

Jeremy Bentham to Sir Robert Peel
11 July 4th
2 " 4th

Queen's Square Place, Aug^t. 30. 1820.
On Mr. Humphrey's Code. Defects observed; Practical conclusions unchanged

Sir

I had not intended to have been a second time thus obtrusive. But a sense of necessity compelled me.

For pronouncing a work worth notice, much less reading is necessary, than for pronouncing it not worth notice. When my former letter went, I had not read what I have read since.

A considerable quantity of matter is already committed to writing, in which are brought to view some of what seemed to me the redundances, imperfections and deficiencies of the plan, together with a few proposed alterations and additions of my own, which had presented themselves to me in the character of improvements. I intend to give publicity to them in some way or other, as soon as may be.

Supposing all mentions of good points suppressed, and bad points held up to view and made the most of, a part of the whole number of bad points I have brought to view would suffice to warrant the conclusion of its not being worth notice. If it has happened to you, Sir,

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to hear any thing said of the plan, this is the way in which, in your position, it seems most natural you should have heard it spoken of. If so, what seems equally natural, is that my former letter should have presented itself to you as a tissue of extravagancies.

When the observations above alluded to are before the public, — any ^{one} that thinks it worth while will see whether my approbation is a blind one.

My ignorance, as to every thing that regards the person of the author, remains entire. My opinion, respecting the usefulness of his receiving encouragement from the hands of government, remains unchanged.

On Mr Humphreys's proposed Property Code: (1)

Offer in relation to it,

Sir,

Queen's Square Place Westminster, Jul^y 4th 1826.
August 1826.

By the liberty taken in this address, I regard myself as ministering to your beneficent designs: no other apology, I hope, is requisite.

Seeing yester day by accident a Book intituled "Observations on Real Property, by James Humphreys of Lincoln's Inn Esq. Barrister," I sent, and bought a copy of it.

Of all reforms or improvements you can have had in view in addition to the Statute Consolidation plan, (not to speak of minor ones) this presents itself to me as the most extensively practicable: resistance minimized; thence, probability of success - true honour - useful and well earned influence - maximized. In every man who, in relation to land, has property either in possession, expectancy, or hope, I see a man who will be served by it: those most who have most property: for, at present, all such property stands, or rather totters, upon a foundation similar to that of the Customs House. Whether, for the sake of security in all other shapes, some men would give up the facilities they have so anxiously preserved for themselves, for obtaining money on false pretences, and cheating their creditors, remains to be tried: but, even that faculty, rather than Mr. Humphreys's plan should in other respects fail, I would, in case of necessity, confirm to them, if it depended upon me. Even the

Yours Hon^{ble} Robert Peel.

difference

differences between divisibility and indivisibility of inheritance as to land, great as it is when considered in itself, is in my eyes, in comparison of the all-comprehending security endeavoured at by Mr. Humphreys's, a minor object.

One point, which, as far as I can see, (for I have not yet gone over his Book,) Mr. Humphreys has not expressly touched upon, is the necessity of homologation, a word which, having seen it elsewhere, I use, for shortness, to designate the conversion of Common into Statute Law. As little, Sir, I believe, has any mention been made of it by you. Whatever may be your ultimate design, consolidation and consolidation only, is your as yet declared design, and (I believe) your word. By that word, resistance was obviated, support ascertained and obtained. Against this consolidation plan, no official or professional voice has, I believe, been lifted up: why? because, to the lawyers, and to them alone, if the design stops there, could it be of any use: of use, namely, by somewhat alleviating their labours; leaving the rule of actions throughout as incomprehensible to non-lawyers, as before; especially if the lengthy and involved phraseology in the established style, in which the consolidation plan has commenced, be persevered in.

While the present state of things in this respect continues (need I mention it?) the Legislative power is in effect subordinate to the Judicial: the Judges complying

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with, or frustrating and in effect over-ruling, the Statute Law, as happens to be most agreeable to them. By a repealing Act, Parliament-made law is indeed repealable. But Judge-made law, not; this is an often avowed doctrine. Edmund Burke (I think it was) when he repealed the fore-stalling the Statutes, tried to repeal the Common Law practices: but the lawyers would not suffer him.

Law language contains some five or six words, by any one of which new crimes can be manufactured in any sort and number. Two of these are conspiracy and conspiracy: more particularly conspiracy; which stretches its arms in potentia over the whole field of Criminal Law, and in act has covered no small part of it. This can not be a secret to Cabinets: but the subdespotisms of the Judges is in the hands of ~~the~~ superdespotisms, an instrument which it can employ at pleasure: an instrument most convenient to both; for, at the expense of a few words, in a few minutes, a single Judge can do, without any the smallest responsibility, what could not be done in less than six or seven months, nor without unpleasant howsoever little, dangerous responsibility, in Parliament. This, though a digression, is not inapposite one: because, if the Cabinet can not prevail upon itself to give up to a certain extent the use of this same instrument, universal security of property can not take place of the present universal insecurity.

Another

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Another thing is, that, if not the very existence, at any rate a great portion of the profits, of the Equity Courts would have to give way. As to official men, so far as concerns money, some addition to their present emolument might perhaps, if coupled with ease, satisfy all but a few. But, such are the sweets of power, when the Court of Session was split in two, President Campbell gave up all in a huff, rather than sit down again with half. Very different is the case with professional men. Neither for Attornies, nor for Counsel, could you come to Parliament, and ask for pensions in compensation for loss of business.

The question therefore is whether, for this share in the universal security for their estates, more particularly their landed estates, the Cabinet and the Great Landholders in both Houses - Tories and Whigs together - would be content to forego the advantage, afforded by the support, given of course by Lawyers, to abuse in every shape without exception, in which, and at the expence of the subject many, the ruling few see a source of continuing profit to themselves. If then these same ruling few have confidence enough in their own strength, to regard it as sufficient without the support of the lawyers for the protection of that part of their interest which is opposite to the interest of the subject many, the lawyers might bawl till they were hoarse, and would get nothing but scorn; for the rest of the ruling few being by supposition against them, so would the people be to a man.

Another

Another question would be - whether, if the universal security plan were to be established, the Equity Courts could, even with diminished profits, keep their ground? Not ultimately, most assuredly. For giving execution and effect to the substantive branches of the law, two sets of judicatories, giving at the same time execution and effect to two mutually repugnant, though both but imaginary, masses of substantive law, are no more necessary, than two men in a boat, one rowing one way, the other the opposite way, are for reaching the landing place. Each is self-confessedly inadequate - both together, ^{are} not only flagrantly inadequate, but completely hostile, to the purposes of justice. An all-embracing system of natural Procedure, as pure from that mixture of absurdity and profligacy, termed technicality, as Mr. Humphrey's Property Code, (and nothing better can be said of it) - this Procedure system, together with an indispensably concomitant and correspondent Judiciary Establishment, reestablishable without Parliamentary Reform, and superseding in no small degree the demand for it, is in forwardness, and will call for your countenance or discouragement before a twelvemonth is at an end; a system, the first that ever was yet in any country, in point of fact directed, and without any deviation, to the ends of justice; that is to say, to the giving execution and effect, with the least possible uncertainty, delay, repetition and expense, to the arrangements made or endeavoured to be made, by the sovereign legislative authority, in whatever hands placed: substituting thus the only

Right Hon. Rob. Peel.

defensible

defensible to the actual ends of Judicature, which, with the exception of the necessary subserviency to the primordial desideria, never have been, nor, consistently with the nature of man, ever could have been, any other than the maximization of those same evils, for the sake of the profit, the magnitude of which keeps pace with their's.

Such, as Mr. Slumpshire's proposed Property Code is to the existing Property-Law Chaos, such is my proposed Procedure Code to the existing Procedure Chaos. The same antique causes, which, in conjunction with the sinister interest of judges, gave existence to the existing property system, gave it to the existing Procedure system.

You see, Sir, and, if I have common discernment see perhaps still clearer, (for my eyes were first upon the subject long before yours were in existence) how great a part you have to act; you see, and feel - what I, in my flower of age, can not so much as entrepreneur - how trying an one. Yours is the option, whether to continue to be what, in appearance at any rate, you have begun to be, a friend to mankind, or a member of the inferior Holy Alliance, of oppressors and depre-dationists.

With the whole rule of action made as universally intelligible as it might be - which is what I and others with me have so long been aiming at - what (it can not but be asked,) would be the condition of the professional order in the lawyer class - Law Practitioners? Answer: what that of medical practitioners,

in

Offer.

in a populous city, might be rendered by the draining of a marsh. Not that the disaster in question would be altogether without its alleviations. One is that after the new system had been brought upon the carpet, years - nobody can exactly say how many - would necessarily be consumed, before it could be established: 2. the already existing, together with the intermediately forming mass of suits, would, for another indefinite period be operating in retardation of the catastrophe. Moreover, if not for the consolation of the leaders, at any rate for that of the profession in general, a very considerable increase indeed, to the number of moderately paid Judgeships, would, in the new Law-lottery, make a very considerable, it might be a complete amendment for the discontinuance of the great prizes. Under these circumstances, to blame their opposition in one's own mind would be as idle as to blame wolves for denuding sheep: but, though I would not blame a wolf for this, I would, if I had sheep, not only kill wolves, wherever I found them, but when ever occasions called, would cry out Wolf, that my neighbours might do the like. Offer.

Comes now at last the offer - the practical object of this already too long intimation. To you, Sir, Mr. Slumpshire's can not, I think, be altogether unknown; to me, he is most perfectly so. This ignorance, that I might have to declare it, has been carefully preserved. What I should of course expect to find in him is a lawyer, who, having to make his way in the world, is ready to do for that purpose whatsoever he sees done without reproach.

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As to me, taking always a mere auxiliary part, I think, in one way or other, I could, in respect of this plan of his, be, more or less, of use to him. Encouragement, at any rate, I am sure I could give him: for, if towards a man so occupied, sympathy, added to the sincerest expression of a degree of admiration never till new experiences, and from a quarter from which jealous rivalry might more naturally perhaps have been expected, would not be encouragement, I can not conceive what could be.

Now then, Sir, to come to the point: if you will make it worth my while, and he will permit me, - this undertaking I will act with him. "Well - and what is it that will make "it worth your while?" Sir, it is this. Say to me that you have taken, or are disposed to take, his plan in hand, and that, on that subject, you have no objection to any intercourse he may be disposed to hold with me. "But" (say you) "why any such questions? What hindered you, from making overtures to him at once, and without ^{saying any thing about it to me?} Answer. 1. For fear of you, he might decline my acquaintance. 2. Supposing the acquaintance made, you might withdraw your confidence from him. 3. I have not a moment of time to dispose of, without, as the lawyers phrase it, valuable considerations: and you see what it is I regard as such. If he occupies any part of that same time, it must be at the expense of some one else, who, as well as myself, would feel the loss. I am in my 79th year: you know my occupations. Several men, men of kindred minds, to whom, at different times, I have at length

Given

given admission, had been years in waiting ere it could be giv-
-en to them. Various young men, whom, were I in youth and
freedom, I could class to my bosom, see my doors still closed:
though my inaccessibility has been made as notorious as with-
-out advertisement it could be, men from various countries
are incessantly hovering about those same unwillingly closed
doors.

The case is, that, in this man has been fulfilled a wish,
which, but for him, could never have risen to hope. By Florne
Tooke I saw done all that I felt myself not prepared to do,
and but for more useful pursuits should have endeavoured to do,
for Universal Grammar. By Mr. Humphreys I have seen done,
and better than I could have done, the only thing that I have
not felt prepared to do, for Universal Legislation. Here, Sir, you
see at once the cause, and with it the sincerity, of the sen-
-timents above declared.

As to ^{yourself,} Sir, taking him in hand, (if on any ground I were capable
of being an object of fear,) on this ground you would have no-
-thing to fear from me. His endeavours would of course be
limited by your displeasure: my assistance, by his endeavours.

If, in your judgment, Sir, (always on the supposition
of your taking up Mr. H's plan,) the accomplishment of it, in
whatever shape you think right to give to it, will be more likely
to be promoted than prevented, by your noticing this offer, you
will act accordingly: if more likely to be prevented than pro-
-moted, you would, even in my own judgment, do wrong were
you so much as to notice it.

Meantime,

Meantime, in your giving me any sort of answer, I see more difficulties than possibly you yourself see. Whatsoever may be your plans of beneficence, in this my retreat it is altogether impossible for one to know or judge to what a degree the accomplishment of them might be endangered by your being known to have, even in this interventional and distant way, any communications with me. Many a man, who has long been seconding my designs, would no more dare to mention my name with any mark of approbation, than at Paris to exhibit a bust of Bonaparte. Mr. H., for aught I know, may be of the number: for, while the spirit of my works, howsoever compassed by providence, breathes in every page of his, - all this while, taking the Quarterly Review Bookeeller for his publisher, he makes no more mention of me than if I had never been in existence. This sort of error is in the nature of, the case; and every man who has laboured as I have done ought to be fully prepared to be the continued object of it. Under such circumstances, an answer in any shape would unavoidably amount to a certain degree of confidence. Taking my chance for being believed, I will tell you how, under the above-mentioned impression, I have dealt by the sort of confidence already reposed in me: a half confidence I must call it - for such and no more it was - though even that was as much as the occasion required, and more than I regarded myself as having any claim to.

Rich

Such as it was, the injunction implied in it has been fulfilled by me, in so far as it has been in the power of the completest secrecy to fulfil it. An intimation, howsoever obscure, of the part which I regard as having been taken by you in relation to the subject in question, I have heard read in some newspaper. From whatsoever source the intimation may have come, nothing that I have said or done can have contributed anything to it. On this subject, by the bye, when the time is ripe, I may perhaps have a somewhat new view of the matter to submit to you. What you and I agree in wishing, might I think be compassed more effectually, as well as extensively, than by any exercise that can be given to a virtually dispensing power.

I will not willingly, Sir, tax, for mere civilities, a time such as yours. Silence, continued for ten days after this date, will be an answer.

Letter and answer will form an incident - it may be an epoch - in our respective lives; not to say in the future history of the habitable globe.

I am, Sir
with the truest respect

Yours for Robert Peel
&c &c

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F. L. Pleadwell 587-1-16-0

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PLEADWELL
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BENTHAM

On Mr Humphrey's proposed PROPERTY CODE: Offer in relation to it.

Queen's Square Place Westminster Saty 29th August 1826.

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Of all reforms or improvements you can have had in view in addition to the Statute Consolidation plan, (not to speak of minor ones) this presents itself to me as the most extensively practicable: resistance minimized; thence, probability of success - true honour - useful and well earned influence - maximized. In every man who, in relation to land, has property either in possession, expectancy, or hope, I see a man who will be served by it: those most who have most property: for, at present, all such property stands or rather totters, upon a foundation similar to that of the Custom House. Whether, for the sake of security in all other shapes, some men would give up the facilities they have so anxiously preserved for themselves, for obtaining money on false pretences, and cheating their creditors, remains to be tried: but, even that faculty, rather than Mr Humphrey's plan should in other respects fail, I would, in case of necessity, confirm to them, if it depended upon me. Even the difference between divisibility and indivisibility of inheritance as to land, great as it is when considered in itself, is in my eyes, in comparison of the all comprehensive security endeavoured at by Mr Humphreys; a minor object.

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yers phrase it, valuable consideration; and you see what it is I regard as such. If he occupies any part of that same time, it must be at the expense of some one else, who, as well as myself would feel the loss. I am in my 79th year; you know my occupations. Several men, men of kindred minds, to whom, at different times, I have at length given admission, had been years in waiting ere it could be given to them. Various young men, whom, were I in youth and freedom, I could clasp to my bosom, see my doors still clos'd; though my inaccessibility has been made as notorious as without advertisement it could be, men from various countries are incessantly hovering about those same unwillingly closed doors.

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As to yourself, Sir, taking him in hand, (if on any ground I were capable of being an object of fear,) on this ground you would have nothing to fear from me. His endeavour would of course be limited by your support; my assistance, by his endeavours.

If in your judgment, Sir, (always on the supposition of your taking up Mr. H's plan,) the accomplishment of it, in whatever shape you think right to give to it, will be more likely to be promoted than prevented, by your noticing this offer, you will act accordingly; if more likely to be prevented than promoted, you would, even in my own judgment, do wrong were you so much as to notice it.

Meantime, in your giving me any sort of answer, I see more difficulties than possibly you yourself see. Whatsoever may be your plans of beneficence in this my retreat it is altogether impossible for me to know or judge to what degree the accomplishment of them might be endangered by your being known to have, even in this interventional and distant way, any communication with me. Many a man, who has long been seconding my designs, would no more dare to mention my name with any mark of approbation, than at Paris to exhibit a bust of Bonaparte. Mr. H, for aught I know, may be of the number; for, while the spirit of my works, howsoever compressed by prudence, breathes in every page of his, - all this while, taking the Quarterly Review Bookseller for his publisher, he makes no more mention of me than if I had never been in existence. This sort of terror is in the nature of the case; and every man who has laboured as I have done ought to be fully prepared to be the continual object of it. Under such circumstances an answer in any shape would unavoidably amount to a certain degree of confidence. Taking my chance for being believed, I will tell you how, under the abovementioned impression, I have dealt by the sort of confidence already reposed in me; a half confidence I must call it - for such and no more it was - though even that was as much as the occasion required, and more than I regarded myself as having any claim to. Such as it was, the injunction implied in it has been fulfilled by me, in so far as it has been in the power of the completest secrecy to fulfil it. An intimation, howsoever obscure, of the part which I regard as having been taken by you in relation to the subject in question, I have heard read in some newspapers. From whatsoever source the intimation may have come, nothing that I have said or done can have contributed anything to it. On this subject, by the bye, when the time is ripe, I may perhaps have a somewhat new view of the matter to submit to you. What you and I agree in wishing, might I think be compassed more effectually, as

well as extensively, than by any exercise that can be given to a virtually dispensing power.

I will not willingly, Sir, tax, for mere civilities, a time such as yours. Silence, continued for ten days after this date, will be an answer.

Letter and answer will form an incident - it may be an epoch - in our respective lines; not to say in the future history of the habitable globe.

Right Honbl Robert Peel
&c &c &c.

I am, Sir
with the truest respect
Yours

Jeremy Bentham

James Humphreys (d. 1830) was the author of "Observations on the Actual State of the English Laws of Real Property, with Outlines of a Code" (1826); barrister, Lincoln's Inn, 1800; friend of Charles Butler, eminent conveyancer, and the first catholic barrister since James II.

Sir Robert Peel at the date of this letter was home secretary in Lord Liverpool's cabinet. In March of 1826, Peel had presented to the House of Commons his program for the reform of criminal law, especially of those parts which which related to offences against property and offenses punishable by death. The masterly bills in which these reforms were embodied were the bills of Peel - not himself a creative genius, but a profound appreciator of other men's creations, and unrivalled in the power of giving them practical and complete effect.

Beginning with Bentham, the codification of the law of England has been the dream of the most enlightened jurists and statesmen. In the interval between Bentham and our own time there has been an immense advance in the scientific study of law, but it may be doubted whether the problem of codification is at all nearer solution. . To Bentham the problem presented itself in the simplest and most direct form possible. What he proposed to do was to set forth a body of laws, clearly expressed, arranged in the order of their logical connection, exhibiting their own rationale and excluding all other law. On the other hand the problem has in some respects become easier since the time of Bentham. . The law has now been brought into a state of which it may be said that, if it is not the best in all respects that may be desired, it is at least in most respects as good as the conditions of legislation will permit it to be. . . The earlier advocates of codification founded their case mainly on the evils of judiciary law, i.e. the law contained in the reported decisions of the judges. Bentham's bitter antipathy to judicial legislation is well known.