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► **To cite this version:**

Michael Drolet, Ludovic Frobert. The Making of Utilitarian Egalitarianism: The Case of Joseph Rey (1779-1855). *Revue d'études benthamiennes*, 2023, 2023 (23), 10.4000/etudes-benthamiennes.10486 . hal-03896432

HAL Id: hal-03896432

<https://hal.science/hal-03896432v1>

Submitted on 13 Dec 2022

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The Making of Egalitarian Utilitarianism: the case of Joseph Rey (1779-1855)

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Abstract:

This article examines the work of the nineteenth-century legal theorist, philosopher, and political radical, Joseph Rey (1799-1855). It explores Rey's serious engagement with Benthamite utilitarianism, philosophical radicalism, and Owenism. It examines how Rey radically re-theorised the principle of utility by fundamentally re-thinking the individual and her creative potentialities, situating both within a radically egalitarian system of co-operation that was inspired both by Owenism and the radical egalitarianism of the democratic communism of the 1790s. Rey's long-neglected fusion of utility and equality represented a thoroughgoing and novel transformation of utilitarianism that far surpassed in its originality J.S. Mill's reworking of the doctrine.

Keywords: socialism, equalitarianism, utilitarianism, Jeremy Bentham, John Stuart Mill, John Rawls, Philosophical Radicalism, Owenism, co-operation.

Résumé : Cet article examine le travail du théoricien, philosophe et socialiste, Joseph Rey (1799-1855). L'article analyse l'engagement sérieux de Rey avec l'utilitarisme benthamien, le radicalisme philosophique, et l'owénisme. Il décrit comment Rey a radicalement rethéorisé le principe d'utilité en repensant fondamentalement l'individu et ses potentialités créatrices, en les situant à la fois dans un système de coopération radicalement égalitaire inspiré à la fois par l'owénisme et l'égalitarisme radical du communisme démocratique des années 1790. La fusion longtemps négligée de Rey entre utilité et égalité représentait une transformation profonde et nouvelle de l'utilitarisme qui va bien au-delà, dans son originalité, du remaniement de la doctrine par John Stuart Mill.

Mots-clés : socialisme, égalitarisme, utilitarisme, Jeremy Bentham, John Stuart Mill, John Rawls, radicalisme philosophique, owénisme, coopération.

In his August 1838 article 'Bentham' for the *London and Westminster Review*, John Stuart Mill heralded Bentham as one of the great English minds of the age. Bentham was, Mill proclaimed, 'among the great intellectual benefactors of mankind', 'the father of English

innovation', 'the great *critical* thinker of his age and country.'¹ But Bentham was also, in Mill's opinion, no 'great philosopher'.² His approach to philosophical questions was narrow and inflexible. His method was unoriginal. And it was applied pedantically, rigidly, and obsessively. The result was a myopic and desiccated 'moral system' blighted by 'interminable classifications' and 'elaborate demonstrations of the most acknowledged truths.'³ While this shortcoming was serious and damaging, it did not detract from the power of Bentham's intellect, which lay in an 'eminently synthetical' mind that made 'short work with the ordinary modes of moral and political reasoning.'⁴ Bentham was never satisfied with 'allusions to reasons' or 'a summary appeal to some general sentiment of mankind, or to some maxim in familiar use', and he treated them as 'an attempt on the part of the disputant to impose his own individual sentiment on other people, without giving them a reason for it'.⁵ This was Bentham's great strength. It was also his great weakness. His mind doubted all other modes of thought and was hostile to them. He 'failed in deriving light from other minds' and believed himself to be intellectually self-sufficient. This, Mill damningly maintained, prevented him from seriously wondering and reflecting on 'the whole unanalysed experience of the human race'.⁶

Bentham's contempt, then, of all other schools of thinkers; his determination to create a philosophy wholly out of the materials furnished by his own mind, and by the minds like his own, was his first disqualification as a philosopher. His second, was the incompleteness of his own mind as a representative of universal human nature. In many of the most natural and strongest feelings of human nature he had no sympathy; from many of its graver experiences he was altogether cut off; and the faculty by which one mind understands a mind different from itself, and throws itself into the feelings of that other mind, was denied him by his deficiency of Imagination.⁷

Bentham's deficiency of imagination restricted his knowledge of human nature. What knowledge he had of it was 'wholly empirical; and the empiricism of one who has had little

¹ Mill, J.S., 'Bentham', in *Utilitarianism and Other Essays*, ed. A. Ryan (London, Harmondsworth, 1987), p. 134.

² *Ibid.*, p. 138.

³ *Ibid.*, p. 139.

⁴ *Ibid.*, p. 145.

⁵ *Ibid.*, p. 140.

⁶ *Ibid.*, pp. 146-147.

⁷ *Ibid.*, p. 148.

experience.’⁸ He denied ‘all that he does not see’, all those truths he did not recognise. And ‘the truths which are not Bentham’s, which his philosophy takes no account of, are many and important.’ In Mill’s estimation, the effect on his utilitarianism was damaging. But it was not fatal. Mill went on to argue ‘Bentham’s non-recognition of [these truths] does not put them out of existence; they are still with us, and it is a comparatively easy task that is reserved for us, to harmonize these truths with his.’⁹ What Mill did to harmonise those truths with Bentham’s utilitarianism is well-known. The distinction he drew between higher and lower pleasures, between the life of Socrates dissatisfied than the life of a fool satisfied needs no additional scrutiny. But the ‘comparatively easy task’ Mill reserved for himself, was deceptive in its simplicity. And it was one of Mill’s great failings not to recognise that. The ‘many and important’ truths of which he spoke were presented as universal. But many were themselves the invention of a ‘deficiency of Imagination’ that was Mill’s own.

This article examines a particular ‘deficiency of Imagination’ that was at the heart of Mill’s and Bentham’s thought; a failing of eighteenth- and nineteenth-century political economy. What Mill and Bentham took to be a ‘universal truth’ was the existence of profound inequalities and the inhuman conditions endured by the working classes. This unfortunate but altogether natural consequence of the development of industry and commerce was, according to Bentham and Mill, and to most political economists of the age, including James Mill, the price to be paid for wealth creation and the future benefits to be bestowed on humanity. Mill’s *London and Westminster Review* certainly acknowledged the high price to be paid. Its pages expressed empathy and feeling. It bemoaned ‘the crowded lands, courts, and alleys of a large town, whose every house is one unseemly den of squalid hunger, strife, envy, hatred, malice, and all uncharitableness – these are the abodes in which poverty appears in her most fearful garb, surrounded by vice and every variety of misery.’¹⁰ It treated as tragic ‘a condition of misery, produced by constant dread of starvation, or in an unimproving condition, caused by apathy arising from hopelessness.’¹¹ But it contended that poverty, heart-breaking as it was, was essentially transitory and would, when the working-classes grew out of their condition of ‘ignorance’, the consequence of a mindset and manners resistant to emulating the ‘elevated’ behaviours of the ‘enlightened’ classes whose financial success was proof of the rightness of their behaviour. In emulating the rich the working

⁸ *Ibid.*, p. 149.

⁹ *Ibid.*, p. 150.

¹⁰ J.R. [probably John Robertson] ‘Domestic Arrangements of the Working Classes’, *The London and Westminster Review*, April-July 1836, p. 451.

¹¹ *Ibid.*, p. 456.

classes would ‘benefit morally’. The working poor in ‘beholding a higher standard of comfort than he himself enjoys, his reason will set to work – not enviously, to reduce the rich man to his own level – but hopefully to devise means of raising himself to the level of the rich man.’¹² This remained Mill’s and the *London and Westminster Review*’s resolute judgement. In the words of Frank Fetter, Mill and the contributors to the *Review* maintained, ‘with surprisingly few exceptions, a consistent view on economic policy and an unwavering belief that the laws of political economy provided the proper guide for advancing the welfare of mankind.’¹³ Mill’s unyielding belief in the ‘laws’ of political economy were at the heart of his own myopia to philosophical questions and ‘non-recognition’ of important truths.

This deficiency of Mill’s and Bentham’s utilitarianism was identified a half century ago in Rawls’s *Theory of Justice* (1971), where he observed how utilitarianism’s origins lay in ‘social theories’, and economics, and that it was conceived to ‘meet’ specific ‘needs’ and ‘wider interests’. Bentham and Mill were instrumental in fashioning utilitarianism ‘to fit into a comprehensive scheme.’ But this ‘scheme’, which emerged over time and in an ad hoc manner, was, in Rawls’s words, nothing more than ‘a variant of the utility principle circumscribed and restricted in certain ad hoc ways by intuitionistic constraints.’¹⁴ And these intuitionistic constraints were a consequence of an unwavering belief in the truth of the so-called laws of political economy. For Rawls and much of liberal theory that would follow in the aftermath of *Theory of Justice*, the fundamental failing of both utilitarianism and intuitionism was their failure to prioritise the individual as the object (and subject) of moral consideration. But, as the Communitarian and socialist critiques of Rawls and the defenders of deontological liberalism have shown, their own versions of deontology are subject to the same critique Rawls addressed against utilitarianism, which is that they too are ‘circumscribed and restricted in certain ad hoc ways by intuitionistic constraints’, the constraints of liberal political economy. It is against this backdrop that this article explores how the work of one of Bentham’s little-known admirers and one of France’s neglected thinkers sought to free utilitarianism from the ‘intuitionistic constraints’ of liberal political economy, and through this, reworked utilitarianism, and political economy fundamentally, thereby rectifying the wrong of ‘non-recognition’ within utilitarianism and political economy. In this Bentham’s little-known admirer achieved what Bentham, Mill, and Rawls himself,

¹² *Ibid.*, p. 456.

¹³ Fetter, Frank, ‘Economic Articles in the Westminster Review and Their Authors, 1824-51’, *Journal of Political Economy*, 70, 6, (December 1962), p. 571.

¹⁴ Rawls, John, *A Theory of Justice* (Cambridge, MA, Harvard University Press, 1971), pp. vii-viii.

could not achieve: the prioritisation of the individual as both subject and object of moral consideration.

Joseph Rey (1779-1855) undertook this important corrective work. As the *Idéologue*, Destutt de Tracy's principal disciple, Rey was, between 1821 and 1826, a leading figure in London's émigré community of French liberals and republicans. Bentham was at the centre of this world. And this article examines how Rey, in his intellectual engagement with Benthamite utilitarianism and the work of Robert Owen and the Owenites, uncoupled the idea of utility from a felicific calculus grounded in two key assumptions of liberal political economy: the idea of private property and that of the private accumulation of wealth. Rey's uncoupling of utility from private property and private wealth accumulation was a direct response to one of those important truths to which Mill might have referred had he been more imaginative. This truth was that of the soul-destroying penury and hardship suffered by the working classes. And it was this that served as one of several steps in Rey's reflections on the social and political upheavals that beset a new, industrial, and commercial, Europe.¹⁵ In his *Adresse au roi* of 1832, Rey made a direct appeal to Louis-Philippe to improve the condition of the working-classes and to reform industry.¹⁶ But this was one of many steps that Rey took in rethinking utility on an entirely different foundation. Rather than see 'nature's two sovereign masters, pleasures and pains' as arising from a psychology that took as its starting point the individual, their labour and private property arising from it,¹⁷ he rethought that psychology.¹⁸ This involved his rejection of an artificial, imaginary, creation of a natural man who had certain 'rights' bestowed by nature, so-called, natural rights. Rey's rejection of state of nature theories was the prerequisite to his rejection of the premises of liberal political economy, with its assumptions about private property as a condition of natural right, and imaginary of social man, whose social rights are corollaries of natural rights, and whose social condition is constructed out of an imaginary natural, individualised, condition. Instead, Rey presented the individual as *a priori* a social being. This was for Rey, as it was for Aristotle, the person's natural condition.¹⁹ In reimagining labour, property, and wealth as expressions of human's species essence, as expressions of their nature, they too were

¹⁵ Weil, Georges, 'Les Mémoires de Joseph Rey', *Revue historique*, 157 (1928) pp. 291-307.

¹⁶ Rey, Joseph, *Adresse au roi* (Paris, 1832), 3-4.

¹⁷ Rey, Joseph, *Des Bases de l'ordre social*, I (Angers/Paris, 1836), p. 181.

¹⁸ Rey's rethinking of the foundations of utility through a rethinking of psychology, paralleled Pierre Leroux's rejection of Theodore Jouffroy's narrow individualist psychology. Rey reimagined psychology, the 'science of man', as rooted in the social. Leroux rejected Jouffroy's 'science of man' because it separated, and treated in isolation, the individual from humanity. See Goblot, Jean-Jacques, *Aux origines du socialisme français : Pierre Leroux et ses premiers écrits (1824-1830)* (Lyon, Presses universitaires de Lyon, 1977), p. 53.

¹⁹ Rey, J., *Des Bases*, I, 184.

conceived to be *a priori* social, or common. Rey rethought the fundamental intuition underlying utilitarianism, which lay in private persons and private property. Through his reworking of the economic and social origins to utilitarianism, Rey sought to establish a firm foundation to utilitarianism and social order, that in satisfying human needs, was the consequence of a moral vision of the world in which individuals' obligations to others were the *a priori* condition of being human.

What were the steps that Rey took to arrive at this radical rethinking of utilitarianism? This article will answer that question. It will show how Rey's time in London, which was marked by many long conversations with Bentham and leading Owenites, was key to this rethinking of utilitarianism. The expression of this rethinking appeared first in 1826 and then again in 1828 with the publication of three works : *Lettres sur le système de la coopération mutuelle* ; *Des institutions judiciaires d'Angleterre comparées à celles de la France*; and *Traité des principes généraux du droit et de la législation*. These were followed eight years later with the publication of Rey's *magnum opus*, his two-volume *Des bases de l'ordre social* (1836). This article will examine how Rey radically re-theorised the principle of utility by fundamentally re-thinking the individual and her creative potentialities.

I. Who was Joseph Rey?

The work of Joseph Rey (1779-1855) is not well known.²⁰ Born into a modest middle-class family in Grenoble on 24 October 1779, Rey was, like so many of his generation, profoundly affected by his childhood memories of the French Revolution and these would have a profound bearing on his reflections and outwardly unconventional intellectual trajectory.

²⁰ Few scholars have given Rey's work any attention. The first years of his intellectual biography are the subject of Mathilde Regad's, *Attaquer le droit pénal par la philosophie: Le cas Joseph Rey (1779-1855)* (Paris, L'Harmattan, 2016). His name appears in a handful of articles devoted to the reception of Owenism in France. See Gans, Jacques, 'Les relations entre socialistes de France et d'Angleterre au début du 19^e siècle', *Le Mouvement social*, 46, 1, (1964), pp. 105-18; Desroche, Henri, 'Images and Echoes of Owenism in Nineteenth Century France', in *Robert Owen, Prophet of the Poor*, ed. S. Pollard and J. Salt, (London, Macmillan, 1971), pp. 285-305; Frobert, Ludovic, and Drolet, Michael, 'The 'Science of Education' and Owenism: The Case of Joseph Rey (1779-1855)', *History of European Ideas*, 47, 2, (2021), pp. 216-230. The remaining articles and books that treat his work are dated and limited in scope. They include: Avril, M., *Un magistrat socialiste sous Louis-Napoléon: Joseph Rey de Grenoble* (Grenoble, 1907); Dumolard, H., 'Joseph Rey, de Grenoble, et ses Mémoires politiques', *Annales de l'Université de Grenoble*, 4, 1, (1927), pp.71-111; Weill, Georges, 'Un éducateur oublié, Joseph Rey', *Revue internationale de l'enseignement*, 54, 1, (1905), pp. 65-9; Weill, G., 'Les Mémoires de Joseph Rey', *Revue historique*, 157, 2, (1928), pp. 291-307; Rude, Fernand, *Un socialiste «utopique» oublié: Joseph Rey (1779-1855)* (Grenoble, 1944); Welch, Cheryl B., *Liberty and Utility: The French Idéologues and the Transformation of Liberalism* (New York, 1984), pp. 178-85. For the most recent study of Rey see Frobert, Ludovic, and Drolet, Michael, 'Kindness as the foundation to Community: For a "Radical Equality, Tempered by Benevolence". The Case of Joseph Rey of Grenoble (1779-1855)', *The English Historical Review*, 136, 578, (2021), pp. 117-150.

In 1802 Rey began studying law in Paris. He quickly fell under the spell the leading *Ideologue*, Antoine Destutt de Tracy who became Rey's mentor and protector, promoting his young amanuensis and playing a critical role in Rey's first appointment to the judiciary.²¹ Rey became an assiduous and hardworking justice in the conquered territories of the Empire and united departments. Under the restored Bourbon monarchy, he became president of the court of Rumilly (Savoie), but he was never a friend of the Bourbons, and he warned Louis XVIII and his ministers against undermining the constitutional charter of 1814.²² When Napoleon returned to Paris in May 1815, the beginning of his Hundred Days, Rey declared his allegiance with a short pamphlet entitled *Adresse à l'Empereur*. This work, which was read widely and admired, offered a blistering attack on the Bourbons' 'despotisme militaire et ministériel', and painted a picture of Napoleon as a founder of peoples, who, through the 'power' of his 'genius', was able, in Rey's words, 'to bring together in the shortest possible time the most varied phases of the whole of human history'. This encomium was also accompanied by an appeal: Napoleon's greatness required he embrace the principles of reason and justice and adopt a moderate liberal constitution 'founded solely on the eternal foundation of the greatest wellbeing of the governed.' The *Acte Additionnel*, penned by Rey's friend, Benjamin Constant, was the result.

Louis XVIII's second restoration resulted in Rey being removed from the bench.²³ This ushered in a new period in Rey's life, one devoted to theoretical reflection. He spent his time writing books on law.²⁴

At the end of 1810s, and in reaction to the White Terror, Rey founded the liberal group 'Union', a secret society along the lines of the Italian Carbonari, which could count on

²¹ Tracy's paternal affection for Rey is vividly conveyed in his letters. See Destutt de Tracy, Antoine, *Lettres à Joseph Rey (1804-1814)*, ed. C. Jolly, (Geneva, Droz, 2003).

²² 'N'essayons d'abord qu'à bien consolider les bases de l'édifice ; mais que tout soit égal entre le monarque et le peuple ; si le monarque veut exiger que les citoyens respectent les dispositions fondamentales de son autorité, il doit à son tour inviolablement respecter celles qui sont favorables aux droits de la nation.' Rey, Joseph, *De l'État Actuel de la France sous le rapport des idées politiques* (Paris, 1814), p. 21.

²³ Bourbon rule was re-established in France after Napoleon's first fall from power on 3 May 1814. On 20 March 1815 Napoleon returned to Paris after leaving Elba. His second rule was brief, lasting one hundred days, known as les Cent Jours. Four days after his defeat at the battle of Waterloo (18 June 1815), Napoleon abdicated (22 June 1815). On 8 July Louis XVIII was returned to Paris and the throne by troops under the Duke of Wellington's command. Thus began the second restoration. Louis XVIII reigned until his death in September 1824. He was succeeded by his youngest brother the Count d'Artois, who, in becoming Charles X, ruled until the July 1830. He was overthrown in a revolution.

²⁴ Important works from this period include: *Des bases d'une constitution ou de la balance des pouvoirs dans l'état* (1815), and *Préliminaires du droit, ou Introduction à un traité de législation générale* (1819).

the support of the more famous liberal *Société des amis de la presse*.²⁵ Rey and his Union championed the cause of the ‘general propagation of enlightenment and the just principles of social rights.’ In Paris the Union attracted to its ranks established liberals such as Lafayette, the duke d’Argenson, Dupont de l’Eure, the lawyer Odilon Barrot, the journalists and political economists Charles Comte and Charles Dunoyer, and the philosopher Victor Cousin. Rey’s place within the Union was important. The assassination of the Duc de Berry in February 1820 led to widespread repression and an immediate crack down on liberal opinion in France. Leading *Doctrinaire* liberals, such as Guizot and Prosper de Barante were dismissed from the Conseil d’État. Popular protests at the curtailing of press freedoms and other repressive measures were violently crushed.²⁶ Rey was outraged by these developments and placed the blame for repression and social turmoil on the Bourbons and their supporters. In *Quelle est la classe de citoyens le plus intéressée au maintien du gouvernement ?* (1820) he accused Louis XVIII and his ministers of pursuing an agenda that was antithetical to the interests of the nation. ‘From that perspective that preoccupies us, the privileged form still a last and quite distinct class, whose interests are diametrically opposed to the preservation of any government which has regard only for those ill-fated with talent and virtue who work.’²⁷ The Bourbons, he concluded, were out of touch and out of control: ‘les *seigneurs* et pour quelques ministres subalternes de leur anarchie, de leurs révoltes continuelles, de leurs illustres brigandages et de leurs chevaleresques atrocités.’²⁸ Rey mobilised members of the Union to join with Bonapartists, republicans, radicals, and sympathetic French army officers to plot an armed uprising. He was one of the key conspirators. The insurrection, planned for 19 August, was foiled, and Rey was lucky to evade arrest. He fled France and after nearly a year on the run found refuge in London.

II. Rey, Bentham, Philosophical Radicalism, and Owenism.

Rey arrived in London in July 1821, and quickly became a key figure in a network of progressive thinkers and politicians who could count among their number John Bowring,

²⁵ For the best book on nineteenth-century secret societies and the networks of conspirators see: Tardy, Jean-Noël, *L’Âge des ombres: complots, conspirations et sociétés secrètes au XIXe siècle* (Paris, Les Belles lettres, 2015).

²⁶ Guillon, Édouard, *Les complots militaires sous la Restauration* (Paris, Librairie Plon, 1895), pp.112-113.

²⁷ ‘Les privilégiés forment encore, sous le point de vue qui nous occupe, une dernière classe tout-à-fait distincte, dont les intérêts sont *diamétralement opposés à la conservation de tout gouvernement qui n’a d’égards que pour l’infortune respectable, pour le travail, les talents et les vertus.*’ Rey, Joseph, *Quelle est la classe de citoyens le plus intéressée au maintien du gouvernement ?* (Paris, 1820), pp. 16-17.

²⁸ *Ibid*, p. 4.

Edward Blaquiere, and Bentham himself. Lafayette was important to this network. He raised money to support Rey;²⁹ Bentham also supported him financially.³⁰ This gave Rey the chance to devote time and energy to the cause of liberal internationalism, serving as an important intermediary between the Philosophical Radicals and French, Spanish, and Portuguese liberal exiles.³¹

To Rey's work among liberal exiles must be added his lectures on French law and judicial institutions.³² The course was popular with liberal and radical audiences in London and was helped by Bentham, who also opened his library to Rey. The debt was amply repaid by Rey who answered many of Bentham's questions on French law.³³ Rey's lectures became his 1828 *Traité des Principes généraux de droit et de la législation*.³⁴ Along with reflecting on French law, Rey participated in discussions of the Utilitarian Society where he met 'the young John Mill', and debated many topics with the Philosophical Radicals, including a subject dear to the contributors to the *London and Westminster Review*, 'unlimited freedom of trade'.³⁵

Rey used his time in London productively. He wrote a parallel work to the *Traité*. This was *Des institutions judiciaires d'Angleterre comparées à celles de la France* (1828). Both the *Traité* and *Des institutions* were important contributions to penal, civil, and constitutional law. And both owed a profound debt to Bentham who enthusiastically welcomed the publication of *Des institutions*, describing it as a 'parallel view' to his own.³⁶

²⁹ Lafayette raised enough to provide Rey with a 1200 francs annuity. Rey, Joseph, *Mémoires*, III, 16, Bibliothèque Municipale de Grenoble (afterwards BMG), Mss. T.8938.

³⁰ Rey, J., *Mémoires*, III, 16, BMG, Mss. T.8938 ; William Effingham Lawrence to Jeremy Bentham, 3 December 1821, in *The Collected Works of Jeremy Bentham: The Correspondence of Jeremy Bentham*, ed. S. Conway, vol.10: July 1820 to January 1821, (Oxford, Clarendon Press, 1994), pp. 450-452; Weill, G., 'Les mémoires de Joseph Rey', p. 303.

³¹ For more on these exiles and conspirators, see Isabella, Maurizio *Risorgimento in Exile: Italian Emigrés and the Liberal International in the Post-Napoleonic Era* (Oxford, OUP, 2009), chs.1-2.

³² Rey, Joseph, *Lettres et billets reçus en Angleterre qui peuvent servir à mes mémoires*. BMG, Mss. T3957.

³³ Rey's answers were important to Bentham's *Constitutional Code*. See 'Introduction', in *The Collected Works of Jeremy Bentham: Constitutional Code*, vol.1., eds. F. Rosen and J.H. Burns (Oxford, Clarendon Press, 1983), and John Neal to Joseph Rey 10 July 1826, in *The Collected Works of Jeremy Bentham: The Correspondence of Jeremy Bentham*, vol.12: July 1824 to June 1828, eds. C. Fuller and L. O'Sullivan (Oxford, Clarendon Press, 2006), pp. 224-5.

³⁴ Rey, Joseph, *Mémoires sur la Restauration. Conspiration du 19 août 1820 et ses conséquences*, BMG, Mss. T8938, p.28.

³⁵ Rey, J., *Mémoires*, III, p. 21.

³⁶ In the introduction to *Traité des principes généraux* Rey acknowledges the importance of his English interlocutors on the evolution of his thinking from the time of the 1820-1821 publication of his *Essai d'un cours sur les principes généraux du droit et de législation* in the pages of the *Journal général de législation et de jurisprudence*. Later in the *Traité des principes généraux* he stressed just how important his discussions with Bentham, and the first volume of *Constitutional Code* were to his reflections. Rey, Joseph, *Traité des principes généraux du droit et de la législation* (Paris, 1828), p. 2. Bentham sent a copy of the first volume of *Constitutional Code* to Rey. See Jeremy Bentham to Lafayette, 11 May 1827, in *The Collected Works of Jeremy*

In *Traité* Rey drew extensively on Bentham. At the same time, he departed from Bentham's principle of utility by giving it a more egalitarian interpretation, arguing that Bentham's formulation of the 'greatest happiness of the greatest number' was inadequate to achieving social harmony and that social peace could not be achieved without attending to the welfare of *all* members of society.³⁷ This departure from Bentham's utilitarianism was the result of many factors. Well before Rey arrived in England, he highlighted the urgency of improving the situation of the poor. His 1820 pamphlet *Quelle est la classe de citoyens le plus intéressée au maintien du gouvernement?* stressed how important this was morally and politically: 'Nous voudrions accorder la plus grande influence politique à la classe des *nécessiteux par infortune* ou à celle des individus qui n'ont que le *strict nécessaire*, par cela seul que ces deux classes ont le plus haut intérêt à la conservation d'un gouvernement.'³⁸ A second factor was Rey's experience as a refugee, including his own experience as trying to establish himself in London as minor distiller driven out of business by a powerful commercial rival.³⁹ These experiences left a deep impression on him.⁴⁰ Third, was the extreme poverty he saw while living in London. A fourth factor was Rey's regular attendance of meetings of the Co-operative Society and his reading Owen's work, notably *A New View of Society*. The many workers he conversed with in meetings of the Co-operative Society and what he assimilated in reading Owen, fundamental principles of 'community' and 'equality', were decisive to helping him find answers to some of Europe's most pressing problems, particularly those that fell under the catch-all expression, 'the social question'.⁴¹

Rey's attendance at both the Utilitarian and the Co-operative Societies landed him at the centre of an animated debate between the Philosophical Radicals and the Owenites. Rey's adherence to the underlying epistemology of *Idéologie*, with its fundamental affinity with utilitarianism, meant that he defended those aspects of Bentham's thought he believed worth defending. According to Rey, the great value of Benthamite utilitarianism was two-fold. Its strengths lay in its methodological and epistemological rigour. Methodologically, its great philosophical and social purpose was to disperse the 'clouds of mysticism' that enveloped legal and political thought, a judgement Mill shared as his 1838 essay on Bentham makes

Bentham: The Correspondence of Jeremy Bentham, vol.12, p. 362. Bentham asked Dumont to translate Rey's *Traité* into English.

³⁷ Rey noted that 'Bentham ne propose que le bonheur du plus grand nombre, tandis que je pense que la société politique doit impérieusement pourvoir au bonheur de *tous* ses membres.' In Rey, J., *Traité des principes généraux du droit*, pp. 233-234.

³⁸ Rey, J., *Quelle est la classe de citoyens le plus intéressée au maintien du gouvernement ?*, pp.17-18.

³⁹ Rey, J., *Des institutions judiciaires de l'Angleterre comparées avec celles de la France* (Paris, 1828), p. 71.

⁴⁰ Rey, J., *Mémoires politiques*, pp.18-19.

⁴¹ Weill, G., 'Les mémoires de Joseph Rey', p. 304.

clear. Utility was also firmly rooted epistemologically in objective criteria of pleasures and pains. But whereas Bentham felicific calculus was the sum of individual pleasures and pains, the greatest happiness of the greatest number, Rey's experiences, his witness to crippling poverty and conversations with disaffected workers, and conviction in Owen's co-operative ideas, caused him to define utility differently, as the 'happiness of the greatest number, and of *all*, if possible, of every individual'. With this new definition, Rey believed he improved on Bentham's utilitarianism by reconciling individual and social activity, achieving, what he thought was beyond the reach of Benthamite utilitarianism, the goal of social harmony.⁴²

III. Idéologie, Utility, and Co-operation: from the *Lettres sur le système de la coopération mutuelle* to *Des bases de l'ordre social*.

Rey's *Des institutions judiciaires de l'Angleterre comparées avec celles de la France* united three intellectual currents that came to define all his later work: *Idéologie*, utilitarianism, and co-operation. *Des institutions* was based on extensive observations of the 'economic and moral state' of the English people.⁴³ And what he witnessed was distressing. Rey observed grinding poverty and confounding ignorance, and he attributed these conditions to soul-destroying employment workers described to him. They recounted dangerous, nauseating, foul, repulsive, and deafening work; strenuous and unyielding levels of exertion; and repetitive and mentally enervating tasks. These conditions were the product of a division of labour that, as Flora Tristan, who in 1840 travelled through England, described as having 'annihilated intelligence, to reduce man to a cog of machines'.⁴⁴ Rey, who observed this 'annihilation' of intelligence, reflected on its psychological effects. What he hypothesised had a direct bearing on his reworking of utilitarianism.

Given the present state of science, one would not find either why such an impression is pleasant and such another painful. This may well be due to a pre-established harmony, on the one hand, between our various organs, and, on the other, between our organs and the other objects of nature, so that any harmonious state of our being would result in well-being and of pleasure, and that any discordant state would produce pain.⁴⁵

⁴² Rey, J. *Traité*, pp. 235-6.

⁴³ Joseph Rey, *Des institutions judiciaires*, p. 2.

⁴⁴ Tristan, Flora, *Promenades dans Londres* (Paris, 2008), p. 56.

⁴⁵ 'On ne trouverait pas davantage, toujours en l'état actuel de la science, pourquoi telle impression est agréable et telle autre pénible. Cela peut bien tenir à une harmonie préétablie, d'une part entre nos divers organes, et de

The ‘annihilating’ environment of work, the extreme division of labour, was fundamentally antithetical to human happiness and to emotional, intellectual, and social harmony.

A general result, which moreover is certain, is that pleasure burst forth especially in the state of health, and when one has the power and the wisdom to exercise all one’s faculties in the appropriate manner; while pain is, on the contrary, proper to the unhealthy state or to the abuse of the faculties.⁴⁶

Rey decried the ‘extreme inequality’ of English industrial society, the ‘colossal fortunes’ accumulated by ‘a small number’ of individuals. This extreme wealth contrasted grotesquely with the unspeakable poverty of the poor. He, like Tristan years later, understood English manufacturers and political economists’ complete absence of empathy as a damning indictment of political economy’s perversion of morality. The degrading and inhuman conditions experienced by the working classes was the cause of great unhappiness and social discord. Rey gave his psychological and socio-political understanding of this in *Des bases de l’ordre social*.

All that we have just said corroborates all the more clearly our previous assertion, that pleasure and pain necessarily share our whole affective life. Now, since it is also proved that pleasure, tempered by wisdom, is a sensation favourable to the laws of our preservation, while pain is in the absolutely opposite case, it is not difficult to conclude that the aim of all our actions, and therefore the goal of social organisation, should be to obtain the greatest possible sum of enjoyment, with the removal of all pain, if that were possible.⁴⁷

l’autre entre nos organes et les autres objets de la nature, en sorte que tout état harmonique de notre être serait producteur de bien-être et de plaisir, et que tout état discordant serait producteur de peine.’ Rey, J., *Des bases de l’ordre social*, I, p. 339.

⁴⁶ ‘Un résultat général, qui du reste est certain, c’est que le plaisir éclate surtout dans l’état de santé, et lorsqu’on a le pouvoir et la sagesse d’exercer toutes ses facultés dans la mesure convenable ; tandis que la douleur est au contraire le propre de l’état maladif ou de l’abus des facultés.’ *Ibid.*, p. 340.

⁴⁷ ‘Tout ce que nous venons de dire nous confirme de plus en plus dans notre précédente assertion, que le plaisir et la douleur se partagent nécessairement toute notre vie affective. Or puisqu’il est également prouvé que le plaisir, tempéré par la sagesse, est une sensation favorable aux lois de notre conservation, tandis que la douleur est dans le cas absolument contraire, il n’est pas difficile de conclure que le but de toutes nos actions, et par suite le but de la direction sociale doit être l’obtention de la plus grande somme possible de jouissances, avec l’éloignement de toute douleur, si cela était possible.’ *Ibid.*, p. 341.

It was this understanding of the destructive tendencies of industrial and commercial society, the great unhappiness they caused in the vast majority, that motivated Rey to write two important pamphlets on Owen and co-operation for the French. And it was in the writing of these that Rey clarified his thoughts and began his remarkable synthesis of *Idéologie*, utilitarianism, and co-operation – a synthesis that was achieved between 1828 and 1836. This was a prolific period in Rey's life culminating in the publication of his great work, the two volume *Des bases de l'ordre social*.

In 1826 Rey was offered an amnesty by Charles X's government. On his return to France, he was invited by Olinde Rodrigues to write on Owenism for the Saint-Simonian journal, *Le Producteur*. The two articles published in the September and October were later added to by a third and published as a book in 1828 as *Lettres sur le système de la coopération mutuelle*. It was the first complete presentation of Owen's work to the French.

The *Lettres* gave a forensic analysis of industrial society, identifying its ruinous vices and their effects. Rey identified 'the spirit of exclusive INDIVIDUALITY' as the main corrupting principle of industrial society.⁴⁸ According to Rey exclusive individuality encompassed the 'deadly principle of competition', which was at the heart of all social interactions and justified the consequence of private property and wealth: 'extreme inequality in the distribution of goods (...) [and] the accumulation of wealth by a small number of individuals.'⁴⁹ The injustice of the spirit of individuality was aggravated by the bewildering paradoxes it engendered. On one hand, it generated immense productive forces and unseen material abundance. On the other, that wealth, accumulated by 'a small number of individuals', was placed beyond the reach of those who laboured to produce it. While the rich and powerful lived lives free of want, the labouring-classes inhabited a world of servitude and unspeakable poverty. The profound social imbalance engendered by the spirit of exclusive individuality was mirrored in an extreme economic imbalance, with scarce resources being directed toward the production of luxuries and warfare. Humans and capital were put to unproductive and inefficient use. And the political imbalance was equally extreme, with laws and force being used to impose and maintain what was a manifestly unjust order. In Rey's words, the spirit of exclusive individuality created a society whose fundamental characteristic was the 'systematic organisation of disorder'.⁵⁰ And the incomprehensibility of this reality was made to appear entirely normal by the language of

⁴⁸ Rey, Joseph, *Lettres sur le système de la coopération mutuelle et de la communauté de tous les biens* (Paris, 1828), 32.

⁴⁹ *Ibid.*, p. 10.

⁵⁰ *Ibid.*, p. 15.

political economy and jurisprudence, which, through a fiction created by a rhetoric of ‘naturalness’, instilled, in subjects and lawmakers alike, a ‘mechanical veneration’ for established practices and institutions. Against this backdrop, Rey presented co-operation as the basis for ‘true social order, that is to say, the only one that can give man in society the greatest possible sum of happiness.’⁵¹ He enumerated the fifteen aspects of Owen's system that, when combined, yielded the ‘greatest possible sum of happiness.’ And he grouped these elements under two broad headings: headings that revealed Rey’s methodological debt to Bentham. The first was the economic and the social. The second was the political and moral.

Under the economic and social, Rey stressed the benefits of a community in which the ownership of land and ‘instruments and capital’ were held in common. Common ownership yielded a more efficient use of resources and guaranteed the equal enjoyment of goods. It also – and this was fundamental to his argument – treated labour equally, effacing the kind of hierarchy between intellectual and manual labour that was pregnant in the idea of capacity or ability, central to liberal political economy.⁵² In treating labour equally and common to community, Rey removed one of the most serious impediments to treating all individuals equally – to prioritising the individual as the object (and subject) of moral consideration. Rey’s ‘communauté de jouissance des produits basée sur l’égalité’ established mutuality between equality and community. He summarised how individual, and community were reconciled: ‘It seems to me beyond doubt that a system of mutual co-operation conjoined to community and the equal enjoyment of goods, would destroy the germ of the divisions born of the state of individual competition the clashing of efforts in production and the laying of claims to enjoyment.’⁵³

Under the political and moral, Rey emphasised just how much of a departure from Europe’s established orders, from the ‘systematic organisation of disorder’, Owen’s system of co-operation was. The equal treatment of labour removed the obstacles to ‘unlimited freedom’: *amour-propre* and with it, domination. The equal treatment of labour, the contented and gratified conditions that arose out of meaningful work, laid the foundation to a genuinely ‘co-operative community’, a community with an expansive understanding of individual and political liberties, including freedom of thought, expression, association, participation, deliberation, and self-governance.⁵⁴

⁵¹ *Ibid.*, p. 8.

⁵² For a detailed critique of the idea of capacity see Frobert, Ludovic, *Vers l’égalité ou au-delà? Essai sur l’aube du socialisme* (Lyon, ENS Éditions, 2021).

⁵³ Rey, J., *Lettres*, p. 40.

⁵⁴ Rey, J., *Lettres*, p. 33.

One key element to Rey's reflections on Owenism was education. To forge a genuine co-operative community, a community of equals free of the hierarchies spawned by *amour propre*, education had itself to be understood and practiced as a collaborative process of discovery defined by a non-hierarchical relationship between student and teacher. Rey's thoughts on equality and the psychology of pleasure as the condition to emotional and intellectual harmony and wellbeing shaped his understanding of learning as a collaborative activity. This was another reshaping of *Idéologie* and utility. Departing significantly from Bentham's 1817 reflections in *Chrestomathia*, Rey's thoughts on education as a collaborative process of discovery, of intellectual, psychological, and emotional growth, of human relating and intersubjective union, informed all his writings and projects on education, particularly another work from that prolific year of 1828: *De la méthode Jacotot*.⁵⁵

By the time Rey published *Des bases de l'ordre social*, he had achieved a new and altogether distinctive way of thinking about the constellation of ideas that would, through the early decades of the nineteenth century crystallise in the ideologies of liberalism, republicanism, and socialism. *Des bases de l'ordre social* was ambitious in scope and intent. It paved the way to a deep rethinking of human relations and social organisation that was wide-ranging and profound. It not only challenged to the core the liberal order of the July Monarchy, dominated by *Doctrinaire* liberalism and the philosophy of eclecticism, it also questioned fundamentally the entire *corpus* of French socialist and republican thought, which itself was in open conflict with the Louis-Philippe's government.⁵⁶ Though the compass of this article does not permit us to discuss in minute detail *Des bases de l'ordre social*, it is worth reflecting on just how remarkably ambitious this work was in scope and intent. First, it resurrected the ancient concept of hospitality and made it a central idea with an altogether modern reworking, reflecting on how it was the guiding principle of human relations in a community of equals living in a spirit of benevolence.⁵⁷ This was Rey's hopeful alternative to the hostile reality of the spirit of exclusive individuality and its accompanying 'deadly principle of competition', which, secondly, Rey dissected and examined forensically. Third, Rey's meticulous analysis of the principles of political economy led him to distance himself more comprehensively from Bentham than in previous writings. Bentham's felicific calculus, the aggregation of pleasures and pains, was, as Mill himself pointed out, derived from an intelligence that believed itself to be self-sufficient but was utterly cut off from most human

⁵⁵ Rey, Joseph, *De la méthode Jacotot* (Paris/Grenoble, 1828).

⁵⁶ Rey, Joseph, *Adresse au Roi* (Paris, 1832), p. 12.

⁵⁷ Considerant, Victor, *Les deux communismes, observations sur la lettre de M. Rey* (Paris, 1847), p. 17.

experience. This total absence of sympathy with, in Mill's words, 'the most natural and strongest feelings of human nature' was fatal to Bentham's utilitarian calculus and disqualified it from being considered a moral theory but qualified it to be the moral fiction and palliative to industrialists', political economists', and legislators' acceptance of profound inequalities and their acquiescence to the plight of the poor.⁵⁸ As Rey observed:

Gentlemen, economists who are well fed, well housed, and enjoy all the conveniences of life, are able to write at their leisure that when work is wanting for certain classes of workers as a result of the introduction of machinery, one shouldn't be too bothered, because soon the low price of products leads to greater consumption, which ends up requiring a much larger number of hands than before the introduction of machinery. I would like to know that if they were subject to similar vicissitudes, especially when they are so frequent, they would continue to maintain such a self-serving theory. I would very much like to see them burdened with dependents, overwhelmed with misery, and knocking in vain at the door of the workshop... I would very much like to hear what they would answer, when told that the natural course of things would soon be restored, and that, in the meantime, they must be patient. ...⁵⁹

With these remarks Rey not only exposed the fiction of political economy, but he also anticipated, by almost a decade, Marx's critique of James Mill. Marx's highlighted just how the political economy's 'abstract laws' were 'no more than an abstract, contingent and one-sided moment' to 'the *real* movement' of 'fluctuation' and 'disparity',⁶⁰ and revealed how this was one of many expressions of political economy's alternative reality, in which concrete human relations are abstracted and reflected to individuals as what is real. Reality became fiction, and fiction, the new reality. In his critique of James Mill, Marx summarised it thus:

⁵⁸ Rey, J., *Des bases de l'ordre social*, II, 180-3, pp. 186-187.

⁵⁹ 'Messieurs les économistes, bien nourris, bien logés, qui jouissent de tous les agréments de la vie, pourront écrire à leur aise que lorsque l'ouvrage manque à certaines classes d'ouvriers par l'emploi d'une machine, on ne doit pas s'en embarrasser, parce que *bientôt* le bon marché des produits amène une plus forte consommation, qui finit par nécessiter un nombre bien plus considérable de bras qu'avant l'invention. Je voudrais bien savoir s'ils persisteraient dans commode théorie, soumis eux-mêmes à de semblables vicissitudes, surtout quand elles sont fréquentes. Je voudrais bien les voir chargés de famille, accablés de misères, et frappant vainement à la porte de l'atelier ... Je voudrais bien entendre ce qu'ils répondraient alors, quand on leur dirait que le cours ancien des choses doit *bientôt* se rétablir, et qu'ils doivent prendre patience en attendant. ...' *Ibid.*, p. 405.

⁶⁰ Marx, Karl., 'Excerpts from James Mill's *Elements of Political Economy*', in *Early Writings*, ed. Lucio Colletti (Harmondsworth, Penguin, 1992), p. 260.

‘Since in the process of exchange men do not relate to each other as men, *things* lose the meaning of personal, human property.’⁶¹

Rey tackled political economy’s fictions from a different angle than Marx. Rather than engage directly with the works of political economists, as Marx had done, Rey showed epistemologically and ontologically how our sense perceptions and the way we make sense of reality worked. He observed that there was, in his words, a ‘perfect unity of being and action, whatever the origin of the phenomena one wishes to express; thus, in any perceived sensation, there is always a moral effect, that is to say an intellectual or affective phenomenon, while, on the other hand, in any sensation, whatever its situation and its cause, there is always a physical effect, since there is always a physical organ that is affected.’⁶² What he showed was how intimately linked the moral and physical were. This demonstration served a triple purpose. The first was to show how this relation between the moral and physical was key to ideas and the science of ideas, or ideology. As he noted ‘we must recognize the necessity of basing the science of our sensations on a good theory of our ideas. Ideology, or the science which aims to observe the origin and development of our ideas, must also precede the establishment of any rational system of social organization.’⁶³ The second was to show how the actions of the legislator, whose function was, according to Rey, ‘to give a certain direction to the actions of the individuals who make up the Society ... to direct human actions rationally’ had to ‘know the principles of the science which is sometimes called economics (...) and often also political economy, but whose general object is to consider the actions of man in society, in relation to a production of *well-being*.’⁶⁴ The third was to show how, the ideas of political economy rested on false premises, and that it gave an incorrect impression of reality. Political economy perverted our ideas and their development, such that our intelligence presented to us an entirely alternative, false, reality from our *actual* lived experience. And this, as we have already seen, had, according to Rey, the most destructive consequences on humans. Showing how this manifested itself was the domain of physiology. As Rey noted: ‘**PHYSIOLOGY** being the science of observation of **ALL** the

⁶¹ *Ibid.*, p. 261.

⁶² ‘Une unité parfaite d’être et d’action, quelle que soit l’origine des phénomènes qu’on veut exprimer ; ainsi, dans toute sensation *perçue*, il y a toujours un effet moral, c’est-à-dire un phénomène intellectuel ou affectif, tandis que, d’un autre côté, dans toute sensation aussi, quels que soient encore son siège et sa cause, il y a toujours un effet physique, puisqu’il y a toujours un organe matériel *impressionné*.’ Rey, J., *Des bases de l’ordre social*, II, pp. 19-20.

⁶³ Rey, J., *Des bases de l’ordre social*, I, pp. 28-29.

⁶⁴ *Ibid.*, p. 27. Emphasis added.

phenomena of life, it is obvious that it must include that of intellectual, moral and economic phenomena, as well as of all the other consequences of our organism.’

Rey succeeded in achieving a threefold revolution in *Des bases de l'ordre social*. First, he transformed utilitarianism by shifting it from its narrowly individualist premises, which were themselves the product of Bentham's ignorance of so much human experience. Second, and, perhaps more important to him given the work's dedication to the memory of Destutt de Tracy, was the complete reworking of *Idéologie*. In this he restored *Idéologie*'s original and authentic critical function, which was to trace and analyse the origins of ideas, subject ideas to rigorous scrutiny, unmask false ideas, and then substitute those fictions with ideas that corresponded to people's genuine experience of the world. Third, he corrected fundamentally utopian socialism's, particularly Saint-Simon's and Auguste Comte's, flawed appropriation of physiology, which, as with liberal political economy, resulted in a central place being assigned to the individualist concept of 'capacité', and its resultant hierarchical and unjust social structure. Rey freed physiology from Saint-Simon's and Comte's contingent and one-sided understanding of it: an understanding that came to dominate utopian socialist thinking. In this, he restored to physiology its comprehensive, egalitarian, and universal character.

What Rey achieved in *Des bases de l'ordre social* was revolutionary. The work proved to be a major intervention in the struggles that came to characterise the ideological formation of nineteenth-century France and Europe, the moment when the great ideological categories of modernity were being forged. And it sought to bridge a widening gap between the competing variants of liberalism and socialism, to reconcile individual freedom and self-determination with community. His revolutionary transformation of utilitarianism and *Idéologie* were critical to his fundamental reshaping of political economy, transforming it from the 'dismal science' of 'laisser-souffrir, laisser-mourir', to the authentic science of the 'production of well-being.' A science that would see, as he put it, a 'sweet harmony spread over all the members of the magnificent family, united forever by the bonds of love, of the general fraternity'.⁶⁵

IV. Conclusion

⁶⁵ Rey, J., *Mémoires sur la Restauration*. p. 28.

The irony of Rey's *Des bases de l'ordre social* was that though it was a major intervention in the intellectual and political struggles that defined the ideological formation of nineteenth-century France and Europe, it was also a victim of those struggles. Rey's unique contribution to unifying *Idéologie*, utilitarianism, and co-operation, an ambitious and encompassing enterprise that brought together distinct intellectual and political positions, became incongruous in a rapidly developing political and social universe where the intensity of political contestation resulted in the forging of rigid ideological identities. The intensity of these struggles stemmed any intellectual cross-fertilisation that, in an earlier era, emerged out of the porousness of amorphous ideological boundaries. The sheer scope of Rey's enterprise, and the radical foundational rethinking it involved, appeared to a new generation of liberals and socialists as ill-considered, as a betrayal to their respective causes. And for this reason, Rey's ideas became marginal to those central discussions and disputes of the nineteenth century. What this article has revealed is that Rey's intellectual trajectory, from *Idéologie* to co-operation, involved a subtle yet thoroughgoing reshaping of fundamental premises to liberal and socialist political thinking, that sought to reconcile fundamental features of both, features that came to be thought of by a new generation of liberals and socialists as irreconcilable. The fierce battles waged by this new generation of liberals and socialists narrowed their intellectual horizons, and this in turn resulted in the very 'deficiency of Imagination' that Mill bemoaned of Bentham and that he himself was guilty of.

The legacy of this 'deficiency of Imagination' we continue to live with, as Rawls's engagement with utilitarianism and liberal political economy made all too clear. And the fierce political struggles that define our current era, risk a further contraction of our own intellectual horizons. The need to return to thinkers such as Joseph Rey, whose rich imaginations yielded enterprises ambitious and encompassing in scope that brought together distinct intellectual and political positions, could not be greater. Rey's intellectual trajectory from *Idéologie* to co-operation, a trajectory that nourished his thinking and ambition to reconcile the fundamental features of *Idéologie*, utilitarianism, and co-operation is precisely a salutary example of the kind of prodigiousness of imagination that our own era desperately requires.

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