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### ***Utilitarianism and the question of free labor in Russia and India, eighteenth-nineteenth centuries***

The English abolitionist movement began its rapid development in the 1780s; the political economists of the time, and Bentham in particular, took part in these debates; free labor was compared with bondage in terms of utility and efficiency as well as broader ethical principles. The problem, as Bentham saw it, lay precisely in choosing between two ways of thinking: first the universalist approach, which meant adopting the same principles everywhere – in Britain, India and Russia – thereby providing the grounds on which labor and its institutions should be evaluated. The other, more particularist approach, was open to distinctions among these three areas; when confronted to Indian slavery, Bentham shifted from the first to the second approach; yet surprisingly, he also thought that Russian serfdom offered an interesting solution to the problem of labor control. It was precisely in Russia that he invented his Panopticon to control not the prisoner, the mad or the serf, but the British worker. In the following pages we are going to trace the multiple confrontations Bentham had with Russia and India, the answers he brought, then the fortune of his approaches in both Russia and the colonial India.

An already substantial historiography exists on the role of utilitarianism in India and the tensions between universalism vs particularism.<sup>1</sup> I will take into account these valuable

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<sup>1</sup> Eric Stokes, *English Utilitarians and India* (Oxford: Oxford University press, 1959). Uday Singh Mehta, *Liberalism and Empire. A Study in nineteenth century British Liberal Thought* (Chicago: Chicago University press, 1999). Martin Moir, Douglas Peers, Lynn Zastoupil (eds.), *J.S. Mill Encounter with India* (Toronto: University of Toronto Press, 1999); Karuna Mantena, *Alibis of Empire. Henri Maine and the Ends of Liberal*

insights, in particular the tension between sovereignty and local agency, but I will adopt a different perspective: I will not discuss empire and sovereignty by themselves, but the question of slavery and free labor in the Indian context<sup>2</sup>, before as well as after the official abolition of slavery. In fact, liberal utilitarianists like Bentham, the Mills and Maine developed their thoughts on this topic in a global context in which the identification of free labor was made at the conjunctions of debates –and their own personal activity- in Britain, India and Russia. Bentham and his brother Samuel spent some years in Russia<sup>3</sup> where they had the occasion to reflect not only on the comparison between serfdom and wage labor, but also, and more interesting, to regulate labor on a Russian estate. It was on this occasion that the Bentham brothers conceived of the Panopticon to surveil not the Russian serfs but the British skilled workers they had requested to join them.

Several connected historiographical stakes present them to start with the tensions between universalism and particularism in the British utilitarianism; the Indian context invited to reflect on this question from the angle of sovereignty and direct/indirect involvement of Britain the Indian affairs, after all under the control of the EIC.<sup>4</sup> The abolition of slavery in India entered these broader stakes. The issues raised by Russia were at once similar and different. The specific features of serfdom were open to discussion when compared with those of colonial slavery; at the same time, as the abolitionists had no direct control in the case of Russia, they could little but attempt to influence British diplomatic attitudes towards the

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*Imperialism* (Princeton: Princeton University Press, 2010). More in the following notes.

<sup>2</sup> On these debates, among the others : Andrea Major, *Slavery, Abolitionism and Empire in India, 1772-1843* (Liverpool : Liverpool University Press, 2012); Indrani Chatterjee, *Gender, Slavery and Law in Colonial India* (New Delhi: Oxford University Press, 1999).

<sup>3</sup> On this : Simon Werrett, “Potemkin and the Panopticon: Samuel Bentham and the Architecture of Absolutism in Eighteenth-century Russia,” *The Philosophic Age Almanac* 9 (1999, special issue: *The Science of Morality: Jeremy Bentham and Russia*): 106–35. See also Ian R. Christie, *The Bentham in Russia, 1780–1791* (Oxford: Berg, 1993); Ian R. Christie, “Samuel Bentham and the Western Colony at Krichev, 1784–1787,” *Slavonic and East European Review* 48, 111 (1970): 232–47; Simon Sebag Montefiore, “Prince Potemkin and the Bentham: The Project to Create an English Village with Modern Factories in Belorussia,” *History Today* 52, 8 (Aug. 2003): 38–43; Simon Sebag Montefiore, *Prince of Princes: The Life of Potemkin* (London: Phoenix Press, 2001); Anthony G. Cross, *By the Banks of the Neva: Chapters from the Lives and Careers of the British in Eighteenth-century Russia* (Cambridge: Cambridge University Press, 1997); Alessandro Stanziani, “The Traveling Panopticon: Labor Institutions and Labor Practices in Russia and Britain in the Eighteenth and Nineteenth Centuries,” *Comparative Studies in Society and History* 51, 4 (2009): 715–41.

<sup>4</sup> Sudipta Sen Distant Sovereignty\*\*

country. However, this contextual difference must be taken not as given and settled once and for all, but as a starting point to us as it was for the actors of that time: how could one think of, and eventually act on the matter of freedom and labor in cases when there was nothing such as a British rule (Russia), an indirect (EIC India) and then direct rule (the Raj)?

A second connected stake concerns the so called “local agency”: this can be studied from the standpoint of the circulation of ideas first: orientalism, Hindu, Muslim, and Russian reflections and productions of texts and rules exerted a clear influence on Bentham, Mill and Maine. Yet, this impact must be qualified and this means that the access to local languages, texts and the broader problem of Orientalism must be evoked. The utilitarianists’ identification of so called “local values” in terms of labor and freedom was not the same in Russia and India according to the authors and their skills. At the same time, the circulation of ideas took place in a context where the British presence expressed in completely different terms: some economic and diplomatic relationships in the case of Russia, the EIC administration, then the Raj, in India, and, yet, it depended on the different areas of the subcontinent. The interplay between intellectual, political and administrative categories and actions has to be understood in this fragmented and yet connected environment.

Even most important, the connections on the labor question between India, Russia and Britain were multilateral; for sure, Bentham, Mill and Maine draw inspiration from the domestic discussions on the Poor Law and the Master and Servants Acts when they discussed Russian serfdom and Indian slavery. But, on the other hand, their experiences in Russia and India led them to modify their perspectives on Britain itself: Bentham advocated the reform of the Poor Law and the diffusion of Panopticon in Britain after his experiences in Russia; James and John Stuart Mill and Henry Maine did the same during and after their experiences in India. The evolution of the labor law in Britain would not have been the same without these experiences. Labor freedom and the crucial question of authority and labor, thus of the

supervisor (through the Panopticon, the overlooker in the mill, on the plantation etc) raised at the same time in so many different contexts as Britain, Western and Eastern Europe, the American and Asian plantations between the 1780s and the 1860s. This was not by chance for the organization of the mills, the passage from small units to large industry encouraged reflections in which the colonial plantation often was source of inspiration.\*\* note. This of course does not mean that British utilitarianist were keen to transform wage labor into forms of slavery (or that the British workers were serfs or slaves, as several anti-abolitionists and some workers associations claimed\*\*), but that their perceptions of free and unfree labor were embedded in global dynamics in which free labor was not seen in contradiction with strong authority over laboring people. The evolution of utilitarianism on this subject took place over decades, between the 1780s and the 1860s; it was only at this moment, after the Sepoys mutiny, that Henri Maine resolved to extend to India the British labor rules (The Masters and Servants Acts) while advocating their repeal in Britain itself advocating its irreversible transformation into a modern industrial country where ancient customs, still in use in India, had to be definitely abolished.

Henceforth, the influence of utilitarianism in India became a springboard for thinking about more general issues, starting with the role of knowledge as a tool for empire-building and colonial control. The aims of political economy, especially utilitarianism, were decidedly universalist: the same categories and interpretive models were valid throughout the world. It would be a mistake to assume, however, as subaltern studies has often maintained, that this universalism was accepted from the outset by colonial elites to justify their imperial constructions. As we shall see, notably in the case of India, the universalist attitude encountered opposition from another approach, which stressed the importance of local specificities. This form of “orientalism” also deserves to be discussed, without equating it a

priori with Edward Said's approach. Indeed, this knowledge was used not only to "invent" an Indian reality the better to control it; on the contrary, it openly questioned the wisdom of putting so much effort into transforming India, thus lending a sort of "legitimacy" to its local customs including slavery. In short, it is important to view utilitarian political economy as a form of knowledge that played an essential role in building the British empire, but it by no means identified, and thereby justified, only one form of imperial construction. The question therefore consists in explaining how and why, among the possible solutions to empire-building and bondage that were compatible with utilitarian principles, some prevailed over others, and to what extent the local context in Russia, India and even England helped to reshape those political and economic solutions and utilitarian thought itself.

### ***The invention of the Panopticon in Russia***

Between 1780 and 1787, the brothers Samuel and Jeremy Bentham were managers of a large Russian estate owned by Prince Grigorii Potemkin, one of the closest advisors of Catherine II. In doing so they faced two related—but distinct—problems: Russian peasants were unskilled, and British skilled workers and supervisors, who had been brought in to work on the estate, were hard to control. Ultimately, the problem of supervising the English workers (and not the Russian serfs) is what led the Bentham brothers to reflect on the relationship between free and forced labor, and then between labor and society. Before and after Foucault,<sup>5</sup> the Benthams'

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5. Foucault, *Discipline and Punish*. Anne Brunon-Ernst has recently challenged the idea that Foucault understood the Panopticon in terms of mere surveillance. See her "When Foucault Reads Bentham," paper presented at Annual Meeting of the the Law and Society Association, Berlin, 25 July 2007, [http://www.allacademic.com/meta/p178059\\_index.html](http://www.allacademic.com/meta/p178059_index.html).

Panopticon has been seen as a response to social deviance and as a concept related to prisons and the emergence of a global surveillance system in modern societies. I want to challenge this view by arguing that the Panopticon project actually was a system for controlling wage labor, which drew inspiration from a particular image of Russian serfdom and from the Bentham brothers' experiences in that country.<sup>6</sup>

Samuel Bentham, Jeremy's brother, arrived in Russia in 1780, as a naval engineer. At first he first worked for an English manufactory in St. Petersburg and then toured the Ural Mountains in 1781–82, before entering the service of Prince Potemkin, in 1784. The prince was at this time Catherine's lover and close advisor, and he owned country estates and numerous factories. He was also directly involved in the ongoing Russian expansion, east to Poland and south to Crimea. The government was then devoting much attention to the development of a short stretch of Black Sea coast that it had secured from Turkey in 1774. These ambitions generated tensions and conflicts with the Ottoman Empire, and an alliance with Britain was part of the Russian strategy. It was thus not by chance that Potemkin asked Samuel Bentham to manage one of his estates, located in the Krichev district of Belorussia.

Russia had seized Krichev from Poland in the first partition, in 1772; it had belonged to Polish magnates who refused to give fealty to Catherine II, who granted the estate to Potemkin. The estate was a large one and included five towns. Krichev's inhabitants were Russians, Germans, Don Cossacks, and Polish Jews. Farming was the main pursuit there, but the district also had rich resources of timber for shipbuilding. The people were known for

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6. My sources are contemporary works published in Britain, Russia, and other European countries, and include legal texts such as laws, case law, and jurisprudence, as well as Russian archival sources. The latter are mostly estate archives and local court litigations available at the Russian State Archives of Ancient Acts (RGADA) and the Central State Historical Archive in Moscow (TsGIAM).

their skills in carpentry, and local landowners, including Potemkin, began to bring in other skilled craftsmen, causing the male population to grow from fourteen to twenty-one thousand, between 1776 and 1785.<sup>7</sup> In fact, the estate was the principal supplier to naval stores down to the Black Sea. Bentham's main task was to build ships for Potemkin, however he found himself faced with a twofold problem involving labor that was both unskilled and undisciplined. The first problem was that the estate's serfs lacked the skills needed for building ships. To address this problem, he suggested that both machines and skilled workers be brought in from Britain. Potemkin's Anglophilia encouraged this approach—he did not care about details, but he wanted Englishmen to drive Krichev's looms and run his botanical gardens, windmills, and shipyards, from the Crimea to Krichev. When twenty skilled workers arrived on the estate in 1785, disciplinary problems quickly surfaced. The English workers showed little respect for instructions or work schedules, and while their foremen complained about the lack of discipline, they too disobeyed Bentham's instructions.<sup>8</sup> Jeremy Bentham noted "a lack of discipline and order among the workmen,"<sup>9</sup> and one foreman even threatened to lodge a complaint with Potemkin and Catherine. It was in this context that Jeremy, who had joined his brother a few months earlier, wrote numerous letters that took up these problems

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7. Evgeniia P. Zakalinskaia, *Votchinnye khoziaistva Mogiliovskoi gubernii vo vtoroi polovine XVIII veka* [Noble estates in the province of Mogilyov during the second half of the eighteenth century] (Mogilyov: Mogilevskii oblast' Kraeved. muzei, 1958), 27, 34.

8. Jeremy Bentham, *The Correspondence of Jeremy Bentham*, 12 vols. Timothy L. S. Sprigge, ed. (London: Athlone Press, 1968–2006), v. 2:504; *The Works of Jeremy Bentham*, 11 vols., John Bowring, ed. (Edinburgh: William Tait, 1838–1843), v. 10:161; Werrett, "Potemkin and the Panopticon"; Christie, *The Bentham in Russia*; Christie, "Samuel Bentham and the Western Colony"; Montefiore, "Prince Potemkin."

9. Bentham, *Correspondence*, 3:498.



and called for an improvement in the system of labor surveillance, particularly regarding the work of the foremen.<sup>10</sup> The letters addressed the well-known problem of how to supervise the supervisors: “With regard to instruction, in cases where it cannot be given without the instructor’s being close to the work, or without setting his hand to it by the way of example before the learner’s face, the instructor must indeed . . . shift his station as often as there is occasion to visit different workmen.”<sup>11</sup> Jeremy was impressed by the virtues of the Panopticon principle elaborated by his brother: “Relative to a house of correction . . . it occurred to me that a plan of a building, lately contrived by my brother, for purposes in some respects similar, and which, under the name of the Inspection house, or the Elaboratory, he is about erecting here, in Krichev, might afford some hints for the above establishment. . . . To say all in one word, it will be found applicable, I think, without exception, to all establishments whatsoever, in which, within a space not too large to be covered or commanded by buildings, a number of persons are meant to be kept under inspection.”<sup>12</sup> Jeremy completed this project by creating a drawing of the architecture of the Panopticon. These letters would become famous, because they contained the Panopticon project or model prison; they were subsequently assembled into the Panopticon letters, published first in 1791.<sup>13</sup>

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10. Ibid., 503, 509–12.

11. Bowring, *Works of Jeremy Bentham*, 4:41.

12. Jeremy Bentham, *The Panopticon Writings*, Miran Bozevic, ed. (London: Verso, 1995), letter 1.

13. Jeremy Bentham, “*Panopticon*”: *or, the Inspection-House; containing the idea of a new principle of construction applicable to any sort of establishment, in which persons of any description are to be kept under inspection; and in Particular to Penitentiary-houses, Prisons, Houses of industry, Workhouses, Poor Houses, Manufacturies, Madhouses, Lazarettos, Hospitals, and Schools; with a plan of management adopted to the principle; in*

The prison project, then, was first of all a project for labor surveillance, and the unskilled serfs were less of a concern than the skilled foremen. The project was not a reaction to the indiscipline of Russian serfs, but on the contrary, it was a response to the behavior of English foremen and skilled workers. Russia thus inspired Bentham with a model of labor organization and surveillance that could be applied in Europe, and in England in particular, as Jeremy Bentham suggested in his correspondence.<sup>14</sup> Most of the countless interpretations of the Panopticon, including Foucault's, go wrong precisely because they overlook this context and hence the link between prison and labor, on the one hand, and free and forced labor, on the other. At the same time, it should be stressed that the Panopticon was not the reaction of an English liberal confronted with an absolutist system and forced labor. For Bentham, after all, the point was precisely to improve the surveillance and labor efficiency of English wage workers. It is therefore incorrect to assert that Bentham's attitudes expressed the exclusive influence of absolutist Russia on an English liberal; rather, these concerns reflected the evolution of legal and economic organization of the Russian estates, as well as those that arose during this period in Great Britain, with regard to labor discipline in the newly emerging industrial world. Intellectual transfers found their origin and legitimation in structural transformations in both British and Russian societies.

### ***How to Supervise the Supervisor: the Russian debate***

Although state law did not control relationships within estates directly, it nevertheless laid down a framework of operating rules.<sup>15</sup> In Russia at the end of the seventeenth century,

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*a series of letters, written in the year 1787, from Crechhoff in White Russia, to a friend in England*, 2 vols. (London: T. Payne, 1791).

14. Werrett, "Potemkin and the Panopticon."

15. Michael Confino, *Domaines et seigneurs en Russie vers la fin du XVIIIe siècle: Étude de*

several estates published instructions or edicts (*nakazy, instruktsiia*) that (along with a collection of national laws) sought to provide a list of the rules for a given estate. The state gave these regulations the force of law. These rules therefore supplemented rules applicable throughout the country, which defined who was entitled to own and transfer inhabited estates. Until about 1750, these *instruksii* concerned taxation and estate administration above all;<sup>16</sup> significant changes took place in the 1760s, when the *instruksii* began to focus more on work organization and the role of bailiffs.<sup>17</sup> This was the time when both the Free Imperial Economic Society and Western economists (Bentham above all) focused on the question of supervision in organizations. In the estates, this change was accompanied by a corresponding modification in the form and dissemination of the documents employed. The number of

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*structures agraires et de mentalités économiques* (Paris: Institut d'études slaves de l'Université de Paris, 1963), 39ff.; Konstantin V. Sivkov, "Nakazy upraviteliiam XVIII v. kak istochnik dlia istorii sel'skogo khoziaistva v Rossii" [Eighteenth-century estate regulation as a source for the history of rural economy in Russia], in *Sbornik akademika B. D. Grekova ko dniu 70-letii* (Moscow: Nauka, 1952), 241–46.; Konstantin V. Sivkov, "Istochniki po istorii sel'skogo khoziaistva Evropeiskoi Rossii vo vtoroi polovine XVIII veka" [Sources of the history of agriculture of European Russia during the second half of the eighteenth century], in *Problemy istochnikovedeniia* [Problems of historiography] VIII (Moscow: Nauka, 1959); Nikolai L. Rubinshtein, *Sel'skoe khoziaistvo Rossii vo vtoroi polovine XVIII v.* [Russian agriculture during the second half of the eighteenth century] (Moscow: Nauka, 1957); Melton, "Enlightened Seigniorialism," 675–708.

16. Confino, *Domaines et seigneurs*, 40.

17. Confino, *Domaines et seigneurs*; Melton, "Enlightened Seigniorialism"; Rubinshtein, *Sel'skoe khoziaistvo*; Sivkov "Istochniki po istorii."

*instruktsiia* increased, although they still affected only a minority of estates.<sup>18</sup> No doubt Catherine herself encouraged the publication of these instructions, as it was in keeping with the logic of a “well-ordered state” typical of this autocracy and the Prussian regime of the same period.<sup>19</sup> The nobles were supposed to run their estates in a more rational way, both in the sense of using more advanced farming techniques and of laying down appropriate operating rules to govern the peasants as well as the bailiffs.<sup>20</sup> In this context, Landowners were less interested in using these instructions to control the peasants than in using them to control and regulate bailiff activity.<sup>21</sup> The bailiffs were either nobles themselves (in which case they were called *upravately*) or free or unfree peasants (called *prikashchiki*), and they were concerned with the organization of production, taxation, and the collection of any kind of economic and fiscal information. A complex and hierarchical system of surveillance was in place: Bailiffs deployed agents among the peasants to watch them, and while bailiffs supervised such peasant agents, they were themselves viewed with great suspicion by landlords, who feared both fraud and overexploitation of peasants. To overcome this problem, landlords developed a complex system of remuneration, bonuses, and fees for the bailiffs.

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18. Viktor A. Aleksandrov, *Sel'skaia obshchina v Rossii, XVIII–nachalo XIXe veka* [The agrarian commune in Russia, eighteenth and early nineteenth centuries] (Moscow: Nauka, 1976).

19. Raeff, *The Well-ordered Police State*.

20. Confino, *Domaines et seigneurs*. For examples, see: Mikhail Golitsyn, “Polozhenie dlia krest'ian Efremovskoi votchiny sela Mikhailovskogo derevni Varvarovki 1839 g.” [The conditions of peasants of the estate Efremovskii, village of Varvarovki, in 1839], in *Materialy dlia istorii votchonnogo upravleniia v Rossii*, ed. M. V. Dovnar-Zapol'skii (Kiev: tipography Imperatorskogo Universiteta, n.d.), 276–80.

21. Indova, “Instruktsiia kniazia,” 460.

Bailiffs were held responsible for harvest or quitrent failure, and this pushed them to transfer these losses on to the peasants and thus “squeeze” them further.

Indeed, in the 1760s and 1770s, in the eyes of noble landowners, tsarist leaders, and agronomists, bailiffs were usually corrupt individuals who appropriated a good portion of the lord’s revenues for themselves and exploited the peasants without encouraging them. All of this resulted in losses for the lord, because it led to a lack of incentive and motivation on the part of the peasants and could even spark riots. The aim of the *instruksiia* during the second half of the eighteenth century, therefore, was quite the opposite of the one put forward by most historians— they were not primarily intended to further squeeze peasants, but to limit abuses by the bailiffs.

These dynamics were pushed forward by the Pugachev unrest and the influence of the Enlightenment and rational estate management.<sup>22</sup> As agronomists, economists, and philosophers suggested, constraints alone were not enough to ensure efficient use of resources—and particularly labor. Enlightened landowners were especially sensitive to this argument, and, as a supporter of “rational” management and as Catherine’s advisor, Potemkin warmly supported it.<sup>23</sup>

Such was the situation when Samuel Bentham arrived in Russia. Bailiffs’ activities, on the one hand, and the estate’s multiple forms of activity (farming, manufacturing, protoindustry), on the other, were at the core of the ideas and practices on the estate level and within the cultural and political elites. Bentham suggested improving the system for controlling the bailiffs; he also suggested integrating and coordinating skilled and unskilled workers and peasants. Yet Bentham drew his inspiration not just from Krichev but from the British context and debates as well.

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22. Confino, *Domaines et seigneurs*.

23. Christie, “Samuel Bentham and the Western Colony.”

*Controlling Labor: Paupers and Servants in Britain*

According to Bentham, the difference between a servant and a slave is that for the latter, the power of the master is unlimited and the slave has no rights. As Jeremy Bentham wrote: “Slavery is susceptible of many modifications and alleviations. . . . There was a great difference between the condition of a slave at Athens and Lacedemon; there is still more between that of a Russian serf and a Negro in the southern states of America. But whatever may be the limits as to the modes of exercising authority, if the obligation of service be unlimited in point of duration, I always call it slavery.”<sup>24</sup> According to Bentham, it was not the condition but rather the duration of the obligation that constituted the real difference between free and unfree labor. The living conditions of a free worker were not necessarily better than those of a slave or serf.

We have to avoid the temptation to translate this qualification into today’s categories. At the turn of the century, in Britain as in France and the United States, Adam Smith’s argument that free labor was more productive than unfree labor was not fully accepted, even among liberal milieus. Quite the contrary: if, according to the utilitarian principles, one could show that the enslavement of a minority group increased the sum of total happiness, then a rationale for slavery was acceptable.<sup>25</sup>

Such an attitude was all the more widespread because at that time, the notion of “free” labor was not the one we are accustomed to now. In Britain, until the mid-nineteenth century, servants, apprentices, laborers, and artificers could be imprisoned until they were willing to

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24. Bentham, *Principles*, ch. 2, on slavery, par. 3310; Bowring, *Works of Jeremy Bentham*, v.

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25. David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (New York: Oxford University Press, 1999), 353–56.

return to their employers to complete the service they had agreed upon. Wage earners were considered domestics and were above all supposed to provide a service.<sup>26</sup> The labor of servants was usually conceived as a master's property, and property consisted in the service rather than in the body or person of the captive.

The Benthams fully adhered to this view. According to Jeremy, "The master alone is considered as possessing a property, of which the servant, in virtue of the service he is bound to render, is the object; but the servant, not less than the master, is spoken of possessing or being invested with a condition." These relationships of dependence applied also to the superintendent, who was subordinate to the master but was controller of the servant.<sup>27</sup> That is to say, master and servant did not enter a contract between formally equal persons, but instead each carried a different legal status. Legally speaking, servants were considered much the same as children and married women: they were under the full authority of their master. Because of this, "The most flagrant species of breach of duty, and that which includes indeed every other, is that which consists in the servant's withdrawing himself from the place in which the duty should be performed."<sup>28</sup>

Criminal-law control over labor was aimed at reducing both turnover and supervision costs,<sup>29</sup> and limiting turnover was also one of the main aims of the Poor Laws. This link is crucial in the broad history of labor and labor institutions in Britain, as well as in the particular history we are dealing with here, that is, the origin of the Panopticon. In both cases, labor surveillance was at center stage. The Old Poor Law (which evolved through a series of statutes, culminating in the Act of Elizabeth, in 1601) required individual parishes to relieve

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26. Deakin and Wilkinson, *The Law of the Labor Market*, 45.

<sup>27</sup> Ibidem, par. 1472 and 1516.

<sup>28</sup> par. 1518.

29. Michael Huberman, *Escaping from the Market: Negotiating Work in Lancashire* (Cambridge: Cambridge University Press, 1996).

their own poor and set able-bodied paupers to work. By the mid-seventeenth century, many parishes were using the Poor Law to shelter both children and the aged in hospitals and to employ those capable of labor in workhouses or with local employers.<sup>30</sup> Around the end the seventeenth century, a number of urban workhouses were set up to train poor children while profiting from pauper labor. In this context, the distinction between vagrant and poor was crucial; a poor person without employment or residence became a vagrant and was submitted to penalties similar to those imposed on “ordinary workers” (that is, servants). “Vagrancy” described a condition in which an able-bodied person without work or other means of subsistence was to be submitted to corporal punishment and returned to his parish.

In the seventeenth and eighteenth centuries, the English Poor Law system was distinctive in Europe to the extent that it embodied a nationally organized, comprehensive, and publicly regulated approach to relief.<sup>31</sup> However, in the mid-eighteenth century, the workhouses and Poor Laws began to be disparaged as inefficient and expensive. A parliamentary enquiry of 1776 revealed the existence of 1,970 workhouses holding a total of 90,000 paupers. In most cases, pauper labor did not meet the general running costs of a workhouse. This situation became all the more alarming when the estimated poor rates increased sharply from £700,000 in 1700 to £1,500,000 in 1776.<sup>32</sup> Increasing enclosure of the

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30. Kathryn Morrison, *The Workhouse: A Study of Poor-law Buildings in England* (Exeter: Royal Commission on the Historical Monuments of England, 1999); M. A. Crowther, *The Workhouse System, 1834–1929: The History of an English Social Institution* (Athens, GA: Georgia University Press, 1981).

31. Deakin and Wilkinson, *Law of the Labor Market*, 114.

32. *Reports from Committees of the House of Commons*, 1st. ser., IX, 1774–1802: 297–538. See Crowther, *The Workhouse System*, 29.



countryside greatly contributed to this rise by cutting off access to the land.<sup>33</sup>

In 1782, a bill known as Gilbert's Act was adopted that allowed neighboring parishes to group together for Poor Law purposes and set up poorhouses under a board of guardians. This occurred just around the time when Samuel and Jeremy Bentham moved to Russia, and they closely followed this debate. The Krichev experience confirmed for Jeremy the necessity of reforming both the workhouses and the Poor Laws. The passage of this bill also explains why critiques of poor laws and the Panopticon project emerged concurrently in public debates of the mid-1780s. Only the "indigent" and disabled were supposed to receive relief, Jeremy Bentham argued, while the "ordinary poor" had to settle down and find an employment.<sup>34</sup>

At the same time, attempts were made to increase the efficiency of the entire system by rational organization, that is, by supervision of the workhouses. This made the boundary between free and unfree labor even more tenuous. Servants, wage earners, the poor, criminals, slaves, and serfs all had to respond to common general principles of utility and efficiency, "no matter how different, or even opposite the purpose: whether it be that of punishing the incorrigible, guarding the insane, reforming the vicious, confining the suspected, employing the idle, maintaining the helpless, curing the sick, instructing the willing in any branch of industry, or training the race in the path of education: In a word, whether it be applied to the

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33. See, for example, J. R. Wordie, "The Chronology of English Enclosure, 1500–1914," *Economic History Review* 36 (1983): 483–505. For classical interpretations, see Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1957, orig. 1944); and Eric Hobsbawm, *Industry and Empire* (Middlesex: Penguin, 1969).

34. Jeremy Bentham, "Essay II. Fundamental Positions in Regard to the Making Provision for Indigent Poor," in *Essays on the Subject of the Poor Law* (1796), reproduced in *The Collected Works of Jeremy Bentham Writings on the Poor Law*, ed. Michael Quinn (Oxford: Clarendon Press, 2001), 39.

purposes of perpetual prisons in the room of death, or prisons for confinement before trial, or penitentiary houses, or houses of correction, or work-houses, or manufactories, or mad-house, or hospital, or schools.”<sup>35</sup>

During the 1770s and the 1780s, anti-slavery activity intensified at the same time as a profound transformation in English attitudes toward the poor was taking place. These issues remained connected until, under pressures of widespread hostility toward both coerced labor and public relief, the apprenticeship system of slavery was introduced in the colonies in 1833–34 and a new Poor Law was passed in 1834.<sup>36</sup> Following the suggestions of Bentham and others since the 1780s, reformers made a sharp distinction between the “natural poor” and the indigent (unable to work), and only the latter were permitted to benefit from poor relief. The same principles were applied to former slaves, who qualified as vagrants if they were not settled and employed.

To sum up, in turn-of-the-century Britain, the barrier between free and unfree labor was movable and negotiable, and it was conceived through categories quite different from those of today. In intellectual and public debates of the time, poor relief, the general condition of labor, and the question of slavery and serfdom were tightly linked. More than just “efficiency” was at stake (hence Adam Smith’s and others’ assertions that wage labor was more productive and efficient than forced labor); public order, vagrancy, and social welfare were equally important. It was not only slaves or the indentured who could have been the “runaways,” but also serfs, servants, and apprentices. From this viewpoint, therefore, differences in labor control and labor rights in Britain and Russia were a matter not of opposite notions, but of degree. Russia remained at one extreme of a common spectrum and

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35. Bentham, *Panopticon Writings*, letter 1. See fn. 13.

36. On this link, see Davis, *The Problem of Slavery*, 356. On the apprenticeship system for slaves, see Drescher, *Capitalism and Antislavery*; Engerman, *Terms of Labor*.

not “beyond the line.” With this in mind, I now turn to explain the fate of Jeremy Bentham’s ideas on labor organization in the two countries.

***The Fate of Bentham’s Panopticon: Labor Organization in Nineteenth-century Britain and Russia***

The Bentham brothers’ plan to build a Panopticon in Krichev was met with favor by Potemkin, who was himself an enthusiast for ideas of labor optimization through the division of labor and enhanced supervision. This kind of Westernizing utopia, born from a mixture of coercion, science, and control, was a cornerstone of the reform plans of Catherine and her close collaborators. One of those collaborators was Potemkin, and another, Mikhail Tatishchev, had been in close contact with the Bentham brothers in London during the late 1760s, when he was involved in drafting Catherine’s *Nakaz* (“Instruction”) for the Legislative Commission and her new legal code.<sup>37</sup> But while Bentham and his brother were originally motivated by a goal of controlling English foremen, Potemkin and the other Russian reformers came to see the project as a way to control serfs. The ambition to combine the division of labor with surveillance had a profound influence on one of the Bentham brothers’ intimates in Russia, Nikolai Mordvinov.<sup>38</sup>

Nonetheless, the shared project of the Bentham brothers and Potemkin—to build a Panopticon on Potemkin’s estate—fell through, because he sold the estate in 1787, which led Jeremy Bentham to return to England. Jeremy’s contribution was to generalize his brother’s project,<sup>39</sup> making it applicable outside of Russia and incorporating it into his general approach

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37. Anthony C. Cross, *By the Banks of the Neva: Chapters from the Lives and Careers of the British in Eighteenth-century Russia* (Cambridge: Cambridge University Press, 1999).

38. *Ibid.*

39. Bentham, *Correspondence*, 4:40.

to the organization of labor. He first extended the idea of an office of labor surveillance to prisons, then to schools, and finally to hospitals—and to all situations in which the problem of supervision arose.<sup>40</sup>

Jeremy Bentham's starting point, to be sure, was an idea that resonated powerfully with his sense of morality: that it was better to put prisoners to work than let them vegetate and that such an approach would facilitate prisoners' progressive reintegration into society. Yet he could not resist straying from this rationale and returning to the utilitarian calculation that new forms of surveillance and organization could and should make prison labor profitable.<sup>41</sup> From there it was but a short step to start thinking about ways to maximize prisoner productivity. At first he proposed to rationalize prisoners' diet: they should not become malnourished or else their productivity would diminish. Yet Bentham thought mostly in terms of amounts and was not embarrassed to suggest that prisoners be given spoiled food mixed with fresh food (within reasonable limits, to avoid abrupt drops in labor productivity).<sup>42</sup> He seemed excited at the thought that prisoners could be made to work fifteen hours and more without their wanting to leave their jobs, as wage laborers did.

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40. *The Panopticon Writings* were systematized and partly abridged in five editions of Bentham's works. The cited edition contains letters from Russia, as well as the final published version of the Panopticon. On this subject, see Philip Schofield, Catherine Pease-Watkins, and Cyprian Blamires, *Rights, Representation, and Reform: Nonsense Upon Stilts and Other Writings on the French Revolution* (Oxford: Clarendon Press, 2002); and Catherine Pease-Watkins, "Bentham's Panopticon and Dumont's Panopticon," University College London Bentham project, [www.ucl.ac.uk/bentham-project](http://www.ucl.ac.uk/bentham-project).

41. J. Bentham, *The Rationale of Punishment* (1830), repr. in Bowring, *Works of Jeremy Bentham*, 1:439.

42. Semple, "Foucault and Bentham," 130–131.

Bentham was not exceptional in advancing these ideas. For example, his friend Admiral Jonas Hanway, founder of the Magdalen Hospital, applied the same principles to the Navy and workhouses. He transformed the prison into a place of highly productive forced labor and then exported that model to the working world at large.<sup>43</sup> To discipline wage labor in ways similar to forced labor was thus a widespread goal in nineteenth-century Britain, and the Panopticon was only one of many proposed methods.

It is here that the gap between Britain and Russia narrows. When Samuel and then Jeremy went to Russia, the question of labor surveillance was being discussed in relation to rural estates, but also, as in Britain in these same years, to poor relief. Before the reign of Catherine the Great, the aged and infirm were supported in parish almshouses, and able-bodied vagrants were frequently conscripted to factories, mines, or the military. In 1775 an edict created the Offices of Public Welfare (*Prikazy obshchestvennogo prizreniia*) and proposed establishing workhouses under the authority of local police to punish the lazy and enable the needy to support themselves. The first workhouse (*Rabotnyi dom*) was built in Moscow in 1782, the same year Samuel Bentham moved to Siberia and that Gilbert's Act was adopted in Britain. This was the culmination of a broader movement started in Russia in the mid-1770s, which coupled Catherine's ambition of urbanization and modernization of the country with police control over migrants and with "Russian pity."<sup>44</sup> This movement received a boost from Bentham's Panopticon theory. In 1806, Samuel Bentham returned to Russia and convinced Alexander I to build a "Panopticon School of Arts" in Saint Petersburg.<sup>45</sup> During

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43. *Ibid.*, 85–86.

44. Joseph Bradley, "The Moscow Workhouse and Urban Welfare Reform in Russia," *Russian Review* 41, 4 (1982): 427–44; Georg Shvittau, *Trudovaia pomoshch v Rossii* [Labor assistance in Russia], 2 vols. (Petrograd: tip. A. Kollias', 1915).

45. M. S. Bentham, "Description of the Panopticon at Okhta," *Mechanic Magazine* (31 Mar.

the years that followed, the tsar ordered the construction of a number of such buildings devoted to administration and education.<sup>46</sup> At the same time—and with the tsar’s encouragement—more and more of Bentham’s works were translated into Russian. However, in Russia as in Europe, the end of the Napoleonic Wars brought a backlash against the reformers. Various Russian authors denounced the conditions of the workers in Europe and showed that the landowners treated and fed their serfs much as they did their horses.<sup>47</sup>

At least at this level of generality, the Russian leaders’ sense of distance from Bentham was shared by almost all nineteenth-century Russian intellectuals and economists, who relentlessly criticized a utilitarianism that they contrasted with Russian empathy and communal principles. The interests of the intellectuals and the autocracy converged in affirming a Russian uniqueness that they identified with both the spirit of community and the rejection of consumerism and hedonism.

While Bentham’s utilitarian ideas were met with a mixed reception, his theories on prisons and labor discipline found enthusiastic adherents among some “reformers,” including Nikolai Mordvinov, a friend of Samuel Bentham and president of the Free Imperial Economic Society between 1823 and 1840. Mordvinov was one of the noble landowners who—starting in the 1780s—had issued more and more written *instruktsii* designed to improve the nobles’ control over their estates and especially over the labor of their serfs. He had known the Bentham brothers since the 1780s, and his aims and opinions were influential on Jeremy Bentham’s thought. Conversely, Mordvinov was deeply influenced by Bentham’s ideas and his system of modeling the division of labor on a well-organized prison. In 1807 Samuel Bentham was back in Russia, and he brought Mordvinov writings by his brother, who at that

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1849), cited in Werrett, “Potemkin and the Panopticon,” 11.

46. Bentham, *Correspondence*, 8:224.

47. See Kingston-Mann, *In Search of the True West*, 69.

time considered Samuel one of his best disciples.<sup>48</sup> After the Napoleonic Wars, in 1818–19, it was Mordvinov’s turn to go to England and present Jeremy with his draft project for a representative assembly in Russia.<sup>49</sup> At this time, Mordvinov insisted, like Bentham, that more surveillance and control over the serfs was necessary to boost productivity.<sup>50</sup>

Finally, Mordvinov intervened in the reforms of the exile system, which were implemented in 1822. However, following my argument—and as the involvement of Mordvinov testifies—these reforms would have not become prominent were it not for the experiences of Samuel Bentham in Siberia, the increased circulation of Western ideas on colonization, and their link with Bentham’s utopia. It is therefore interesting from a historiographical perspective and ultimately surprising to hear the enthusiastic praise later expressed for the liberal spirit of Mordvinov, that “great liberal” who has supposedly been unjustly forgotten.<sup>51</sup>

A similar case was that of Pavel Kiselev, the minister of state domains, who imposed corporal punishments and fines on peasants who resisted changes in the organization of labor or the

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48. Bentham, *Correspondence*, 7:563–67.

49. Bentham, *Correspondence*, 10:542.

50. Nikolai S. Mordvinov, “Nekotoriia soobrazheniia po predmetu manufaktur v Rossii i o tarife” [Some observations on Russian manufactures and the tariffs], *Zhurnal Departamenta Gosudarstvennoi ekonomiki* 14 (30 Dec. 1815): 282–303, 345–388. On Mordvinov, see A. M. Gnevushev, *Politiko-ekonomicheskie vzgliady gr. Mordvinova* [Mordvinov’s political and economic orientations] (Kiev: M. V. Dovnar-Zapol’skii, 1904).

51. See, for example, Basil Dmytryshyn, “Admiral Nikolai Mordvinov: Neglected Russian Liberal,” *Russian Review* 30, 1 (1971): 54–63; and more recently, Susan P. McCaffray, “What Should Russia Be? Patriotism and Political Economy in the Thought of N. S. Mordvinov,” *Slavic Review* 59, 3 (2000): 572–96.

extension of the potato fields that were figured into Kiselev's plans as a protection against future bad harvests. The new measures he introduced sparked peasant riots that destroyed the potato fields.<sup>52</sup> However, though this approach of forcibly introducing changes into the organization of agricultural labor was dominant, it was not universal, and scholars have shown that landowners in fact achieved varying degrees of success in introducing new agricultural methods.<sup>53</sup>

We can thus conclude that the relationship between coercion and reform, free labor and forced labor, was no less complex in Russia than in Britain. Here Bentham inspired those who wished to rationalize society through supervised labor, but in Russia not everyone followed his approach, for negotiated reforms did indeed take place, most notably at some noble estates.

Indeed, these orientations found a root not only in debates about slavery, serfdom and the guilds in the eighteenth century and in Bentham's approach, but also in the building of Empires. After all Russia was not a British colony; how did the political economy of utilitarianism confront to the question of labor and freedom in places like India?

#### Utilitarianism in India

The Indian case was extremely relevant in the nineteenth century and still it is in the historiography because it tackled any pre-defined and ahistorical definition of slavery and

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52. Aleksandrov, *Sel'skaia Obshchina*; Peter Kolchin, "In Defense of Servitude: American Pro-slavery and Russian Pro-serfdom Arguments, 1760–1860," *American Historical Review* 85, 4 (1980): 809–27; Walter M. Pintner, *Russian Economic Policy Under Nicholas I* (Ithaca: Cornell University Press, 1967).

53. Confino, *Domains et seigneurs*; Hoch, *Serfdom and Social Control*.



freedom.<sup>54</sup> To discuss the limits of utilitarianism and the failure of nineteenth-century liberalism to conceive of equal rights in the colonial context, it is essential to examine abolitionism in India.<sup>55</sup> Utilitarianism's relationship with India has received much more attention than its dissemination in Russia. This was probably due to the imperial dimension of their connection and all the debates relating to it. In the 1970s, the cultural turn, and in particular Geertz, Foucault, Said and subaltern studies, stressed the relationship between culture and power. Starting from this premise, British rule in India was viewed above all as control over language. Many historians and social scientists have talked about "kidnapped language" and language-based or "cultural" dependence, etc. According to this view, Western perceptions of the "other" reduce civilization to positively valued institutions, behaviors and accomplishments associated with the West.<sup>56</sup> Within this context, Utilitarianism in India has been viewed as a major expression of this attitude, consisting in imposing rules, legal notions and criminal codes in order to control India. Classical studies on British liberalism in India stressed the "despotism" of utilitarian authors seeking to forcibly impose on India what they were unable to make acceptable in Britain, namely regulation, utilitarianism and the abstract principles of political economy.<sup>57</sup> In a similar vein, some authors underlined the connection between liberalism and colonialism.<sup>58</sup> Subaltern studies adopted and radicalized this approach.<sup>59</sup>

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<sup>54</sup> Indrani Chatterjee and Richard Eaton (eds), *Slavery and South Asian History* (Bloomington: Indiana University Press, 2006); Dharma Kumar, "Colonialism, Bondage, and Caste in British India", in Martin Klein (ed.), *Breaking the Chains. Slavery, Bondage, and Emancipation in Modern Africa and Asia* (Madison: The University of Wisconsin Press, 1993), pp. 112-130; Gyan Prakash, *Bonded histories. Genealogies of Labor Servitude in Colonial India* (Cambridge: Cambridge University Press, 1990). Jan Breman, *Labor Bondage in West India* (Oxford: Oxford University Press, 2007).

<sup>55</sup> Stokes, *The English Utilitarians*; Moir, Peers, Zastoupil *J.S. Mill Encounter with India*; Bhikhu Parekh, "The Narrowness of Liberalism from Mill to Ralws", *Times Literary Supplement*, Feb. 25, 1994: 11-13; Uday Singh Mehta, *Liberalism and Empire. A Study in nineteenth century British Liberal Thought* (Chicago: University of Chicago Press, 1999). Jennifer Pitts, *A Turn to Empire. The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005).

<sup>56</sup> Christopher Lloyd, *The Structures of History* (Oxford: Blackwell, 1993); Paul Griffith, "Ethnocentrism as Act of Kidnapping. The Procrustean Complex in the West", *American International Journal of Social Science*, 1, 2 (2012): 59-70; Roy Preiswerk and Dominique Perrot, *Ethnocentrism and History: Africa, Asia and Indian America in Western textbooks* (New York: Nok. Print. 1978).

<sup>57</sup> Stokes, *The English Utilitarians*.

<sup>58</sup> Thomas Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1994); Mehta, *Liberalism and Empire*.

<sup>59</sup> Ranajit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* (Oxford: Oxford University Press, 1983).

In contrast, several other authors highlighted the complexity and flexibility of British liberalism and utilitarianism, especially when confronted with India.<sup>60</sup> These works highlighted the evolution of attitudes among the main authors and the complex transplantation of ideas in India, in particular among EIC and British officials. Moreover, local actors were not simply passive, although distinctions need to be made among the actions and influence of local intellectual, political, economic elites and laborers.<sup>61</sup>

I will discuss these views and show that, in the case of both Russia and India, individual and institutional experiences in the Indian subcontinent had considerable impact on Utilitarianism and the British notions of labor, rights and sovereignty. Indeed, the evolution of the Masters and Servants Acts in Britain was influenced not only by Bentham's experience in Russia but also by the British experience in India. The ideals and approaches to the law<sup>62</sup> formulated by Bentham and James Mill as well as the famous utilitarian analysis of status and contract were to a large extent inspired by Indian regulations and jurisprudence.<sup>63</sup> The underlying question was whether legal and economic categories could apply universally or whether they had to be rooted in local culture.

In the late eighteenth and early nineteenth centuries, most observers and colonial elites were convinced that the forms of dependence existing in India did not come under the heading of slavery: they were domestic relationships and in any case "traditional." This approach fit well with the need to manage the Empire and India in particular,<sup>64</sup> where British control was still precarious, as the wars against the Marathas, Mysore, the Sikhs, etc. demonstrated. Jeremy Bentham played a crucial role in this debate.<sup>65</sup> Debates on slavery and abolition in India must be understood within this broader context. Since the early eighteenth century, the EIC came under increasing criticism concerning its fiscal autonomy, its use of slaves and its monopoly

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<sup>60</sup> Armitage, *The Ideological Origins*; Sartori, *Liberalism in Empire*; Robert Travers, *Ideology and Empire in eighteenth Century India. The British in Bengal* (Cambridge: Cambridge University press, 2007).

<sup>61</sup> Johanna Innes, "Governing Diverse Societies", in Paul Langford, ed., *The Eighteenth Century 1688-1815* (Oxford: Oxford University Press, 2002): 103-140.

<sup>62</sup> Kartik Kalyan Raman, "Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence", *Modern Asian Studies*, 28:4 (1994): 739-791.

<sup>63</sup> On the impact of the Indian experience on Britain: Eric Stoke, *The English Utilitarians and India* (Oxford: Oxford University Press 1959).

<sup>64</sup> On these debates, among the others : Andrea Major, *Slavery, Abolitionism and Empire in India, 1772-1843* (Liverpool : Liverpool University Press, 2012); Indrani Chatterjee, *Gender, Slavery and Law in Colonial India* (New Delhi: Oxford University Press, 1999).

<sup>65</sup> Stokes, *English Utilitarians*; Moir, Peers, Zastoupil, *J.S. Mill's*.

on trade, all of which were contrary to liberal principles. Indeed, the EIC control over fiscal revenues as well as the fact that it had its own army distinguished it and India from any other British colony. Fierce debates took place in the British parliament, each time the chart and privilege to the EIC were under renewal. Many forces in the British Parliament criticized the strong fiscal, military and political independence of the EIC; these debates increased during the second half of the eighteenth century and above all after 1770 when trade control turned into territorial occupation. For sure, EIC's revenues from India did not require, as in West Indies, massive import of slaves and the plantation system. The EIC itself adopted a double politics: it was firmly against slave trade within India as practiced by local powers. This was seen as a danger for its control of parts of India – an economic and political danger at the while. At the same time, the company had no interest in suppressing slavery for political (preserving the alliance with local elites) and economic reasons (tax from local revenues).<sup>66</sup> The Bengal famine of 1770s, in which up to ten million people were said to die,<sup>67</sup> was the occasion to reopen the debate on slavery. Several British official justified the selling of people with the argument that this was necessary in order to save them from death. The debate on the relationship between slavery and famine led to discuss alternatives forms of welfare to local bondage. Opponents to Indian slavery claimed the necessity for alternative forms of help, namely the poor law. Local police officials asked for help to feed indigent and poor children and the extension to India of the British poor law and workhouse system was frequently suggested. In the lack of parish, as in Britain, EIC's officials suggested to tax local elites in order to finance welfare, while experiencing the workhouse system.<sup>68</sup> However, a majority of EIC officials and parliamentary representatives were against the extension of the British poor law system to India. The EIC feared to loose revenues while British political representatives evoked the structural difference between the British and the Indian poor: the former required a public assistance because of the modernization of society while the latter could still rely upon village and other forms of solidarity.<sup>69</sup>

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<sup>66</sup> Major, *Slavery, Abolitionism and Empire*: 46. Michael Mann, “Dealing with Oriental Despotism: British Jurisdiction in Bengal, 1772-1793”, in Harald Fischer-Tiné, ed, *Colonialism an Civilizing Mission: Cultural Ideology in British India* (London: Anthem Press, 2004); Ranajit Guha, *A Rule of Property for Bengal: an Essay on the Idea of Permanent Settlement* (Durham: Duke University Press, 1996).

<sup>67</sup> David Arnold, “Hunger in the Garden of Plenty: the Bengal Famine of 1770”, in Alessa Johns, ed, *Dreadful Variations: Confronting Natural Catastrophe in the Age of Enlightenment* (New York, London, Routledge, 1999).

<sup>68</sup> *British Parliamentary Papers*, 125 (1828).

<sup>69</sup> *Ibidem*.

At the same time, this practice was allowed only when people enter inter-indian servitude, supposed to be “mild”;<sup>70</sup> on the contrary, European powers other than the British were not allowed to exploit this situation to enslave people. Warren Hastings, the Governor-General of India, and the Provincial Council of Patna issued a declaration limiting the right of masters over their slaves to no more than one generation.<sup>71</sup> In 1774 the Government of Bengal passed regulations which removed the right to trade in persons without a written deed and prevented the sale or purchase of any individual not already in a state of slavery.<sup>72</sup> The 1774 declaration of the Provincial Council of Patna, under the direction of the Governor-General Warren Hastings, identified two forms of slavery: *moolzadeh* and *kahaar*. The first type referred to Muslims who were war captives, while the second identified Hindu palanquin bearers owned by their masters. The two were grouped together as slaves because both were considered unfree; however, the council found that, in practice, variations in condition could legitimate recognition of a different status. For example, if palanquin bearers could marry and work at their own discretion, then they were “free”.<sup>73</sup> However this legislation was not particularly successful; British diplomatic reports accused Portuguese and French to practice illegal slave trade in India.<sup>74</sup> Indeed, the British themselves largely contributed to this trade.<sup>75</sup> Thus, the legislation of 1774 was reissued in 1789.<sup>76</sup> That same year, slave exports was banned in the Bengal presidency; Madras followed in 1790<sup>77</sup> and the EIC’s Courts of Directors also took measure to abolish the slave trade in Malabar. At the same time, it is worth noting that the debates and policy implementation were based on distinctions between

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<sup>70</sup> BRITISH PARLIAMENTARY PAPERS, *Slavery in India*, 125 (1828): 115, 236, 245.

<sup>71</sup> IOR (India Office Library and records, London): BRC (Bengal Revenue Consultations) 16 August, 1774, n. 442, letter from the Provincial Council at Patna to Warren Hastings, 4 August 1774.

<sup>72</sup> BRITISH PARLIAMENTARY PAPERS, *Slavery in India*, 125 (1828).

<sup>73</sup> Prakash, “Terms of Servitude”.

<sup>74</sup> BRITISH PARLIAMENTARY PAPERS, *Slavery in India*, 125 (1828) 11-12.

<sup>75</sup> Allen, “Suppressing a Nefarious Traffic”.

<sup>76</sup> BRITISH PARLIAMENTARY PAPERS, 125 (128) : 13.

<sup>77</sup> Richard Allen, “Suppressing a Nefarious Traffic”. Judith Jennings, *The Business of Abolishing the British Slave Trade* (London: Routledge, 1997).

different forms of slavery (debt, chattel, etc.) and their origins (inheritance, kidnapping, coercion, violence) with references to local Muslim and Hindu customs. The respect for local rules and the easy translation in terms of property and ownership legitimated both the description of Indian slavery as “mild” and its tolerance by the EIC.<sup>78</sup> By emphasizing that, unlike the West Indies, East Indian slavery was mostly domestic, colonial officials generally tied it to kinship and prestige, hence the favorable conditions of “slaves”. In the years that followed, many other documents were produced<sup>79</sup> and several EIC officials expressed broad anti-slavery sentiments and ideologies; many others preferred to adopt a more cautious attitude and, on the ground, both were compelled to negotiate with local conditions. In particular, children slavery was strongly condemned.<sup>80</sup>

In 1782, just before his experience in Russia, Bentham urged lawmakers to take the conditions peculiar to India into account before trying to impose British rules.<sup>81</sup> He agreed that the laws of England should serve as the standard; at the same time, he point out that, unlike Russia and Canada, Bengal was so completely different from England that a transfer of British law could be achieved in toto. In Bentham’s opinion, deciding the question of British influence and Indian “specificity” was secondary to establishing good laws everywhere. He associated India with oriental despotism and encouraged a radical reform of its laws in accordance with Utilitarian principles. For Bentham, this will involve an examination of the effects of laws upon the pains and pleasures felt by individuals. Bentham opposed the attitude which consisted in collecting local customs in order to orient the jurisprudence.<sup>82</sup> According to Bentham, both in India and Britain rules had to respond not to jurisprudence but to universal ethical principle which in turn had to orient the elaboration of legal codes.<sup>83</sup>

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<sup>78</sup> Sata Lani, *Contentious Traditions: the Debate on Sati in Colonial India* (New Delhi: Oxford University Press, 1999).

<sup>79</sup> Revd William Tennent, *Indian Recreations* (Edinburgh: C. Stewart, 1803); Francis Buchanan, *A Journey from Madras through the Countries of Mysore, Canara, and Malabar* (London: Cadell & Davies, 1807). Also: *British Parliamentary Papers on East Indian Slavery* (London: House of Commons Press, 1828, 1834, 1837, 1838, and 1844).

<sup>80</sup> BL IOR P/50/60.

<sup>81</sup> Jeremy Bentham, Essay on the Influence of Time and Place in Matters of Legislation, in *Works of Jeremy Bentham*, Bowring edition, vol. 2: 171.

<sup>82</sup> Jeremy Bentham, *An Introduction to the Principles of Moral and Legislation*, in: *The Works of Jeremy Bentham*, 11 vols., John Bowring, ed., Edinburgh, William Tait, 1838–1843, vol. 1, chapter II, section 8: 5.

<sup>83</sup> Philip Schofield, “Jeremy Bentham and Nineteenth-Century English Jurisprudence”, *Journal of Legal History*, 12, 1 (1991): 58-88. Herbert Lionel Hart, *Essays on Bentham: Jurisprudence and Political Theory* (New York,

According to him, in India, codes would free the local population from oriental despotism, while in Britain, code would have freed the population from the arbitrary of the common law; last but not least, according to Bentham, a unified legal code would have restored the power of the crown over that of the EIC. At the same time, in his schema, the sovereignty and stability of rules were associated with utility and scarcity: every measure should be studied in the light of this principle. In other words, the logic of law is not internal to this discipline and rooted in procedure; rather, it must meet the universal principle of utilitarianism. The imperfections of competition can then be resolved through rules, but the construction and use of the latter is done through utilitarian calculus.<sup>84</sup>

The transfer of British values and institutions to India was in fact a core issue in political debates and administrative governance between the 1760s and the 1810s.<sup>85</sup> The conquest of India was still unstable, as the wars against the Marathas and Mysore testify. Attitudes within the East India Company (IEC) as well as in Parliament varied considerably. Some, prompted by the political and military instability, advocated a cautious approach; others, on the contrary, demanded more direct intervention and expansion justified by warfare, trade security and, last but not least, the need to abolish slavery in the Indian interior. The outcome of these approaches, together with the fierce resistance of Indian states and populations, was a patchwork of institutional and practical solutions; they varied according to the field (law, economy, culture, lower or higher education, criminal or commercial law, trade or labor), the geographical area concerned (Southern India, Northern India, the Malabar Coast, etc), and, of course, the individuals concerned. Thus, while the East India Company inherited many Mughal and post-Mughal legal institutions such as the *Qazi* courts (appellate courts),<sup>86</sup> Parliamentary committees agreed that “no Conclusion can be drawn from the English law,

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New York University Press, 1982).

<sup>84</sup> Jeremy Bentham, *An Introduction to the Principles of Moral and Legislation*, in: *The Works of Jeremy Bentham*, 11 vols., John Bowring, ed., Edinburgh, William Tait, 1838–1843, vol. 1, chapter II, section 8: 5.

<sup>85</sup> Alessandro Stanziani, *Bâtisseurs d’Empires. Russie, Inde et Chine à la croisée des mondes* (Paris : Liber, 2012) and *Seamen, Migrants and Workers. Bondage in the Indian Ocean World, Eighteenth-Nineteenth centuries* (New York: Palgrave MacMillan, 2014).

<sup>86</sup> Tapas Kumar Banerjee, *Background to Indian Criminal Law* (Calcutta : Orient Longman 1963): 130; Harald Fischer-Tiné, Michael Mann (eds), *Colonialism as Civilizing Mission* (London: Anthem Press, 2004).

that can be properly applied to the Manners or State of this Country (India), with the exception of plans for the eradication of banditry.”<sup>87</sup>

Indeed, it was not only a question of governance in India; during those same years, British criminal law was the focal point of an intense intellectual and political debate at home.

Reformers opposed Edmund Burke and his conservative allies, demanding a fundamental change in the criminal justice system, accused of being arbitrary and highly irrational.<sup>88</sup> This debate overlapped with the debate over the laws to be adopted in India. Both Burke’s *Reflections on the Revolution in France* (1790) and William Jones’ enthusiasm for Hindu civilization, expressed in his project to compile a digest of Indian law, reasoned in terms of the uniqueness of a culture (Indian, English or French) to argue against revolution and in favor of colonialism.<sup>89</sup>

Burke led the prosecution in the impeachment trial of Warren Hastings, the first governor-general of India, in which he accused the EIC of violating “the eternal laws of justice” through treaty violations, arbitrary and despotic government, and acts of corruption. He called for stricter parliamentary control over the Company and protection of indigenous laws. This latter demand was made in opposition to Hastings’ attempt to codify Hindu and Muslim law with a view to incorporating them in Anglo-Indian legal administration. In fact, Burke was openly attacking the association of ideas linking India with oriental despotism.

Bentham sought to criticize this view: in his opinion, deciding the question of British influence and Indian “specificity” was secondary to establishing good laws everywhere. He associated India with oriental despotism and encouraged a radical reform of its laws in

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<sup>87</sup> “Extract of the Proceedings of the Committee at Kishan Nugar (June 28, 1772)”, in Seventh Report from the Committee of Secrecy (May 6, 1773), in House of Commons Sessional Papers of the Eighteenth Century 348 (Sheila Lambert ed. 1975) (hereinafter ‘Seventh Report’).

<sup>88</sup> Elie Halevy, *The Growth of Philosophic Radicalism* (Mary Morrist trans., 1972); Douglas Hay, *Albion's Fatal Tree: Crime and Society in Eighteenth Century England* (London: Pantheon Books, 1975); Daniel Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth Century England* (Cambridge: Cambridge University Press, 1989)

<sup>89</sup> Jones to Arthur Lee, 1<sup>st</sup> October 1786 in *The Letters of Sir William Jones*, ed. Garland Cannon, 2 vols., Oxford, 1970, II: 712.

accordance with Utilitarian principles. It was from this standpoint that he condemned Indian forms of slavery.<sup>90</sup>

Indeed, in the 1770s, Warren Hastings, the Governor-General of India, and the Provincial Council of Patna issued a declaration limiting the right of masters over their slaves to no more than one generation.<sup>91</sup> Yet as late as March 1808, the Joint Magistrate J. Richardson denounced the continuing tolerance of slavery in India.<sup>92</sup> No official action was undertaken, except to keep a register of slaves.<sup>93</sup> The British anti-slavery movement thus claimed it was necessary to expand the abolitionist campaign to India. Supporters of local customs and pragmatic colonial elites replied that what existed in India was not real slavery, but merely forms of family dependence and domesticity. They won the backing of the English planters in India, who claimed their enterprises were not comparable to the plantations in the West Indies. Even within the abolitionist movement, many held that bondage in India was different from slavery, either because they genuinely believed it or for tactical reasons, i.e. to stop the transatlantic slave trade first. The fact that there was nothing in the subcontinent comparable to the transatlantic slave trade – the use and trade of slaves in and from India took place on land and was therefore much more difficult to quantify and control – also helped to support this view.

Although Bentham never worked out a detailed analysis of the Indian system, his systematic approach to the law met with some success among younger, enthusiastic utilitarians. The final defeat of the Marathas in 1818 transformed Bombay into a major center under Company rule.

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<sup>90</sup> Lea Campos Boralevi, *Bentham and the Oppressed* (Berlin and New York: Walter de Gruyter, 1984); Fred Rosen, *Bentham, Byron and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought* (Oxford: Clarendon Press, 1992).

<sup>91</sup> IOL (India Office Library and records, London): BRC (Bengal Revenue Consultations) 16 August, 1774, n. 442, letter from the Provincial Council at Patna to Warren Hastings, 4 August 1774.

<sup>92</sup> IOL, Bengal Judicial Consultations, P/132/21.

<sup>93</sup> IOL, Bengal Judicial Consultations, P/132/57.



The first question that arose in this context was which type of governance should be adopted for the newly annexed states: direct rule or a subsidiary system. As an officer of the EIC, James Mill criticized the latter solution for failing to provide the strong centralization required for military purposes.<sup>94</sup> As for Bentham, in the case of James Mill as well, domestic stakes were strongly with colonial discussions;<sup>95</sup> by criticizing Indian despotism he also attacked British aristocracy; he evoked both reforms in India and in Britain.<sup>96</sup> He also began drafting a systematic Utilitarian legal agenda for India. Mill thought Mughal feudal law had to be replaced by British law<sup>97</sup> and he was convinced that poverty and ignorance could be cured by framing the right laws. From this perspective, India was a tabula rasa that could be molded by Utilitarianism. In the years following the Napoleonic wars, these ideas seemed to be assimilated into a wider trend among British rulers in India looking for ways to make local administration more efficient. Contrary to Mill's views, however, in the eyes of most British elites in India, efficiency was linked much less to abstract principles of Utilitarianism than to law enforcement.<sup>98</sup> In other words, whenever there was a conflict between abstract justice and practical sovereignty, priority should be given to the latter. This meant that Islamic law should be preserved – even if it went against certain British principles of justice – as long as it guaranteed compliance with the rules.

This policy nevertheless proved difficult to put into practice: by the 1820s, the Indian courts had been reorganized several times and numerous digests of Indian law had been produced.

Even so, uncertainty continued to surround judicial procedures in the 1830s; no less than nine

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<sup>94</sup> British Parliamentary Papers, 1831-2, XIV, 16 Feb 1832.

<sup>95</sup> Andrew Sartori, *Liberalism and Empire. An Alternative History* (Berkeley: University of California Press, 2014).

<sup>96</sup> Javed Majeed, *Ungoverned Imaginings: James Mill's History of British India and Orientalism* (Oxford: Clarendon, 1992).

<sup>97</sup> James Mill, *The History of British India* (London: James Madden, 1858) 1<sup>st</sup> edition: 1817.

<sup>98</sup> C.E. Grey and E. Ryan, "Some Observations on a Suggestion of a Code of Law", submitted 13 Sept. 1830 to the Governor-General in Council. Bentick to Grey and Ryan, 9 Oct. 1831, *British Parliamentary Papers* (1831) VI, 144.

different systems of civil procedure were simultaneously in effect in Bengal before 1859.<sup>99</sup> The Draft Penal Code of 1837, irrespective of its alleged amendments to the old order, not only acknowledged that, as of 1837, the “technical terms and nice distinctions borrowed from Mohammedan Law are still retained,” but it kept the indigenous names for various facets of the Company's judicial system. The young John Stuart Mill took a position in this debate. John Stuart had been brought into the EIC's India House by his father James at the age of seventeen, after having been instilled with his father's Benthamite ideas. He believed that local customs and chiefs must submit to British rule.<sup>100</sup> Like Bentham before him, the younger Mill concluded that what India needed was a penal code, rather than a hodge-podge of existing laws. The only escape from darkness for Indians was to be led through a long and arduous process of tutelage by those more advanced. During the 1830s, however, his thinking was gradually changed by two interrelated events: first, he was confronted by opposition from the EIC and British officials who refused to subjugate local customs; second, the military campaign in Mysore and the difficulties the British encountered in overcoming local resistance convinced Mill to adopt more pragmatic attitudes toward local elites.<sup>101</sup> At the same time, according to Mill, this general orientation in defense of indirect rule could not apply to questions of slavery. He wrote in a dispatch that “the custom of permitting Brahmins to purchase Domes for the cultivation of their lands, it be permitted by Government, is liable to gross abuse.” And he complained to the government of Calcutta that the abolition of slavery in India “seems still to be very defective.”<sup>102</sup> He reiterated this

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<sup>99</sup> Sandra den Otter, “Law, Authority and Colonial Rule”, in Douglas Peers, Nandini Gooptu (eds.), *India and the British Empire* (Oxford: Oxford University Press, 2012):168-190, in particular 179. See also: Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of law* (Cambridge: Cambridge University Press, 2010); Martin Wiener, *An Empire on Trial: Race, Murder and Justice under British Rule, 1870-1935* (Cambridge: Cambridge University Press, 2009).

<sup>100</sup> John Stuart Mill, “Essays on Equality, Law, & Education” in *Collected Works of John Stuart Mill*, vol. 21, , p. 83. Original 1825, edition by John Robson, Stefano Collini (eds), University of Toronto Press, 1984.

<sup>101</sup> Lynn Zastopul “India, J.S. Mill and Western Culture”, in Martin Moir, Douglas Peers, Lynn Zastoupil, *J.S. Mill's Encounter with India*, Toronto, University of Toronto Press, 1999: 111-148.

Robin Moore, “John Stuart Mill and Royal India”, in J.S. Mill's Encounters: 87-110.

<sup>102</sup> British Library, Oriental and Indian Office Collection, political dispatch to India, 13 February 1838, E/4/753: 909-12.

position in 1842 when he denounced the fact that the Sultan of Sharja and the Imam of Muscat had violated the treaty of 1839 abolishing the slave trade with the African Somali tribe.<sup>103</sup> A year later, he expressed his regret that the practice of kidnapping children had been allowed to linger on within the EIC's possessions.<sup>104</sup>

Indeed, the abolition of slavery in India was linked to several factors: first, the passage from apprenticeship to freedom in other British colonies led the abolitionist movement to focus on India; second, the EIC came under increasing criticism concerning its fiscal autonomy, its use of slaves and its monopoly on trade, all of which were contrary to liberal principles. Further support came from the Americas, where abolitionists criticized slavery in the South as well as in India and accused Britain of hypocrisy on both sides – in India for tolerating slavery and in the U.S. for financing the slave trade.

As sugar in West Indies became the main target of the abolitionist movement, the EIC and other British elites immediately took the occasion to stress the free made sugar in East Indies. Many Abolitionist still supported the image of free India to better attack West Indian planters; therefore, supported by the EIC they replied that Indian poverty was a choice and not the fruit of exploitation. West Indian lobbies replied by accusing the EIC of exacerbating the oppression and the misery of the Indians.<sup>105</sup> Towards the mid-1820s, the fact that slaves were employed in India made its way in the public opinion.

In 1833, when the debate on the abolition of slavery was still under way, the House of Parliament discussed the renewal of the EIC's charter. The EIC's interests and benevolent attitude towards slavery were also mentioned as possible causes of the exacerbation of slavery. Instead, still in 1837, Macaulay still insisted that abolitionism must be put into practice in the Caribbean and Africa while Indian slavery was qualified as "mild".<sup>106</sup> In June

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<sup>103</sup> British Library, Oriental and Indian Office Collection, political dispatch to Bombay, 21 September 1842, E/4/1071: 335-45.

<sup>104</sup> British Library, Oriental and Indian Office Collection, political dispatch to Bombay, 18 October 1843, E/4/1074: 54-6.

<sup>105</sup> Joseph Marryat, *A Reply to the Arguments Contained in Various Publications, Recommending an Equalization of the Duties on East and West Indian Sugar* (London: Relfe, 1823).

<sup>106</sup> H.V. Bowen, *The Business of Empire: the East India Company and Imperial Britain, 1756-1833* (Cambridge: Cambridge University Press, 2006); Howard Temperley, "The Delegalization of Slavery in British India",

1840, the First World Anti-Slavery Convention in London adopted a series of resolutions condemning slavery in India. Thus, in 1839 the British India Society was founded and it immediately set about attacking slavery as a cause of human suffering along with famines. The Society adopted a global approach: its leaders argued that the abolition of slavery in India would improve local conditions, eradicate famine and help to promote abolitionism in the Americas.<sup>107</sup> For most participants, the issue of Indian slavery was not just about abolitionism but also about the rule of the EIC and India's future within a reconfigured imperial system. Even though slavery was officially outlawed in India in 1843, local governors and elites espoused quite different attitudes depending on their own definition of slavery. For example, debt bondage was systematically excluded from it and therefore tolerated.<sup>108</sup> The government of Madras and other provincial British governments captured fugitive slaves and laborers and sent them back to their masters. Yet instead of putting an end to the slavery question, this outcome raised new ones, starting with Britain's relationships with Indian States. British rules sought to encourage the Indian States to adopt antislavery rules. Slave trading was outlawed in Jaipur in 1839 and slave status abolished in 1847. However, in the following years, British officials complained that these acts were hardly enforced. These difficulties reveal the impossibility of assimilating the slave trade and slavery in India to their transatlantic equivalents. In the latter case, the long-distance trade of slaves gave meaning to the distinction between the abolition of the slave trade and that of slavery, whereas on the Indian subcontinent, the distinction was seldom relevant.<sup>109</sup> The enforcement of antislavery rules was compromised by the wide use of forced labor by the British themselves. The EIC employed

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*Slavery and Abolition*, 21, 2 (2000): 169-87.

<sup>107</sup> British India Society, *British India: the Duty and Interests of Great Britain, to Consider the Condition and Claims of her Possessions in the East: Addresses Delivered before the Members of the Society of Friends, at their Yearly Meeting, Devonshire House, Bishopsgate Street, on the 1<sup>st</sup> of June, 1839* (London: Johnston and Barrett, 1839).

<sup>108</sup> Gwyn Campbell, Alessandro Stanziani, *Debt and Bondage in the Indian Ocean, 18<sup>th</sup>-21<sup>st</sup> centuries* (London: Pickering and Chatto, 2013).

<sup>109</sup> Indrani Chatterjee, "Abolition by Denial", in Gwyn Campbell (ed), *Abolition and its Aftermath in the Indian Ocean, Africa, and Asia* (Abingdon: Routledge, 2005), pp. 150-168.

this type of labor digging canals and on other public works projects as well as for portage.

In the mid-nineteenth century, these practices came under attack from the abolitionist movement; engineers and other colonial personnel involved in infrastructure development immediately reacted against the movement, while government and EIC officials were divided on the topic.

In 1861, Henri Maine published his famous work on ancient law, based on a series of lectures at the University of Cambridge and subsequently under the influence of the Sepoy rebellion in India, which was widely debated in Britain.<sup>110</sup> His main argument was a late expression of utilitarianism: legal principles are universal but must be adapted to local contexts through procedure. He therefore opposed status-based societies – India, Asian societies, ancient Europe – to contract-based societies in modern Europe. Progress consisted precisely in reducing state influence and state discrimination. According to Maine, “Brahminical India has not passed beyond a stage which occurs in the history of all the families of mankind, the stage at which the rule of law is not yet differentiated from the rule of religion.” Instead, modern societies have a mechanism for legal protection that evolves according to the transformations in society. Maine identified “three ways by which law can be adapted to improvements in society: Legal Fiction, Equity, and Legislation.” Legal fiction referred to altering the interpretation of the law without changing the wording; Equity involved adding new rules to the existing central body of law, while Legislation entailed the evolution of the body of law itself. Maine associated each form of legal change with a higher form of civilization. This hierarchy reflected his original Benthamite orientation, giving priority to legislation over jurisprudence. Of course, legislation was supposed to express universal principles and above all the autonomy of free individual will over that of the state.<sup>111</sup>

It was from this standpoint that Maine interpreted the Sepoy rebellion. In Britain, the event triggered widespread debate about the Empire, the role of the EIC and civilization, and substantial differences in terms of race. The Sepoy mutiny was initially seen as the irrational rejection of English rule and civilization by barbarians. But to others, it also signaled the failure of the liberal British Empire and the need to transform it; in particular, the EIC needed

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<sup>110</sup> Mantena, *Alibis of Empire*.

<sup>111</sup> Henri Maine, *Ancient Law, its Connections with the Early History of Society, and its Relation to Modern Ideas* (Createspace: Independent Publishing Platform, 2013).

to be replaced by new forms of government. It was in this context that the question of indirect rule emerged. Disillusionment with the ideal of “making the world British” turned into political considerations about whether this might not be an opportune moment to shift from direct to indirect rule and allow the natives to live under their own rules as long as they were compatible with the basic principles of British justice.<sup>112</sup> The Queen’s proclamation of 1858 seemed to confirm this new trend.<sup>113</sup>

Maine intervened in the discussion, arguing that the native law of India was under increasing pressure from modern institutions. The dissolution of traditional society had to be managed through indirect rule and basic British principles. Unlike Bentham, who believed in the superiority of the Enlightenment, Maine was concerned with the disintegration of “traditional societies” and the need to provide justice and order beyond the chaos of jurisprudence. Indirect rule, supported by Maine and several other British elites, was a response to the Sepoy mutiny and marked the passage from a universalistic to a “culturalist” form of Empire management. However, as we have seen, these tendencies were already commonplace in colonial India and Britain in the late eighteenth century and to some extent informed the tolerance of Indian slavery. Yet after 1857 such attitudes took on a new meaning and configuration: it was no longer a question of learning Sanskrit in order to better govern India but of adopting general British (not EIC) rules capable of reconciling universal principles of justice with local authority. It was a turning point in the constellation of liberalisms and their relationship with the Empire. In the early nineteenth century, the British Empire was justified on the basis of ideals of trusteeship and improvement; after 1857, the idea of educating India for eventual self-government was almost entirely eclipsed. In the 1770s, as we have seen, Hastings and Burke quarreled over the relationship between Empire and Justice. For Burke, the EIC had wrested its power by unjust means. He thus contested Orientalism as a justification for local and British (company) abuses. Subsequently, while Bentham gradually changed his position on this point, James Mill radicalized the universalistic attitude and the need for direct rule. He was following Burke more than Bentham. John Stuart opened up the crisis of classical liberalism when he moved back to a more nuanced attitude and the need to incorporate “local knowledge” and indirect rule in imperial liberalism. In part because of the Sepoy mutiny, Maine definitively confirmed this shift. In his view, the mutiny was a symptom of poor government due to imperfect

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<sup>112</sup> Mehta, *Liberalism and Empire*. Pitts, *A Turn to Empire*.

<sup>113</sup> Mantena, *Alibis of Empire*.

knowledge.<sup>114</sup> He therefore set about producing that knowledge by studying “traditional societies.” He observed that previous European accounts of “Indian” society had focused on language (Sanskrit) and religion. Classical utilitarianism had made the same mistake. He argued that the real nature of local institutions lay in customs and traditions that were not derived from Sanskrit and Brahmanism alone. Ethnographic knowledge was required to fill this gap.<sup>115</sup> In taking this position, he also distanced himself from eighteenth century accounts such as *Histoire des deux Indes* by Raynal and Diderot. According to Maine, this work was exclusively based on knowledge of urban and coastal societies. He concluded that abstract utilitarianism and its legal and economic prescriptions had failed because they were not applicable to primitive or ancient societies of which India was a prime example. Yet this did not mean that Maine was prone to cultural relativism. Quite the opposite: he believed that India and England shared the same Indo-European heritage, but India was the “living past” of Europe. Anthropological rather than philological knowledge was accompanied by an evolutionary notion of progress.

#### *Concluding remarks*

Initially the Enlightenment and later on Utilitarianism and liberal thought were all faced with a fundamental dilemma compelling them to choose between freedom, morality and ethics, on the one hand, and labor and sovereignty on the other. The dilemma involved the status of “free” labor and the role of law in relation to the economy. Economic rationality, born of the Glorious Revolution in Britain and the French Revolution and further developed during the first half of the nineteenth century, had trouble reconciling these elements. In this environment, it was not unreasonable for Bentham to take an interest in Russian serfdom in order to reform the Poor Law in Britain; this did not mean he considered the British workers serfs, but simply that Western and Eastern Europe were confronted by common problems of labor and surveillance, public order and the economy. Bentham’s ideal of rational law based

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<sup>114</sup> Henri Summer Maine, “India” in Humphrey Ward, ed., *The Reign of Queen Victoria: a Survey of Fifty Years of Progress* (London: Smith, Elder, 1887): 460-528, in particular p.478.

<sup>115</sup> Henri Summer Maine, *Village-Communities in the East and the West*, Lecture 1.

upon Utilitarian principles provided the umbrella to discuss India, Canada and Russia within the same theoretical approach. It was no accident that the British Parliament debated the abolition of slavery in the colonies and the reform of the Poor Law and the apprenticeship system at the same time. Slaves were emancipated but placed under a system of temporary apprenticeship; as a result, the apprenticeship system was radically transformed (and finally abolished) in Britain and consequently the Poor Law, too, entered a new phase. Historians have artificially separated these debates, according to their own interests and fields – the history of labor, of slavery, etc. – whereas in the archives and in reality, they were all parts of a single problem. In England, the Poor Law was reformed and the abolition of slavery was gradually accepted, even as the Navy and the Poor Houses continued to make use of coerced labor. In India, slavery was tolerated in the name of indirect rule, while the transfer of British institutions raised widespread skepticism if not hostility not only among various Indians but also among the British colonial elites themselves.

The relationship between labor and authority was crucial in this context. The whole debate centered on the question of how to increase productivity – through tighter controls or enhanced worker incentives. They were seen as the only available options, but it was impossible to link either one entirely to forced labor or wage labor. Although it might seem that serfdom involved coercion and wage labor involved freedom, the debates show precisely the opposite: the partisans of reformed (but not abolished) slavery and serfdom advocated giving slaves and serfs more responsibility; they maintained that free wage labor entailed far greater surveillance costs. Hence, the adoption of apprenticeship in the colonies and an even longer “transition” period in Russia, before as well after the official abolition of serfdom. In the colonies, the difference between slavery, apprenticeship and indentured contracts was clear in the legal statutes, but much less obvious in the implementation of rules and social



practices.<sup>116</sup> In opposition to these uncertain attitudes, most radical reformers considered coercion to be definitively less profitable than free labor and advocated a complete transformation of labor institutions and practices. Yet, paradoxically, they did not hesitate to adopt coercive methods in order to impose reforms. This occurred in Russia as well as in the European colonies. Coercion for the good cause was to meet with increasing success in the late nineteenth and twentieth centuries.

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<sup>116</sup> Alessandro Stanziani, "Local Bondage in Global Economies: Servants, Wage Earners and Indentured Migrants in Nineteenth Century France, Britain and the Mascarenes", *Modern Asian Studies*, 47, 4 (2013):1218-1251.