John Austin, to turn a scepticism about available sanctions back upon the idea of law itself to deny that international 'law' was law in any recognizable sense: instead, it could only be a positive international morality, consisting of the 'opinions or sentiments current among nations generally. It therefore is not law properly so called'.[80] This was surely a rather un-Benthamite conclusion derived from some idiomatically Benthamite premises.

The 'spectre of Austin' would haunt later attempts to place international law on solid positivist foundations. If Austin's analysis was correct, then many of the same charges that Bentham himself had laid against natural jurisprudence could be applied to international law: that it was non-binding, factually indeterminate and merely hortative. If international law suffered all these faults, then it needed some other foundation, such as divine revelation or Christian theology, to give it moral efficacy. [81] Contrary to many of the

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[77] Henry to Bentham, 'Letter to Mr Bentham on his Invitation to me to undertake a New Vattel', undated (1830), BL Add. MS 30151, fol. 22ʳ.

[78] James Mill, 'Law of Nations', in James Mill, *Essays on Government, Jurisprudence, Liberty of the Press, and Law of Nations* (London, 1825); Bentham, 'Mills [*sic*] Article International Law in the Supplement to the Encyclop. Britannica Marginal Heads' (6 October 1822), UCL XCVII. 189.

[79] Étienne Dumont, 'Origine des notions morales, des lois civiles et du droit des gens', *Bibliothèque Universelle, des Sciences, Belles-Lettres et Arts*, 40 (Geneva, 1829), pp. 337–51; Dumont, untitled manuscript treatise on international law, Bibliothèque de Genève, Dumont MSS 60.

[80] John Austin, *The Province of Jurisprudence Determined* (1832), ed. Wilfrid E. Rumble (Cambridge, 1995), pp. 112, 124.

[81] Casper Sylvest, *British Liberal Internationalism, 1880–1930: Making Progress?* (Manchester, 2009), pp. 63–8; Wilfrid E. Rumble, *Doing Austin Justice: The Reception of John Austin's Philosophy of Law in Nineteenth-Century England* (London, 2005); Georgios Varouxakis, 'The International Political Thought of John Stuart Mill', in *British International Thinkers from Hobbes to Namier*, ed. Hall and Hill, pp. 119–23.

standard narratives twentieth-century international lawyers told themselves about the origins of their discipline, there was no smooth transition from naturalism to positivism in the late eighteenth and nineteenth centuries: indeed, what has been called 'synthetic natural law' remained remarkably robust in the age of liberal nationalism.[82] This should not be surprising in light of the gradual narrowing of the universalism of natural law that had taken place in Europe in the decades since the French Revolution. It had become a particularistic universalism, based on principles idiomatic to only one self-defined civilization which increasingly claimed a mission for itself to export those values to the rest of the world.

The imperial roots, and colonial fruits, of that mission would in due course bring all such European universalisms into disrepute. But we should beware of throwing the universalist baby out with the imperialist bathwater. Just as it has proved possible to detach Bentham the sceptic about colonialism from his utilitarian followers,[83] so it is feasible to disentangle Bentham the proponent of a universal international law from his more sceptical heirs, such as Austin. Deciding whether it was his own evolving universalism, the global conjuncture in which he lived, or a combination of more local circumstances around the world that made him, almost alone among his contemporaries, a figure with worldwide fame and influence will be among the many pressing tasks for any future global history of political thought to pursue.

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[82] Andrew Fitzmaurice, 'The Resilience of Natural Law in the Writings of Sir Travers Twiss', in *British International Thinkers from Hobbes to Namier*, ed. Hall and Hill, pp. 137–59; Sylvest, *British Liberal Internationalism*, pp. 77–80, 90–1.

[83] Pitts, 'Jeremy Bentham: Legislator of the World?'.