

# Introduction

Anne Brunon-Ernst

Bentham is more important for the understanding of our society than Kant and Hegel.<sup>1</sup>

Here, in one beguiling phrase, one finds the many contradictions which cluster around Jeremy Bentham's legacy in Michel Foucault's work. Foucault's statement goes to the very heart of the subject-matter of this volume of essays: what did Foucault understand of Bentham's philosophy, and to what extent was he influenced by Bentham's utilitarianism?

To readers familiar with Foucault's – or Bentham's – works, examining the Bentham–Foucault relationship in this way is far from self-explanatory; quite the contrary, it is, and seeks to be provocative, especially when the works of both authors on the Panopticon – Bentham's inspection-house principle of utilitarian management – are considered.

## Historiography in Question

This last statement needs to be supported by arguments. There are traditionally two schools of thought in Bentham studies.<sup>2</sup> On the one hand, the authoritarian school contends that Bentham is the mastermind of authoritarian state control.<sup>3</sup> On the other hand, the liberal school contends that Bentham thinks in terms

---

<sup>1</sup> Foucault, *Dits et écrits*, vol. 1, p. 1462. [Where no published English translation has been located, translations from French works are those of the author.]

<sup>2</sup> See J.E. Crimmins, 'Contending Interpretations of Bentham's Utilitarianism', *Canadian Journal of Political Science/Revue canadienne de science politique*, 29/4 (1996): pp. 751–77 and L.J. Hume, 'Revisionism in Bentham Studies', *The Bentham Newsletter*, 1 (1978): pp. 3–20.

<sup>3</sup> See N. Rosenblum, *Bentham's Theory of the Modern State* (Cambridge, MA; London: Harvard University Press, 1978), L.J. Hume, *Bentham and Bureaucracy* (Cambridge: Cambridge University Press, 1981), and D. Long, *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to his Utilitarianism* (Toronto: University of Toronto Press, 1977). J.R. Dinwiddy refers to the scholarship which centres on the 'dirigiste or manipulative tendency in [Bentham's] writings': see J.R. Dinwiddy, *Bentham* (Oxford: Oxford University Press, 1989), p. 94.

of the rule of law, and aims at promoting civil and political rights.<sup>4</sup> These two perspectives have always coexisted in academia, as is shown by Elie Halévy's 1901 statement that Bentham's thought was divided between the preservation of liberty and authoritarian social reform.<sup>5</sup>

These two schools of thought are mirrored in the construction of Bentham's Panopticon. In 1975 the French philosopher Foucault coined the term 'panopticism'<sup>6</sup> which quickly became used to describe Bentham's utilitarian theory as a whole. Panopticism is the theorisation of surveillance society, derived from Bentham's project of a prison, with an all-seeing inspector. In his wake, the works of Michelle Perrot and J.A. Miller targeted Bentham's Panopticon as the epitome of disciplinary society at its worst.<sup>7</sup> At the same time, in the United States, similar contentions were being made. Gertrude Himmelfarb and Charles Bahmueller adopted the view that Bentham did not consider paupers as fully-fledged human beings.<sup>8</sup> However, since the 1990s the London-based Bentham Project has been developing far deeper insights into Bentham's panoptic thought, as Janet Semple and Michael Quinn have studied, respectively, the prison-Panopticon and the pauper-Panopticon. Their research has highlighted the strength of Bentham's proposals in various fields, including prison- and pauper-management. Their analyses of Bentham's project are more balanced, and stress the benefits of the Panopticon for inmates, and also the fairness of the system. Philip Schofield explains that '[Foucault's interpretation of the Panopticon] would have seemed very odd to Bentham, who regarded his

---

<sup>4</sup> See H.L.A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Oxford University Press, 2001) and F. Rosen, *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code* (Oxford: Clarendon Press, 1983). A parallel interpretation stresses that Bentham promotes redistributive justice (P.J. Kelly, *Utilitarianism and Distributive Justice: Jeremy Bentham and the Civil Law* (Oxford: Clarendon Press, 1990)). See also A. Dube, *The Theme of Acquisitiveness in Bentham's Political Thought* (New York: Garland, 1991) and S.G. Engelmann, "'Indirect Legislation": Bentham's Liberal Government', *Polity*, 35/3 (2003): pp. 369f.

<sup>5</sup> See E. Halévy, *La formation du radicalisme philosophique*, ed. M. Canto-Sperber (3 vols, Paris: Presses universitaires de France, 1995), vol. 3, p. 80.

<sup>6</sup> Michel Foucault, *Surveiller et punir: Naissance de la prison* (Paris: Gallimard, 2000), pp. 228–64.

<sup>7</sup> See J.-A. Miller, 'Le despotisme de l'Utile : la machine panoptique de Jeremy Bentham', *Ornicar? Bulletin périodique du Champ freudien*, 3 (1975): pp. 3–36 and M. Perrot, 'L'inspecteur Bentham', in J. Bentham, *Le Panoptique* (Paris: Belfond, 1977).

<sup>8</sup> G. Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (London: Faber, 1985); G. Himmelfarb, 'The Haunted House of Jeremy Bentham', in *Victorian Minds* (New York: Knopf, 1968); C. Bahmueller, *The National Charity Company: Jeremy Bentham's Silent Revolution* (Berkeley, CA: University of California Press, 1981).

Panopticon prison as humane, and an enormous improvement on the practices of the criminal justice system of the time.’<sup>9</sup>

Scholars working on the Panopticon writings have always been painfully aware of the deep-seated contradiction in Bentham’s writings, as Semple demonstrates when she writes: ‘[The Panopticon writings] are ... disturbing and create problems for Bentham’s admirers.’<sup>10</sup> This discrepancy between an increasingly attractive Bentham (thanks to the new edition of *The Collected Works of Jeremy Bentham* and monographs by scholars at the Bentham Project) and a still repulsive Panopticon is largely to be attributed to Foucault’s discussion of the Panopticon in his book *Discipline and Punish*. If Foucault’s interpretation of the Panopticon has made Bentham’s work known to a wider audience, conversely it has also turned Bentham into a forerunner of Big Brother.<sup>11</sup> Bentham scholars have consistently lamented Bentham’s bad name among the general public and Foucault’s hand in the matter. In the light of recent studies on Bentham, referring to a Foucault–Bentham relationship seems naturally to point towards the idea that Foucault grossly distorted Bentham’s philosophy in *Discipline and Punish*. The object of this volume is to go beyond this misleading presumption and to uncover Bentham’s legacy in Foucault’s theory.<sup>12</sup>

### The Panopticon beyond *Discipline and Punish*

Panopticon studies cannot move forward without tackling the Foucault problem up front. The French Centre Bentham has been producing new research on the subject.<sup>13</sup> The Centre was created at Paris Ouest-Nanterre-La Défense University in 2002 by Jean-Pierre Cléro and Christian Laval at a time when the British legal philosopher was little known among French academics. Any research on Bentham – and this statement applies in full to the Centre Bentham – owes

---

<sup>9</sup> P. Schofield, ‘Panopticon’, in *Bentham: A Guide for the Perplexed* (Bodmin: Continuum, 2009), p. 70.

<sup>10</sup> J. Semple, ‘Bentham’s Haunted House’, *The Bentham Newsletter*, 11 (1987): p. 35. See also the comment made by J.R. Dinwiddy: ‘the most indignant modern attacks on Bentham as a thinker have come from writers who have focused on [the panopticon projects] areas of his work’, in Dinwiddy, *Bentham*, p. 94.

<sup>11</sup> Semple, ‘Bentham’s Haunted House’, p. 36.

<sup>12</sup> The volume of essays centres on the interpretations of the Panopticons in Bentham and Foucault. Brunon-Ernst’s *Utilitarian Biopolitics* (London: Pickering and Chatto, 2012, forthcoming) establishes a Bentham–Foucault relationship beyond the panoptic schemes.

<sup>13</sup> See also the work produced by other members of the Centre Bentham (Emmanuelle Bénicourt, Emilie Dardenne, Armand Guillot, Claire Wrobel), and outside the Centre by French Bentham scholars such as economists Annie Cot and Nathalie Sigot.

much more than can ever be acknowledged to the impressive editorial work carried out at the Bentham Project at University College London under Philip Schofield. Scholars there have made available a definitive edition of Bentham's works, as well as extensive scholarship on Bentham and utilitarianism, both of which serve as groundwork for any study of the Panopticon.<sup>14</sup> French Bentham scholars have enjoyed a very privileged vantage-point. At the crossroads of French academia, influenced both by Foucault's ideas and by Bentham scholarship, they had already been working on the relationship between the two thinkers.<sup>15</sup> They all agree on the distortion of Foucault's interpretation of Bentham. However, they have not established what could be termed a school of thought as such, since there is a certain measure of disagreement when it comes to key issues, such as the extent of panoptic social control, as can be seen in the last part of this volume.

If the translation of Foucault's *Surveiller et punir* into English has allowed Bentham's theories to be widely circulated for more than a generation, the latest editions of his hitherto unpublished lectures at the Collège de France have just been made fully available to a non-French-speaking audience.<sup>16</sup> These lectures are of interest because they qualify Foucault's stand towards the Panopticon and Bentham more generally. Over years of broadening perceptions and definitions of Bentham, coupled with fresh insights into Foucault's overall theory, French Bentham scholars have reappraised the meaning of panopticism. Unfortunately their work, written in French, was not accessible to an English-speaking audience. The chapters which make up this volume provide unexpected insights into new research on Foucault, Bentham and the Panopticon to an English-speaking audience for the first time. Much of this work combines a thorough grounding in Bentham studies with a continuing critical engagement with Foucault's theorisation of productive power.

The argument here is to rehabilitate Bentham's thought to a wider audience, who might have had access to Bentham only through the lens of Foucault's *Discipline and Punish*. Foucault's contribution to the diffusion of Bentham's ideas in France is central in *Discipline and Punish* and in *Dits and écrits* and hence should not be underestimated. Less well-known is the fact that Foucault's

---

<sup>14</sup> They have allowed to make more accessible the esoteric Bentham as opposed to the historic Bentham, the latter being the Bentham people actually read. See J.R. Dinwiddy, *Radicalism and Reform in Britain, 1780–1850* (London: Hambledon Press, 1992), p. 291.

<sup>15</sup> A telling example is the workshop on 'Is Foucault a Utilitarian?' It was organised by the Centre Bentham at Paris 2 university in January 2011. The proceedings are published in Brunon-Ernst (ed.), *Foucault et l'utilitarisme*, spec. issue of *Revue d'études benthamiennes*, 8 (2011), available at: <http://etudes-benthamiennes.revues.org/240>, accessed 1 August 2011.

<sup>16</sup> This does not mean that these translations do not also create problems. See C. O'Farrell, *Michel Foucault* (London: Sage, 2005), p. 7.

Collège de France lecture series also put Bentham on the map of the history of Western political ideas. Conversely, Foucault is also in dire need of being rehabilitated among English-speaking Bentham scholars. This volume thus sets itself the difficult task of achieving a double rehabilitation: that of Bentham's political theory to Foucault readers, and that of Foucault's panopticism to Bentham scholars. In doing so, it hopes to contribute to the wider circulation of knowledge on the Bentham–Foucault relationship.

To achieve this dual task, the book investigates how this relationship has been described, misinterpreted and now reconstructed. This goal cannot be reached without embracing lesser known aspects of Bentham's conception of power, and of Foucault's later writing. While Bentham's and Foucault's theories are well documented and allow this volume to be heavily dependent on the insights of others, the focus of the book on the Foucault–Bentham relationship is less familiar and to a certain extent unique. The field of investigation thus embraces works of Foucault which mention Bentham – such as *Discipline and Punish, Dits et écrits*<sup>17</sup> and *The Birth of Biopolitics* – and works of Bentham dealing with the different versions of the Panopticon scheme and with issues of power, a topic in which Foucault also showed great interest. In order to chronicle this very unusual relationship, the contributors to the volume have recognised the importance of the utilitarian philosophical tradition in ascribing meaning, but have put aside many preconceptions on the Panopticon and panopticism, on Bentham's penal reform principles, on Bentham's power theory and on Foucault's liberalism.

There have already been some attempts to read Bentham in the light of Foucault's later writings.<sup>18</sup> However, if the piece entitled 'In Defence of

---

<sup>17</sup> Six lecture series have been published so far: see M. Foucault, *Abnormal: Lectures at the Collège de France, 1974–1975*, trans. G. Burchell and ed. A.I. Davidson (New York: Picador, 2003); M. Foucault, *'Society Must Be Defended': Lectures at the Collège de France, 1975–1976*, trans. D. Macey and ed. A.I. Davidson (New York: Picador, 2003); M. Foucault, *Psychiatric Power: Lectures at the Collège de France 1973–1974*, trans. G. Burchell and J. Lagrange (New York: Palgrave Macmillan, 2004); M. Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France 1981–1982*, trans. G. Burchell and ed. F. Gros (New York: Palgrave Macmillan, 2004); M. Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977–1978*, trans. G. Burchell and ed. M. Senellart (London: Palgrave Macmillan, 2007), and M. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, trans. G. Burchell and ed. A.I. Davidson (Basingstoke: Palgrave Macmillan, 2008). It is mainly thanks to the last edition that French Bentham scholars have reappraised Foucault's interpretation of panopticism.

<sup>18</sup> See for example, S.G. Engelmann's paper "Indirect Legislation": Bentham's Liberal Government', where he explains that: 'My approach to Bentham pays little attention to the technologist of discipline popularized by Foucault .... Especially in the United States, where Foucault's discipline is often misread in terms of sovereignty, this material has contributed

Panopticism' by Semple is excepted,<sup>19</sup> the focus of Anglo-American Bentham scholarship has not been the Bentham–Foucault relationship. They have of course been aware of Foucault's interpretation, but his blatant ignorance of Bentham's general theories and his gross distortion of the Panopticon scheme have not made it worth their while to take issue with the French philosopher. Bentham and Foucault were out to achieve different aims, as Schofield puts it:

What concerns Foucault is to understand the nature of the modern state. What concerns us is to explain Bentham's interest in panoptic architecture, and why he thought it would be such an effective tool in the management of a whole range of institutions.<sup>20</sup>

Although Bentham scholars could not ignore panopticism, their concerns were not with Foucault but with Bentham. To the best of my knowledge, this volume of essays is the first to offer an extensive study on the relationship between the authors. Beyond the dichotomy in Bentham and Panopticon historiography highlighted above, the panoptic schemes themselves have been the object of three monographs,<sup>21</sup> quoted above, and numerous book chapters. When the Panopticon is dealt with as part of a wider argument, traditionally studies have focused on the role of the Panopticon in Bentham's overall theory.<sup>22</sup> This volume

---

to a dirigiste reading of Bentham.' Instead Engelmann reads Bentham's essay 'Indirect Legislation' as a work which develops the principle of liberal government, understood as inspired by Foucault's interpretation in later writings (Engelmann, "Indirect Legislation": Bentham's Liberal Government', p. 369n).

<sup>19</sup> Semple, 'Foucault and Bentham: Defence of Panopticism', *Utilitas*, 4/1 (1992): pp. 105–20.

<sup>20</sup> Schofield, *Bentham: A Guide for the Perplexed*, pp. 70–71.

<sup>21</sup> Bahmueller, *The National Charity Company*, J. Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford: Clarendon Press, 1993) and A. Brunon-Ernst, *Le Panoptique des pauvres. Jeremy Bentham et la réforme de l'assistance en Angleterre* (Paris: Presses de la Sorbonne Nouvelle, 2007).

<sup>22</sup> Scholars raise three sets of questions: first, did the Panopticon divert Bentham's attention from his greater purpose of reforming the legal system? J. Steintrager, *Bentham* (Oxford: George Allen and Unwin, 1977) makes the following negative comment on p. 58: '[Bentham] buried himself in his attempt to establish a model Panopticon prison'. J.R. Dinwiddy deplores the time wasted that could have been used more fruitfully (*Bentham*, p. 9). In *Bentham and Bureaucracy*, L.J. Hume sees positive effects to the panoptic experience such as the development of the minutiae of the workings of an administration. M.P. Mack, *Jeremy Bentham: An Odyssey of Ideas (1748–1792)* (London: Heinemann, 1962) shows on p. 81 how, thanks to the Panopticon, Bentham focused on a practicable scheme. The idea of economy in management is more generally dealt with by Rosen, *Jeremy Bentham and Representative Democracy*, although as part of the general principles of political economy

of essays endeavours to understand the Bentham–Foucault relationship beyond the position of the Panopticon and panopticism respectively in the systems of their authors. This work provides a unique opportunity to push back the boundaries of established (Foucaultian) truths about the Panopticon, enabling us to go beyond the received reading of panopticism as a dark disciplinary technology of power.

## From Discipline to Governmentality

The key to understanding the opposition between the received interpretation of the Bentham–Foucault relationship and the ‘real’ relationship lies in the shift between the earlier Foucault of *Discipline and Punish* and the later Foucault of the Collège de France lecture series. Indeed if, in his later writings, Foucault does not dwell on panopticism, he does qualify his earlier statements on Bentham’s overall philosophy. At a later stage Bentham becomes for Foucault not only the inventor of disciplines, but also the theorist of governmentality. The two chapters in Part I dwell on a series of early misreadings of the panoptic project by Foucault, and highlight ways in which, later in life, Foucault examined Bentham’s theories beyond the Panopticon.

At the threshold of this study, concepts need to be explained. The terms ‘Panopticon’ and ‘panopticism’ have only been briefly defined in this Introduction and the phrase ‘panoptic paradigm’ needs to be explained. For the present purpose, it is enough to state that the Panopticon is an example of architecture built to ensure a social purpose:

---

and not in relation to the Panopticon (p. 4). Second, is the Panopticon a model of Bentham’s state? Rosenblum, *Bentham’s Theory of the Modern State*, on p. 19 refuses to consider the Panopticon as ‘a microcosm of state’, but rather as an idea of perfect order (p. 201). See also Schofield’s comments on the subject, in *Bentham: A Guide for the Perplexed*, pp. 90–91. Third, what is the role of the Panopticon in Bentham’s conversion to democratic ideas? This debate was started by Halévy’s comments in *La formation du radicalisme philosophique*. They raised the issue whether Bentham’s thought had paused from 1789 onwards, on account of the work involved in the Panopticon project. (Hume, ‘Revisionism in Bentham Studies’, p. 4). See also P. Schofield, *Utility and Democracy: The Political Thought of Jeremy Bentham* (Oxford: Oxford University Press, 2006), pp. 109–11, who links the failure to implement the panoptic project to the fleshing out of the principle of sinister interest; the last principle being instrumental in Bentham’s transition to democracy (pp. 110–11). This interpretation goes further than that of L.J. Hume in *Bentham and Bureaucracy*, where he states that the Panopticon prepared Bentham’s mind for reorientation (pp. 175–8).

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, number of persons are meant to be kept under inspection.<sup>23</sup>

The Panopticon is the name given to a circular building with a central tower from which an inspector can see the inmates in the circumference at all times, without being seen. Its main purpose is teaching inmates appropriate behaviour to maximise the aim of the institution.

Panopticism is defined as:

... one of the characteristic traits of our society. It's a type of power that is applied to individuals in the form of continuous individual supervision, in the form of control, punishment, and compensation, and in the form of correction, that is the moulding and transformation of individuals in terms of certain norms.<sup>24</sup>

Panopticism describes power relations which manifest themselves as supervision, control and correction. Panoptic architecture, with its mechanisms for enhancing the power of the institution over inmates, is the best illustration of panopticism, albeit not the only one. Chapter 1 by Anne Brunon-Ernst describes the different shades of meaning these words take on by guiding the reader through the general and specific panoptic mechanisms. In doing so, it aims to challenge Foucault's concept of 'panopticism'. It highlights the fact that, in *Discipline and Punish*, Foucault refers to Bentham's initial 1787–91 project. If Bentham's Panopticon scheme was indeed first devised in *Panopticon, or the Inspection-House*, the panoptic paradigm reappears in later works from 1798 to the nineteenth-century *Constitutional Code*. There is not one Panopticon, but at least four different versions of Bentham's surveillance machine, which he amends and modifies as his thoughts on good government develop. The chapter underlines how Bentham modified his surveillance model to adapt it to the needs of inmates and to the requirements of his utilitarian vision. Brunon-Ernst provides a means of understanding the gap between Bentham's plural Panopticon scheme and Foucault's concept of panopticism as fleshed out in *Discipline and Punish*. Chapter 1 begins to unravel the complexities of the Panopticon, which cannot be confined to the workshop or the prison, but is progressively developed in Bentham's works as an instrument

---

<sup>23</sup> J. 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*, in J. Bowring (ed.), *The Works of Jeremy Bentham* (11 vols, Edinburgh, 1838–43), vol. 4, pp. 37–66.

<sup>24</sup> Foucault, 'Truth and Juridical Forms', in *Power*, p. 70.

of power. The first chapter thus shows the inability of the concept of panopticism to account for the complexity of the Panopticon, but in doing so, it points to ways in which Bentham and Foucault's theories of power are similar. This is then further developed in the following chapter.

Chapter 2 by Christian Laval shows that contrary to traditional historiography about the Bentham–Foucault relationship, Bentham's and Foucault's power theories have much in common, if the panoptic experience is left aside. Thanks to the study of Foucault's later writings, Bentham is presented in this chapter as the main thinker of governmentality, who influenced Foucault's conception of power. This chapter provides an exciting insight into the ways in which Foucault's whole theory of liberalism draws on Bentham's utilitarian liberal thinking. This contribution examines the boundaries of the Foucault–Bentham relationship to enable us to reconsider the influence of Bentham's philosophy in the shaping of Foucault's theories.

### **The Status of the Panopticon in Prison, Penal and Constitutional Reform**

The function of the Panopticon is akin to a utopia, both for the contemporary reader and at the time when it was written. Indeed, Foucault contends that, in the Panopticon, 'Bentham describes, in the utopian form, a general system, particular mechanisms which really exist.'<sup>25</sup> Bentham himself referred to his project as a utopia. Time has now come to reveal the utopian features in the Panopticons. This study explores the different meanings of utopia and heterotopia. Emmanuelle de Champs in Chapter 3 reflects on the meaning of these denominations and thus opens up fresh perspectives on the status of the Panopticon: is it a utopia or the blue-print for a wider-ranging reform of penal and other institutions? She describes to the reader the story of one Panopticon which was built in Geneva, and tabulates the gap between Bentham's project and the Genevan prison.<sup>26</sup> In the end, she highlights ways in which panoptic architecture turned out to be an inadequate means of achieving discipline.

---

<sup>25</sup> M. Foucault, 'The Eye of Power', in C. Gordon (ed.), *Power/Knowledge* (New York: Pantheon Books, 1980), p. 164.

<sup>26</sup> The case de Champs makes for the Genevan Panopticon is in many respects similar to what Rosen established in the case of the influence of Bentham's ideas in the Greek struggle for independence. Even though Bentham's ideas had little influence on historical events, as an icon of radicalism, his name was used for ideological purposes. See F. Rosen, *Bentham, Byron and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought* (Oxford: Clarendon Press, 1992), p. 7.

In *Discipline and Punish*, the Panopticon is presented by Foucault as encapsulating Bentham's penal theory. However, Bentham's major work on judicial evidence, *The Rationale of Judicial Evidence*, does not mention the Panopticon once in any of its five volumes. This contradiction raises the issue of the position of the Panopticon writings in Bentham's overall reform of criminal law and institutions and thus questions the relevance of Foucault's reliance on the Panopticon scheme. Jean-Pierre Cléro wishes to de-panopticise Bentham's penal theory, as Tony Draper tried to do when he assessed Bentham's theory of punishment beyond the panoptic scheme.<sup>27</sup> The Panopticon is the prison branch of Bentham's penal reform. Other branches include the rationale of punishment and the rationale of judicial evidence. The last branch raises the issue of how to determine truth, which is so central to the justice system. From this perspective, the Panopticon also appears as a machine to bring truth to light, thanks to its all-seeing central inspector. However, this instance of the search for judicial evidence does not appear in *The Rationale of Judicial Evidence*. Cléro first traces the legacy of Cesare Beccaria in Bentham's ideas of punishment. Chapter 4 then studies the shift from the judicial institution's role in establishing truth to Bentham's criticism of the concept of truth *per se*. In Bentham's theory, this judicial quest for truth is replaced by the likelihood of the defendant having committed the crime. This measurement of probability is then part of the calculus of rewards and punishment. The prison holds a key role in this system because punishment can be meted out in terms of hours, months and years. If Foucault did indeed identify that the Panopticon exemplified another rationality of punishment based no longer on inquiry but on examination, he did not understand the scope of this new rationale of evidence grounded on the calculus of probabilities. In non-panoptic writings related to judicial reform, Bentham offers a probabilistic reading of surveillance.

Chapter 5 by Guillaume Tusseau focuses on the relationship between penal theory and constitutional writings in Bentham's thought. A fourth type of Panopticon scheme, the constitutional-Panopticon, is identified in Chapter 1: this fourth Panopticon allows Tusseau to consider the Panopticon beyond the walls of the prison, the workshop or the poor house to take in the possible political implications of the panoptic paradigm. Bentham's Panopticon model, together with the principles of social control which inspired it, should not be restricted to penal law. Bentham's political theory as displayed in his constitutional writings seems to share in a similar perspective. The kinship between the penitentiary and political reform projects is surprising and raises the question whether Bentham

---

<sup>27</sup> A.J. Draper, 'Jeremy Bentham's Theory of Punishment', diss., University College London, 1997, pp. 9–11.

was considering a global panoptic society. The last two chapters further examine this issue in a controversial debate.

### Is There a Panoptic Society?

Over decades, scholars have wondered whether the Panopticon should not be construed as Bentham's model of the utilitarian state.<sup>28</sup> In his constitutional writings, Bentham seeks to write the constitution of the ideal utilitarian state in which governors would have to govern for the greatest happiness of the greatest number. Chapter 6 by Marie-Laure Leroy provides a reassessment of the long-established interpretation of the panoptic central-inspection principle and of the panoptic discipline paradigm. It shows how Bentham uses the Panopticon rather as a remedy for misrule than as a tool for inspection and discipline. The transparency provided by the panoptic paradigm helps the Public Opinion Tribunal to control government action, which is always liable to threaten individual liberty. Contrary to what Foucault wrote in his earlier writings, Bentham's idea was not to create a panoptic society, where nothing would escape the gaze of the omniscient ruler. Transparency is only required if it can guarantee individual freedom and prevent impunity on the part of public functionaries as well as criminals. Leroy calls this mechanism the reversed Panopticon. Thus, social control through observation should take place only when and where political power is exerted, when public decisions are made, or where laws are enforced or framed. Contrary to received ideas on the Panopticon, the greatest happiness of the greatest number cannot be promoted by the pervasive use of coercive methods, because constraint entails significant pain.

The last contribution takes a different stand on the issue of social control. Malik Bozzo-Rey explains how in Bentham's theory control is to be enforced beyond panoptic means. The chapter opens with an overview of the panoptic means of control, in accordance with the way Foucault conceives of panopticism in *Discipline and Punish*. Bozzo-Rey then takes his analysis beyond established (Foucaultian) panoptic social control to study the non-panoptic means of social control Bentham uses. This leads us to uncover the importance of law and language in Bentham's intellectual enterprise, which Foucault completely missed out. The twist is that the chapter also tries to show ways in which non-panoptic legal and linguistic means of social control can be construed as operating along panoptic paradigmatic guidelines (as defined in Chapter 1). The

---

<sup>28</sup> See for example Rosenblum, pp. 19 and 201 and more recently Schofield, *Bentham: A Guide for the Perplexed*, pp. 90–91.

concept of 'legal panoptic paradigm' allows one to consider Bentham's project as a testing ground for the development of a legal theory of how a law can become an element of social control.

### The Panopticon as a Contemporary Icon

For a number of scholars, the Panopticon now forms the backdrop for exploring Foucault's thought and the far-reaching concept of governmentality, but also for understanding the framework in which surveillance operates in our institutions and in society at large.<sup>29</sup> In this volume the contributors are responding directly to recent and strong expressions of interest from academics and students beyond the limited field of Bentham and Foucault studies. In the Epilogue, Tusseau starts by showing how experiments in cyber democracy can be construed as contemporary applications of the panoptic paradigm. The rest of the Epilogue by Brunon-Ernst aims to outline the consequences of the findings of the seven chapter for other fields of research, such as the emerging surveillance studies. It reflects upon recent developments in writings on the panoptic paradigm in different fields. Scholars from various disciplines, such as sociologists studying contemporary surveillance techniques, have used the concept of panopticism and the adjectives panoptic/panoptical to define objects that lay beyond the actual scope of Bentham's Panopticons or of his panoptic paradigm. To date, most studies have been unable to see beyond the panopticism of Foucault's *Discipline and Punish* as indictment of the utilitarian surveillance society.<sup>30</sup> By incorporating Foucault's lesser-known work on Bentham and the full sweep of Bentham's Panopticon reflections to frame a panoptic paradigm that encompasses language, legal theory, political thought and governmentality, the volume produces a less one-sided picture of Bentham's thought and explores ways in which Bentham's Panopticon can be construed as post-panoptical.<sup>31</sup> In

---

<sup>29</sup> As David Lyon, a prominent sociologist in the field of surveillance studies, notes: 'Though many historians of ideas or systems of punishment have recognized the importance of the Panopticon, it is really only since Foucault that interest in it has become widespread' (D. Lyon, *The Electronic Eye: The Rise of Surveillance Society* (Cambridge: Polity, 1994), p. 62).

<sup>30</sup> See the field of surveillance studies in the academic world where the Panopticon is made synonymous with pervasive surveillance techniques. See also P. Bollon and A. Champagne, 'Attention, Internet vous surveille,' *Le Monde* 2, 11 February 2006, p. 21.

<sup>31</sup> Bentham is still considered as a major intellectual in today's debates. See Brunon-Ernst (ed.), *Jeremy Bentham's Theory Today*, spec. issue of *The Tocqueville Review/La revue Tocqueville*, 32/1 (2011). The issue examines the impact of Bentham's utilitarianism on some contemporary debates.

so doing, the book hopes to provide a new concept of the panoptic paradigm that could help scholars from other fields to unravel the complexities of our surveillance societies or of the workings of social control in institutional settings.

ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com