AN 'ENLIGHTENED' SCOT AND ENGLISH REFORM:
A STUDY OF HENRY BROUGHAM

by

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ABSTRACT

Henry Peter Brougham (1788-1868) has always received more than his fair share of attention from historians. However, as we shall attempt to show, his role as a social reformer in England has not been treated properly. Historians have viewed Brougham in different ways. They have called him a humanitarian, a Benthamite, and a middle-class apologist. They have never taken his Scottish background or his training at Edinburgh University adequately into account. As a result, these historians have overlooked an interesting example of the influence of Scottish thought and practice in English reform movements.

The present study is an attempt to examine Henry Brougham in the light of his Scottish heritage. By isolating those factors in Brougham's Scottish experience which were to have a bearing on his efforts in behalf of social reform in England, we hope to construct a composite picture of Brougham as an 'enlightened Scot'.

The first chapter of the thesis deals with Scottish culture in a fairly general way. Here, we attempt to define the peculiar aspects of the Scottish identity and to explore the development of 'moral' or 'common sense' philosophy by the thinkers of the Scottish School. In addition, we show how Brougham, as a member of the 'Edinburgh literati' and a student of Black and Stewart, was a true exemplar of this culture.

In chapter two, we examine the specifically Scottish institutions of law, poor relief, and education in some
depth. These institutions ingrained deep attitudes in the minds of Scots such as Brougham. Furthermore, in every case, the Scots believed that their own institutions were vastly superior to those of England.

Having outlined Brougham's 'mental baggage', we then move on to demonstrate the ways in which Brougham's work as a social reformer in England reflected his Scottish heritage. For, it is quite clear that his ideas were very much informed by Scottish theory and practice.

First, as a legal reformer, Brougham evidenced his training as a Scots lawyer. Like Mansfield before him, he looked to Roman law as a remedy for the chaotic condition of English Common law. Second, in his attack on the English Poor Law, Brougham was forever contrasting the English system of institutionalized relief with the voluntary system of Scotland. Moreover, his training in political economy at Edinburgh University caused him to regard institutionalized relief as a hindrance to economic advance. Finally, as the leader of the movement for mass education in England, Brougham attempted to create a national system of education on the Scottish model. And his pride in Scottish parochial education was buttressed by an 'enlightened' faith in the power of education to shape men.
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INTRODUCTION
As a recent writer on the early Victorian period has pointed out, one of the most serious failings of British historians is their tendency to concentrate on England to the exclusion of the other countries in the British Isles. This oversight is particularly striking in the case of Scotland. The unique and contradictory nature of the Scottish experience has been virtually overlooked in British histories. Scotland's different system of laws, education, and poor relief have not been treated adequately. Nor has the originality of the Scottish intellectual renaissance after 1750 been taken into account. Even so, thought and practice interacted in such a way as to define a culture which, although greatly influenced from outside, was peculiar to Scotland.

The negligence on the part of British historians is all the more perplexing when one considers that the relationship between England and Scotland was not entirely one-sided. During the late eighteenth and early nineteenth century, Edinburgh University was the cultural Mecca of Great Britain. Large numbers of Englishmen, as well as Scots, completed their education at this 'Athens of the North'. Here, they learned the progressive and reforming principles of the Scottish School. It is certainly no coincidence that students such as Russell, Mill, Brougham, and Petty went on to become reformers in England. They had been well schooled in this calling during their stay at Edinburgh.

Yet the role of Edinburgh University remains to be examined.
in any detail. In fact, only recently have historians even begun to explore the connections between Scottish thought and English reform movements.² And the work that has been done is very limited in scope.

While it would be impossible to deal with a problem of such magnitude in a study of this kind, one can trace the Scottish influence through a single individual with some accuracy. Henry Peter Brougham (1788-1868) was one of the most notable reformers of the early nineteenth century. He was also a Scotsman and a graduate of Edinburgh University. We shall argue that Brougham can only be properly understood once his Scottish background is taken into account. Conversely, there is a logical continuity between Brougham's formative years in Scotland and his efforts on behalf of social reform in England.

Henry Brougham was a well educated Lowland Scot. When he travelled to London in 1803, at the age of twenty-five, he carried with him a typically Scottish attitude towards society, law, poverty, and education. This perspective caused Brougham to react to the problems besetting English society in a predictable way. Invariably, he would draw upon his Scottish experience in order to formulate a solution.

Brougham's 'Scottish experience' was of two kinds. On the one hand, it consisted of an inbred and nationalistic pride in those institutions which were distinctly Scottish. On the other hand, it embraced the intellectual doctrines then being disseminated by way of Edinburgh University. Thus, Brougham
was not simply a Scot -- he was an 'enlightened Scot'. And it
is this distinctive characteristic which we intend to discuss
in relation to his activities in England.

Since Henry Brougham can only be properly understood in
terms of Scottish culture, we shall devote a considerable
amount of this study to outlining its salient features. Once
this has been accomplished, we will be able to make sense of
Brougham as a reformer.
CHAPTER I

THE SCOTTISH EXPERIENCE
It is no simple matter to categorize the Scottish culture of the late eighteenth and early nineteenth century. But perhaps the best way of approaching the problem is to see Scottish culture through Brougham's eyes. In a letter written to Lord Ardmillan in 1859, commemorating a festival in honour of Robert Burns, Brougham expressed a deep concern for the preservation of "the pure and classical language of Scotland." He drew his reader's attention to the "conciseness" and "clearness" of the Scottish language, as evidenced by the brevity of Scottish legal statutes. Most of all, he emphasized the poetical quality of the Scottish tongue as it was reflected in ancient and modern national poetry.

Why were Scotsmen such as Brougham so worried about the preservation of a language which, in most cases, they did not even speak? Brougham's letter is a good example of the anxiety of Lowland Scots to establish a firm identity separate from England. One is immediately reminded of the willingness with which the Edinburgh 'literati', in their quest for a purely Scottish body of literature, allowed themselves to be seduced by the supposedly primitive poetry of Macpherson's Ossian.

Henry Brougham was the product of a culture continually faced with the problem of self-identity. Throughout the eighteenth century, the Lowland Scots looked to England as the model of a well-ordered Protestant society. But their fear of English assimilation caused them to retain many of the cultural ties of the 'auld Alliance' with France. This, in spite of the fact that the Scots bore no love for 'papists'. In their
struggle for self-identity, the Scottish 'literati' drew heavily from the Gaelic culture of the Highlands. Yet, Lowlanders generally regarded their northern neighbours as idle and barbaric savages. They even went so far as to deny that Highlanders were Scots; instead, they gave them the derogatory label "Irish". Lowland culture was indeed, to quote David Daiches, 'schizophrenic'. It was characterized by a hesitant borrowing from across three frontiers: England, France, and the Highlands.

When the Scots decided to give up their independence as a nation, their motivation was a purely economic one. Before the Union of 1707, Scotland was an extremely poor country. Although various panaceas were attempted, the failure of the Darien scheme underlined the necessity of joining England if economic progress was to occur. Despite much opposition, the event finally took place; Scotland retained her Church and legal system but lost her parliament. And, while the Scots were determined to preserve their identity and remaining institutions from English interference, intelligent observers among them understood that the Union brought great economic advantages. In the course of the eighteenth century, and especially after 1745, Scottish agriculture and commerce prospered. The professional and business classes of the Lowland towns learned to speak English and looked to that country as a model of commercial society.

This relatively late development of the Scottish economy helps to explain why Brougham and other 'enlightened Scots'
attributed so much importance to economic growth, for the jealousy with which the Scots eyed the industry and commerce of the English was clearly reflected in their intellectual works as well. Hume, for example, claimed that the economic system of England accounted for its superiority "above any nation at present in the world, or that appears in the records of any story." Adam Smith continually contrasted England's prosperity with the relative poverty of Scotland, although he did note that the Scotland of 1776 had progressed steadily since Union, and was outstripping France which held trade in disrepute. As a student at Edinburgh University, Brougham fell heir to this emphasis on economics through his teachers Dugald Stewart and John Millar.

Whereas the Lowlanders looked south with a mixture of fear and envy, they looked north with disgust. Henry Brougham's attitude towards the Highlanders was typical. In his account of a tour of the Western Isles in 1799, Brougham called the Highlanders 'savages'. In a letter to his great uncle, the historian, Robertson, Brougham compared the Highlanders unfavourably with the natives of the Pacific Islands:

Nothing in Captain Cook's voyages comes 'half' so low...A total want of curiosity, a stupid gaze of wonder, an excessive eagerness for spirits and tobacco, a laziness only to be conquered by the hope of the above-mentioned cordials, and a beastly degree of filth, the natural consequence of this, render the St. Kildian character truly savage.

Similar characterizations of Highland society may be found in Johnson's and Boswell's A Journey to the Western Islands of Scotland as well as in the reports of the Gaelic Society or
The Society for the Propagation of Christian Knowledge. Despite the attempts to exploit Highland culture for propagandistic purposes, there was little love lost between the peoples north and south of the Highland line. Lowlanders thought the Highland clans idle, theiving barbarians who spoke a foreign language, practiced strange celtic rites, and were generally poor and illiterate.

The Lowlanders had good reason to regard the alien society of the Highlanders with some reservation. The Highland was traditionally a martial society; its organization had been based on the authority of warrior chiefs. As late as 1724, Highland clans descended into the Lowlands in order to rustle cattle. In 1745, they rose in rebellion under the banner of Charles Stuart. The '45 uprising ended as a dismal failure, despite early signs of success, and resulted in the final conquest of the Highlands and the expulsion of rebel chiefs. From this time on, the Highlands lost many of its distinctive qualities. And, although Highland society had been gradually changing from a feudal to an economic organization, the defeat of the last of the old chiefs symbolized the end of clan values. The Highland landlords, largely imported from the south, tended to become masters of things rather than men. They even began to replace their "clansmen with Lowland sheep."

However, as one can see from Brougham's letter to Robertson, the transformation of the Highlanders was a gradual one. Brougham's solution (which would no doubt have pleased the author of The History of Charles V) was economic development.
As a corollary of this, it was necessary to transform the Highlanders into rational 'economic' men like the Lowlanders. The tool was to be education. Brougham wrote:  

We made several remarks on the state of the island, and the mode of management to which it is subject. Were its extent, fertility, and populations of sufficient consequence, no better method could be fallen upon than to send a schoolmaster, and then to abolish the present iniquitous method of collecting its produce.

Brougham's suggestion contained nothing new. Highland illiteracy and economic backwardness had long been a concern of Lowlanders. But there was some uncertainty about what kind of education would suit the purpose. In 1698, an Episcopalian minister by the name of Kirkwood converted some Edinburgh gentlemen of "weight and distinction" to the task of bringing 'civilitie' to the Highlands. They formed the Scottish branch of the Society for the Propagation of Christian Knowledge. The initial attempts of the Scottish S.P.C.K. concentrated on instruction in religion and English. When this failed, due to the hostility of the Highlanders, it was decided to supplement such instruction with technical training in industrial and agricultural skills. Given the great stress on industry in the Lowlands, this step does not seem surprising. Nevertheless, the attempt to spread education to the Highlanders had limited effect. The S.P.C.K. achieved its greatest success in operating spinning schools for young women.

The significance of the Scottish S.P.C.K. resides not so much in its achievements as in the way it demonstrates the Lowlanders' attitude towards economic backwardness and
education. Faced with the problem of a poor and potentially unruly population, Scots like Brougham automatically turned to education for the solution.

The influence of the Highlands was, by and large, a negative one. Lowlanders regarded Highlanders as barbarians and sought to transform them in their own image. A much more positive influence, however, was exercised by France.

In their fear of English assimilation and their disgust with Highland barbarity, Lowland culture borrowed heavily from French liberal thought. Unlike England, Lowland Scotland experienced an 'enlightenment' which corresponded fairly closely with intellectual life on the continent. Brougham was a true child of this enlightenment; he studied science, mathematics, and moral philosophy at Edinburgh University. Among his teachers were such luminaries as Black, Playfair, Millar, and Dugald Stewart. Since Brougham's future activities can only be understood in the light of his enlightenment thinking, it is important to discuss this development in some detail.

In many respects, the Scottish enlightenment paralleled the 'awakening' in France. Scotland's historical and cultural ties with France facilitated an interchange of ideas between the two countries. Thus, the French and Scots had identical heroes in Bacon, Newton, and Locke. Enlightenment thinkers regarded Newton with special reverence -- he was the prototype of a good scientist. His supposed introduction of the principles of empiricism and induction into physics was,
according to the 'philosophes', a major step in the advancement of knowledge.\textsuperscript{16} His use of 'analysis' to determine the basic components of things and then to discover the laws by which they are structured, was what the 'philosophes' meant by 'Reason'. In this way, 'reason' is characterized as 'agency' rather than 'being'. Ernst Cassirer, in his masterly work \textit{The Philosophy of the Enlightenment}, regards this as the distinguishing mark of the enlightenment approach:\textsuperscript{17}

The eighteenth century takes reason in a different and more modest sense. It is no longer the sum total of "innate ideas" given prior to all experience, which reveal the absolute essence of things. Reason is now looked upon rather as an acquisition than as a heritage. It is not the treasury of the mind in which truth like a minted coin lies stored; it is rather the original intellectual force which guides the discovery and determination of truth.

Only by the use of reason, now seen as agency, could legitimate knowledge be arrived at. All else was superstition. \textsuperscript{18} Which is not to say that enlightenment thinkers were sceptical about the existence of general laws by which nature was ordered; quite the contrary. They did, however, believe that these laws could only be discovered by close examination of concrete experience.

Since reason, for enlightenment thinkers, was a universally applicable method for arriving at knowledge, its application went far beyond the study of mathematics and physics. It could also be used to examine the institutions of man and even the nature of man himself. Now, both the Scots and the French were interested in studying the individual and his
relationship with society in the light of reason. However, in their application of the principles of empiricism to social life, they came to quite different conclusions.

Like the Scots, the French thinkers rejected the Christian assumption that man was inherently evil. They argued that the individual was basically a reasonable and moral creature. However, the majority of the French 'philosophes' utilized this conviction in a radical critique of existing institutions. As Norman Hampson illustrates in his work The Enlightenment, by about 1760 many French thinkers had adopted a 'critical and passionate' approach to political problems. These men felt that, in order for the good qualities of the individual to be brought forth, it was necessary that "society must be changed to make it worthy of the individual and not 'vice versa'".

The Scottish thinkers differed from their French counterparts in as much as they did not stress the 'rights' of individuals but, rather, their 'duties' as social beings. They viewed society as a "natural relation", not an "artificial creation". For this reason, they laid a greater emphasis on man's 'ethical sense' and his 'social sensibility' than did the 'philosophes'. Man, they argued, was not only a creature with reason, he was also a social animal, attached to his fellows by strong ties of affection. While such ideas were not foreign to French thinkers, they were not nearly so deeply rooted there. Scottish thought, on the other hand, always contained this heterogeneous mixture of 'reason' and 'feeling'.
The reasons for this paradoxical "division between the Scottish head and the Scottish heart" were both cultural and historical. No doubt there is a great deal of truth to David Daiches' claim that the philosophy of the Scottish enlightenment reflected the overly 'sentimental' qualities of Scottish romance literature. But certainly there is more involved than just this.

The Scottish School believed that 'reason' untempered by 'feeling' was a potentially dangerous tool. The French Rationalists, for example, claimed to be employing reason in the development of the theory of 'social contract'. According to this theory, society consisted of separate individuals who had no rule but their own self-interest. These same individuals came together in society only for the sake of convenience and in order to protect their property. The Scottish School was well aware of the radical implications of this theory -- it could easily be used to support an attack on existing institutions of government. Such a view could never be sanctioned by Scottish thinkers. Closer to Montesquieu than other French thinkers, the Scots did not have any strong hatred of government. Nor would they countenance any theory which might justify radical change. The Scottish intellectuals looked upon society as a natural entity and rejected the notion of 'contract'.

The likely explanation for this resistance to the idea of radical change was the close connection between Scottish intellectuals and the landed classes. Since most intellectuals were either attached to patrons or held university posts at their pleasure, they were not at all interested in attacking
the 'status quo'. Indeed, they tended to identify themselves with their benefactors. And, as T.C. Smout puts it: 27

This identification with the landed classes was accompanied by a lack of social and political iconoclasm. David Hume, for instance, was ready enough to attack the creeds of the church and Adam Smith to destroy the basis of mercantilist economics, but no one ventured to do the same for property and social privilege.

But there is another side to the question of Scottish intellectual conservatism besides this 'deep seated need for association with the great'. Scottish landowners exercised a virtually despotic power over the society in which they lived. They controlled education, poor relief, and church patronage. 28 They wielded considerable authority as justices and landlords. And their relationship with the society at large was an extremely paternalistic one.

Thus, there was very little opportunity for the expression of social criticism in Scotland. Whenever critics did appear, as they did during the early stages of the French Revolution, they were quickly and effectively silenced. 29 Given such a restrictive state of affairs, it is hardly surprising that the energies of Scottish thinkers were channeled into moral philosophy instead of political polemics.

Moral philosophy set itself the task of discovering the laws which govern social life and then deriving individual norms of action. It has been called 'common sense philosophy' because it accepted the validity of certain common human beliefs which could not be proven if one adhered strictly to the theory of sensations. In fact, the only member of the Scottish School to follow the theory of sensations out to its logical
conclusions was the sceptic, David Hume. He went so far as to argue that the concept of 'cause' was merely a product of custom. There was no "necessary connection" between things which could "define a cause and effect." But most of the Scottish thinkers were not prepared to go to such extremes. Brougham is fairly representative in this respect. He believed in the existence of God, the qualities of sympathy and benevolence, a 'moral sense', and the propensity of men to seek their own improvement. He also believed in the inevitability of human progress. He argued that reason alone was not a sufficient organ to dictate a man's social duty; these common beliefs must also be taken into account.

Adam Ferguson (1723-1816) was the chief spokesman for moral philosophy and representative of the others in the Scottish School. His work, which often reflects his admiration of Montesquieu, was concerned with the discovery of the scientific laws of human society. For Ferguson, there were two types of laws, 'physical laws' and 'moral laws'. Moral philosophy, concerned with the latter, investigated topics like benevolence, social duty, and human improvement. Ferguson believed that man's moral duty towards the common good was as self-evident as his instinct for self-preservation and his desire for personal happiness. As Gladys Bryson writes in *Man and Society: The Scottish Inquiry of the Eighteenth Century,* moral philosophy deals with moral laws, that is, with expressions of what ought to be, of what is not yet universally a fact of a kind a physical law can
express. Nevertheless, it has its basis...in physical fact, in the constitution of man which impels him not only to preserve himself, but to be a benevolently minded member of society, and to seek always to improve himself and the common life. On that basis the moral law consciously builds the dictum that the most desirable thing for a man is that he should cultivate the love of his fellows, and act always for their happiness and betterment.

In the works of Ferguson, social relations are "so many fields for the application of the moral law." One sees this same theme running throughout the writings of the Scottish School. Hutcheson, for example, attacked the Rationalists and posited a disinterested "public sense" in his analysis of human nature. As a follower of Locke, Hutcheson was aware of the epistemological difficulties of positing such moral assumptions. However, he sidestepped the problem by claiming that our "ideas of primary qualities" could be attributed to God. Adam Smith, too, was a moral philosopher; he was interested in political economy only insomuch as it formed a division of the ethical science. His fame during his lifetime was not due to The Wealth of Nations, but rather, to The Theory of Moral Sentiments.

These characteristics of the Scottish enlightenment -- that blending of 'reason' and 'sentiment' -- are clearly evident in the work and ideas of Henry Brougham. When he entered Edinburgh University in 1792, Brougham quickly became a disciple of the scientist Black and the mathematician Playfair. He worshipped Black, whom he called "the first philosopher of his age." According to Brougham, it was Black who had made chemistry a science.
It was certain that after the discoveries of Black had opened vast and new views of nature, both as regards the operations of heat, the most powerful and universal of all agents, and as regards the constitution of elastic fluids, the most unknown of the four elements, no natural philosopher would have had the hardihood to doubt if chemistry was an important branch of his science.

But what impressed Brougham most was Black's ability to "show him both the connection of the theory with the facts, and the steps by which the principles were originally ascertained." 38

Brougham became something of a scientist in his own right. At the young age of seventeen, he wrote a paper on Newton's Optics entitled "Experiments and Observations on the Inflection, Reflection, and Colours of Light", which was read by the Royal Society. This was followed by another paper on light as well as one on 'porisms'. Brougham also had the rather dubious distinction of "delaying the wave theory (of light) for some considerable time" as a result of his severe criticism of Thomas Young in an 1803 article for the Edinburgh Review. 39

While Brougham was not to make the subject his profession, he retained his love for science and his faith in the scientific method throughout his long life. And, like most enlightenment thinkers, he constantly referred to the examples of Newton and Bacon in his writings. In fact, he was something of an expert on the life and times of Bacon.

However, Brougham's interest in science was not confined to chemistry and optics; rather, it was the enlightenment ideal. Science, or reason, was a universally applicable
method for arriving at knowledge. With this tool, any field of enquiry could be reduced to general laws. In an essay entitled "Objects, Pleasures, and Advantages of Political Science," Brougham wrote:

General principles of Moral and Political Science may thus be established, by reasoning upon the results of experience; and from those principles, rules for our guidance may be drawn, highly useful both in the regulation of the individual understanding, and in the managing of the concerns of communities of men. To deny that Morals and Politics may be reduced to a science, because the truths of Natural Philosophy rest upon more clear evidence and assume a more precise form, would be as absurd as to deny that experimental science is deserving of the name, because its proofs are more feeble, and its propositions less definite and less closely connected together than those of pure mathematics.

This understanding of 'science' helps to explain Brougham's comprehensive range of knowledge. He could write with some authority on any number of subjects from the habits of bees to the existence of God.

The explicitly Scottish influence becomes evident when we turn to Brougham's attitude towards society. Like almost all the other members of the Scottish School, he did not regard man as an isolated individual but a social being. For this reason, he was more inclined to stress man's 'duty' than his 'rights'. Although he was an ardent reformer, and even looked upon as an extremist by some of the older members of the Scottish School, Brougham believed that society was an organic body and that all change should be gradual. In 1818, he wrote in this way about the old English reformers:

They knew well that man and nature, or rather its great Parent, must proceed by very different steps; and that, while the latter, according to Lord Bacon's beautiful observation, engenders at once the
whole plant, so that the rudiments of each part are to be formed in the germ, from whence the light, the air, the shower, expand and educate the perfect vegetable; finite beings must be content to add things to each other, and go on by successive experiments, step by step, until, through many trials and failures, they work something approaching to the object of their wishes.

Such an approach was to lead inevitably to difficulties in dealing with the Benthamite utilitarians, whose view of society was far more mechanical. Henry Brougham, on the other hand, was much more like a modern sociologist than the advocate of the perfectly ordered utopia. Thus, it is not surprising to find that when the National Association for the Promotion of Social Science was founded in 1857 for the purpose of discovering "the laws which govern men's habits and the principles of human nature, upon which the structure of society and its movements depend" -- Brougham took the chair and delivered the inaugural address.45

In many of his essays, such as A Discourse of the Objects, Advantages, and Pleasures of Science (1828), Brougham introduced his subject matter by enclosing it within the traditional structures of moral philosophy. For example, he wrote:46

After the many instances or samples which have now been given of the nature and objects of Natural Science, we might proceed to a different field, and describe in the same way the other grand branch of Human knowledge, that which teaches the properties, or habits of 'Mind' -- the 'intellectual faculties' of man, or the powers of his understanding, by which he perceives, imagines, remembers, and reasons; -- his 'moral faculties', or the feelings and passions which influence him; and, lastly, as a conclusion or result drawn from the whole, his 'duties' both towards himself as an individual, and towards others as a member of society; which last head opens to our view the whole doctrines of 'political science',

including the nature of 'governments', of 'policy' and generally of 'laws'.

Again, this is a result of his Edinburgh training. Brougham attended lectures on moral philosophy from Dugald Stewart. Stewart's Account of the Life and Writings of Adam Smith was an active synthesis of the views of the Scottish School on progress, epistemology, morality, and economics. And, although Brougham seldom referred to Stewart in his writings, all of his comments indicated that he had a great deal of respect for his "revered friend" and teacher.

In summary, we can say that Brougham was an exemplar of the 'paradox' of Scottish culture. He advocated the use of the scientific method, while adhering to the 'a priori' and sociological constructs of moral philosophy. He was disgusted with Highland backwardness at the same time as he took an interest in the antiquarian studies of Gaelic life and language. And, like other members of the Scottish School, Brougham tended to regard the development of civilization in terms of economic progress. This particularly Scottish set of attitudes and values was to have an enormous influence on the way in which Brougham viewed, and proposed solutions to, 'social facts'. 
CHAPTER II

SCOTTISH INSTITUTIONS
Before turning to a discussion of Brougham's activities in England, it is necessary to examine yet another aspect of Scottish culture. For Scottish culture was not only the response of a small nation which felt its identity threatened from the outside, it also reflected attitudes which had long been maintained and legitimized in uniquely Scottish institutions. When Scotland's identity came into danger of being assimilated after 1707, these institutions took on a national importance. Indeed, the Scots were quick to boast of the superiority of their own institutions over those of England.

Henry Brougham was no exception. He often expressed his 'respect and admiration' for Scottish institutions in word and print. Moreover, in large part, Brougham modelled his reform measures on specifically Scottish establishments. Therefore, if we are to comprehend fully Brougham's views on social reform, we must consider Scotland's different systems of law, poor relief, and education.

If he had his wish, Henry Brougham probably would have followed the theoretical career of his teacher Black. As he told his friend Francis Horner:

"Science is unquestionably a far finer field than Law or even politics: but worldly things have their weight and their sweets: an independant spirit revolts from the idea of subsisting wholly on any man's bounty, even on a father's."

So, in 1796, Brougham began his studies for the Scottish Bar, to which he was admitted in 1800. He spent several years as
a lawyer on the Scottish circuit. However, as his letters to James Loch and Francis Horner indicate, Brougham viewed the House of Commons as his "ultimate" objective and his ambition was not satisfied to remain in "the sticky bottom of Scots law." Therefore, he had his name entered at Lincoln's Inn, and began his studies of English law in 1804.

The future Lord Chancellor had little love for English law; he regarded it as a means to an end. At the outset of his studies, Brougham wrote to his friend Loch:

The English Bar is in a very great degree tedious, and, to say the least of it, somewhat uncertain. I look forward with no small horror to five years' dull unvaried drudgery, which must be undergone to obtain the privilege of drudging still harder, among a set of disagreeable people of brutal manners and confined talents.

The implicit assumption behind this statement is that of the superiority of Scottish law and lawyers. Brougham here is underlining the fundamental difference between the two systems. And, if one wishes to understand Brougham's future activities as a legal reformer, it is important to be aware of these differences.

When Brougham referred to the "brutal manners and confined talents" of English lawyers, he was doubtless comparing them to the cultural elite of the Scottish legal system. For the Scots, law was regarded as "not only a profession leading to political advancement but also as a gentlemanly pursuit and a guarantee of a liberal mind." Many Scottish lawyers doubled as historians, writers, antiquarians, poets, and literary critics. The list included such men as Walter Scott, Charles...
Erskine, Lord Kames, and Lord Jeffrey. Brougham, too, wrote poetry and literary criticism (although his attempt at writing a novel was a miserable failure). In fact, most of the Edinburgh 'literati' were trained in Scottish law. And, as David Daiches notes, they were well aware of its national significance:

Many judges, advocates, and 'writers' regarded themselves, with varying degrees of conscious awareness, as guardians of a peculiarly Scottish tradition. They realized the national character of the Scottish legal system, and being an elite they regarded themselves as leaders not only of society but of national thought.

But Scottish law was characterized by more than just its elite clientele; it was a very different system from the English law of England.

In essence, English law is an amalgam of practices and customs which have their basis in local tradition. English Common law was a complex combination of the customary laws of the Anglo-Saxons, the feudal practices and royal administration of the Normans, and the later refinements and improvisations of judge made law. In the course of time, English criminal law became a complex and unwieldy maze of legislation. For example, English civil law began as an extension of the King's Court into the business of private disputes. Each new case had to be dealt with by formal written orders called 'writs'. However, in time these 'writs' piled up and, since they were extremely formal documents, the technicalities of English law became standard. And, because every 'writ' was legally binding, it was up to judges to decide what was 'relevant
in past cases and what was not." Given the weighty body of often conflicting legislation which had accumulated over the centuries, this certainly was no mean task. When Brougham referred to the "drudgery" of English law, what he meant was this system of 'stare decisis' or the following of precedent.

Scottish law, on the other hand, had roots as far back and preceding the 'auld Alliance' with France. It was comparative and cosmopolitan in flavour where English law was insular. The absence of a complex maze of legislation -- largely due to the influence of 'Romano-canonical' law -- enabled it to be much more effective and flexible than its English counterpart. For instance, Scotland's criminal laws in the eighteenth and nineteenth century were much fewer and less harsh than those of England during the same period; the speed and certainty of punishment reduced the need for a multiplication of laws and bloody examples. Furthermore, Scottish law was capable of changing with the times where English law was not. In The Scottish Legal Tradition, Lord Cooper writes:

tested by the standards of the modern philosophy of jurisprudence and by experience, the classical law of Stair, Erskine, and Bell has proved to be eminently suited to Scottish needs and eminently capable of adaptation and adjustment to solve the new problems of a transformed social world, which its authors never beheld even in a vision.

It was only after the Napoleonic Wars that Scottish law began to become absorbed into the law of Great Britain -- much to the chagrin of Scottish nationalists then and now.
As was the case with Germany, France, and Holland, Scotland's laws were characterized by the predominant influence of Roman law. Between 1100 and 1500, Roman law became the basis for legal science throughout western Europe. Unlike English law, in which precedent was strictly adhered to, Roman law was based upon definite principles of justice or 'equity'. These principles, in time, came to be equated with 'natural law', or the law which was theoretically binding on all human societies. Roman law probably first entered Scotland through church and canon law. During the period of the 'auld Alliance' (1329-1460) and even later, Roman law was received into Scotland from France. Scottish students studied in Orleans, Bourges, and Louvain. However, after the Reformation cut the direct ties between France and Scotland, Scottish students usually went to Leyden in Holland to carry on their legal studies. Thus, there was a continuous influence of Roman law on Lowland Scotland. This was reflected in the two classics of Scottish law, Stair's 'Institutions' (1681) and Erskine's 'Institute' (1773). Both works relied heavily upon Roman law as a source of inspiration. Invariably, Roman law superseded Common law as the guide for legislation in Scotland.

With this sort of legal training, it is hardly surprising that Brougham found English law unsatisfactory. Repeatedly, he claimed that it was chaotic and in dire need of codification according to definite principles. In his essay "On the making and Digesting of the Law," Brougham complained of the
backwardness of English law:

I am very well assured that were a French lawyer to pass a portion of his time yearly in England as I do in France, he would find himself exceedingly at a loss to ascertain the many points respecting which I have occasion to seek information, and hardly ever to seek it in vain, from the French Codes. Suppose any one resorting to our country in this way, were to ask a friend in what book he must look for information as to the law, either civil or criminal, under which he had come for a season to live: I will venture to say a more perplexing question could not be put.

Brougham went on to point out that the practice of Common law left far too much power in the hands of individuals, thus giving rise to "the uncertain state of conflicting dicta of Judges." However, its weakest characteristic, he argued, was that it failed to adjust to the times -- it was "obsolete."

The difference between the two systems helps to explain why England did not experience anything like an 'enlightenment'. The 'natural law' theorists of the enlightenment looked to Stoic philosophy in support of logical proof and definition in jurisprudence. They also believed that 'natural laws' applied in all the branches of human, natural, and theological science. For them, law should be the reflection of man's reason rather than historical fact.

Law in its primary and original sense, in the sense of "natural law" ('lex naturalis'), can never be resolved into a sum of merely arbitrary acts. Law is not simply the sum total of that which has been decreed and enacted; it is that which originally arranges things. It is "ordering order" ('ordo ordinans'), not "ordered order" ('ordo ordinatus'). The perfect concept of law presupposes without doubt a commandment affecting individual wills. But this commandment does not create the idea of law and justice, it is subject to this idea.

The English conception of law was quite different. One sixteenth century writer summarized it as follows:
(English customary law) is so framed and fitted to the nature and disposition of this people, as we may say it is connatural to the Nation, so as it cannot possibly be ruled by any other Law. This Law therefore doth demonstrate the strength of wit and reason and self-sufficiency which hath been always in the People of this Land, which have made their own Laws out of their wisdom and experience (like a silk-worm that formeth all her web out of her self onely), not begging or borrowing a form of Commonweal, either from 'Rome' or from 'Greece', as all other Nations of 'Europ'e have done...

Notice that the concept of 'reason' and 'nature' are used in a very different sense here than they are in the writings of the Scottish and French intellectuals. 'Reason' refers to the wisdom of tradition, while 'natural' simple means customary. The practice of English law precluded the enlightenment notion of 'natural law'. This helps to explain Edmund Burke's fundamental opposition to the 'philosophes' of the French Revolution. In his criticism of the revolutionaries ideal of "justice," Burke employed the concepts of 'reason' and 'nature' in a typically English way.

For the Scottish thinkers, law was to be deduced from the principles of moral philosophy. They stressed the duties which each individual has in the maintenance of social life. In The Wealth of Nations, for example, Adam Smith presented his subject as a branch of "jurisprudence" and the "science of the legislator." Lord Kames was quite representative of the Scottish viewpoint when he claimed in his Essays on the Principles of Morality and Natural Religion (1751) that all law has its roots in man's 'moral sense' or 'peculiar feeling'. Kames' biographer, Ian Ross, writes:
The objects of the 'peculiar feeling', justice, faith, and truth, are strictly entailed by our duty, and without them society would degenerate into anarchy. The whole drift of this argument is of the greatest interest when it is remembered that Home (Kames) is a Scots lawyer, presumably nurtured on Stair's 'Institutions', with all its stress on the operation of right reason in making moral and ultimately judicial decisions: 'Law is the dictate of reason determining every rational being to that which is congruent for the nature thereof'.

Similar views were held by all the members of the Scottish School. John Millar's social philosophy, for example, derived largely from his legal training -- he was Professor of Law in Glasgow University from 1761 to 1801.24 Henry Brougham, too, was deeply imbued with the moralistic attitude of the Scottish School towards law.

Brougham evidences a fairly extensive knowledge of the legal ideas of Stair, Erskine, and Baron David Hume throughout his writings and speeches. But his background in Scottish jurisprudence comes out most sharply in his treatment of foreign policy. Brougham considered himself an expert on the subject and wrote prolifically on such topics as colonial policy, the balance of power, the 'Holy Alliance', and foreign intervention. In an 1848 essay on "General Principles of Foreign Policy", he continually attempted to fit specific cases of foreign policy within clearly ethical principles.25 For example, he argued that while the confiscation of Denmark's fleet during the Napoleonic Wars was justified in order to preserve it from falling into the hands of the enemy, the failure of Britain to restore the fleet to its proper owner after the war was quite illegal, since it could not be based in
any moral principle. It could only be held on the grounds
that 'might is right'. Brougham went on to maintain that a
country's foreign relations should not reflect its own self-
interest, but rather, the values of justice and humanity.

Since international relations should be conducted within
the bounds of moral law, Brougham advocated the union of all
countries into a league for the defence of member states against
rapacious aggressors. However, the league was not to meddle
in the internal affairs of any of its members; the sins of
the 'Holy Alliance' were to be avoided at all costs. It made
little difference to Brougham that his 'league' did not conform
to the practice of foreign policy in his day. The justification
for a league of this sort existed in reason and moral law.
Brougham's views on foreign policy were derived from 'natural
law' theory and, ultimately, from Stoic philosophy. And he
was well aware of this. In "A Historical View of the Doctrine
of Foreign Policy", he wrote: 26

The Law of Nations, sometimes not inaccurately termed
International law, was thus introduced, or rather was
reduced to a system; for its principles, grounded on
the plain maxims of natural justice, existed at all
times, and were at all times admitted in argument, how
widely soever departed from practice...The Roman
Lawyers gave the name of Law of Nations ('Jus Gentium')
to that branch of Law which we term National; namely,
the law which all nations use, the principles of
natural justice which, being implanted in the minds of
all men, are recognized by the municipal laws of all
nations, and are the foundation of all systems of
jurisprudence. But what we term International law,
the law that binds, or ought to bind independant
states in their intercourse and mutual relations --
the Law which regards all States as forming one great
community -- this was termed by the Roman jurists,
Natural Law ('Jus Naturale').
Brougham's debt to the Scottish tradition of moral philosophy is fairly clear in this passage. It is also shown earlier on in the essay, when Brougham referred to Robertson's *History of Charles V* and Hume's *Essay on the Balance of Power* as the source of many of his ideas. The intellectual lineage was a direct one.

In conclusion, we can say that Brougham's attitude towards both legal practice and theory was heavily determined by his training in Scots law and his study of moral philosophy. Brougham was quite convinced of the superiority of Scottish law to the Common law of England, which he thought was archaic, confused, and unjust. It is also probable that Brougham's dislike for English law reflected his inbred Scottish nationalism. At any rate, like Lord Mansfield before him, Henry Brougham was little impressed with the aesthetic qualities of English Common law. He found the "silk-worm's web" to be a sticky "trap."

II

Henry Brougham was even more annoyed at the English treatment of poverty than he was with their notion of 'law'. The aspect of the English Poor Law which Brougham detested most was its encouragement of the "idle and the profligate." He contrasted this situation with the one which obtained in Scotland:

Scotland is not a land where many visionaries or speculators are to be found. Metaphysically as some of its inhabitants are inclined, they have an utter
contempt for anything that does not promote their own real and substantial advantage... My praise of the Scotch is, that they know and follow what is their real advantage, and that they do not see the advantages of vice and idleness. Their youth are not brought up in vice and idleness, but in persevering and industrious habits.

To Brougham's mind, idleness was the cardinal sin since it destroyed a person's "moral sense." "Guilt", "crime", and "impure desires" were the "records of idleness." Industry and the cultivation of one's faculties, on the other hand, were "the safeguard against impure desires" and "the true preventative of crimes."

Brougham's attitude towards work and idleness had a particularly Scottish flavour. The moralistic language in which he praised 'industry' and condemned 'sloth' does not have a utilitarian tone. Instead, it reflects elements of moral philosophy in combination with a traditionally Scottish approach to poverty. Such views were typical of the Scottish School. When Malthus dropped his bombshell on the theorists of human progress, it was no coincidence that among his most ardent supporters were the writers of the *Edinburgh Review*. Along with Malthus, they shared a distaste for the 'vices' of idleness.

Long before Malthus argued that "dependent poverty ought to be held disgraceful," the Scottish poor law had been operating on just that principle. The Scottish poor law had its basis in the Statute of 1579. Here, a clear distinction was made between the impotent poor, who were to be "placed in alms houses or given badges to beg" and the
"sturdy beggars" who were to be "arrested and scourged." 31 Thus, only the most destitute: the aged, widows, and invalids, were eligible for relief. Even then, help was scanty. Poor relief was calculated annually at the kirk sessions. However, since funds for this purpose were obtained through voluntary donation, they were not sufficient to be of much help to the needy.

In times of agricultural scarcity, such as the crop failure of 1783, the able-bodied labourer was unable to obtain the relief necessary to support himself and his family. Individual attempts by landlords to remedy the situation by reducing rents or making cheap corn available, were too sporadic and regional to be of much use. The widespread distress which occurred was described by one witness from Inverness in this way: 32

I cannot express to you the miserable situation of this country -- There are many good farmers with their wives and children begging in the streets -- Last harvest has finished the most of them -- meal or any kind of victuals cannot be had for love or money, and before the summer is over people will die in the fields for want.

However, despite the recurrence of such conditions, the Scottish landowners were adamant in their opposition to outdoor relief for the able-bodied poor.

In comparison to the Scottish system, the English Poor Law, which Brougham criticized so vehemently, was relatively humane. During the eighteenth century, English Poor Law practice was characterized by a tacit recognition of the right of the individual to subsistence. 33 The Speenhamland system,
introduced by the Berkshire magistrates in 1795, was conceived to bring aid to able-bodied labourers in a time of agricultural distress. However, the 'right to subsistence' was an alien concept to the Scottish experience. Brougham himself was severe in his attack on such a notion. In 1834, he said:

They have succeeded in wholly disconnecting the idea of labour and its reward in the minds of the people... Parish allowance is far worse than a dole because it is more certain in its nature -- because it is better known, more established -- because it approaches, in the mind of the poor, to the idea of a right.

For Brougham, the right to subsistence was not to be permitted since it removed the moral duty of work from individuals.

One might suspect that the harshness of the Scottish poor law reflected Calvinistic attitudes towards work and idleness. But, at least in its application to sixteenth century Scotland, this idea seems not to be correct. While the reformed church was concerned to rid the 'true kirk' of idle vagrants, it was also the 'champion of social justice' for the poor. Knox and his followers continually upbraided the Scottish landowners for their unchristian behavior towards the impotent poor and the labourer. Indeed, as T.C. Smout notes, Knox's program for spiritual reform included a plan for basing poor relief on church tithes. When this failed, due to opposition from the landowners, it was through no fault of the General Assembly.

On the other hand, the presbyterian attitude towards work and idleness did, in time, come to play a significant role in Scottish thinking on the subject of relief. Once Scottish poor
law practice had been firmly established, it was defended by Scots on religious as well as practical grounds. In the late eighteenth and early nineteenth century, Scottish clergymen viewed the English Poor Law as immoral because it encouraged idleness and irregularity. They pointed to their own institution as a safeguard against these 'vices'. Therefore, it is safe to say that Calvinist thought eventually did influence poor law policy, even though its original effect was felt on the "psychological rather than the institutional plain."  

One thing is certain, as a result of the Scottish attitude towards poverty, the cost of poor relief in that country was extremely modest. In *A History of the Scotch Poor Law*, Nicholls compared the cost of relief with that of England in the first half of the nineteenth century:

<table>
<thead>
<tr>
<th></th>
<th>Cost (£)</th>
<th>% Pop.</th>
<th>Rate/Head</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eng. 1840</td>
<td>4,576,965</td>
<td>7 3/4</td>
<td>5s 10½d</td>
</tr>
<tr>
<td>Scot. 1837</td>
<td>155,121</td>
<td>3 1/6</td>
<td>1s 3d</td>
</tr>
</tbody>
</table>

Such figures helped to perpetuate the myth that the Scots were more industrious than their English counterparts. In fact, Henry Brougham was one of the leading propagandists for this view. He attributed the Scots' great "success in life" to the fact that there was no poor law in Scotland and to the Scottish educational system which instilled 'habits of industry'. Indeed, it is from people like Brougham that the image of the hardworking practical Scot has come down to us today.

The question is -- does this image have any basis in reality? As Nicholls pointed out, there was no lack of
vagabonds and beggars in Scotland. When Boswell and Johnson arrived in Edinburgh in 1773, they were surprised to find that its proportion of beggars was as great if not greater than similar towns in England. And, as Douglas Young points out in his book *Edinburgh in the Age of Sir Walter Scott*, the back streets of late eighteenth century Edinburgh were not unlike those of London -- "the resort of misery, filth, poverty, and vice." What of the work habits of the Scottish people -- were they in fact more disciplined and industrious than their southern neighbours? Brougham may have thought so, but the reality of the situation was quite different. Although some enterprising English managers thought that it might be better to build their factories in Scotland during the eighteenth century, there is little evidence to suggest that the Scots had superior work habits. In *The Genesis of Modern Management*, Sidney Pollard tells of the difficulty the Scottish textile factories experienced in recruiting and disciplining labour:

In Scotland, since 'all the regularly trained Scots peasantry disdained the idea of working early and late, day after day, within cotton mills', and 'it was most difficult to induce any sober, well-doing family to leave their home to go into cotton mills as then conducted', the founders of the mills had to employ the scum of the cities, or snatch at people in distress...Glasgow masters, indeed preferred the Irish, who were docile and willing to take starvation wages.

It would seem, therefore, that the much vaunted reputation for 'regular habits' and 'industry' of the Scottish people was quite unfounded.
Regardless of their efficacy, the Scottish poor laws reflected deep feelings towards poverty and work in the minds of Scots. And, while it is not clear to what extent these views themselves were derived from the practice of poor relief, they were certainly to have a longstanding effect upon the way in which the Scots perceived the problem of poverty.

These attitudes were also reflected in Scottish intellectual circles. Invariably, the members of the Scottish School viewed poor relief as an encouragement to idleness and a threat to industry. According to A.W. Coats:

members of the Scottish school maintained that man possessed a natural 'impulse to action', so that the poor laws, by encouraging idleness among those who had not yet developed an 'active' habit of industry and enforcing idleness upon those who had, constituted a source of individual unhappiness as well as a loss to society.

Or, as Lord Kames succinctly put it -- "men by inaction degenerate into oysters."

However, there is yet another aspect of the 'enlightened' attitude towards work and poverty which requires explanation. For there is no doubt that the members of the Scottish School were extremely concerned about the problem of economic backwardness. They equated poverty, such as that which existed in the Highlands, with a low stage in the evolution of civilization. They also considered work to be a fundamental duty of all members of society, since without it economic advance and the raising of culture could not occur. In this context, pauperism became more than simply an individual problem; it became a serious menace to civilization. Thus, it is necessary to discuss
the theoretical framework of the Scottish School in greater detail.

In "Economics and History -- The Scottish Enlightenment," Andrew Skinner points out that a distinct feature of the philosophy of the Scottish School was its development of economic history. Indeed, Scottish thinkers typically regarded historical progress in specifically economic terms, viewing the level of civilization as dependant upon the stage of socio-economic organization. Ferguson, Millar, Steuart, and Smith developed this method of analysis quite clearly in their writings. Sir James Steuart, for example, believed that feudal government resulted from primitive methods of production which were doomed from the minute that agriculture became capable of producing a surplus. And, of course, Adam Smith, in The Wealth of Nations, built upon this type of analysis and carried it a step further towards the idea of capitalist organization.

Brougham too shared in these views. In his historical and political essays, he was quick to point out the advantages which the expansion of commerce brought about in raising the level of civilization of the countries which participated in it. He also argued that the form of a country's government was, in large measure, caused by its economic structure. Thus, republics and mixed governments could only exist in countries which were advanced economically.

This 'materialistic' interpretation of history can be traced back to David Hume, to whom Brougham often referred in his own writings. In an essay entitled "Of Refinement in the
Arts," Hume argued that civilization and economic advance were inseparable:

Industry is much promoted by the knowledge inseparable from ages of art and refinement; as, on the other hand, this knowledge enables the public to make the best advantage of the industry of its subjects. Laws, order, police, discipline; these can never be carried to any degree of perfection, before human reason has refined itself by exercise, and by an application to the more vulgar arts, at least, of commerce and manufacture. Can we expect, that a government will be well modelled by a people, who know not how to make a spinning-wheel, or to employ a loom to advantage?

The materialistic approach, as Skinner shows in his essay, was most clearly developed in the work of Adam Smith and Brougham's teacher, John Millar. However, one should not overlook the work of other Scottish thinkers such as Muir, Stewart, and Brougham's great uncle, Robertson.

Economic thought did not merely constitute one area of study for the Scottish thinkers. As Ronald Meek argues in "The Scottish Contribution to Marxist Sociology," the Scottish School laid its "primary emphasis on the development of economic techniques and economic relationships." While it is true, as Bryson claims, that Scottish economic thought was only one branch of moral philosophy, it is nevertheless clear that it achieved predominance over all the other ones. For, if one believes that the most important 'natural laws' of social life are necessarily economic ones, then moral philosophy, for all intents and purposes, tends to approach political economy.

Both Millar and Smith viewed human relationships primarily in terms of dependence upon the 'mode of production'. According to Smith, all men were born with the "propensity to truck, barter, and exchange one thing for another" as well as a desire
for self-improvement. The difference between the most primitive savage and the most enlightened man seemed to "arise not so much from nature as from habit, custom, and education." These in turn were dependent upon the extent of the division of labour in society. In fact, Smith understood the progress of intellectual ideas in the same terms as he did the production of pins:

In the progress of society, philosophy or speculation becomes, like every other employment, the principal or sole trade and occupation of a particular class of citizens... Each individual becomes more expert in his own peculiar branch, more work is done upon the whole, and the quantity of science is considerably increased by it.

Once the complex of societal relationships had been reduced to a simple economic model, it remained only for the moral philosopher to clarify the duty of the individual within it. Since, for Smith, all progress was an outcome of the division of labour and man's propensity for self-aggrandizement, it was necessary to stress the importance of work and self-help. In an unpublished doctoral thesis, "The Conception of Work and the Worker in Early Industrial England," E.J. Hundert shows how Smith built on Hume's earlier work to arrive at a new theory of human nature. By adapting the enlightenment belief in the potential equality of all men to fit his materialistic theory of history, Smith demonstrated that it was necessary and natural for all men to work. Those who were idle had simply been brought up in bad habits.

T.C. Smout argues that the materialistic nature of the Scottish enlightenment may have been connected with "Calvinist habits of reflection and seriousness of individual
purpose. By this he means that once the influence of the 'kirk' had diminished, the energy and drive of Scottish intellectuals became channelled into secular objectives. In essence, Smout's argument is similar to the one put forth by Max Weber in *The Protestant Ethic and the Spirit of Capitalism*, except that it is applied to the intellectual life of Scotland. On the other hand, Ronald Meek does not see any connection between Calvinism and economic theory in Scotland. Instead, he argues that socio-economic thought of this kind is a 'function' of the 'rapidity of economic advance' and 'the facility for observing contrasting areas at different stages of economic growth'. According to Meek, the rapid economic development of Lowland Scotland had an enormous influence on Scottish intellectual habits. He goes on to point out that:

> the new forms of economic organizations which were emerging could be fairly easily contrasted with the forms of organization which still existed, say, in the Scottish highlands.

Andrew Skinner makes much the same claim in his article. The validity of Meek's thesis can be easily seen by looking at the large number of comparative references made by Scottish intellectuals to England and to the Highlands. However, there is no need to regard Smout and Meek's theories as mutually exclusive. The materialistic nature of the Scottish enlightenment had its roots in traditional attitudes towards work and poverty. This was doubtless reinforced by certain aspects of Calvinist thought. At the same time, such an interpretation was heavily influenced by the sharp contrast
between the Highlands and Lowlands as well as the comparison with England.

All these elements can most certainly be found in Brougham's writings. He was an advocate of 'reflection' and self-help; he regarded the backwardness of Highland life with disgust; and he heartily approved of the Scottish poor law. It would be impossible, however, to estimate the relative importance of these factors. Brougham was heir to a succession of economic thought which had been developing from Hume to Smith. Brougham received the ideas of political economy from his mentor, Dugald Stewart, and through discussion in the Speculative Society. It is not surprising, therefore, to find that Brougham considered himself to be a disciple of Adam Smith. In Lives of the Philosophers of the Time of George III, Brougham wrote:

> the general soundness of Dr. Smith's views upon this important subject (political economy) has never been questioned by persons of good authority.

Since Brougham accepted Smith's analysis of the progress of society, he believed that it was the ethical duty of all men to labour for the common good and to try to improve their condition. The socio-economic system, seen in Smith's terms, operates smoothly only when the desirability of work has been accepted as the main requirement of citizenship. The ethical nature of work derives from the main tenet of moral philosophy -- that man is a social creature and his duty is towards the betterment of society as a whole. The problem is -- how can men, specifically the lower orders of society, be brought to
realize their moral duty? For Brougham, as for many Scots, the solution lay in 'moral education'.

III

On December 12, 1803, Brougham wrote a letter to his friend, James Loch, in which he included some statistics on the sale of magazines in Britain:

of the Farmer's Magazine 4200 are sold: of these 300 in Ireland and about 1000 in England... Meantime it is singular to remark the different circulation of it in the two parts of this island -- not as to the numbers sold -- but the description of the purchasers. In England the gentlemen alone take it. In Scotland it is circulated among the farmers fully as much as the landlords. I am the more pleased w. finding this to be the case than I had predicted to myself before I asked Constable if it was not so.

Brougham was here expressing his pride in the extent of literacy in Scotland. The chauvinistic tone is the one of a man who has something to prove -- it reflects the insecure, yet flamboyant, attitude of the Scottish 'literati'. Still, Brougham's pride had some justification. As M.C. Jones points out: "Scotland alone of the four countries of the British Isles could lay claim at the beginning of the eighteenth century to a national system of education." Brougham was forever praising the Scottish system of parochial education. In a House of Commons speech in 1818, he claimed that "national education in Scotland reflects immortal honour upon its inhabitants." He went on to say that the education statute of 1696 was one of Scotland's "most precious legacies." In word or print, Brougham was always prepared to attack the English system of education, or
compare it unfavourably with that of Scotland. This attachment to Scottish education is significant for Brougham was to become the acknowledged leader of the movement for universal education in England after 1811. Furthermore, his basic aim was to establish a national system of education on the Scottish model. Thus, in order to understand the 'mental baggage' which Brougham brought to England from the Scottish milieu, it is necessary to examine the basic characteristics of Scottish education.

In contrast to their southern neighbour, the Lowland Scots had a strong faith in the benefits of universal education. The Calvinist belief that each man should be able to read and understand his bible had ensured widespread literacy throughout the Lowlands. But the religious influence went far beyond this. Education, for Knox and his followers, had as its fundamental purpose the inculcation of habits of 'Godly discipline' in all the members of the kirk. It was rooted in the conviction that man was not born innocent, but in sin. T.C. Smout describes the religious influence thus:

The sphere of ecclesiastical discipline was carefully and sharply defined: 'it stands in reproving and correcting of those faults which the civil sword doth either neglect either may not punish...drunkenness, excess (be it in apparel or be it in eating and drinking), fornication, oppression of the poor by exactions, deceiving them in buying and selling by wrong mete or measure, wanton words and licentious living tending to slander do properly appertain to the Church to punish the same as God's words commandeth'...The whole system of discipline was to be supplemented by a national scheme for education, for while discipline serves merely to correct the adult after the offence, education by touching the
soul of the child may altogether avoid the sin.

Although the power of the old kirk gradually declined during the eighteenth century, its influence continued to be felt in the importance which the Scots attached to education. Scottish education retained its moral flavour until well into the nineteenth century (and, indeed, in the twentieth century).

Scottish education, although praiseworthy by British standards, was never all that its admirers thought it to be. As we have seen, attempts to provide the Highlanders with a moral and work-orientated education in the eighteenth century had limited success. Even in the Lowlands, there were great regional differences in the quality of education. Burgh schools often taught a wide variety of subjects, at least after the traditional Calvinist instruction had been watered down by the influence of Moderates. The educational fare of the village schools, on the other hand, was of a much more humble sort. But it cannot be denied that almost all Lowlanders were provided with a minimum standard of literacy throughout the eighteenth century.

Two facts about Scottish education are significant. First, except in cases of exceptional poverty, parents were required to pay a small fee for the instruction of their children. In this way, it was felt that education would be valued as a privilege rather than a right and individual incentive would not be destroyed. Second, the general diffusion of education (combined with the relative poverty of the upper classes) resulted in a greater mixing of classes of Scotland than in England.
Upward social mobility was not so uncommon in Scotland either. During the agricultural revolution of the second half of the eighteenth century, an independent class of yeoman farmers came into existence, largely as a result of educational opportunities:

'This is ascribed chiefly to the examples of a perfect cultivation set by many of their ancestors, joined to the capital possessed by most of them, and to the good education they receive: which in many instances is perfected at the University'.

This absence of rigid distinctions in Scottish society helps to explain Brougham's dislike of titles and other artificial distinctions. It also explains why Scotsmen of talent, including Brougham, were regarded as "oddities" in English polite society. Scotsmen usually retorted by criticizing 'salon' culture and claiming that they were practical men -- thereby revealing their own defensive self-consciousness. On the other hand, it is fairly clear that social mobility and the mixing of classes in Scotland did result in "a relative absence of social tension" in that country. Thus, Scots like Brougham found it difficult to understand the argument of many Englishmen that the education of the lower orders would only result in class war.

Scottish education had the important effect of easing the opposition between classes. But by far the most significant characteristic of the system derived from its historical relationship to the treatment of poverty. That is, its stress on 'industry' and 'habits or prudence'.

While Nicholls, the nineteenth century authority on the
Poor Law, was extremely critical of the Scottish attitude towards poverty, his praise of the "enlightened policy" of Scottish education was excessive. He noted that every parish school had a well qualified teacher. He also pointed out that schoolmasters were required to provide the children of the poor with free education. However, Nicholls failed to connect the importance which the Scots attached to education with their attitude towards poverty.

To a sensible Scotsman, the connection was a direct one. Poverty, crime, and idleness were the products of poor upbringing; education in the 'right principles' of industry and morality was the only remedy. Brougham repeated this theme incessantly. In the speech of 1818, he lavished praise on the Scottish educational system, claiming that it had become the example for other countries:

In Sweden, where a number of noble families are of Scotch extraction, something upon the model of the parish-school system has long been established. In the Swiss cantons, and in many of the Protestant countries of Germany, the example has been followed, with more or less closeness, and whenever the plan has been adopted its influence upon the improvement of the lower classes and the general well-being of society has...been abundantly manifest.

At the same time, by citing the case of America, Brougham emphasized the importance of education for inculcating good work habits:

That is surely the last country in the world where idleness can expect to find encouragement... An idler there is a kind of monster...such is the conviction there that popular education forms the best foundation of national prosperity, that, in all the grants made by the Government...the
twentieth lot is reserved for the expense of instructing and maintaining the poor.

Thus, the solution to poverty and 'the foundation of national prosperity', for Brougham and other Scots, always rested in education.

Given the deep religious and historical roots of Scottish education, it is not surprising to find that there was a "great flurry over education" in intellectual circles in the second half of the eighteenth century. Gladys Bryson treats of education as if it were merely one of the social institutions which came under the scrutiny of moral philosophy. She is mistaken. Almost every major Scottish thinker stressed the importance of education. In fact, most of them were teachers themselves and took their role as diffusers of knowledge very seriously. The Scottish School had unlimited faith in the power of education to mould men's minds.

Moral philosophy set itself the task of discovering the laws which govern social life and then deriving the individual's duty from them. But men will not always do what is in their own and society's best interest; their 'reason' and 'moral sense' can become defective as a result of the evils of custom and habit. It is for precisely this reason that education in 'right principles' was so important. And, since the most important social laws were economic ones, these 'principles' were 'industry' and 'self-help'. The relationship between education and industry comes out quite clearly in Hume's essay 'of Refinement in the Arts':
Thus 'industry', 'knowledge', and 'humanity,' are linked together by an indissoluble chain, and are found, from experience as well as reason, to be peculiar to the more polished, and, what are commonly denominated, the more luxurious ages...But industry, knowledge, and humanity, are not advantageous in private life alone: They diffuse their beneficial influence on the 'public', and render the government as great and flourishing as they make individuals happy and prosperous.

Brougham went so far as to suggest that the lower orders should be taught the principles of 'political economy':

I can hardly imagine, for example, a greater service being rendered to the men, than expounding to them the true principles and mutual relations of population and wages.

So, the necessity of education for inculcating the individual's moral duty was as clear to the Scottish philosophers as it was to their Calvinist forerunners. Only, in the case of moral philosophy, one's moral duty was not to serve God, but to ensure the well-being of the socio-economic system.

Like the French, the Scottish School borrowed from Locke to buttress their faith in the power of education. In his Essay Concerning Human Understanding (1690), Locke attacked the belief that the mind contained innate ideas. Instead, he claimed, the mind was a 'tabula rasa,' upon which sensations made an impression. A corollary of this argument was that all human values are a product of environment and habit. Also, there is no natural superiority of intellect; the difference between men is a result of their upbringing. Enlightenment theorists seized upon Locke's ideas and derived several important principles from them:

ttoleration...; acceptance of the potential equality
of man...; the assumption that society by the regulation of material conditions, could promote the moral improvement of its members; a new psychology and a new attitude towards education, based on the belief that human irrationality was the product of erroneous associations of ideas, that had become fixed in childhood.

Enlightenment thinkers, as they interpreted Locke, saw great hope for the future of mankind through moral and educational uplift.

Adam Smith certainly concurred with these ideas, although he attached a characteristically economic interpretation to them. He wrote:

> The difference between the most dissimilar characters, between a philosopher and a common street porter, for example, seems to arise not so much from nature as from habit, custom, and education. When they came into the world, and for the first six or eight years of their existence, they were perhaps very much alike, and neither their parents nor play-fellows could perceive any remarkable difference. About that age, or soon after, they come to be employed in very different occupations.

The conclusion of Smith's argument is clear -- the difference between men is not a result of heredity but education.

Brougham would have agreed with Smith except in his analysis of the critical age at which a child's education should begin. For Brougham, the early formation of good habits was all important:

> If a child is neglected till six years of age, no subsequent education can recover it. If to this age it is brought up in dissipation and ignorance, in all the baseness of brutal habits, and in that vacancy of mind which such habits create, it is in vain to attempt to reclaim it by teaching it reading and writing. You may teach what you choose afterwards, but you have not prevented the formation of bad habits, you will teach in vain.
For this reason, in addition to his efforts on behalf of national education in England, Brougham was concerned with the establishment of 'Infant Schools'. Here, 'moral habits' could be instilled in young minds before they could be exposed to the "nurseries of obscenity, vulgarity, vice, and blasphemy."\(^{86}\)

Henry Brougham's conception of education and its efficacy was informed by his Scottish background. In practice and in theory, the Scots were convinced of the power of education to shape 'moral beings'. By moral beings, they meant industrious, prudent, and self-disciplined individuals who were aware of, and carried out, their duty to the community. Brougham's pride in the beneficial effects of Scottish education was thus reinforced by his training as a moral philosopher. When he saw the sicknesses which were besetting English society, it was only natural that he should regard education in 'right principles' as the remedy.

IV

Theory and practice in the Scottish milieu cannot be categorized in any artificial order of importance. Rather, they interacted in a highly complex way. Scottish intellectual life was influenced greatly by the French enlightenment, but it was also characterized by specifically Scottish feelings about society, 'natural law', and the development of industry. These, in turn, were reinforced by the contrast between the lawless, barbaric Highlands and the Protestant, commercial
Lowlands. Historical factors played an important role. Calvinism left its mark on education and the conception of work, long after it had lost its institutional power. The influx of Roman law, first through France and then through Holland, ensured a quite different legal system for Scotland than England. The harsh practice of Scottish poor relief ingrained a negative attitude towards pauperism and a distaste for charity. These and other factors all played a part in Henry Brougham's Scottish experience.

One of the most revealing summaries of Brougham's relationship to his Scottish upbringing is the letter written to Lord Ardmillan in 1859. There Brougham displayed his "honest national pride" in treating of the superiority of Scottish character, laws, and education. He lauded the effects of Scottish education on 'industry' and 'prudence'; at the same time, he was concerned to ensure its maintenance:

\[\textit{it is fit to dwell upon the common and universal effects of the system in raising the character of our people, distinguishing them wherever they go for intelligence and usefulness; for thoughtful and therefore prudent habits. The testimony is general and it is striking, which is born to them in these respects, not only by calm observers free from all national prejudice...but by employers of labour in all parts of the world both old and new...Our duty is to maintain and amend the system by all well considered measures, so that it may not only be perpetuated but improved.}\]

Similarly, Brougham called for a revival of the old Scottish poetry and language.

Even more interesting is the way in which Brougham proposed to maintain the Scottish identity. He did not argue that the
uniqueness of Scottish institutions should be respected; rather he claimed that their superiority should be recognized. Scottish words would 'improve and enrich' the English language; the 'brevity and conciseness' of Scottish law could amend English legal procedure; Scottish educational methods should be implemented in England. In order to defend his heritage, Brougham did not go to the barricades. He went on the attack. In Brougham, the Scottish School let loose an ardent nationalist on British society.

Brougham's zeal was the consequence of his training in moral philosophy. Throughout the letter, Brougham adopted the tone of a moral philosopher with his alternate appeals to 'reason' and 'sentiment'. The terminology of the Scottish School can be found there too, in Brougham's peculiar use of "science", "happiness of mankind", "virtue", and "solace". But the influence is most striking in the following statement:

It is truly gratifying to reflect that wherever a native of Scotland goes, he bears this character along with him, and finds his claim to respect acknowledged, as soon as he declares his country; not like the old Roman appealing to the fears awakened by the sound of the barbarous tyrant's name, and silencing the voice of justice or preventing its course; but representing the humane and enlightened nation which has faithfully discharged its highest duty of diffusing knowledge and promoting virtue.

Beneath the rhetoric, Brougham was underlining the duty which any individual, but especially an enlightened Scot, has towards the human community to which he belongs.
CHAPTER III

A SCOTSMAN AT THE ENGLISH BAR

O Brougham! a strange mystery you are!
'Nil fuit unquam sibi tam dispar';
So foolish and so wise—so great, so small,
Everything now—tomorrow nought at all.

Bentham
The part played by Henry Brougham in English legal reform has yet to be treated in any detail. This is odd, if only because Brougham was regarded as a great legal reformer by many of his contemporaries. His speeches on the rationalization of law, as well as his reforms in the Court of Chancery, made Brougham the darling of such popular organs as *The Times* and *The Morning Chronicle*.\(^1\) At the opposite end of the political spectrum, 'the Man at the Bar' was a prime target for Tory ballad-makers and cartoonists.\(^2\) Clearly, he was considered a figure of some importance by both sides.

However, our primary purpose here is not to measure Brougham's influence but, rather, to show how his reform activities reflected a training in Scottish law and enlightenment theory.\(^3\) In order to demonstrate the importance of Scotland, it is necessary to challenge the assumption that Brougham was a disciple of Jeremy Bentham. This involves some discussion of nineteenth century administrative reform in general.

I

All the major works on Bentham and nineteenth century legal reform posit a master-disciple relationship between Bentham and Brougham. Elie Halevy calls Brougham the "spiritual son" of Bentham, and argues that his efforts on behalf of the reform of judicial organization are evidence of Bentham's influence.\(^4\) Similarly, A.V. Dicey refers to Brougham as a "Benthamite", quoting him on the "genius and position" of Bentham.\(^5\) The famous legal historian, Holdsworth, regards Brougham as the
person who gave Bentham's theories a "practical shape." And, in a more recent book, Alan Harding claims that, although Bentham objected to Brougham's "piecemeal" and "unsystematic" reforms, Brougham was nonetheless Bentham's "disciple."

This supposed master-student relationship has not been questioned by any of Brougham's biographers. Both Aspinall's *Lord Brougham and the Whig Party* and Garratt's *Lord Brougham* acknowledge Brougham's great debt to Bentham in his views on law reform. His latest biographer, Chester New, is quite explicit on the subject:

> He never spoke, as Bentham too often wrote, as though everything was wrong and everything could be put right by a new set of theories. Nevertheless, in law reform he was the disciple of Bentham.

In the same vein, New goes to great lengths to explain away Bentham's criticism of Brougham. He claims that "Bentham was the great basic theorist; Brougham the practical reformer." Therefore, the differences between them were not qualitative but merely ones of degree.

But perhaps we should take Bentham's criticism of Brougham a bit more seriously. After all, Bentham did call Brougham an opponent in law reform. And Bentham was more than willing to go half way if it meant that even a few of his ideas might be implemented.

The failure to distinguish Brougham's ideas on law reform from those of Bentham is a conceptual one. It stems from a broader tendency to regard most nineteenth century governmental reforms as Benthamite in stamp. Since this is a problem which
will be encountered again in later chapters, it may be fruitful to deal with it in some detail here.

According to Oliver MacDonagh, the problem really began with the publication of *Law and Public Opinion* by Dicey in 1905. In this work, Dicey defined Benthamism as 'laissez-faire' individualism, and then proceeded to attribute governmental reforms between 1830 and 1870 almost entirely to Bentham's influence. The 'Dicey thesis' held the field for a remarkably long time; strong elements of his argument are present in the work of such well known scholars as Crane Brinton and William Holdsworth. In what is still the best study of Bentham and his school, Elie Halevy refers his readers to Dicey for an account of Bentham's influence on law. It was not until the 1950's and 1960's that Dicey's analysis was subjected to any rigorous criticism. During these decades, however, an extremely important and heated reappraisal of nineteenth century governmental reform took place.

Although it is quite beyond the scope of this essay to examine all the intricacies of the controversy over 'the nineteenth century revolution in government', two points are well worth our attention. The first involves Dicey's loose use of the term 'utilitarianism'. By equating such heterogeneous concepts as 'individualism', 'utility', 'humanitarianism', 'common sense', and 'utilitarianism', Dicey was able to unite all sorts of scattered reform activities under Bentham's banner. He even went so far as to claim that the reforms of Conservatives and Evangelicals were nothing more
than "a recognition of the principle of utility." In a similar way, a large number of writers after Dicey have adopted 'utilitarianism' and "Benthamism" as catch-all phrases. Unfortunately, as Dicey's critics pointed out, such usage obscures much more than it reveals.

Chester New's analysis of Brougham is a good example of the pitfalls into which such lack of rigor in definition may lead. On the one hand, New wants to argue that Brougham was a disciple of Bentham in law reforms. At the same time, he repeatedly claims that "we recognize his humanitarian outlook" in Brougham's attitude towards law reform. But are 'humanitarianism' and 'utilitarianism' as compatible as New would have us believe? According to Halevy, Bentham's system explicitly ruled out any sentimental feeling. He writes:

(Bentham) mistrusted sensibility and opposed reason to sentiment: he had already so colored the philosophy of reform in England as to distinguish it for all time from the humanitarian philosophy which prevailed in the country of Rousseau, and even that of Beccaria.

To this, we might add the country of Ferguson and Hutcheson. If New wants to claim that there were strong humanitarian elements in Brougham's legal theory, perhaps he should look for other influences than Bentham. Indeed, he might look to enlightenment thought or 'common sense' philosophy in Scotland.

The second criticism of Dicey's thesis concerns the extent of Bentham's influence. Given that Dicey's definition of Benthamism was faulty, the problem of assessing Bentham's influence remained. It was on this point that the fiercest
in-fighting of the 'nineteenth century debate' took place. Two of the protagonists, Oliver MacDonagh and David Roberts, argued that the influence which Bentham had upon governmental reform was minimal. They, in turn, were attacked by Henry Parris and Jennifer Hart, who claimed that nineteenth century reform cannot be explained if Bentham's role is excluded. But regardless of the weaknesses in Robert's and MacDonagh's arguments, they most certainly established the importance of looking closely at the workings of administrative machinery and individual reformers. In the future, historians will be forced to proceed with caution when they discuss the influence of Bentham or label each and every reform 'utilitarian'.

It is interesting to note, however, that neither Dicey nor his critics paid any attention to Bentham's legal theory 'per se'. Surprisingly, since Bentham was more interested in the mechanics and systematization of law making than anything else. If one would expect to find his influence anywhere, it is there. This observation leads us directly into the relationship between Bentham and Brougham, because Brougham is regarded as important evidence of Bentham's influence in this area. If it can be shown that Brougham's legal theory was informed by quite different considerations from Bentham's, then the argument for Bentham's influence is seriously weakened through the elimination of one of its strongest bastions. And, conversely, if Brougham's legal theory was Scottish influenced, then the role of Edinburgh University and the Scottish Bar in English legal reform must be taken into account.
II

In order to determine if our hypothesis is valid, it is necessary to examine Brougham's writings and speeches on the subject of legal reform. Brougham's most comprehensive statement on English law was his six hour speech delivered to the House of Commons in February, 1828. In this sharp indictment of the legal system, he dealt directly or indirectly with almost every department of jurisprudence. And, although it is necessary to supplement it with evidence of different kinds, the speech provides a useful focus to distinguish Brougham's ideas from those of Bentham. As we shall see, Brougham was opposed to Bentham on several extremely important points. Furthermore, Brougham's most common references were not to Bentham but to Scottish and French legal practice.

In addition to its comprehensiveness, the speech is important for two reasons. First, legal historians have viewed it as a most effective instrument of reform. J.B. Atley writes:

This speech may be said without exaggeration to have led, directly or indirectly, to a greater number of beneficial and useful reforms than any other, ancient or modern, and its extraordinary wealth of detail may be recommended to those who are inclined to scoff at the qualifications of Brougham as an initiator of legislation.

Second, and more important for our purposes, Halevy and others have pointed to this speech as conclusive proof that Brougham was Bentham's student. Halevy writes:

Upon the reform of judicial organization, Bentham's influence is still easier to determine. The great speech delivered by Henry Brougham in February 1828 developed all Bentham's theories on the reform of adjective law, from the supression of special
pleading to the institution of local courts.

Halevy was quite mistaken.

Brougham began his speech by stressing two ideas which clearly contradicted Bentham's legal theory. "To my mind", Brougham said:

he was guilty of no error -- he was chargeable with no exaggeration -- he was betrayed by his fancy into no metaphor, who once said, that all we see about us, Kings, Lords, and Commons, the whole machinery of the State, all the apparatus of the system, and its varied workings, ended simply in bringing twelve good men into a box. Such -- the administration of justice -- is the cause of the establishment of government: it is this purpose which can alone justify restraints on natural liberty -- it is this only which can excuse constant interference with the rights and property of men.

These are the words of no utilitarian, but a liberal thinker. Throughout the speech, Brougham defended the 'natural liberty' and 'rights' of men. And his faith in the jury system was almost religious. Nothing could be more antithetical to Bentham's scheme than language of this flavour. Bentham considered the concept of liberty to be a 'mischievous piece of sophistry' popularized by the likes of Montesquieu. Trial by jury, he argued was totally opposed to his system of 'natural procedure'; it involved 'delay', 'vexation', and 'expense'.

Brougham's next foray was hardly utilitarian. He condemned the practices of the Courts in Westminster-hall: King's bench, Common place, and the Exchequer. Whereas the function of these courts had once been quite separate, he argued, they now overlapped considerably. However, due to the monopolies of
advocates and the specialized technical forms in the different courts, most suits went invariably to the court of King's bench. Such an inordinate system caused a great deal of pressure on one court. Thus, Brougham claimed that the number of judges in King's bench should be increased:

If twelve was beautiful in the days of lord Coke, fourteen must now, I fear, on this account take its place; for how any one can suppose that twelve men can be able to do now, what they were only able to do centuries ago, is to me a matter of astonishment.

Even this practical reform would have been opposed by Bentham. Although Bentham was all for increasing the number of judges in the country as a whole, he was dead set against increasing the number of judges in any one court. Such an action, he believed, negated the benefits of 'individual responsibility' which might be obtained under a more natural system. As he says:

A 'board'...is a 'screen'. The lustre of good desert is obscured by it; ill-desert, slinking behind, eludes the eye of censure; wrong is covered by it with a presumption of right, stronger and stronger in proportion to the number of folds.

Only by means of 'single-seated judicature' could Bentham's 'natural system' be implemented. Bentham would later make similar criticisms of Brougham's proposals for the reform of Chancery.

But there are more productive ways of considering the influences acting on Brougham in 1828 than merely searching for points of disagreement between the philosopher and the politician. The positive influence of Scottish institutions and thought is evident in almost every theme. Brougham never mentions Bentham, but he makes numerous references to the Scottish legal system. And, in almost every case, he contrasts Scottish law favourably
The Scottish influence is evident, for example, in Brougham's lengthy analysis of the position, duties, and ideal frame of mind of a judiciary. Here, his primary target was the evil of choosing judges on the basis of party rather than merit. Comparing England with Scotland, Brougham claimed that the Scots were more liberal in choosing deserving individuals to fill judicial vacancies. In that country, a judgeship was not entirely dependant upon party politics. Brougham argued that the Scottish practice should be adopted in England.\(^\text{31}\)

Now, when I quote these instances in Scotland, I want to see examples of the same sort in England; for, however great my respect for the law and the people of the North may be, I cannot help thinking, that we of the South too, are of some little importance, and that the administration of justice here may fairly call for some portion of attention.

There was an even greater reason for ensuring that judges were not chosen on a party basis. Brougham stressed the advantages which accrued to public liberty when the judicial organs of the state were completely separate from its executive organs. Such a notion would not have appealed to Bentham, who saw the executive and judicial functions of the state as inseparable. It reflects Brougham's faith in the doctrine of a balanced government, where checks and balances ensured the liberty of the citizen. Brougham certainly derived this theory from the French writers he studied at Edinburgh University. His later writings seem to indicate that he was especially influenced by Montesquieu, whose great book \textit{The Spirit of the Laws} developed the theory most clearly.\(^\text{32}\)
Turning to the duties and education of judges, Brougham shows further evidence of his Scottish prejudices. He argued that the work of judges should be limited so as to allow more time for the cultivation of liberal pursuits "which have always formed the most accomplished lawyers." Brougham is using Scottish lawyers as his reference here. For, in Scotland, the law was perceived as 'a guarantee of a liberal mind'. And, according to Brougham, the most objectionable thing about English lawyers was that they were men of 'brutal manners and confined talents'. As for the education of lawyers 'per se', Brougham felt that they should be "accustomed to study other systems of law besides our own." This plea for a broader legal training was nothing more than an apology for the 'comprehensive approach' of Scots law.

Brougham's own 'comparative approach' helps to explain his extensive knowledge of French and Dutch law, to which he often referred in the course of his speech. One of Brougham's most treasured projects -- the setting up of local courts of arbitration -- was modelled on similar institutions in Holland and France. Such an institution, he claimed, would prevent many minor cases from reaching the higher courts.

Such a tribunal exists in France, under the name of 'Court de Conciliation'; in Denmark it exists; and for certain merchantile causes in Holland also. If it be thought too great a change to introduce it here, in what I deem its best form, I think much good would arise from a modification of it.

At a later date, when Brougham moved a Bill for the establishment of local courts, he deemed these courts of arbitration the most novel and important of the measure.
Having dealt with the administrative system as a whole, Brougham concentrated his attack on the modes of procedure by which the courts conducted their business. One might expect Bentham's influence to be greater in this area. For, was it not Bentham who deplored the rules of evidence, the delays of justice, and the anachronistic art of special pleading? And did not Brougham condemn these very things? He certainly did -- but it is to his Scottish background, not Bentham, that we should attribute his views.

In order to speed up justice and prevent intentional delays, Brougham argued that the plaintiff should be entitled to immediate justice whenever he or she seemed clearly in the right. In England, a great number of cases were not prosecuted simply because the defendant could so easily delay proceedings. Often, the case would be transferred to a higher court and the expenses involved become exorbitant. A wealthy defendant obviously had a great advantage over a man of small or moderate income under such a system. Brougham claimed that the trial should always proceed at once, in the cheapest court available, unless the defendant could show good reason why it should not. His solution was that of a Scottish lawyer:

This is a mode well known in the law of Scotland, and would put an end to all those undefended causes, which are now attended with such great and useless expense, as well as injurious delay to the parties

Furthermore, Brougham thought that, whenever it appeared that future suits might arise in any particular case, they should be dealt with straight-away. Thus, for instance, there would be no need for a new court case every time a disputed title to possession was transferred or inherited. Once again
Brougham cited the superiority of the Scottish system which "permits a declaratory action to be instituted by the party in possession or expectancy, 'quia timet', and enables him to make all whose claims he dreads parties, so as to obtain a decision of the question immediately."  

Brougham was especially critical of the manner in which evidence was admitted in the English courts. He felt that any relevant evidence should be admitted; its relative merits should be judged by the jury. One aspect of the court's attitude towards evidence struck Brougham as most 'mischievous'. This was the withholding of important written evidence until well on into a trial. Parties often kept documents such as deeds, letters, or receipts under wraps until they had determined what mode of attack their opponents might adopt. Brougham referred to this practice as 'trick and conflict'. He contrasted the rule of his native land:

In Scotland, the law in this respect is better than ours, for no man can produce a written instrument on trial without having previously shown it to his adversary...I think, Sir, the adoption of some such rule as the Scotch might be desirable.

In general, the rules of procedure and evidence were far less formal and more straightforward in Scotland. As Brougham was fond of pointing out, the Scots made no distinction between law and equity. They were not as much interested in form as they were in getting to the heart of the matter.

Perhaps the most memorable part of the speech was Brougham's sarcastic condemnation of 'special pleading'. He said that he approached the subject "with some degree of awe", since it
had been lauded by Coke as "a delightful science." But special pleading was a curious 'science' to say the least; in plain English, it meant that many cases had to be conducted according to precise technical rules and legal niceties. These often obstructed justice, since so many cases were thrown out on technicalities. Brougham's attack on the mysteries of special pleading was described by a contemporary in this way:

They are gone, for the most part. The ghosts of antique folleries that were taught in a Pleader's office were exorcised from that night of the 7th of February. Not for much longer would John Brown, complainant in an assault charge which consisted in lifting a finger against him, be made to declare that William Smith, "with a certain stick, and with his fists, gave and struck the said John a great many violent blows and strokes on and about the head, face, breast, back, shoulders, arms, legs, and divers other parts of the body..." This for a sample of the mystical worship of the Priests of the Law, before Common Sense had pulled down their idols.

This section of the speech must have been impressive to evince such strong emotion.

The question is -- in what respect did his Scottish experience affect Brougham's attitude towards special pleading? In the first place, nothing like special pleading had ever existed in Scotland. Thus, Brougham could hardly be expected to sympathize with Lord Coke's panegyric on the 'science'. Secondly, Brougham was merely following, in his critique, the rationale of an earlier Scot turned English lawyer. This was Lord Mansfield, a reformer who always turned to Roman law and Scottish practice when he deemed English law inadequate. Brougham claimed Mansfield as his authority.
Those rules, as Lord Mansfield once said, were founded in reason and good sense; accuracy and justice were their object, and in the details much of ingenuity and subtelty were displayed; but by degrees the good sense has disappeared, and the ingenuity and subtelty have increased beyond measure.

For Brougham, as for Mansfield before him, form and precedent were subordinate to 'reason and good sense'. Brougham did not need Bentham to convince him that special pleading should be abolished.

Brougham had now treated of the administrative system and its rules of procedure. In both cases, he drew strongly upon the example of Scottish legal practice. Next, he entered upon the subject of trial by juries. Scottish practice could not aid Brougham here, since the jury system had only recently been introduced in that country. On the other hand, there is little doubt that Brougham's reverence for the jury system was inspired by the French authors he studied while at Edinburgh university.

The 'enlightened Scot' regarded the jury system of England as an 'attainment of perfection' which Scotland would do well to imitate. It is interesting to note that, in the one case wherein Brougham regarded the Scottish system as inferior, he was most at odds with Bentham. In an intentional contradiction of the theory of 'natural justice', Brougham defended the use of juries as a check on bad judges as well as an efficacious method for involving common people in the legal process. He said:

"the House will permit me to say a few words upon the subject of Juries, the rather because this venerable..."
institution has, I lament to say, been of late years attacked by some of the most distinguished legal reformers. Speaking from experience, and experience alone, as a practical lawyer, I must aver, that I consider the method of juries a most wholesome, wise, and almost perfect invention, for the purpose of judicial inquiry.

Thus, in his only reference to Bentham, Brougham was decidedly negative.

Brougham moved on to point out the manifest defects in English laws on property. Here, Brougham's training in Scottish law proved most useful. He saw no reason why moveable property should not be freely alienable. However, in England much personal property was subject to the archaic and contradictory regulations of Common Law. Property in money, stocks, and bank notes were not transferable in a rational manner. For example, if a debtor owed a thousand pounds, he could not be forced to pay the sum simply because the money was readily available. The law said that 'money could not be sold', and debts were to be paid out of 'goods sold'. Under this ridiculous state of affairs, a debtor might be able to laugh at his creditors. In Scotland, on the other hand, Roman law was the source of all principles on moveable property. For this reason, it was capable of being transferred much easier than in England.

Lord Mansfield, as a result of his knowledge of Roman law, had earlier criticized this aspect of the property laws. Brougham was merely following in his footsteps. Of Mansfield, Brougham said:

"It is true, that great judge, whose merits as a lawyer were never underrated, except by persons
jealous of his superior fame, or ignorant of the law... leaned to a contrary construction of the creditors powers, and might have somewhat irregularly introduced it. But Lord Ellenborough afterwards denounced such attempts as perilous innovations.

His affinity with Mansfield should be viewed as that of one Scottish lawyer for another. For, although Mansfield was trained at the English bar, he looked to Scottish law to remedy the imperfections of the law in England.

Brougham's respect for Mansfield continued in his analysis of the laws of land, or the laws of 'real property'. Although Brougham did not desire to see landed property made too easily disposable, he believed that many of the more objectionable restraints on the alienation and improvement of land should be removed. Local customs greatly complicated the rational transfer and use of land. Men in debtor's prison were unable to sell part of their land in order to obtain their freedom -- they had to sit in jail and rot. The entire subject of inheritance, leasing, and mortgages was fraught with petty and complex rules and regulations. Brougham wanted all this done away with. But many of the reforms which he advocated had been attempted by Mansfield before him. One has only to look to Scotland to see why this is the case.

In a few areas, the laws of 'real property' in Scotland were affected by Roman law. Whenever the Scots found their own laws incomplete, they tended to look to Roman law for guidance. By and large, however, the laws controlling immovable property were feudal in origin. The feudal system in Scotland,
unlike England, was adopted wholesale and fitted in fairly well with earlier methods of land tenure. It did not have to be modified in order to conform to Common law, as was the case in the south. Therefore, the Scottish system was more uniform and consistent in its principles than the English. The conveyancing of land was, thus, much simpler. Given their first hand knowledge of the Scottish situation, then, it is hardly surprising that Mansfield and Brougham should have considered the English laws of 'real property' so incomprehensible.

We turn finally to the question of the codification of laws. Brougham emphasized the importance of codification throughout his speech. He did not, however, make any reference to Bentham's Code but, rather, to the Code of Justinian and the Code of Napoleon. Brougham's concept of a code was not 'utilitarian'. Instead, it was a means for stressing the 'principles' rather than the 'precedents' of law. Brougham certainly did not want to see the law adapted to the Procrustean bed of Bentham's 'felicific calculus'. Something more akin to the principles of Roman law was what he had in mind.

The influence of Roman law had ensured that the bulk of Scottish law was small in comparison with that of England. Brougham pointed this out pronouncedly, before concluding his speech with a panegyric on the wisdom of timely reform. Brougham's words are important, not only because they are permeated with Scottish nationalism, but also because they came at the climax of his speech.
What grounds can there be for taking alarm at the course I recommend of amendment, and proceeding by careful but general inquiry? It is, indeed, nothing new, even of late years, in this country. We appointed a Commission to investigate the whole administration of justice in Scotland; and it ended in altering the constitution of the Courts, and introducing a new mode of trying causes. Yet Scotland, to say nothing of the treaty of Union, so often set up as a bulwark against all change, might urge some very powerful reasons for upholding her ancient system, which we in England should vainly seek to parallel. She might hold up her Statute-book in three small pocket volumes, the whole fruit of as many centuries of legislation, while your table bends beneath the laws of a single reign — and of your whole jurisprudence, it may be said as of the Roman before Justinian, that it would overload many camels.

As we said in the first chapter, Brougham did not argue that the uniqueness of Scottish institutions should be respected, but that their superiority should be recognized. England would do well to imitate the legal system of the Scots.

The speech was quite a success. During its entire delivery, "there were no signs of impatience in an audience always impatient of tediousness." The next day the papers were full of Brougham. One person, however, was not impressed. Bentham felt that he had been betrayed by the person in whom he had placed his highest hopes. Then began a prolonged battle between the two reformers and their adherents in the pages of the Edinburgh Review and the Westminster Review. The argument resulted in one of Bentham's fatherly letters to his disobedient son. The letter is indicative of the wide distance between the two men. It reads:

Naughty, Naughty Boy! -- Pap for you? Oh no! no more of that — you would only puke it up again. Pap for you? No! that is not what you are in want of — you have outgrown it; what you
are in want of is another dose or two of jalap to purge off your bad humours, and a touch, every now and then, of the tickle-Toby, which I keep in pickle for you... When will you have learnt your primer? When will you be able to spell 'greatest-happiness principle; non-disappointment principle; ends of justice -- main end, giving execution and effect to the substantive branch of law'; collateral ends, avoidance of delay, expense, and vexation -- evils produced by the adjective branch? When you have got that by heart, you may then be fit to be breeched and sent to a grammar-school.

Bentham was wasting his breath -- Brougham was no utilitarian.

III

In his law reform speech, Brougham summarized many, but not all of his legal views. For example, he omitted any discussion of criminal law because he did not wish to trespass on what was considered Peel's territory. Furthermore, the speech was a theoretical piece; it tells us nothing about the way in which Brougham brought his ideas to bear in practical situations. The remainder of this chapter will be taken up with a discussion of these issues. As one might expect, Brougham's Scottish education is central to this discussion.

There is no doubt that Brougham was much closer to Bentham in his analysis of criminal law than any other legal department. He gave considerable advertisement to Bentham's ideas on the subject in his writings of the Edinburgh Review. However, one should not confuse agreement with influence. Brougham was much more of a humanitarian than was Bentham. Moreover, he was apt to poke fun at Bentham's claim to be 'scientific'. At the same time, he supported Bentham's attack on the useless
severity and patent irrationality of English criminal law. It is necessary to look to Brougham's Scottish background to see why this was the case.

Scottish criminal law was capable of being much more effectively executed than that of England; and, since swiftness and sureness of action obviated the need for harsh measures, Scotland's criminal law was far less cruel. Be that as it may, Scottish criminal law was still far too severe for a liberal thinker such as Brougham. He wrote:

> The criminal law of Scotland has at all times been greatly superior to that of England in its administration, though not in its structure. It is too severe; and, as by the principle of Scotch jurisprudence, statutes after a lapse of years, fall into desuetude, a code is more wanted there than in England.

In this passage, Brougham was primarily attacking the 'arbitrariness' of Scottish criminal law. As a young liberal in Edinburgh, he had seen its ill effects in the form of the Scotch Sedition Trials during the heyday of the French Revolution.

Still, Brougham's criticisms of English criminal law were probably derived, to some extent, from his experience with a more humane and effective system. But even if his views were not fully inspired by Scottish practice, they were most definitely influenced by French enlightenment thought via Edinburgh University. Brougham had a thorough grounding in 'natural law' theory and the works of Montesquieu and Beccaria. In fact, he often cited these writers in his essays on Bentham's critique of criminal law. Therefore, Brougham's views on penal
law were already well formed before he read Bentham's *Theorie des Peines et des Recompenses*. In any case, Bentham's philosophy of penal law was highly unoriginal. As Halevy points out, it was derived wholesale from Beccaria:

In what then does Bentham's originality in relation to Beccaria consist? It consists in that superior faculty of logical arrangement which was destined one day, after many vicissitudes, to set him up as the head of a school.

Brougham would have held the same views on penal reform if Bentham had never existed.

Brougham's philosophy of criminal law, then was derived from enlightenment thought, with specific reference to continental thinkers. The specifically Scottish influence becomes more apparent in Brougham's practical activities, first as a lawyer, and later as Lord Chancellor. Although it would be beyond the scope of this paper to give the details of Brougham's colorful legal career, some examples will be sufficient to convey a general impression.

In 1827, Brougham acted as counsel in the Wakefield case. The particulars of the case are interesting, primarily because of the legal questions involved, but also because they show the lengths to which some individuals were willing to go in order to marry wealth. A young English heiress of fifteen was tricked into crossing the Scottish border and marrying a crafty old man. She had been told that her father was in prison, and could only be released if she married. Upon returning to England, the girl discovered the fraud and tried to have the marriage annulled. However, the case was thrown out of court on the grounds that
only the Scottish courts had jurisdiction to dissolve it. Thus, Brougham's client was forced to remain married to her abductor.

Brougham's criticism of this judgement was threefold. First, he claimed that it was "contrary to natural justice." Second, it was inconsistent with any of the "principles" of the law against fraud. Third, it transgressed against international law, which stated that "no nation has a right to become the means of destroying another's institutions." Unfortunately, Brougham's objections to the decision followed from his training in Roman law and his adherence to the principles of Scottish moral philosophy. Such considerations had no validity in English Common law, which placed precedent above principle and refused to accept the notion of an abstract 'justice'. According to their own lights, the English courts were quite correct in throwing the case out.

The case evidences Brougham's knowledge of and respect for Roman law. During its course, a Scottish lawyer was called upon to show that the marriage was valid under the law of Scotland. In his cross examination, Brougham drew heavily from the principles of Roman law:

(Brougham) Is not the Civil Law of high authority in the Scotch law of marriage? and does not the Scotch law import into the law of marriage the principle of the Roman law, 'consensus non concubitus facit nuptias'?

(lawyer) It does: and we long used to go by the Civil Law, but we now think we have cases on which we can proceed.

(Brougham) But the Civil Law principles are of high authority as respects the Scotch law of marriage?
(lawyer) Certainly.

(Brougham) Are you not aware it is a principle in the Civil Law, that a contract is void "cui dolus dat locum;" that there is a principle in the Civil Law which voids a contract of that sort?

Brougham's devotion to principle was such that he was willing to bring this case, or any particular instance, under it. Like Mansfield before him, Brougham refused to accept purely technical arguments. 72

Much to the chagrin of the lawyers who practiced in his court, Brougham continued this practice after he became Lord Chancellor in 1830. He was ever impatient of the 'vain subtelties and absurd refinements' of the suits presented before him. 73 This impatience often led Brougham to make hasty and ill-formed decisions. Atlay, in The Victorian Chancellors, has pointed to the serious errors of which Brougham was guilty, as well as his defective knowledge of the law of equity. 74 Still, it appears that much of Brougham's "ignorance" and "precipitation" was attributable to his desire to reduce cases to basic principles, rather than any "carelessness" or "incompetence." 75 And it is hardly surprising that the Bar would have a bad opinion of this sort of reductionism. On the other hand, this practice would have been quite acceptable in the Scottish courts. There, no distinction was made between 'law' and 'equity', and 'equity' was usually equated with the principles of natural justice.

As Lord Chancellor, Brougham was to further disappoint Bentham. One of Brougham's proposals even resulted in Bentham
calling him "an enemy". This was Brougham's resolution to absorb the Courts of the Vice-Chancellor and the Master of the Rolls into the Chancery Court proper. The rationale behind the measure was a liberal one -- three equity judges, instead of one, could act as a check upon biased or mistaken judgements. Bentham severely attacked Brougham on this matter (as well as his love of juries) in an essay entitled "Boa Constrictor, alias Helluo Curiarum," in which he defended 'single-seated' justice and ridiculed the liberal theory of checks and balances. Bentham wrote:

> For my own part, my own opinion, right or wrong, is at any rate clear, determinate, and self-consistent: it is -- that so far as depends on 'number', in the case of a judicial situation, aptitude is as the number of the functionaries occupying it, inversely.

Bentham was no liberal; Brougham, as a product of Edinburgh University, was.

IV

In practice, therefore, as well as in theory, Brougham was a product of his Scottish background. As we have tried to demonstrate, two elements converged to form his attitude on the reform of English law. Edinburgh liberalism, derived from French thinkers such as Montesquieu, constituted one element; Scottish law, with its reliance on rational principles and Roman law, was the other. One should not separate these elements too rigidly, however, since the Scottish Bar was regarded as 'the guarantee of a liberal mind'.

If this interpretation is correct, then the notion that Brougham was Bentham's 'disciple' can no longer be entertained.
Moreover, if Brougham's legal activities were inspired by his Scottish cultural and practical environment, then the relationship of Bentham to nineteenth century law reform must be reappraised. Bentham should be placed within the reform tradition, rather than as its 'deus ex machina'.

Jeremy Bentham was more aware than his biographers of the differences between Brougham and himself. He realized, too, that most of these differences were attributable to Brougham's formative years in Scotland. As a matter of fact, Bentham lampooned one of Brougham's Bills by referring to its Scottish authorship:

Noble and learned eyes! can you carry yourselves so far as to the other side of the Tweed...

In Scotland, had not the noble and learned father of this act, if not the whole, the last and finishing part, of his education? In his advocate's shape, did not -- in his chancellor's state, have not already -- those same noble and learned eyes found need to carry themselves all over that part of the island?

Indeed they had.
CHAPTER IV

THE POOR LAW DEBATE

I renounce any connection with a society speaking of men as mere animals, of rearing them and sending them to market!

Anonymous
Most of Brougham's energy was directed at the reform of the 'lower orders'.¹ He considered legal reform secondary to the decisive task of indoctrinating the poor with a new mentality consistent with a developing industrial society.² Such a design involved much more than a redirection of traditional frames of reference. It was tantamount to the creation of a completely new human nature, with unique incentives to behavior. For Brougham, one formidable obstacle stood in the way of this re-modelling of the poor. That obstacle -- which he described as a 'stalking monster' -- was the Poor Law.

While the problem of the 'lower orders' was certainly not a new one, its focus and significance had shifted considerably by the time it had attracted Brougham's active attention. The late eighteenth and early nineteenth century witnessed a spate of pamphlets declaring that the fundamental impediment to the improvement of the labouring poor was the corrupting influence of the Poor Law. The three most frequent criticisms of the Poor Law were: it discouraged labour by rewarding idleness; it encouraged improvidence; and it decreased the 'real' price of labour by denying it mobility and a competitive market. Though the critics disagreed widely upon the solution, most were convinced that something had to be done quickly. It was within such a context that Brougham first addressed himself to the problem of the poor. In 1817, he wrote:³

The course of proceeding which the legislature ought to pursue in dealing with the estates of the poor, is a subject of peculiar delicacy and closely connected with the great question of the Poor Laws. It is

³
chiefly in this connection, that I have from the beginning been induced to regard both the subject of Charities and of National education. Because this 'great question' dominated contemporary thought on the reform of the 'lower orders', it warrants some general consideration here.

I

Contemporary scholarship on the Old Poor Law is almost invariably concerned with the so-called Speenhamland system, introduced by the Berkshire magistrates in 1795 and finally abolished by the Poor Law Amendment Act of 1834. Historians have offered arguments for and against this system of relief to the able-bodied labourer. In the process, they have bandied about a good many ideological assumptions about the nature of man and the development of history. But only recently has any serious research been undertaken to determine the way in which this system worked in practice. The findings of historians such as Mark Blang and James Huzel indicate that the practice of outdoor relief was not as widespread or significant as was once believed. What little effect it did have was probably beneficial in the sense of preventing unnecessary suffering and rural riot.

Unfortunately, this kind of information tells us very little about the perception of pauperism by Brougham and other contemporaries. They had neither the statistics nor the sophisticated analytical tools to arrive at these conclusions. Regardless of the actual effects of the relief system, it is nonetheless clear that a great many intelligent men came to
perceive it as a serious disease in the social organism. And, while it would be assuming too much to attribute the Poor Law Amendment Act primarily to their influence, their protests certainly did become embodied in the powerful doctrines of classical economy. Furthermore, their perception of dependant poverty has had a remarkably long life. In 1928, George Orwell was struck by the fact that unemployed Englishmen were 'ashamed' to be out of work, despite the realization that no jobs were to be had. These 'loafers on the Dole' had truly internalized the economic belief that poverty was a personal failing rather than a social problem.

This attitude towards dependence was clearly articulated in the Poor Law Report of 1834, a synthesis of enlightened contemporary opinion on the nature of pauperism and its remedy. Extolling the virtues of prudence and self-help, the Report advised that the workhouse replace outdoor relief as the means for alleviating destitution. According to the Commissioners, in order that idleness and fraud might be discouraged, the workhouse situation was to be 'less eligible' than that of the lowest paid worker. In this way, the Report attached a stigma to dependant poverty which even the experience of the depression of the 1930's could not eradicate.

In their pioneering study of the English Poor Law, the Webbs placed a misdirected emphasis on the Commissioner's Report. They assumed that the Report brought into being the Poor Law Amendment Act of 1834. In all probability, however, the New Poor Law reflected more the state of the honourable
members' purses than the application of any abstract theory of pauperism. The poor rates were paid by landowners and, until the twentieth century, landowners dominated Parliament. It may well be that the rapidly rising cost of providing for the poor decided the issue. In any case, the Act was so seriously modified in practice as to be a pale reflection of what the Commissioners had intended. Again, its real significance rested in the perception of poverty which it helped to establish.

Whence did the Commissioners derive their analysis of pauperism? This question remains to be answered satisfactorily. Sidney and Beatrice Webb made the mistake of attributing the ideas in the Report solely to the influence of Bentham and Malthus. They claimed that Malthus' theory of population and Benthamite utilitarianism were the Commissioners' guiding lights. The Webbs' assumptions, supported by scanty evidence, have had a noteworthy staying power. In his essay on poor law research, J.D. Marshall states that there is "little doubt that the Commission was influenced, decisively, by utilitarian thought." In a similar vein, Mark Blaug singles out Malthus as the villain of the Poor Law debate.

Without denying the important contribution of individual thinkers such as Bentham and Malthus, it is suggested that the Webbs have led historians on an unfruitful chase. The singling out of 'influential' intellectuals has resulted in a general blindness towards the rich and complex debate on the labouring poor which was carried on throughout the eighteenth century and
continued on into the nineteenth century. Even J.R. Poynter's important work *Society and Pauperism* fails to remedy this lack. By emphasizing the subtle, varied, and contradictory opinions on dependant poverty between 1795 and 1834, the author does make a determined effort to place Bentham and Malthus within the debate rather than at its head. Still, the period Poynter covers is far too short, while the number of positions he examines is too large. The result is a somewhat superficial treatment of the question of pauperism as a whole.

In order fully to understand the attitude which Brougham and some of his contemporaries held towards pauperism, it is necessary to reach further back into eighteenth century conceptions of poverty and labour. In his classic study, E.S. Furniss claimed that a dominant belief of eighteenth century observers was that poverty was not only inevitable but imperative. Only through fear of starvation was it possible to force the stiff-necked poor to perform degrading but necessary labour. Such an attitude was intimately connected to the belief that manual labour was inherently servile and unpleasant. This may have been the dominant paradigm, but if A.W. Coats is correct, then it seems that a quite contradictory view existed alongside it. In "Changing Attitudes to Labour in the Mid-Eighteenth Century," Coats argues that the belief that the poor would respond to labour incentives was gaining ground throughout the eighteenth century. In fact, some thinkers, primarily Scots, claimed that a man had a 'natural impulse to industry' just as long as he was rewarded for his labour.
By the nineteenth century, the latter view had gained considerable support. For those who believed that work was 'natural' and that the poor would respond to economic incentives, the Poor Law could be regarded, at best, as a necessary expedient. More often, it was seen as a dangerous and pernicious institution. It negated man's natural inclination and moral duty to work by granting him a 'right' to subsistence regardless. Like many of his contemporaries, Brougham was highly critical of this "idea of a right." He even went so far as to call for the total abolition of the Poor Law.

However, it is far too simplistic to say that Brougham was one of those who regarded pauperism in a new light and to leave it at that. New attitudes do not arise out of thin air. The crucial factor in the development of Brougham's ideas, and a significant variable throughout the Poor Law debate, was that of the Scottish conception of work and pauperism. There is little doubt that the new attitude was most clearly formulated by members of the Scottish School of moral philosophy. Both Hume and Smith, as well as the lesser luminaries of the Scottish School, regarded an increase in the standard of living of the lower orders as "an unmistakeable indication of national well-being." It is also clear that a majority of the propagandists in the Poor Law debate accepted this view. Regardless of whether or not they wished to see the Poor Law abolished in its entirety, the pamphleteers usually agreed that labour should receive its just reward. This was as true of Cobbett and Oastler, as it was of men like Brougham.
The importance of the Scottish School in the spread of a new conception of the economic rationality of the worker and the advantages of high wages should not be underestimated. Not until the mid-nineteenth century, at which time workers began to adjust to the rules of the marketplace, did any more than a small minority of workers respond to monetary incentives. Nor did employers see any benefits in incentive payments and 'intensive labour utilization' until late in the century. Yet the theorists who attacked the administration of relief demonstrated a perceptiveness far in advance of those actually engaged in labour and production. Implicitly or explicitly, they assumed that all men were potentially rational and calculating in Adam Smith's terms.

The Scottish School had done a good job of disseminating its doctrine. Townsend was well acquainted with the principles of the 'Edinburgh literati'; Bentham claimed that he was following Smith in his attack on low wages and the Law of Settlement; and Eden titled himself 'a disciple of Adam Smith'. In his interesting pamphlet entitled "The Condition of the Labouring Classes of Society", John Barton claimed to be arguing from the "incontrovertable opinions of Locke, Hume, and Smith" in his attack on the merchantilist theories of Young. And similar references may be found in many of the tracts written against the Poor Law. Brougham, of course, was forever referring to Scottish thought in his writings and speeches.

While the Poor Law propagandists drew upon Scottish philosophy, many pointed as well to Scotland's superior system
of administering relief. Again and again, they cited Scotland as a country without any legal provision for the poor yet with a hard-working, obedient labour force. Champions of the Scottish system, such as, Townsend, Davies, Rickman, Chalmers, Curwen, Brougham and Whitbread, attributed the superiority of the Scots to the fact that their system of relief was a voluntary one. Their writings greatly distort the real situation, however. Scottish conditions were not as satisfactory as the critics of the English Poor Law were inclined to believe. Scotland, in the early nineteenth century, was facing its own problems with the poor and many Scots were beginning to look to the example of the English Poor Law as a possible solution. And, as George Rose pointed out in his pamphlets, relief in Scotland was not as voluntary as it seemed. Kirk heritors had considerable powers of assessment, and called upon the common law to force compulsory contributions under special conditions. Thus, one should not assume that the Scottish working classes were much better off than their English counterparts. There was truth in Cobbett's derision of the "impudent Scotch quacks" who railed against the English Poor Law but overlooked the suffering in their own country.

Nevertheless, even those who did not swallow the myth of the industrious and obedient Scot were usually willing to admit that the Scottish system was an improvement over that of England. It at least discriminated between the able-bodied labourer and the sick or aged. Furthermore, it did not divert large sums of money from industry to the support of a stagnating rural
society. Among those who looked to the Scottish model on these grounds we can number: Chadwick, Eden, Malthus, Rose, Romilly, and Sturges Bourne.28

Thus, the variables of Scottish thought and practice concerning the treatment of pauperism are crucial to an understanding of the early nineteenth century debate on the Poor Law. The relationship of those variables to actual policy decisions is difficult to assess. The increasing cost of poor relief was an important factor in the demise of the Old Poor Law. Dramatic social change and problems such as the agricultural distress of 1815, the agitation for relief in Ireland during the 1820's, and the Captain Swing riots of 1830, all played an important role in bringing the problem of pauperism forward. However, it seems probable that the Scottish attitude had some effect on the formulation of a solution. More important, this attitude has remained with us in the modern age.

The influence of Scottish ideas on Henry Brougham is much easier to determine. We have already shown that Brougham was a product of the Scottish School and an extremely nationalistic defender of Scottish institutions. What remains is to demonstrate how Brougham evidenced these traits in his attack on the English Poor Law.

II

Brougham and several other former students of Edinburgh University were fortunate in being able to use the Edinburgh
Review as a vehicle for the spread of Scottish ideas on work and pauperism. The Edinburgh Review maintained a constant and severe criticism against the English Poor Law policy during the early nineteenth century and educated a significant sector of British society in abolitionist principles. Among its contributors were two of the fiercest opponents of outdoor relief: Chalmers and Brougham. Malthus, too, wrote a number of articles for the publication and the Review was from the first a staunch supporter of the Malthusian doctrine as it applied to the Poor Law.

There appears to have been a fairly consistent division of labour among the contributors to the Edinburgh Review on the problem of the poor. John Allen, Sidney Smith, and, of course, Thomas Chalmers, wrote most of the articles on the Poor Law, while the education of the poor was considered to be Brougham's territory. However, one should not assume that the two issues were distinct in the minds of the reviewers, quite the reverse. Thomas Chalmers, for example, in his essays on "Causes and Cures of Pauperism", argued that the operation of the Poor Law "sustains the whole fabric of pauperism." "A powerful safeguard against that degradation of character among the people", he went on to say, was "moral education" in "industry" and "frugality". Similarly, Brougham made innumerable damning comments on the operation of the Poor Law in his essays on the education of the poor and the state of the nation. A few examples will suffice to indicate his views on the subject.

"Two facts speak a language which cannot be disregarded,"
Brougham wrote in an article of 1813: 33

1st, There is no poor-rate in Scotland. In England every eighth or ninth man is a pauper; and the poor's rate, which was a little under five millions ten years ago, is probably as much more than six at present. 2nd, According to the criminal calendars of the two countries, for every single criminal in Scotland, in an equal quantity of the population, you have eleven in England.

Like many of his fellow reviewers, Brougham was fond of condemning the Poor Law by comparing the Scottish situation with that of England. Indeed, Brougham's nationalistic pride comes out in almost every article he wrote. 34 He believed that the lower orders of Scotland were morally, as well as intellectually, superior to their English counterparts. The English Poor Law had sapped the moral fibre of the populace; in its wake had come vice, crime, and insurrection. In a later writing, Brougham claimed that the Poor Law was the most important problem facing the Legislature and that it should be abolished altogether. 35 At the very least, he argued, relief should be withdrawn from the able-bodied poor: 36

in a little more than twenty years it would leave no poor to be provided for, except those who are incapable of working, from accident, disease, or age. There may be a question whether even these ought not to be left dependant upon private charity, but, at all events, the poor from want of employment, should look to this source of support alone.

Harsh words, indeed, for the modern ear! Still, one should be wary of accusing Brougham and his colleagues of a lack of genuine sympathy for the plight of the poor. The reviewers could argue with Malthus that the Poor Law was cruel because it depressed the wages of labour, thus negating the effect of money
incentives. Furthermore, it sapped the worker of his self respect and left the poor at the mercy of positive checks towards population growth. But, above and beyond that, they believed that the problem of the deserving poor could be eliminated through private charity. So central was this belief that Brougham railed against a fellow abolitionist, Arthur Young, for advocating that all alms should be abolished. Brougham labelled Young a man who had forgotten "the common language and feelings of humanity." Even Malthus, the hero of the Edinburgh Review, was not free from criticism on this score. One reviewer wrote:

There is no danger that the liberality of individuals will ever flow so certainly, or so abundantly, as to draw after it any sort of dependance....genuine benevolence, in short, visits and relieves distress without any strict inquiry into its cause, wherever it is found. We cannot therefore agree with Mr. Malthus, that the hand of private benevolence should be very sparingly stretched out.

This theme recurs again and again in the articles of the Edinburgh Review. And, it stems directly from the moral philosophy of the Scottish School.

Brougham often referred to Adam Smith's theory of 'natural sympathy' in his own writings, but the clearest articulation of this position is found in the essays of his associate Chalmers. The 1818 essay "Causes and Cures of Pauperism" reads in parts like a deliberate parody of Adam Smith's Theory of Moral Sentiments. All men, Chalmers writes, are led by "that great law of the human constitution....to associate with similar circumstances." In other words, it is a principle of man's
nature that he should sympathize with his poorer brethren. Unfortunately, Chalmers claimed, this feeling had become 'fettered' through the compulsory aspect of the Poor Law. The Poor Law needed to be abolished in order that men's kindlier feelings could work freely again. Only then, will men have restored "to Benevolence all its lovely and endearing attributes, without robbing it of one partical of its efficiency." 41

Malthus, as we have already shown, was taken to task for failing to recognize the power and beauty of benevolence. Nevertheless, it remains true that he was the darling of the Edinburgh Review up until the 1820's when McCulloch became the periodical's principal writer on economics. However, if we are really to grasp Malthus' appeal for Brougham and his friends, we must examine the respective positions of both more closely.

In Scotch Reviewers: The 'Edinburgh Review', 1802-1815, John Clive claims that the reviewers were staunch Malthusians. 42 On first glance, Brougham's writings seem to bear this interpretation out. In an essay entitled "O'Connor's 'Present State of Great Britain'"; Brougham praised Malthus' theory of population. He referred to Malthus as a genius in almost every one of his essays on education. Furthermore, he defended Malthus against Cobbett's attack in a review of Cobbett's Cottage Economy. 43 Nevertheless, there were extremely important differences between Brougham and Malthus. In the first place, Brougham's theory of the development of civilization was taken from enlightenment thought and was, therefore, much more optimistic.
It is for this reason that one finds no reference to anything like the wage theory which was so crucial to Malthus' position. Secondly, the Malthusian doctrine did not center around the question of the Poor Law. In fact, Malthus tended to be rather contradictory about the possible influence of the Poor Law on population growth. Initially, he attacked the Poor Law as a stimulus to population. However, in later writings, he tended to claim that the influence of the Poor Law on population was minimal and rested his case, instead, on the fraudulent nature of the Poor Law in promising alleviation from suffering. The 'Edinburgh Reviewers', on the other hand, were almost totally concerned with the application of Malthus' theory to Poor Law policy. Thus, they were Malthusian in only a very narrow sense.

Malthus held a strong appeal for the reviewers because he called for the total abolition of the Poor Law. Most English writers, including Bentham, were not prepared to do away with organized relief entirely. Brougham and his colleagues, on the other hand, had the 'voluntary' system of Scotland in mind. They thought the English system irrational in principle as well as inefficient in administration. Malthus could be used to support their argument. At the same time, Malthus was ignored or attacked whenever he contradicted the teachings of the Scottish School. His concern to keep wages low and his distrust of benevolence could not be reconciled with the doctrines of Adam Smith or his followers in the 

When an important element of Malthus' theory is examined, it
is possible further to understand its appeal to Brougham and the reviewers. That element is the religious value which Malthus attached to 'work' and 'idleness'. Malthus continually associated work with order, calling, and God's blessing, whereas idleness and irregular habits he associated with dissipation, depravity, and sin. He believed that 'constant and regular exertion' would enable an individual to "avoid evil and pursue good;" indolence would have the reverse effect. As seen in Malthus' eyes, therefore, work was much more than a matter of personal or social interest; it was a religious duty. Thus the concluding lines to the Essay on Population:

Evil exists in the world not to create despair but activity. We are not patiently to submit to it, but to exert ourselves to avoid it. It is not only the duty of every individual to use his utmost efforts to remove evil from himself and from as large a circle as he can influence, and the more he exercises himself in this duty, the more wisely he directs his efforts, and the more successful these efforts are, the more he will probably improve and exalt his own mind and the more completely does he appear to fulfill the will of his Creator.

Malthus' message is clear. Idle hands are the devil's workshop; work is a reflection of godliness.

Not coincidentally, the members of the Scottish School of moral philosophy entertained a similar attitude to work and idleness. This attitude had its roots in the Calvinist religion, which dominated Scotland's cultural and intellectual life until the second half of the eighteenth century. Calvin's God had demanded a life not only of godly works but also of Godly discipline. Our purpose here is not to examine the mechanism by which this moral commandment to orderly exertion
was transferred into the materialistic philosophy of the Scottish School. Nevertheless, it was clearly there. The writings of Scottish philosophers, such as Reid and Ferguson, reflected an inbred disgust for idleness quite religious in its flavour. For them, as for their Presbyterian forerunners, disciplined work was a holy thing.

Thus, a basically Calvinistic perspective was deeply imbedded in the fabric of the moral philosophy in which Brougham and his friends were steeped. As John Clive puts it: \(^{48}\)

Their native country supplied the reviewers with a two-fold heritage: Puritanism and Enlightenment. They retained the ethical postulates of the former along with the intellectual presuppositions of the latter.

This goes a long way towards explaining the great esteem in which Malthus was held by the reviewers. Their kinship with Malthus was as much religious as it was intellectual.

In their attack on the Poor Law, therefore, Brougham and the other reviewers showed themselves to be products of their Scottish heritage. They used Malthusian tenets, but only to a very limited extent. On crucial points, such as the wages of labour and the workings of charity, they remained closer to the teachings of Adam Smith. But, like Malthus, the reviewers attached fundamentally Calvinistic values to work. They viewed the Poor Law, on principle, as destructive of these values, and they attacked it with a religious fervor.

III

Brougham and Chalmers vigorously attempted to spread their
views to educated Englishmen through the pages of the Edinburgh Review. However, the printed page was only one of the fronts on which the battle against the Poor Law was taking place. Brougham simultaneously carried the fight into the House of Commons.

When Brougham re-entered Parliament in 1816 as a member of the borough of Winchelsea, the country was feeling the effects of what many thought to be a severe agricultural depression. Although the period from 1815-1836 is viewed by modern historians as one of agricultural re-adjustment rather than depression, many large farmers certainly did feel the pinch of post war prices. Brougham came to their defence on April 9th, with a powerful speech on the 'Distress of the Country'. Here, he argued that while some decline in agricultural profits had been inevitable, the underlying cause of agricultural suffering was the Poor Law. The landed interest had been unjustly burdened with an excessive and unnecessary expense, since the Poor Law only spread the disease which it was supposed to remedy. Brougham continued:

I confess that I see but one radical cure for the state into which this last abuse is daily growing worse, degrading its whole economy, debasing its national character....it is the one which follows so immediately from the principles unfolded in Mr. Malthus' celebrated work.

At the very least, Brougham said, relief should henceforth be withheld from the able-bodied labourer. Ideally, voluntary charity should replace all forms of institutionalized assistance.

Brougham intended to follow up this attack with a bill of his own for the abolition of the Poor Law, but his work on
education and charitable abuses kept him too busy. Nevertheless, he did hope for some good results from Sturges
Bourne’s Committee on the Poor Law which was set up in 1817.
John Curwen, a political ally of Brougham’s with similar views
on education and the Poor Law, had moved that this committee be
set up in 1816 and again in 1817. In his motion to strike a
committee, Curwen praised Scotland as an example of “the
influence of moral and philosophical principles on the conduct
and character of a nation.” According to him, it was Scotland’s
system of voluntary charity and ‘moral education’ which had
prevented the spread of poverty and the debasement of labour.
Curwen suggested that the same remedy would prove effective in
England. Brougham could not have agreed more. When the
committee laid the Statement of the General Assembly of the
Church of Scotland on poverty before the House, Brougham exclaimed
that “none were more qualified to judge of the exigencies of the
poor, and of the best mode of providing for those exigencies.”

The end result of Curwen’s efforts was disappointing. He
was unable to convert the other members of the committee to the
abolitionist position. Consequently, the Poor Law Amendment
Bill of 1818 was an extremely weak measure, hardly touching on
any of the most fundamental problems. Brougham threatened to
bring in a bill of his own. At the same time, he was only too
aware that any bill calling for drastic changes in the treatment
of the poor would come up against considerable opposition in
the House, and would most surely be rejected by the Lords. Thus,
Brougham eventually declined to submit his plan at that time,
lest it "scare" too many of his colleagues in the House. Brougham was not able to exert effective political pressure for Poor Law reform again until 1831. At that time, he became a member of the Whig administration and, in typical Brougham fashion, forced his party's hand on the issue. Lord Salisbury had just moved a resolution for the reform of the Poor Law in the House whereupon Brougham asserted that a bill was presently being drafted on that very subject. Then Lord Salisbury gracefully withdrew his motion in expectation of a government bill. But the whigs had absolutely no intention of drafting any plan for Poor Law reform at that time. Melbourne was completely taken aback by Brougham's rash statements. Nevertheless, Brougham had now forced his party to act. He, more than any other, can be said to have been responsible for the establishment of a commission to enquire into the operation of the Poor Law.

In *Passages of a Working Life*, Charles Knight tells how ardently Brougham followed the progress of the commissions:

The Chancellor took an especial interest in the inquiries that were then proceeding under a Royal Commission as to the administration and operation of the Poor-Laws. Evening after evening would his Dispatch-box bring down some Report of the Assistant Commissioners.

In addition, Brougham made an important behind the scenes contribution to the investigation. It was he who suggested that Assistant Commissioners be appointed to travel around the country in order that first hand evidence might be obtained. The usual practice in commissions of this sort had been the
rather dubious one of hearing oral evidence from all interested parties. Brougham's innovation helped give the commissioner's Report a scientific credibility among contemporaries.

In fact, contemporaries recognized Brougham as the leader of the Poor Law reform movement. They had adequate reason to do so. Besides his activities behind the scenes and in the Cabinet, it was Brougham who convinced Harriet Martineau to enlist her pen in the service of reform. Miss Martineau's simplistic series, appropriately entitled Poor Laws, probably had more effect, and most certainly a greater readership, than the commissioner's Report and all the tracts written against the Poor Law put together. In gaining her assistance, Brougham evidenced a shrewd perception of the need for public support. For public opinion outside Parliament was distributed heavily on the side of the Old Poor Law. Richard Oastler called Brougham a 'cold, calculating Scotch Malthusian' and claimed that he was totally ignorant of the condition and feeling of the English peasantry. Most people were inclined to agree with Oastler. Even Brougham's most loyal supporter, The Times, could not reconcile Brougham's attitude towards the Poor Law with his more popular views on reform, despite the fact that he had made the connection quite clear in his writings and speeches.

His lack of support in the country did not hamper Brougham from carrying through with his crusade. He played a dramatic role in the carrying of the Poor Law Amendment Bill of 1834 through parliament. In fact, contemporaries thought that his
famous speech on the second reading of the bill in the House of Lords was the decisive factor in its passage. \[^{61}\] Their comments notwithstanding, it is extremely difficult to measure the effect of a single speech on a money issue such as this. Furthermore, the Lords were no doubt prodded in their decision by the fear of renewed labour riots which were thought to stem from the maladministration of the Poor Law. \[^{62}\] The really interesting thing about the speech is its theoretical basis.

Nassau Senior called Brougham's speech a "philosophical disquisition," and so it was. In fact, Althorp and Melbourne vaily attempted to talk him out of giving it once they had been informed of its content. \[^{63}\] For Brougham's speech did not merely treat the bad administration of the Poor Law, it also condemned the principles on which it was founded. Brougham went much further than the Commissioner's Report in suggesting that a system of institutionalized relief was inimical to the laws of political economy as well as the moral law. Brougham's colleagues were afraid that such extreme views would alienate the Lords. Fortunately for the Whig cause, the speech was received favourably.

For our purpose, the significance of Brougham's speech resides in the way in which it summarizes his attitude towards the English Poor Law and pauperism in general. Brougham began by re-iterating the rather commonplace argument that the able-bodied labourer should be less eligible for relief than the more deserving poor. Very quickly, however, he expanded this argument to claim that any fixed and permanent fund for the relief of the poor was a disaster. Not only would it encourage
individuals to remain idle and imprudent, but also it would remove from the more fortunate members of society their Christian duty to help the poor. Brougham said:

For most certain it is, that anything more mischievous, anything more fatal to the country, anything more calculated to multiply, indefinitely, the numbers of the poor, cannot be conceived, than the applying to them any regular and fixed provision, be it tithe or be it tax, which they can claim at the hands of the rich, except by the force of that duty of imperfect obligation -- private charity which is imposed upon all men.

An abolitionist position, combined with a firm belief in the efficacy and moral imperative of benevolence, is clearly at work here.

Brougham turned next to the effect of the Poor Law on work and idleness. It was man's moral duty, he claimed, to work. The Poor Law was immoral in that it encouraged the greatest of all temptations to vice -- idleness. If God had commanded men to work, the Poor Law encouraged the exact opposite. Thus, the Poor Law was to be attacked because it was sinful, not simply because it was dangerous or inefficient. Brougham evidenced this attitude towards work in the following vehement passage:

The dispensation of wrath, which appointed toil for the penalty of transgression, was tempered with the mercy which shed countless blessings upon industry -- industry, that sweetens the coarsest morsel, and softens the hardest pillow; -- but not under the Poor Law! Look to that volume, and you will find the pauper tormented with the worst ills of wealth -- listless and unsettled -- wearing away the hours, restless and half-awake, and sleepless all the night that closes his slumbering day, -- needy, yet pampered -- ill-fed, yet irritable and nervous. Oh! monstrous progeny of this unnatural system, which has matured, in the squalid recesses of the workhouse.... Industry, the safeguard against impure desires -- the true preventative of crimes; -- but not under the Poor-law! Look at that volume, the record of idleness, and her sister guilt, which now stalk over the land.
Obviously, this evocation of the 'dispensation of wrath' was not typical of British writers on the Poor Law. It was, however, in the spirit of pamphlets written by Dissenting clergymen and Scots. Brougham had inherited a Calvinistic perspective from the Scottish School of the eighteenth century. Therefore, like Malthus, his opposition to the Poor Law contained a powerful religious element.

According to Brougham, there was no excuse for such a pernicious and immoral system. The example of Scotland provided sufficient proof that the Poor Law merely increased the evil which it was set up to prevent:

The good effects of a rigid abstinence, in administering relief have been strongly exemplified in Scotland, and yet that experience has been quite thrown away upon England... The Scotch -- a careful and provident people -- always watchful and fearful of consequences, kept an exceedingly close hand upon the managers of the poor's fund, and did everything in their power to ward off the necessity of assessments.

Consequently, the Scottish people were not burdened with an excessive rate and the labouring class of that country had not been demoralized. Brougham believed that England must 'tread back her steps' in order to achieve the salutary state of her northern neighbour.

Brougham concluded his speech with a long-winded eulogy on political economy. Distressed by the "grovelling and ignorant" derision of the Economists by many Englishmen, he said that he was proud to follow in the footsteps of these illustrious men. Not surprisingly, Brougham had his choicest words of praise for Adam Smith. But he also included Quesnai,
Turgot, and the other French philosophers among those who deserved the laurels of mankind. It was only fitting that Brougham should end his critique of the Poor Law with such an analysis. For, it was the development of the laws of political economy which marked the greatest contribution of the Scottish School to the intellectual heritage of the nineteenth century. And, according to these laws, it was necessary that a free market in men and goods be established. Before this might take place, however, the Poor Law had to be done away with.

Following Adam Smith and Malthus, Brougham condemned the Law of Settlement as an impediment to the flow of labour and an incentive to pauperism and improvidence. The provisions of settlement were so complex and conducive to fraud, Brougham argued, that much of it should be abolished. He went much further than the Royal Commission in the direction of a completely mobile labour force by suggesting that the ideal determinant of settlement should be residence. This would rid England of the "great chicanery and much trickery" which was presently practiced by both individuals and parishes. More important, it would result in a free market for labour.

In finishing his speech, Brougham reminded his audience that his ideas on the Poor Law had not changed since he had first 'borne a part in this great question' in 1817. This was quite true. The Lord Chancellor who delivered the famous speech of 1834 was fundamentally the same Edinburgh reviewer who had condemned the Poor Law in an article in 1816.
Wherein lies the significance of this attack on the Poor Law which dominated the literature of the early nineteenth century? The answer is not far to seek. In his classic work *The Great Transformation*, Karl Polanyi stressed the Poor Law Amendment Act of 1834 as a sharp break in traditional attitudes towards labour. His theory of radical change simply will not do. The attitudes embodied in the Act had long been anticipated. The Act 'per se' did not amount to much in practice. On the other hand, Polanyi's understanding of the nature and significance of this alteration in perception is astute. As a result of the long-term debate on pauperism, labour did increasingly become categorized as a commodity subject to the fluctuations of the market. This mechanistic perception of a man's work -- and thereby of man himself -- was unprecedented in the history of mankind. Ironically, while the Scottish School was extremely conscious of the dignity of work and man's duty towards his fellows, it had contributed to the creation of a completely unfeeling social ethic. The humanitarian impulses of Adam Smith, and disciples, such as Henry Brougham, were overlooked or forgotten. Self-interest -- without the saving grace of benevolence and duty, was to have its day.
CHAPTER V

THE EDUCATION MOVEMENT

'Education'! Despicable cant and nonsense!

Cobbett
The connection between the attack on the Poor Law and the movement for mass education in the early nineteenth century was a direct one. Because the Poor Law had debased the morals of the lower orders, it was necessary to replace 'idle' and 'dissolute' habits with ones of order, frugality, and industry. The tool for this transformation was education.

This is not to say that the English had completely overlooked the effectiveness of educating the poor in the past. The Sunday School movement and the labours of the Society for the Propogation of Christian Knowledge are proof that this principle had been recognized and acted upon long before. Nevertheless, the question of the Poor Law greatly intensified the demand for educational facilities and broadened the horizon of educational aims. During the early nineteenth century, education became more than simply a vehicle for the indoctrination of particular religious values. Forward looking men perceived education as the means for a complete transformation of the poor and society at large. These men were often Scots; their leader was Henry Brougham.

It would be difficult to overestimate Henry Brougham's contribution to the development of English education. He was instrumental in founding several institutions and societies for the advancement of learning. Among these were: London University, the Infant School at Brewer's Lane, the British and Foreign School Society, and the Society for the Diffusion of Useful Knowledge. Besides this, the 'Learned Friend' wrote countless tracts, on an infinite number of subjects, for the benefit of the
poor. At the political level, Brougham was pre-eminent in bringing the importance of education to the attention of parliament. It was he who was responsible for setting up and directing the famous Committee of 1816 to enquire into the education of the lower orders. And, from the first, Brougham was the leading advocate of a national system of elementary education. Thus, inside as well as outside parliament, he led the educational movement. One would be hard pressed to name a piece of the educational pie in which Brougham had no finger.

But a catalogue of Brougham's endeavours on behalf of education is not intended in this chapter. It is sufficient merely to point out that Brougham was the dominant figure in the history of education for the early nineteenth century. The purpose of this chapter is, rather, to demonstrate in what ways Brougham's views were informed by Edinburgh thought and Scottish educational practice. In the process, we hope to show that these variables were of some significance, not only in Brougham's case, but for the educational movement as a whole. Before this task can be undertaken, however, a brief re-appraisal of educational history for the period between 1804 and 1839 is in order. For, as we shall argue, the history of education during this period -- particularly as it applies to Brougham -- has been rather badly done. As a result, the importance of Scottish ideas has been overlooked.

I

Many of the accounts of educational developments in the
nineteenth century contain an implicit theory of progress. For example, one well-known author views the spread of education to the lower orders as an "advance of humanity." Given this premise, it follows that those who opposed popular education were either 'prejudiced' or 'reactionary'. The reader of these typical accounts is offered the age-old dichotomy between good and evil, with the assurance of hindsight that good will eventually prevail. The problem with this sort of approach is twofold. First, it presupposes that education is an unmixed blessing. Second, it tends to obscure the particular aims of those engaged in educational reform.

In almost every case, Brougham's biographers fall into the pitfalls of this approach. They assume that his activities as a reformer were progressive, beneficial, and humanitarian. They seldom attempt to say what Brougham's ideas on education really were. Francis Hawes' work Henry Brougham is a case in point. The author praises Brougham's efforts to create a national system of education, but is struck by the fact that Brougham believed that education should be neither free nor compulsory. This fact the author explains by telling his reader that Brougham was "a man of his times," and, although he had managed to rid himself of many prejudices, he was still influenced by traditional views. But this is not an explanation at all. Hawes says nothing about the specific problems to which Brougham addressed himself or the influences which determined the nature of his solution. Brougham is relegated to the status of a stepping stone to progress. In the process, his aims and
behavior are considerably distorted.

Another biographer of Brougham sums up his contribution to English education in the following line: "Throughout his active career he devoted himself untiringly to the stupendous task of breaking down the barriers that stood in the way of universal education, and to work of liberating the minds of the masses from the bondage of ignorance and prejudice." In yet another work, G.T. Garratt describes Brougham as the champion of all those who opposed any monopoly on knowledge and a man "far in advance of conventional Victorian opinion." The two studies which deal at length with Brougham's educational activities have a similar tone. Chester New fits his subject neatly into the framework of a whig theory of history and provides very little analysis. The same is true of Amy Gilbert's unpublished master's thesis "The Work of Lord Brougham for Education in England," wherein the protagonist is depicted as 'the enemy of every kind of oppression' towards the poor.

This image of Brougham as the friend of the oppressed does not do anything to aid our understanding of his educational views. Fortunately, there has been a reaction against this approach in the past few years, notably in the work of some American historians. Michael Katz's *Class, Bureaucracy, and Schools* is a concerted assault on the whig position. Mass schooling, he argues, began as a method of ensuring the adaption of the working classes to the needs of a rapidly developing industrial society.
reform -- the middle-class -- were not moved by any humanitarian impulse. Rather, their chief aim was to inculcate moral habits and thereby ensure the obedience and work-discipline of a growing urban working class. Schools, to use Irving Goffman's term, became 'total institutions' stressing regimentation, punctuality, and precision.

Brian Simon has noted a similar pattern in English educational development. In *Studies in the History of Education*, he questions the assumption that the proponents of universal education were moved by "disinterested benevolence." Instead, Simon argues, the period between 1800 and 1850 witnessed the spread of education as the tool of a middle-class rapidly increasing its power. The middle-class looked for very real advantages from the education movement. On the one hand, they wanted to wrest political control over educational institutions from the aristocracy and established church. At the same time, they sought to use education to further the interests of capitalism.

As revealing as this class analysis is for a later period, it does not do justice to the educational movement of the early nineteenth century. To be sure, some of those engaged in the organization and operation of industry viewed education in terms of their own interest. But to say that these individuals dominated the movement, or even that they constituted a self-conscious class, is simply incorrect. From the beginning of the nineteenth century, there were large numbers of landowners and high ranking clergy who advocated the
spread of education and supported societies and institutions for that purpose. And the problem of the Poor Law certainly swelled their membership. Furthermore, a rigid class structure cannot be said to have fully arrived in England until the mid-nineteenth century. Thus, the idea of a homogeneous middle-class in the early decades of the century is anachronistic. As Harold Perkin points out in *The Origins of Modern English Society*, it is not until the 1820's that one is able to see the beginnings of a true middle-class which saw its interests as being in opposition to the landed classes.12 Only with Ricardian economics did the implications of class become fully evident. Even then, 'it had a great deal of growing up to do' before it lost all of its eighteenth century characteristics.

Brian Simon's treatment of Henry Brougham, although perceptive in many respects, suffers from the rigidity of his class framework. He views Brougham purely as a middle-class apologist.13 If this be so, then Brougham certainly entertained some extremely peculiar middle-class views. Brougham was a staunch defender of the corn laws in the House of Commons. Furthermore, he was opposed to the total disenfranchisement of 'rotton buroughs'. Were these simply "peculiar views," as Simon would have us believe? Or, as we suspect, is the class framework an inadequate one for understanding Brougham and many of his contemporaries? There is no doubt that Brougham felt that the 'middling classes' were entitled to a more equitable share of political power.. But nothing could have been further
from his mind than the construction of a middle-class state. The idea that education should serve the interests of a single group never occurred to Brougham.

Simon falls into yet another trap in his analysis of early nineteenth century educational development. He places far too much emphasis on Bentham and his school. Thus, in his eyes, Bentham and James Mill were the leaders of educational reform; Brougham was merely their 'disciple'. Simon goes so far as to claim that Brougham "owed all his ideas to Mill." This interpretation simply will not do. As we argued in an earlier chapter, to attribute each and every social reform to Bentham's influence is as wrong-headed as it is commonplace. The same is true of the tendency to postulate a master-disciple relationship between Bentham and Brougham. For Brougham did not owe any of his ideas on the nature and importance of education to either Bentham or Mill. They were a product of his Scottish upbringing and education.

The need for a broader framework in which to view early nineteenth century educational reform should be obvious. Neither the whig interpretation nor a purely class analysis is adequate. One thing is certain, however -- a new framework should include the influence of Scottish thought on the educational movement. As Simon himself points out, the Scottish universities "exercised a key influence" upon educational theory in the second half of the eighteenth century. Unfortunately, he ignores the Scottish contribution after 1800. This oversight is puzzling because so many of the men involved in the
spread of education were either Scots or had studied at Edinburgh University. It is not without reason that one author has labelled the education movement a "Scottish invasion of England."\(^{17}\)

Chester New notes the large number of those involved in the British and Foreign School Society as well as the Mechanics' Institute movement who had been educated in Scotland.\(^{18}\) The latest research on the Society for the Diffusion of Useful Knowledge also indicates that the hard core of the Society's general committee were Scots. And, as one investigator puts it, "for many ordination had taken place at the University of Edinburgh."\(^{19}\) Even the Infant Schools, first established by Robert Owen, had their origin in Scottish thought. In Robert Owen and the Owenities in Britain and America, J.F.C. Harrison has shown the extent to which Owen's ideas derived from the moral philosophy of the Scottish School. Though Owen was reluctant to admit his debt to the Scottish School, his followers were quite liberal in their praise of the Scottish philosophers.\(^{20}\)

Why were so many Scotsmen certain that education was the solution to the problems besetting English society? Furthermore, why were they not fearful of radical consequence from educating the 'lower orders'? The answer is not far to seek. Many Scots had internalized an enlightenment faith in education at Edinburgh University. Moreover, they realized that the education of the poor in Scotland had not resulted in revolution or even disaffection. Quite the contrary; as the Scots were
only too fond of pointing out, education had a stabilizing effect.

In fact, the claim that education is the most effective means of preventing riot and disorder was repeated continually in the writings of Scottish pamphleteers. They often called education 'moral training' to distinguish it from the learning process 'per se'. It would be simple, though tedious, to document the use by the Scots of this concept of moral education here. One example will suffice. In an article written for The Scotsman in 1830, the author attributed the recent labourer's revolt to the fact that education had not been diffused to the English people. Only when the poor have been properly educated, he argued, will they become obedient and orderly. Otherwise, they will continue to give themselves up to 'depraved habits' and 'vice':

Search the history of the criminals who crowd our Bridewells to come to the scaffold...and you will find, that most of them have become what they are, in consequence of neglect of education and moral training in their youth.

This concept of education, essentially as a mechanism of social control, was no less prevalent in Scottish intellectual circles. As we have already pointed out, the philosophers of the Scottish school were more concerned with the individual's duties than with his rights; they tended to view society in a conservative way. Thus, it is not surprising to find that they saw education more as a tool for inculcating moral habits than as a means of personal liberation. This is not to say that the Scottish thinkers completely overlooked the liberal ideal of
education; far from it. But, although Adam Smith was an ardent defender of the right of every man to a decent education, he laid greater stress on the advantages which accrued to the state through the moral training of the 'inferior ranks'. Smith ends his chapter on education in _The Wealth of Nations_ thus:

> An instructed and intelligent people, besides, are more decent and orderly than an ignorant and stupid one. They feel themselves, each individually, more respectable, and more likely to obtain the respect of their lawful superiors, and they are therefore more disposed to respect those superiors.

A shrewd analysis indeed!

The link between the movement for education and the critique of the Poor Law now becomes even clearer. Having gained an insight into the power of socialization inherent in education, Scots like Brougham were inclined to view the 'great question' of pauperism in a different way from their English counterparts. It was possible for them to argue that pauperism was neither necessary nor inevitable -- it was merely the result of a poor education. The problem of pauperism could be safely eliminated through 'moral training'. Thus, moral education would stress not only obedience but also prudence and good work habits.

It is perfectly true that the Scottish concept of moral training involved more than the creation of a reliable labour force. Nevertheless, the distinction between a moral man and a disciplined worker did tend to become blurred in the context of the Poor Law debate. This tendency was also accentuated by Adam Smith's theory of economic development. If, as Smith argued, the economic laws governing social life were so
important, then the individual's duty as a social being was to obey these laws. And, since economic growth was dependant upon the increased division of labour, it was imperative that labour become strictly disciplined. As seen from a Smithian perspective, the good factory worker and the moral man approximate one another.

Given this brief analysis of the Scottish concept of education, it is now possible to examine Brougham's contribution to the education movement. For Brougham was thoroughly Scottish in his approach to education. Whenever he treated of the education of the lower orders, he almost invariably referred to their 'moral education'. His writings and speeches were typically Scot with their nationalistic bias and use of enlightenment concepts. Thus, it behoves us to examine Brougham's endeavours in a new light. He was not a 'disinterested humanitarian', a 'middle-class apologist', or a 'Benthamite utilitarian' -- he was an enlightened Scot. As such, he held very definite views on the power and ends of education.

II

Brougham was not the first Scot to make the cause of education his own. Some of Brougham's fellow students had already become deeply convinced of the need to educate the poor as early as the beginning of the nineteenth century. James Pillans and Francis Horner, his colleagues on the Edinburgh Review, were advocates of the monitory system of education described by Lancaster in 1804.24 Brougham's friend, George
Birkbeck had begun teaching science to the mechanics of Glasgow as early as 1799. And, of course, Robert Owen had started to implement his plan to educate the children of workers by 1809. But Brougham was the educational propagandist 'par excellence', as well as the defender in parliament of the people's right to education. So, although he was never the originator of educational schemes, Brougham was always at the head of the 'education mad party'.

Brougham became actively involved in the education question in 1810, when the followers of Lancaster turned to him for help. It seems that Lancaster had not acquired the skill to manage money and was deeply in debt. Brougham, with his usual skill in such matters, arranged public meetings and wrote articles. As a result, funds were obtained, and, in 1811, the Royal Lancasterian Society was founded. This would eventually become the British and Foreign School Society.

Through the pages of the Edinburgh Review, Brougham now began to publicize the Lancasterian method and to advocate a national system of elementary education. By 1816, he was asking parliament to use charitable endowments for the purpose of providing the poor with schools and teachers. The history of Brougham's efforts to implement these aims is a long one, greatly complicated by the issue of sectarian strife. It need not concern us here. What is important, however, is the attitude towards education which Brougham and his friends held, and the type of education they wanted to see.

In his proposal to establish a national system of education, Brougham clearly had the Scottish model in mind. "In my
humble opinion," he said in the House of Commons in 1818, "we ought to adopt the system which has already been tried with so much advantage in Scotland." The Education of the Poor Bill, which Brougham introduced at this time and again in 1820, called for the establishment of parish schools in the small towns and villages of England. Brougham deemed it quite unnecessary for the government to meddle with education in the more populous areas. There, voluntary charity could be called upon to ensure the education of the poor. But the more thinly populated districts required government aid if the poor were to receive any instruction.

This aid should not amount to very much. Again citing the example of Scotland, Brougham argued that it should not exceed the cost of building a school and, if necessary, the schoolmaster's fee. The cost of supplies and maintenance would be taken care of by the tuition of the students. For, as in Scotland, education was not to be free:

In Scotland there was hardly such a thing as gratuitous education....Even the peasants took care to provide means for this purpose; and we in this part of the empire might well envy Scotland the possession of such a peasantry.

Brougham was particularly fond of this aspect of Scottish education because it helped to cultivate independent habits and an appreciation for education. He often cited cases of poor parents doing without food or surrendering meagre savings in order to obtain an education for their children.

Brougham cannot be accused of stint in his praise for Scottish parochial education. He claimed that Scotland's
system reflected "immortal honour upon its inhabitants." The Act of 1696, which forced kirk heritors to foot the bill for education in their parishes, was "among the most precious legacies" which the Scottish parliament bequeathed to its country. As for the results of the system, Brougham said, they were self-evident. The Scottish people were renowned for their learning. Wherever they travelled, Scotsmen carried their education with them and conferred countless blessings on the land of their adoption. The Scottish educational system 'per se' had been copied by a number of countries. Sweden and Germany, for example, had adopted a modified version of parochial education to their distinct advantage. Not so England -- a singularly uneducated country:

Before 1803, .... only the twenty-first part of the population was placed in the way of education, and at that date England might be justly looked on as the worst-educated country of Europe. What a different picture was afforded by Scotland! The education there was in the proportion of 1-9th.

Brougham's praise of the Scots and depreciation of the English are obviously nationalistic in tone. However, it would be a mistake to think that his attempt to Scotify education south of the Tweed simply reflected chauvinism. The full implications of Brougham's scheme become more readily apparent when we examine his defence of education against its critics.

In his Edinburgh Review essays on the "Education of the Poor," Brougham was most concerned to refute the arguments of Dr. Mandeville and "his orthodox followers in modern times." Mandeville's famous work The Fable of the Bees (1723) condemned Charity Schools on the grounds that education would
make the poor despise their work. "To make the Society Happy and People Easy under the meanest Circumstances," wrote Mandeville: 32

it is requisite that great numbers of them should be ignorant as well as Poor. Knowledge both enlarges and multiplies our Desires, and the Fewer things a Man Wishes for, the more easily his necessities may be supply'd....The more a Shepherd, a Plowman or any other Peasant knows of the World, and the things that are Foreign to his Labour or Employment, the less fit he'll be to go through the Fatigues and Hardships of it with Cheerfulness and Content.

Mandeville's 'modern followers', if lacking his frankness, preached much the same argument. E.W. Grinfield, in a pamphlet entitled A Reply to Mr. Brougham, claimed that he could see no social benefits but a great deal of social unrest resulting from the education of the lower orders. 33 Conservative opponents pointed out that servants would refuse to serve and "farmers scorn the plough" if ever Brougham had his way. 34

The manner in which Brougham countered these arguments is most interesting. He did not merely claim that education was no danger to order and industry, but that it was an extremely effective means of promoting them. Again, his model was Scotland. Brougham's writings and speeches were filled with references to the 'industry' and 'respectability' of the poorer classes of Scotland. And this benign state he attributed to two causes. First, there was no Poor Law in Scotland. Second, Scottish youth received "moral and intellectual" training in the parish schools. "We desire our opponents to tell us," Brougham wrote. 35
in what respect the circumstances of the English population have not been more favourable than those of the Scottish, except in the article of schooling alone?...All these causes of elevation to the minds of the English populace were highly favourable both to their intellectual and moral virtues; and yet their inferiority to the Scots in both, has ceased to be a matter of dispute.

He went on to list the benefits which resulted from the system: there were few paupers in Scotland; the crime rate was considerably lower; the peasantry were more prudent, independent, and vigorous. And, although Brougham did hasten to add "the value of that inward happiness, which results from a mind lifted somewhat above the object of mere animal pursuit," it was as a quite secondary consideration.

It would appear, then, that Brougham's primary interest in educating the poor was to teach them habits of obedience and work-discipline. This hypothesis can be further tested by taking a close look at the particular kind of education which Brougham supported.

The Lancasterian or monitorial method, which Brougham described and praised in his writings, was essentially a cheap way of educating large numbers of students. It was a system whereby one teacher taught a few select students a lesson which they, in turn, taught to other classes of students. Andrew Bell, the Scottish originator of this system, called it a "moral engine", and, indeed, it was. The Lancasterian schools stressed industry, religion, and obedience. The method of instruction was exceedingly mechanistic. Each unit of teaching had to be mastered by rote before the next one could begin.
Dictation and recitation were the usual means of mastering a lesson.

As Brougham was forever pointing out, the content of these lessons was of minimal importance. The manual for the British and Foreign School Society teachers clearly stated:

The first great and leading principle of the British system is, that it is a teacher's duty to pay more regard to the formation of the character of his scholars, than to their success in any, or in all the branches of learning professedly taught.

Of what did this character formation consist? The "real importance" of these schools, the manual specified, was to inculcate "habits of industry and order" and to direct young minds to "the blessed Gospel."  

If the aims of the Lancasterians were fairly limited, their faith in the power of education was not. For them, education was the key to social progress. Brougham went so far as to claim that:

he trusted to the schoolmaster armed with his primer more than he did to the soldier in full military array.

Such enthusiasm for education was common among the supporters of the British and Foreign School Society. It can only be fully understood in relation to their intellectual heritage.

The guiding principles of the monitorial system were taken directly from late enlightenment thought. Or, as Brougham would have it, they were "founded in good sense, and a knowledge of human nature." Enlightenment thinkers had combined Locke's epistemology with the associationist theory of Hartley and Reid to form a revolutionary psychology of the mind. Thus, the
mind became a 'tabula rasa' upon which facts could be etched; these facts were then ordered by means of the 'association of ideas'. The radical upshot of the new psychology was a view that human nature was extremely malleable, particularly in the case of children who had not yet had occasion to form habits or opinions. Hence, the importance of education in the eyes of its enlightened supporters. Brougham summed up their basic premise quite neatly when he said:

send them to school...at that invaluable period of life when mind, as the Roman poet said, "might be fashioned like wet clay."

The enlightenment account of the mental process helped to establish a new attitude towards the child, one which was clearly reflected in the mode of teaching used in the monitorial schools. The child was no longer viewed as a sinful creature or an animal that had to be trained. Instead, educational reformers emphasized the concept of the 'innocent child', who would respond to reasonable treatment. Lancaster encouraged his teachers to use kindness and positive reinforcement rather than severe punishments. Brougham was pleased to inform the readers of the Edinburgh Review that the monitorial method was a "source of amusement" for children:

A large collection of toys, bats, balls, pictures, kites, is suspended above the master's head, beaming glory and pleasure upon the school beneath. Teachers gave good students toys as prizes, and punished naughty students with humiliation:

Mr. Lancaster punishes by shame rather than pain; varying the means of exciting shame, because, as he justly observes, any mode of punishment long continued loses its effect.
By means such as these, the socialization of the child became less oppressive. At the same time, however, its influence became more subtle and effective.

In the monitorial schools, the powerful force of enlightenment educational thought was directed towards one fundamental end -- the creation of obedient, disciplined workers. Undoubtedly, this was a narrow ideal. However, one should avoid the tendency to change its supporters with being narrowly self-interested. Men like Brougham really did believe that it was the individual's best interest to internalize these 'moral habits'. Furthermore, they argued that it was for the good of the community as a whole, that the lower orders adopt regular work habits.

Such an emphasis was entirely consistent with the doctrines of Adam Smith. And it is hardly surprising to discover that so many of the advocates of the monitorial system considered themselves to be his disciples. As Eric Midwinter points out in *Nineteenth Century Education*, these men consciously applied Smith's principle of the division of labour to the institution of education:

Andrew Bell and Joseph Lancaster, the chief progenitors of the schools in that period, both maintained that 'the principle in schools and manufactories is the same'. Their earnest admirer and advocate, Sir Thomas Barnard, urged "their grand principle" as being 'the division of labour applied to intellectual purposes'.

But their adherence to Smith's thesis went beyond a mere imitation of the factory model. Education was the ideal means for training the future workers of an industrial society.
It is for precisely this reason that the movement for education must be seen as something more than a solution to the problem of pauperism. To be sure, the 'great question' of the Poor Law initiated an educational response, but it did not dictate the form it would take. Brougham, Owen and other Scots were concerned to make education the vehicle for industrial progress. This feature can be seen most clearly in another phase of the educational movement -- the founding of Infant Schools.

III

The two names most closely associated with Infant Schools were Henry Brougham and Robert Owen. Both men had arrived at the conclusion early on that the moral training of children was far too important to forego until the age of six or seven. It was Owen who first put this principle into practice by founding an Infant School for children from three to six at New Lanark. When Owen came to publicize the results of this institution to the English people, it was usually Brougham who presented his petitions before parliament. And, in 1818, two years after Owen had established his school, Brougham started an Infant School in London.

Two stranger bedfellows than Owen and Brougham can scarcely be imagined. As a disciple of Smith, Brougham was the advocate of economic individualism. Owen, on the other hand, wanted to replace capitalist competition -- the tendency of which was to devalue the true worth of labour -- with a cooperative community.
Yet the 'father of modern socialism' and the disciple of Adam Smith became lifelong friends. There are two good reasons why this friendship occurred. First, they both had similar roots in 'the Scottish enquiry of the eighteenth century'. Second, they both perceived education as a tool in the socialization of a manufacturing population.

Like Brougham, Owen owed most of his ideas on society and human nature to the teachings of the Scottish enlightenment. As a member of the Glasgow Literary and Commercial Society, and a personal friend of many of the Edinburgh literati, Owen was exposed to the same influences as his friend. Thus, he borrowed heavily from enlightenment epistemology in his analysis of character formation and the importance of social institutions. In addition, he believed that all men possessed a moral sense which could be cultivated through a 'rational and consistent' education. Owen's originality is not to be found in his intellectual framework. It resides, rather, in his clear application of social theory to an emerging industrial society. For, both Owen and Brougham were primarily concerned to ease the transition between a predominantly agricultural society and a highly developed industrial state. This involved a social transformation of singular importance -- the adjustment of individuals to the dictates of the factory system. As far as this issue was concerned, the fact that Brougham was a 'capitalist' whereas Owen was a 'socialist' made little difference. In the short run, their aims were identical.

The establishment of Infant Schools was to be a major step
in the creation of a new industrial society. Brougham and Owen were well in advance of their times in recognizing the importance of what is now called 'primary socialization'. In an 1819 speech on 'Mr. Owen's Plan', Brougham noted that he had observed the great effects:

where education alone was given to children without any food or clothing, and where children were taught moral, attentive and cleanly habits at that period of life when curiosity, the great spring and element of all education was most active and ardent -- when in consequence, that which at another period of life would have been felt as a burthen, was enjoyed as a pleasure.

The implication of statements such as these is clear. If children were taught habits of industry and discipline in their early years, they would not find it nearly so difficult to adjust to factory life as had their parents. The problems of labour recruitment and labour discipline would virtually disappear. Contrast this situation with the one that obtained in Lanark before Owen and his brother began their educational endeavours:

It was...necessary to collect a new population to supply the infant establishment with labourers. This, however, was no light task; for all the regularly trained Scotch peasantry disdained the idea of working early and late, day after day, within cotton mills.

Education was to serve a most useful purpose.

This great emphasis on the early inculcation of habits of work-discipline can be seen in Brougham's articles on Fellenburg's establishment at Hofwyl. Fellenburg, a disciple of the educational theorist, Pestalozzi, founded an Infant School in Switzerland for the purpose of training pauper
children in agricultural skills. He believed in treating
his youngsters with parental kindness and firmness, teaching
by 'good example' rather than 'moral precepts'. Even the
Lancasterian reliance on humiliation as a method of punishment
was rejected in favour of a more humane approach:\footnote{57}

let the master sit down and take the little offender
kindly upon his knee, reason with him, and convince
him that he loves him, that he has done as he would
not like another to do unto him, and that such
conduct is unfriendly to his own happiness.

Fellenburg's method, relying heavily on 'social learning', was,
and still is, a most perceptive and benevolent way of
educating. On the other hand, the goals of this method were
very similar to that of the Lancasterian schools:\footnote{58}

it is never allowed for a moment to be absent from
their thoughts, that manual labour, in cultivating
the ground is the paramount care which must employ
their whole lives, and upon which their very
existence depends. To this everything else is made
subordinate.

Thus, it is always important to distinguish between the means
of educating and the ends which education is supposed to serve.

Both Brougham and Owen were impressed with Fellenburg's
success with his students when they visited his establishment
in 1816 and 1818 respectively. In fact, they adopted much of
his method in their own Infant Schools. However, Brougham
and Owen wished to apply Fellenburg's system to industry rather
than agriculture. Brougham wrote:\footnote{59}

'Agricultural labour' is not the only occupation
which can be made the base of such an education.
'Manufactures', with all their disadvantages, might
answer the purpose.

Therefore, in his articles, Brougham stressed those aspects of
Fellenburg's system which were suitable for a manufacturing population. For example, he had nothing but praise for the experimental manufactory which Fellenburg set up to make and improve farm machinery. But he reserved his greatest approbation for the 'moral training' which children received from the 'Exercises' of the Swiss school. In every case, the activities that Brougham chose to describe were ideal for moulding modern industrial workers. One example will suffice:

'The use of the whistle in the school is various; if the children are sitting down, and talking during the time others are saying their lessons, a sound of the whistle commands silence; if they are singing or repeating hymns incorrectly, a sound of the whistle stops them; they then begin again singing or repeating the verse...in an orderly and proper manner. If any of the children should be running about, during the time they should be seated, a sound of the whistle arrests their attention, and brings the wanderers to their seats.'

What better way to discipline future factory workers and to impress the notion of 'time-thrift' on their budding minds?

Much more could, and perhaps should, be said about the Infant Schools. Certainly, Brougham and Owen did not view them totally as the handmaiden of industry. They encouraged children to develop their minds as far as possible for their station in life. They thought that the 'delights' of learning should be accessible for the poor as well as the rich. However, these were secondary to the overriding aim. A passage on infant education, written by Brougham in 1820, bears this out:

learning is not all, nor the principal consideration -- moral habits are acquired in these schools.... Whether the children learn more or less is of little consequence. The moral discipline is the great consideration.
And, as we have seen, he seldom distinguished between 'moral discipline' and 'labour discipline'.

IV

In addition to his involvement in the education of poor children, during the 1820's Brougham turned his efforts in the direction of adult worker education. This aspect of Brougham's work was closely related to his venture into the other branches of the education movement. However, it took a somewhat different form. While it was quite possible to inculcate habits of obedience and work-discipline in small children, the 'moral education' of adults was not such an easy matter. Adult workers would not respond to subtle attempts at indoctrination, as their children might. Any plan to educate them, it would seem, must make a more direct appeal to their reason. This fact helps to explain why Brougham approached the problem of adult education in a special way.

Before discussing the particular type of education which Brougham advised for workers, it is important to outline briefly his activities in this field.

Brougham first made his influence felt in worker education as a polemicist and fund raiser for 'Mechanics' Institutes'. Adopting the techniques he had used so effectively in the Edinburgh Review and elsewhere, he advocated the founding of these institutions all across the country. His best known essay Practical Observations on Popular Education was extremely influential. Within a few months of its publication in 1825,
thirty Mechanics' Institutes were founded. By the end of the year, the number was probably a hundred. 62

Besides this, Brougham founded the Society for the Diffusion of Useful Knowledge in 1827. The purpose of this Society was to provide the working poor with 'moral and useful' reading material at a cheap price. The tracts of the Society did sell well, averaging between 22,350 and 27,900 copies of each issue. 63 Brougham wrote many of them personally, and read the proofs of all the others. Considering the vast amount of 'moral and useful' material which the Society published, this was no mean feat.

However, despite their rapid spread, neither the Mechanics' Institutes nor the publications of the Society fulfilled the function for which they were intended. Brougham's target was the labouring poor. The Mechanics' Institutes tended to attract a labour aristocracy whereas the tracts of the Society were often used as university textbooks. 64 The average worker had neither the time nor the inclination to pursue such heavy reading matter. Even if he did, chances are that he did not possess the reading skills which these works took for granted. 65 Eventually, Brougham and the Society realized this fact, and, in 1829, began publishing a series entitled 'The Library of Entertaining Knowledge'. These works indicate a significant change in the Society's didactic technique. They attempt to teach simple scientific and moral principles through tales of adventure and amusing anecdotes.

It was Brougham's Scottish perspective that caused the
initial attempts of the Society to flounder. He committed the error of assuming that the English working classes were as literate as those of Scotland. In *Practical Observations*, Brougham pointed out:

> The circulation of cheap works of a merely amusing kind, as well as those connected with the arts, is at present very great in England; those of an aspect somewhat more forbidding, though at once moral, interesting, and most useful, is very limited; while in Scotland there is a considerable demand for them.

This demand did not only come from the upper and middling classes, Brougham claimed. Those at the 'base of the social pyramid' were equally elevated in their reading tastes. Brougham's observation may have been relevant as far as Scotland was concerned, but he was sadly mistaken in thinking that the cheap supply of philosophical and scientific works would generate a similar demand among the labouring classes of England. As Brougham soon discovered, the Scottish model was inapplicable.

But the adoption of a Scottish model extended well beyond this assumption of a high degree of literacy. Almost every aspect of Brougham's scheme for adult education had a Scottish precedent. For instance, the first Mechanics' Institute was founded in Glasgow. Likewise, Brougham's concept of local libraries, where workers might obtain reading material at a low cost, was an imitation of the 'Parish Libraries' which had been set up in many parts of Scotland. Even his plan to form workers' debating societies had its origin in similar organizations in Edinburgh.
Just as the framework of Brougham's plan for adult education was taken from Scotland, so was its content. For Brougham also borrowed the idea of teaching science and political economy to adults from his Scottish friends and colleagues. Birkbeck and Ure had taught science to the workers of Glasgow since 1799. McCulloch, while a lecturer at Edinburgh between 1817 and 1822, began the popularization of political economy for tradesmen and mechanics. Thus, when Brougham advocated the teaching of both science and political economy to workers in the 1820s, he merely followed in Birkbeck's and McCulloch's footsteps.

It is not difficult to understand why Brougham and his Scottish friends believed that it was crucial to teach workers the principles of science and political economy. According to the committee of the Haddington School of Arts in Scotland in 1826, the purpose of this type of instruction was perfectly clear. The committee's report, inspired by the efforts of McCulloch and Brougham, stated:

"Our mechanics do not sufficiently know the limits of their own, nor the extent of their masters' just rights....Only let the working classes be trained to discrimination, either by that general science which sharpens the faculties of all who are conversant with it; or let them be made acquainted with the nature of the relation in which capitalists and labourers stand to each other; and we shall be as little disturbed by the spirit of combination, as by a revival of the spirit's of witchcraft."

Implicit in the committee's statement is a conviction that the teaching of science and political economy to workers would enable them to reason more clearly about their lot and, thereby prevent them from venting their frustration in strikes and
sabotage. Evidently, they based their argument on two related assumptions. Not only did they perceive science to be the ideal subject for training the reason; they also held the laws of political economy to be 'scientifically incontrovertable'. Given these assumptions -- common for enlightened Scots -- it followed that workers would become more docile and accepting of the 'status quo' once they had been instructed in scientific and economic principles.

Brougham viewed adult education as an instrument of social control in precisely this way. In an address to the Manchester Mechanics' Institute in 1835, he expressed disappointment that so few members of the working classes were present, for he felt that the teaching of science to workingmen would make them 'more orderly, better members of society and more disposed to be peaceful and obedient'. Elsewhere, Brougham argued that the teaching of political economy was desirable because 'it eased the opposition of classes' and 'secured the peace of the country, and the stability of the government'.

The significance attached to the teaching of political economy by Brougham and his allies in the adult education movement has been well documented in some recent histories of early Victorian Britain. The authors of these works support the contention that the chief end of the movement was not liberal humanitarianism but social control. However, there is one characteristic of this type of education which they have overlooked -- the connection between the teaching of science and the need to systematize labour. As E.P. Thompson has
pointed out, one of the most pressing problems facing English society in the early nineteenth century was that of adjusting adult workers to the rhythms of industrial life. It would seem, then, that any scheme to educate workers would take this problem into account.

Brougham and his colleagues in the Society were well aware that there was more to the 'labour problem' than the threat of strikes and combinations. With the increased division of labour resulting from the spread of the factory system, labour had to become disciplined and regular. More than that, it was the duty of individuals to adapt themselves to the new work world.

The Society spelled this out in its best known justification of the capitalist system, *The Rights of Industry* (1831). Comparing industrial England with more backward societies, the author of this work stated:  

> with all savage tribes there is a want of steady and persevering exertion, proceeding from the same cause. Severe labour is succeeded by long fits of idleness, because their labour takes a chance direction. This is a universal case. Habits of idleness, of irregularity, of ferocity, are the characteristics of all those who maintain existence by the pursuit of the unappropriated productions of nature; while constant application, orderly arrangement of time, and civility to others, results from systematic industry.

Clearly, there is more to this passage than a mere condemnation of idleness. The well-being of the socio-economic system -- indeed, the level of civilization -- is held to be dependant upon 'systematic industry'. It is not only necessary for men to work, but to do so in a 'regular' and 'orderly fashion'.
How did the Society act on this principle in its publications? On the one hand, of course, they attempted to convince workers that it was in their own best interest to develop good work habits. The author of *The Rights of Industry* pointed out that the comparatively high standard of living enjoyed by the English working classes depended on a strict division and systematization of labour. Contrasting nineteenth century Colchester with a medieval city, and even with contemporary French cities, he wrote:

> Some, even of the humbler classes, are not thought to exceed the proper appearance of their station if they wear silk. The men have decent working habits, strong shoes and hats, and a respectable suit for Sundays, of cloth often as good as is worn by the highest in the land.

Citing the case of 'wild Peter', the author went on to demonstrate that "misdirected labour" -- where men "worked without skill" -- resulted in "universal poverty." On the other hand, the Society did not rely solely on these direct appeals to the worker's reason. The Society also hoped that its scientific tracts would serve a 'most useful' purpose. Brougham and his colleagues thought that a basic grounding in science would cultivate an appreciation of the abstract principles of order and regularity. Such instruction would thereby equip workers with a mental framework which would allow them to appreciate the methodical and aesthetic arrangement of the new work world.

Both approaches to the problem of work-discipline are evident in the Society's first publication, *A Discourse of the Objects, Advantages, and Pleasures of Science*. In this work,
Brougham impressed upon the minds of his readers that it was their 'sacred duty', both to themselves and their country, to work. Only when they had provided for themselves and their families, Brougham said, did they have any 'right' to relaxation or intellectual improvement.\textsuperscript{77} However, Brougham went on to show that scientific instruction was directly related to the way in which an individual approached his work. If the worker were conversant with the principles of science, he would be "more skilful, expert, and useful."\textsuperscript{78} Furthermore, he might even be able to make "important discoveries" which would aid industrial growth. But these "advantages" were secondary to the influence which science would have on "the natural constitution of his mind."\textsuperscript{79} Learning the doctrines of Natural Science would instill invaluable moral habits:\textsuperscript{80}

Let a man pass an evening in vacant idleness, or even in reading some silly tale, and compare the state of his mind when he goes to sleep or gets up next morning with its state some other day when he has passed a few hours in going through the proofs, by facts and reasoning, of some of the great doctrines in Natural Science... he will find as great a difference as can exist in the same being, -- the difference between looking back upon time unprofitably wasted, and time spent in self-improvement: he will feel himself in the one case listless and dissatisfied, in the other comfortable and happy.

The resemblance between these lines and Brougham's statements on the Poor Law should not pass unnoticed. In both cases, Brougham stressed the benefits of 'regular exertion' as opposed to idle or irregular habits. As far as Brougham was concerned, this principle applied equally to the mind as to the body. Thus, the habits which an individual acquired from the study of science
would carry over into his other activities. Or, as Brougham put it, "the more progress he makes in the sciences," the more he will prize "industry" and "the habits of regular labour."  

However, the message of Brougham and his Scottish friends fell on deaf ears. Works such as *The Rights of Industry* and *The Objects, Advantages, and Pleasures of Science* were written for an audience that did not exist. Workers did not rush out to buy the Society's simplifications of science and political economy. After these initial failures, the publications of the Society became more blatantly propagandistic and banal. The *Penny Magazine*, for example, was written in the style later to become popularized in moralistic periodicals aimed at the lower orders. It stressed temperance, thrift, and good work habits with such articles as "The Value of a Penny," "The Cure of Drunkenness," "The Secret of Great Workers," and "How to Endure Poverty." The earlier attempt to treat workers as rational beings was henceforth transferred into the education of the upper classes and a labour aristocracy.

Although the education of the middling and upper classes was not the fundamental focus of the reformers, it certainly deserves a brief mention. In one of his essays on Fellenbrug, Brougham claimed that there were two kinds of education:  

The education of the lower classes is principally negative. For it is nearly sufficient to set them good examples, and keep idleness and vice out of sight. But the education of the higher classes is of a more positive and extensive sort; and they have evidently more to learn.

For Brougham, the education of the latter classes should more
nearly approach the liberal ideal. To this end, he and his friends founded London University in 1826. It will come as no surprise to the reader that the model for this institution was Edinburgh University.

V

In summary, the Scottish influence on the educational movement in the early nineteenth century was considerable. Brougham was only one of a large number of Scots who were willing to expend considerable energy in behalf of the 'education of the poor'. These men carried with them a traditional Scottish faith in the power of education for inculcating habits of discipline and industry. And, in most cases, their faith was reinforced by enlightenment ideas on education.

It would be an exaggeration to claim that the Scots were only interested in education as a tool of social control. In almost every case, they believed that knowledge was a good in itself quite apart from the uses to which it was put. Still, it is true to say that the main emphasis of education for the lower orders was on inculcating 'moral habits'. Not only was this necessary in order to eliminate the serious problem of pauperism, but the rapid division of labour in industrial society also demanded the creation of a disciplined workforce. As disciples of Adam Smith, the Scottish educational reformers perceived the 'labour problem' to be a fundamental concern.
Like Adam Smith, the reformers inherited an appreciation for education from their native country. However, Smith himself did not view education as an instrument for creating disciplined industrial workers. Rather, he believed that workers should receive education in order to prevent them from 'falling into drowsy stupidity' as a result of the monotony of their labour.\(^{84}\) By applying their understanding of education to the needs of a rapidly developing industrial England, Smith's disciples went a step further than their master towards the creation of a capitalist society. In fact, they fused education to industrialization in a way from which we, in the present, find it difficult to escape.
CONCLUSION
In 1826, William Cobbett reiterated the wish of 'that honest Englishman Guy Fawkes' to 'blow the Scotch beggars back to their mountains again'.

Cobbett certainly had no love for the Scottish reformers, or 'beastly Scotch feelosophers' as he called them. Indeed, he held them responsible for many of the changes which had so transformed the rural England that he had known in his youth. Although Cobbett tended to exaggerate the extent of Scottish influence, there is no doubt that he was pointing to a very real phenomenon. Scotsmen and Scottish thought did exercise a significant influence in early nineteenth century reform movements.

However, by the 1840's, Cobbett's observation no longer held true. The major reforms had been accomplished, and England began to settle into an industrial age. As W.L. Burn points out in The Age of Equipoise, the mid-Victorian generation was a rather self-satisfied one. They believed that the worst evils of the past had been abolished and that they were living in 'enlightened' times. Brougham and his Scottish friends had served their purpose. Any touching up that needed to be done could be left to administrators.

The age of reform gave way to an age of administration. No longer did innovative ideas play such an important role. The basic ideas and values were generally agreed upon; the problem was putting them into practice. Despite some initial opposition, Chadwick and the other Poor Law Commissioners began the gradual process of rationalizing the system of relief throughout the country. A similar progress towards centralization
and uniformity took place in the legal system as well. And, in education, the state continued its policy of 'filling in the gaps' by means of grants and inspection.

The developments in education are indicative of the changes which had occurred since Brougham and his fellow Scots first took up the 'progressive and reforming' cause. In 1839, a Select Committee was appointed to inspect the schools and assess the quality of education provided. Thus, only two years after Brougham delivered a powerful speech condemning state interference in the voluntary system, the foundation of government control over education was laid. Brougham had convinced parliament of the necessity for educating the poor, but he did not foresee the direction that this education would take. Nothing could have been further from this Edinburgh liberal's intention than an increase in the power of government. But, by 1839, Brougham's reign as the leader of the education movement was drawing to a close. His place would be taken by a tough-minded administrator. Sir James Kay-Shuttleworth was no 'heady idealist'; he was a 'mundane realist'. ³
NOTES

Introduction


Chapter I


2. In Brougham's youthful letters, he often refers to another national poet, Thomas Campbell. See Brougham and His Early Friends; Letters to James Loch, (London, 1908).


14. M.G. Jones, *op. cit.*, 207. Jones goes on to argue that this practical sort of education "played a leading role" in the transformation of the Highlands. One finds this conclusion rather startling, since all the examples which Jones cites of schoolmasters and schoolmistresses trying to implement this policy were ineffectual. It is more reasonable to argue that this transformation was brought about by the new economic possibilities which accompanied the breakdown of clan organization and mass immigration. Jones' error was to rely too heavily on the biased reports of the S.P.C.K. and the Gaelic Society. True to Scot form, the members of these Societies were inclined to attribute the progress to their educational endeavours.

15. There were 'enlightenment' thinkers in England, such as Price and Priestley. However, these men were quite isolated from the main thrust of intellectual life in their own country.

16. In fact, neither Bacon nor Newton were as empirical as their enlightenment followers supposed. Both held religious and metaphysical ideas which even the Scottish School would have rejected.


18. Ibid., 21.


20. Ibid., 207-8.


22. Ferguson, Hutcheson, Hume and Smith were continually stressing this point. See Bryson, *op.cit.*, 148-72.
23. Daiches, _op. cit._, 82.

24. Ibid., 80-2.

25. An interesting, if somewhat dated, work on Montesquieu's social thought is Emile Durkheim's *Montesquieu and Rousseau*, (Michigan, 1960). Bryson herself does not make very much of Montesquieu's influence on the Scottish School, but even a superficial examination of their work suggests that this influence was very strong.


27. T.C. Smout, _op. cit._, 505.


32. Ibid., 37.

33. Ibid., 35.

34. Ibid., 115-9.

35. Ibid., 119.


41. The use of the categories of natural and moral philosophy enabled Brougham to become fairly knowledgeable about a wide range of subjects. It also made him the object of much criticism from specialists. For instance, his analysis of political economy in an 1822 House of Commons debate was ridiculed by Ricardo and Husskinson. In the same way, many of his later scientific writings, such as an 1834 article paralleling the use of induction in both religious and scientific explanation, were heavily attacked.

42. This was true of many of the members of the Scottish School. As Francis Hawes said of the writers for the Edinburgh Review: "In after years the various contributors found it difficult to sort out their own articles; one can hardly wonder at it when they wrote so many and on such diverse subjects." See Francis Hawes, Henry Brougham, (London, 1957).

43. Brougham's reputation as something of a radical began while he was a member of the Speculative Society in Scotland. In a 1799 debate on the introduction of a religious topic for discussion, Brougham moved a motion that the conservative taboo of the society be relaxed in favour of free discussion on both religious and political topics. This incurred the wrath of the older members. Further details can be found in The History of the Speculative Society, 1764-1904, (Edinburgh, 1905), 11-14.

44. Henry Peter Brougham, Opinions of Lord Brougham, (London, 1837), 79.

45. The Press, October 17, (1857), 1019.

46. Henry Peter Brougham, A Discourse of the Objects, Advantages, and Pleasures of Science, (London, MDCCLXXVIII), 152.


Chapter II


6. As a literary critic, Brougham made a savage attack on the early poetry of Byron, causing the latter to apply himself and produce better work. See John Cam Hobhouse, *Recollections of a Long Life*, (New York, 1909), 336-7.


16. Ross, *op. cit.*, 8-44.


31. T.C. Smout, *A History of the Scottish People*, (London, 1969), 98. Since writing this section, I have come across Rosalind Mitchison's recent article "The Making of the Old Scottish Poor Law," *Past and Present*, 63, (1974), 58-93. Mitchison argues that, in practice, Scottish poor relief was not nearly as harsh as was once believed. For this reason, I would now temper my argument somewhat. However, there is no doubt that the formal Scottish poor law was much more severe than that of England. Furthermore, the Scots themselves were proud of a system that did not encourage pauperism in the slightest degree.


36. T.C. Smout, op. cit., 84.

37. Ibid., 84-5.

38. For example, Sidney Smith and Thomas Chalmers in the Edinburgh Review. And there were many others.


41. Opinions of Lord Brougham, 73.


46. Ibid., 45.


48. Ibid., 5-15.

49. Ibid., 11.


52. Skinner, op. cit., 1-22.

53. Msek, op. cit., 47.


56. *Ibid.*, 120.


59. Notice the difference between Smith and his predecessor Petty. Whereas Petty thought that it was every man's duty to work, he did not believe that this came naturally to him. See E.A.J. Johnson, *Predecessors of Adam Smith*, (New York, 1960), 93-113.

60. Smout, *op. cit.*, 513.

61. Meek, *op. cit.*, 47


63. In many passages in *The Wealth of Nations*, Adam Smith evidences the obsession that Lowland Scots had concerning the backwardness of Highland society. Two will suffice here:

there is at this day a village in Scotland where it is not uncommon, I am told, for a workman to carry nails instead of money to the baker's shop or the alehouse.

And:

In some parts of Scotland, a few poor people make a trade of gathering, along the seashore, those little variegated stones commonly known by the name of Scotch Pebbles. The price which is paid to them by the stone cutter is altogether the wages of their labour; neither rent nor profit make any part of it.

See Adam Smith, *op. cit.*, 127, 154.
It is interesting to note that one of the questions discussed in the Speculative Society was "That benevolence is a stronger principle of action than interest." The fact that this question could be raised within the boundaries of moral philosophy is indicative of the spread of the ideas of Adam Smith. Incidentally, the Society ruled that interest was the stronger of the two qualities.

It was at this time that Brougham took over the finances and organization of the Royal Lancastrian Society, and began actively campaigning for a national system of education.

70. Smout, op. cit., 73.
71. Ibid., 452-61.
73. Smout, op. cit., 312.
76. Nicholls, op. cit., 120-4.
77. Opinions of Henry Lord Brougham, 73.
78. Ibid., 73-4.
80. David Hume: Writings on Economics, 23.


84. Adam Smith, op. cit., 120.


86. Ibid., 117.


88. Ibid., 4.

Chapter III

1. See cartoons in Francis Hawes, Henry Brougham, (London, 1957), 256. For Brougham's relationship with The Times, see ch. 7 of Derek Hudson, Thomas Barnes of 'The Times', (Cambridge, 1943).

2. Arthur Aspinall, Lord Brougham and the Whig Party, (Manchester, 1927), 70, 99, 123. Brougham was caricatured countless times by Punch which found his long nose a fitting object for ridicule.

3. At any rate, the true extent of Brougham's influence would be difficult to determine. Brougham's claim to fame resided more in his ability to initiate legal reforms than in carrying them through personally. Thus, much of his influence would have been indirect. Sir Cecil Carr points this out quite clearly in A Victorian Law Reformer's Correspondence, (London, 1955), 11.


10. Ibid., 400. This argument parallels the one put forth by Holdsworth in Some Makers of English Law. In fact, New cites Holdsworth as his source.


14. Crane Brinton, English Political Thought in the Nineteenth Century, (New York, 1962) and Holdsworth, Some Makers of English Law. Brinton also claims that Brougham was a disciple of Bentham.

15. Halevy, op. cit., 509. It is important to note, however, that it was Halevy's scholarly analysis of utilitarianism which furnished Dicey's critics with the ammunition to destroy his thesis. It is strange that Halevy himself was not more critical of Dicey's argument.

20. Hart's criticism of David Roberts was particularly scathing -- she claimed that Roberts totally discounted the role of ideas in his 'conservative' theory of reform. However, this was nothing more than a caricature of Robert's argument and Hart's political accusation was hardly warranted. Speaking recently at the University of British Columbia, Roberts denied both of Hart's accusations. He did not wish to eliminate the role of ideas, but merely to give them their proper place. Furthermore, his analysis had nothing to do with any conservative bias.

21. Both Roberts and MacDonagh were guilty of using vague generalizations such as "administrative necessity", "humanitarian sentiment", and "peculiar concatenation of circumstances". This lack of proper definition left them wide open to attack from Parris and Hart.


27. See "Letters to Lord Grenville on the Proposed Reform in the Administration of Civil Justice in Scotland," Bowring, op. cit., Vol. V, 29. Also, see Halévy, op. cit., 84, 138-40. As Halévy points out, Bentham was no liberal. He opposed the ideas of the 'philosophes' in France and the revolutionaries in America. For Bentham, the liberal doctrine was "the chief cause of that weakening in the power of justice, from which are seen to result, in England, so inefficacious an administration of law." Even among Bentham's more liberal disciples, the concept of liberty was subordinate to those of security, efficiency, and happiness. Bentham's ideal state was closer to that of the Grand Inquisitor than the utopia of liberal thinkers.
28. "Letters to Lord Grenville...," op. cit., 7-14, 29-47. Also, see Halevy, op. cit., 400-2 for a clear analysis of Bentham's opinion of juries. Bentham's system of natural justice had its basis in the speed and efficiency of the face to face justice meted out by a father to his children. Here, the responsibility of judgement was centered in a single individual; the truth could be ascertained quickly by admission of all relevant evidence and through cross examination; the punishment was swift and sure, allowing no excess pain through delay. Such was Bentham's ideal system. He believed that judicial organization should always approximate this model as closely as possible.

29. Law reform speech, op. cit., 140.


31. Speech, 144-5.


33. Speech, 151.

34. Speech, 156.

35. Speech, 191.

36. See "Abstract of the Bill for Establishing Courts of Local Jurisdiction," Edinburgh Review, July (1830), 478-495. It is important to point out, as well, that the idea of setting up local courts did not come from Bentham. As Brougham was well aware, Scotland had for centuries a system of local courts under the Sheriffs of counties. See Works of Henry Lord Brougham, Vol. XI, 367-8.

37. Speech, 179.

38. Speech, 179.


40. For a brief analysis of this subject, see T.B. Smith, A Short Commentary on the Law of Scotland, (Edinburgh, 1962), 42-6.

41. Speech, 196.
42. Charles Knight, *Passages of a Working Life*, Vol. II, (London, 1864), 71. It may not be amiss here to note that the original purpose of Special Pleading was to compel litigants to state their cases fully and distinctly. Unfortunately, by the time Knight wrote this, the thing had become totally anachronistic. On Special Pleading, see William Holdsworth, *A History of English Law*, Vol. XIII, (London, 1952), 450-63.

43. The parallels between Mansfield and Brougham are striking. Mansfield introduced the idea of 'equity' into Common law; Brougham went further and would have liked to see the distinction between them abolished. Both used Roman, French, and Scottish law as their basic reference. In addition, they both had a determined single-mindedness in regard to the modernization of the law for a commercial and industrial society. On Mansfield, see Harding, op. cit., 282f.

44. Speech, 196.


46. Speech, 212.

47. Speech, 236.

48. Speech, 236.

49. Speech, 181. This followed from Brougham's belief that the balance of power in the state should be preserved. He wanted to see the landed classes remain as a separate and powerful interest in society.


53. For example, Brougham could not see why a person profiting from the use of the land of another could not be treated as if he himself held a legal estate. As it stood, the legal niceties involved in 'uses upon uses'
were ridiculous. Brougham, referring to Scotland, asked "why there should be any horror of mounting a fee upon a fee, an idea so familiar to the feodists in the sister kingdom." (Speech, 225).

54. Despite his dislike for Napoleon, Brougham looked upon the Napoleonic Code as "a wonderful monument of genius." (Speech, 218).

55. Perhaps the noun used most often in the speech was 'principle'. This must have struck any English lawyers in the House as strange. They were accustomed to hearing it argued that the glory of English law lay in the fact that it did not adhere to any abstract 'principle', but, rather, was the fruit of ages of experience.


57. Knight, op. cit., 70.


59. A psycho-historian would have a field day interpreting this passage.


61. As was mentioned before, Chester New points this out quite often without ever realizing its significance.


66. Halevy, op. cit., 57-8, 54-75.
67. See Brougham's essay on the Wakefield Case in the Edinburgh Review, January, (1828) entitled "Trial of Edward Gibbon Wakefield...," 100-18. Since Brougham was counsel in the case, he probably wrote the article. If not, it is still absolutely certain that the article reflects Brougham's opinions and was written under his supervision.

68. Ibid., 102.

69. Ibid., 111.

70. Ibid., 116.

71. Ibid., 105-6.

72. Ibid., 109. Of Mansfield, Brougham writes:

Influenced by the general principle, that whatever is plainly done 'in fraudem legis', shall not avail the wrong-doer, many great lawyers, and among them Lord Mansfield, refused to recognize the validity of those runaway marriages.

73. This is quite evident from the proceedings of the Court of Chancery during Brougham's Chancellorship. See The English Reports, Vol.XL, Chancery XX, (Edinburgh, 1904), esp. 26, 52.


75. It is always difficult for a layman to interpret legal proceedings. But Brougham certainly seems to deliberately reject important arguments of counsel for precisely these reasons in a number of cases. For instance, in the case of 'Armstrong v. Armstrong' (Jan. 21, 1834), Brougham rejects a purely formal interpretation of the evidence on the grounds of common sense. Similarly, in the case of 'Hunter v. Atkins' (Jan. 30, 1834) and 'Wharton v. The Earl of Durham' (July 29, 1834), Brougham avoids technical arguments based on precedent in order to rely on first principles. See The English Reports, Vol. XL, Chancery XX, 18-27, 42-61, 180-5. Another interesting case was recorded by Greville in his famous diary. Greville tells us that a man, who should have been executed for forgery, owed his life to Brougham:

If Lyndhurst had been Chancellor he would
most assuredly have been hanged; not that Lyndhurst was particularly severe or cruel, but he would have concurred with the Chief Justice and have regarded the case solely in a judicial point of view, whereas the mind of the other (Brougham) was probably biased by some theory about the crime of forgery or by some fancy of his strange brain.


77. Ibid., 562.

78. Ibid., 607.

Chapter IV

1. It would be extremely anachronistic to refer to anything like a self-conscious class during this period. As Peter Laslett points out in The World We Have Lost, (London, 1971), there was actually only one group in this society which contained enough vertical and horizontal links to be entitled to the label 'class'. Brougham, himself, was fond of referring to society as a 'pyramid', at the base of which were the 'lower orders'. Incidentally, this point should cast doubt upon those historians who regard Brougham purely as a middle-class apologist; he did not at all view society in class terms.

2. The distinction between a moral and a market economy which necessitated the inculcation of a new character is clearly delineated in Karl Polanyi, The Great Transformation, (Boston, 1957).


9. In his study of voting patterns in the House of Commons in the 1840's, William Aydelotte found that neither the radical nor the tory paternalist theories of social reform are helpful in explaining the way in which members would vote on any given issue. Political attitudes and alignments were so complex as to make such generalizations superficial. If Aydelotte's findings can be extended to cover the earlier period, it would seem that the Webb's assumption is highly dubious, to say the least. Thus, the money explanation seems a more plausible one. See William Aydelotte, "The Conservative and Radical Interpretations of Early Victorian Social Legislation," Victorian Studies, (1967), 225-36.


13. In his review of Poynter's book on the theory of pauperism, David Roberts claims that the 'finely spun theories of Bentham and Malthus' had no real influence. One need not go quite this far to claim that a good argument for the extent of their influence remains to be made. Poynter himself is extremely tentative in his estimate of their influence.


17. By this I do not mean to say that there was a clear division between those who held one view and those who held the other. Many thinkers were not aware of the inconsistency between the two positions; others seemed to feel the tension but not to know exactly what to do about it. For example, Townsend has been depicted as a man who believed that the poor must be kept poor if the country was to maintain a balanced economy. Yet, even he was aware of the benefits of 'luxury' in stimulating the lower orders to industry. See Joseph Townsend, A Dissertation on the Poor Laws, (Berkeley, 1971), 33. I tend to believe that the two positions were carried on into the writings of the wage fund theorists. It is certainly true that many of these thinkers attempted to reconcile low wages with incentive payments by arguing that incentives should be applied but only very gradually. John Barton, for example, claimed that the working classes could only gradually acquire new needs, but that in time, they would raise their status considerably. See Observations on the Circumstances which influence the Condition of the Labouring Classes of Society, (Maryland, 1934), 40.

18. A.W. Coats discusses the importance of the Scottish School in "Economic Thought and Poor Law Policy in the Eighteenth Century," Economic History Review, 2nd Series, XIII, 1, (1960), 39-57. It should be noted, however, that Coats' emphasis is on Gilbert's Act whereas mine is on the Poor Law Amendment Act. Thus, while we are both concerned with basically the same Scottish ideas, it is in a very different context.


20. Oastler clearly evidences these views in his letters to the Duke of Wellington. These have recently been compiled in Richard Oastler: King of Factory Children, (New York, 1972).


22. E.J. Hobsbawm gives a perceptive analysis of this development in an essay entitled "Custom, Wages, and Work-Load." Here, he argues that British employers did not adopt new managerial techniques until they were absolutely forced to do so by the pressure of international competition and the new demands of workers. See


26. Scotland in the early nineteenth century and its problems with the poor was the subject of a tract written by George Ross, Observations on the Poor Laws and on the Management of the Poor in Great Britain arising from a Consideration of the Returns not before Parliament, (London, 1805).


29. Although Brougham was not a founding member of the quarterly journal, he quickly became the publication's most frequent contributor and dominating force. In fact, his influence was so strong that he had more effective control than even Jeffrey himself. However, there was a remarkable degree of unanimity among the originators of the project on most issues. This is hardly surprising since Jeffrey, Smith, Horner, and Brougham had all studied under Dugald Stewart. Thus, they shared the same views on the nature of society and the importance of political economy. Furthermore, they were all members of the Edinburgh 'literati' and had belonged to the Speculative Society. For an excellent account of their background and views, see John Clive, Scotch Reviewers: The 'Edinburgh Review', 1802-1825, (London, mcmlvii), ch. 2, 5, 7.

30. Ibid., 130-6. Clive draws some interesting conclusions on the influence of the periodical in disseminating the principles of classical economy by looking at its circulation and attempting to define its readership. On the role of the Edinburgh Review in influencing contemporary opinion on the Poor Law, see Poynter, op. cit., 165-73, 275.


34. This pride, it is important to note, was usually coupled with fear. As one reviewer pointed out, many Scottish parishes were beginning to adopt elements of the English system in the early nineteenth century. See Edinburgh Review, October, (1824), 228f.


36. Ibid., 276-7.


42. Clive, op. cit., 133.

43. See Edinburgh Review, October, (1804); Edinburgh Review, February, (1823), "Cobbett's 'Cottage Economy'"; all of the essays entitled 'Education of the Poor' are Brougham's as well and are worth looking at.

44. Malthus, op. cit., ch. 16. Here, Malthus takes issue with Adam Smith's theory of rising wages.

46. It is true that Brougham and his colleagues used Malthus in defence of gradual rather than dramatic social reform. See, for example, Torrens' article on "Mr. Owen's Plan for Relieving the National Distress," Edinburgh Review, October, (1819). However, this reflects the conservative nature of the Scottish School rather than any clearly Malthusian bias.

47. Malthus, op. cit., ch. 18, 19.
51. Ibid., 1115.
52. Hansard, Vol. 34, (1816), 878-894.
53. Ibid., 890-1.
55. Ibid., 1001.
56. Webbs, op. cit., 47. For an excellent discussion of the policies of the Whigs, see Austin Mitchell's The Whigs in Opposition, 1815-1830, (London, 1967). Basically, Mitchell argues that any definition of the Whig party in the early nineteenth century must necessarily be a 'soft' one. It is based largely on the distinction between a party that held the reins of power and one that was attempting to seize them.
58. Webbs, op. cit., 52.
59. Brougham's relationship with Harriet Martineau has not been examined by any of his biographers. However, some information may be obtained from Monica C. Groebel, "The Society for the Diffusion of Useful Knowledge," (University College, 1930). Further evidence of Brougham's significance can be seen in the fact that many of the pamphlets written against the Poor Law were addressed to him. A few of these are enclosed in The Aftermath of the 'Last Labourers' Revolt', (New York, 1972).
Chapter V


2. These dates are somewhat arbitrarily chosen, but they do serve a useful purpose in restricting our focus. 1804 was the year in which Lancaster described his new system of education. The monitorial system, as it came to be called, was the first attempt to efficiently educate large numbers of poor children. But no efforts were made at this time to have the state enforce any standards or to make attendance compulsory. With the appointment of a Committee of Council in 1839 to superintend educational funds, we see the real beginnings of state intervention in a serious way. About this time, Dr. James Kay-Shuttleworth rose to prominence as an educational figure.


19. See Elaine Anne Storella, "O What a World of Profit and Delight," (Brandeis University, 1969), 214. To name only a few of the Scotsmen in the Society, there were: Loch, Roget, Coulston, Thompson, Bell, Pattison, Elliotson, Quain, Horner, and Mackintosh.

21. See "The Scotsman's advice to the labouring classes."
The Aftermath of the 'Last Labourers' Revolt', (New York, 1972), 7.


23. Now, these were precisely the virtues which early capitalism needed to generate in the lower orders. Yet, faced with the difficulty of obtaining a disciplined labour force, English industrialists did not at once see the importance of education. It is interesting to note that the pioneers of factory education and scientific management were both Scots -- Andrew Ure and Robert Owen. See Sidney Pollard, The Genesis of Modern Management, (Middlesex, 1965), ch. 5.


26. However, this did involve the principle of governmental interference in what were believed to be private concerns. Brougham cited Adam Smith in defence of this modicum of state involvement. Still, it should be noted that the principle of government interference does contradict a strictly 'laissez-faire' position. See Simon, op. cit., 139.


29. Ibid., 593.


34. Notable among these were the satirists, Thomas Love Peacock and Mackworth Praed. One passage from Peacock's Crotchet Castle is particularly amusing:
"I say, sir, law for lawyers, and cookery for cooks: and I wish the learned friend, for all his life, a cook that will pass her time in studying his works, then every dinner he sits down to at home, he will sit on the stool of repentance."


37. Brougham also pointed out that the labouring classes of Scotland were able to maintain themselves on much lower earnings than those of England. In retrospect, perhaps it was a good thing that the 'needs' of English labourers were greater than those of their Scottish counterparts or they might have been expected to make do on less than they did. Oatmeal, even at the best of times, is a meagre fare.


40. Ibid., 5. This work, incidentally, describes the system in detail and provides several interesting diagrams of the students performing to verbal commands. Nothing could have been more conducive to the training of a factory worker or clerk than some of the meaningless and regimented exercises which the students had to perform.

41. Ibid., op. cit., 367.


43. See Russell, op. cit., 96-7; John William Adamson, English Education, 1789-1902, (Cambridge, 1930), 24-5. For a more detailed and contemporary account of the use of these theories in educational thought, see Joseph Priestley, On Education, (Bath, MDCLXXXVIII).
To be fair to Smith, he did not foresee education becoming a tool for the inculcation of work habits. Rather, he viewed it as a way of enabling the factory worker to exercise his mind, in compensation for the monotony of his labour. Nevertheless, the rationale for just this sort of education may easily be deduced from the fundamental thesis which Smith put forth.


52. J.F.C. Harrison, *op. cit.*, 45-78.


55. *Utopianism and Education*, 59.


64. Altick, *op. cit.*, and Anne Storella, *op. cit.*, on this issue. Storella's basic thesis is that the Mechanics' Institute was meant to serve the labour aristocracy. We do not think that this thesis is tenable, considering the disappointment that Brougham and his friends expressed when only a labour aristocracy was attending the Institutes' lectures.

65. Brougham acknowledged the Society's failure in an article in the *Edinburgh Review* in 1829. It is also interesting to note that his approach to working mens' clubs also changed after this period. Initially, Brougham had argued that workers' clubs should be places for intellectual stimulation rather than amusement or recreation. However, he soon changed his tune when this approach proved to be unfruitful. See Richard N. Price, "The Working Men's Club Movement and Victorian Social Reform Ideology," *Victorian Studies*, XV, 2, (1971), 117-47.


67. Brougham refers to the Scottish precedents for his educational proposals in *Practical Observations*, 10, 12, 22.


69. Ibid., 158.

70. Amy Gilbert, *op. cit.*, 72-3.


74. Charles Knight, *The Rights of Industry*, (London, 1831), 40. This work was written by Charles Knight. But since Brougham and Knight had a very close working relationship, it is probable that Brougham had a hand in it. The purpose of this book was to justify the doctrines of Adam Smith to workingmen and to show that the labour economists were incorrect. Brougham considered it to be one of the most important tracts of the Society. See Charles Knight, *Passages of a Working Life*, Vol.II, (London, 1864), 168-9, 310. Amy Gilbert, op. cit. mistakenly attributes this work solely to Brougham.


76. Ibid., 112f.


78. Ibid., 156.

79. Ibid., 163-83.

80. Ibid., 176-7.

81. Ibid., 156.


Conclusion


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