

JEREMY BENTHAM: A CENTENARY RETROSPECT*

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THE year 1932 will be marked by some notable centenaries, and by the appreciations which a centenary is sure to call forth. In our time there seems to be increased interest in such secular commemoration of leading figures of the past, and surely every historian must welcome this adventitious aid to the studies he has at heart. Within the last few years we have been stirred by the mere suggestiveness of the calendar to a reconsideration of men so different as Renan and Pasteur, Ibsen and George Meredith, Leo Tolstoy and Gabriel Rossetti. Nor is it only the great men, it is also the merely attractive and humorous of long ago, that we love to find a pretext for thus recalling. I note that this year the enthusiasts for a tercentenary are trying to convince themselves that 1632 saw the birth of that delightful companion of our fireside, Samuel Pepys; and though it seems just as likely that it was 1633, there is reluctance to press so disagreeable a point on those in a hurry to celebrate. It is at least certain that two other names, with interest of an order very different from that of Pepys, will soon be thrilling the historical imagination of men of letters all over the world. For 1832 was marked by the death of Sir Walter Scott at Abbotsford and of Goethe in Weimar.

I think the philosophers have been rather remiss in leaving the centenaries and bicentenaries and tercentenaries of the men of their craft insufficiently observed. We should have made more noise than we did in 1924 over the fact that just two hundred years had passed since the birth of Kant. Two months ago, we should have been explaining, to a world that was quite unaware of it, how great a figure had gone from the scene by the death of Hegel a century before. I am hopeful that 1932 will not be allowed to pass without a very keen revival of interest in Locke and Spinoza, whose tercentenaries are due respectively in August and in November. As a modest contribution to such improvement of these secular opportunities, I invite you to reflect with me this evening on what was meant to the world of philosophy by the work of that remarkable thinker, Jeremy Bentham, who died on 6th June, 1832.

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I

We do well to recall him because, in the first place, we may say of Bentham what Lord Balfour said of Henry Sidgwick,—that if any man ever belonged to the household of Socrates, he surely did. Plato's motto, that the unexamined life is not worth living for man, might have been prefixed as a headline to almost every chapter in every book he wrote. His passion was the scrutiny of established customs and institutions, systems of belief and systems of practice, laying bare what was presupposed, and challenging every assumption to disclose why one ought to assume it. He directed this searchlight upon the contemporary structure of British law and British government, not at a time like our own, when sceptical criticism is the fashion and none but the really original philosopher can face the odium of defending what is conventional. As Mr. Chesterton has admirably said, there is no more courage in attacking hoary or antiquated things than in offering to fight one's grandmother, but it requires genuine courage to defy tyrannies young as the morning and superstitions fresh as the first flowers.¹ Such high courage was Bentham's; for though the forces he defied were old, they had been endowed by the accident of circumstance with the robustness of an artificial youth. The French Revolution had made a tremendous difference. In a spirit of the keenest intellectual adventure, Bentham questioned things established at the very time when their establishment was most savagely guarded, arraigning constitutional and judicial abuses of the period when, as Sydney Smith said, Lord Eldon and the Court of Chancery sat heavily on mankind.

Unlike most philosophers, too, he did this with marked practical effect. Fitzjames Stephen said his influence had been comparable to that of Adam Smith, and Brougham—in an ecstatic moment—said he was the first legal philosopher that had appeared in the world! His fame indeed has suffered through his very triumph, for he made the principle of "Utility" seem such a truism in legislation that one easily forgets how on its first announcement it seemed rather a paradox. On the mind of Brougham he operated with a success such, for example, as Plato never achieved in dealing with Dion of Syracuse. Numerous pieces of legislation, both civil and criminal, were shaped in the "Hermitage" of Queen's Gate. More than forty years after his death, Sir Henry Maine could recall no legal reform in that period which could not be traced to Bentham's influence. Nor was it merely a British in-

1. G. K. Chesterton, *What's Wrong with the World?* p. 33.

fluence. France knew and revered his writings before he had any real fame in the country of his birth, and there is reason to believe that they provided material to Mirabeau for speeches at the States-General. George Borrow found his name one to conjure with in Spain. All over the republics of Latin America, then struggling to birth, there was an impulse to send to Bentham for a draft constitution. Even in Russia, little disposed to favour his speculations, he was spoken of with awe as an innovator of the same intellectual quality as Bacon or Newton. In the crisis of agitation for reform of the British parliament, he was coaching the parliamentary radicals, composing for them their *Catechism*, the very oracle of inspiration to a Burdett, a Cartwright, an O'Connell.

What is perhaps most interesting, from our point of view, is the fact that Bentham in all these public activities conceived himself fulfilling the behests of a *philosophy*. Whether right or wrong in his conviction about it, he was altogether convinced that what separated him from English reactionaries on the one hand and French Jacobins on the other was his rigorous inference of practical measures from fundamental truths of human nature. Neither a traditionalist nor an empiric, he was relying everywhere on a scientific psychology. Our question now is twofold: (i) how far he was reformer, and (ii) how far his reforms were dependent—as he thought they were—on his philosophy.

II

The biographical sketch which is conventionally prefaced to an account of a philosopher's opinions may, in his case, be brief. Jeremy Bentham had little that can be called a private life, and except for the sequence of his publications he had no public career.

He was a Londoner, very much a Londoner, born in Houndsditch, educated at Westminster School—where he was a shy, much bullied and very self-conscious pupil about the time when Wolfe took Quebec. He left the capital in his youth only to keep his terms at Queen's College, Oxford, and afterwards—when he came into an inheritance of ample means—he spent a life of over half a century in a spacious old London house overlooking St. James's Park, a rendezvous for radical thinkers of his own kidney, and avoided by almost everyone else. Like the sixteenth century Protestant Reformers, he was born and bred to the system he was to attack. Bentham was a lawyer, coming of a family of lawyers, and by his obvious precocity he stimulated his father's hope that he might reach the woolsack. Of Oxford, whither he went just

five years after Gibbon left it, he thought very much as Gibbon thought; and when in preparation for the bar he took lectures from Sir William Blackstone, he felt that the uselessness of what he had been taught in arts was succeeded by the absurdity of what he was being taught in law. He listened, as he has himself said, "with rebel ears" to an account of the exquisite perfection of British legal machinery, and already he marked the disingenuousness of the lecturer in suggesting, without committing himself to its historical follies, that the basis of all political obligation was a social contract. He had not long gone down from Oxford when he began to prepare the remarkable brochure entitled *Fragment on Government*, in which the Blackstone theory of the State was torn to shreds. It appeared anonymously, and being attributed in turn to Lord Mansfield, to Dunning, and to Lord Camden, it created enormous excitement—much like the excitement of a hundred years later, when the disturbing book called *Supernatural Religion* was rumoured to be the work of a bishop.

Meanwhile, Bentham had been called to the bar, but he never really practised, and when he advised that a client whose case had been committed to him should settle it out of court, for economical reasons, his family's hope of the woosack was at once overcast. "It is as impossible", he exclaimed, "for a lawyer to wish men out of litigation as for a physician to wish them in health." Moreover, he was trifling with chemical studies, and other purely intellectual pursuits which any ambitious professional man should know how to avoid!

But Blackstone had not only roused in him a violent dislike of the practice of law. He had likewise stirred in his pupil an intense curiosity about the real foundations of the social and legal structure. It was plain that the argument of the famous *Commentaries* could not stand a moment before the devastating critique on "Social Contract" in the third book of Hume's *Treatise*, of which Bentham says that when he read it, the scales fell from his eyes. But neither, he considered, was there anything that deserved a moment's respect in the new theory about man's "Natural Rights" which had just been published in a transatlantic document called *Declaration of Independence*. Bentham actually joined with another in concocting a pamphlet to defend the policy of Lord North, and ridiculed the sacred *Declaration* because it everywhere took for granted what it was pretending to prove. Following Hume, he saw that no country ever did, ever can, or ever should guarantee rights absolutely to any individual, and that the rights a citizen may enjoy must always be limited by the public necessity.

With this principle in mind, Bentham was a critical onlooker at the social tempest in the Europe of the years just before the French Revolution. Relieved by the windfall of a large inheritance from the need to earn a livelihood, and introduced by the notorious *Fragment* to a few of the leading politicians that surrounded William Pitt, he became an eager propagandist for his own peculiar brand of opinion about law and government. By the standard of utility he began to review the contemporary scandals—muddled and unstable policies in parliament, capricious procedure in civil and criminal courts, the amazing old dogmas about what made evidence admissible, the delays of Chancery, and the prison system which had so lately rivetted the attention of Howard. Availing himself of the opportunity to visit his brother, Samuel Bentham, who was engaged on engineering work in Russia, he was absent from England for two years, keeping his eyes open to all he marked in the German, the French, the Polish, the Russian, even the Turkish ways of life and law and government. Shortly after his return, he produced the first fruits of his protracted study, the work which still remains his most important single treatise, entitled *Theory of Legislation*.

That was the real beginning of his long career in the rôle of a social prophet. For the next forty years he was applying with rigorous exactness the central doctrine of this book, that all laws should be passed and administered with a single eye to making their consequences yield the maximum surplus of pleasure to the greatest number of people. The question whether limits should be set to trade, to rates of interest, to any sort of private enterprise, was to be determined by no manner of either ancient tradition or abstract principle, but solely by the results to be expected for public happiness from this solution and from that.

How he would have fared if he had been given actual charge of the great social schemes he used to plan out on paper, there is no evidence to show. He offered his services, for example, to Robespierre in the capacity of Director of a Paris Prison, where during the Reign of Terror he might put to the proof his new utilitarian ideas about punishment; but the Committee of Public Safety contented itself with adding Bentham's name to the list of its honorary citizens, and preferred to rely upon penal methods with which it was already familiar. A more serious consideration, but in the end a like fate, attended his plan for dealing at home both with criminals and with paupers by the establishment of a vast Government workshop, in which these classes should be productively employed. One feature of this was what he thought

a brilliant architectural idea, that of a central building from which all the workers could be kept simultaneously under observation, and he spent a great deal of his own money in experimenting with what he called his "Panopticon." It makes one feel that he was not altogether unpractical when one reads that though his proposal was declined, he extracted from the Government large compensation for his outlay. But, though his influence on British institutional changes was profound, it was never direct. He was not the creator of new things, but the seminal source of those ideas which other men put into practice. As Mill said, it was not Bentham at work by his own writings, but it was Bentham through the minds which those writings fed.¹ How much, for example, was his in the production of the swelling tide that carried the Reform Bill into law in the very year of his death!

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Regarding the philosophy of Bentham, the main thesis of this paper may be put in short space.

He preached Utilitarianism as the foundation principle of all reform both in law and in morals, explaining that Utilitarianism meant the judgment of every proposal by its anticipated consequences in increase of pleasure and avoidance of pain. This ethical doctrine has not stood the test of criticism, and yet the public reforms which it prompted have been invaluable. The key to the paradox lies in the fact that Benthamism comprised two quite different propositions, one sound, the other unsound, but it was on the unsound proposition that he so constantly harped as to make it seem the centre of his system, while the sound one, about which he said little, was the very nerve and spring of his reforms. Bentham maintained (i) that the estimate of values in conduct is to be reached not by intuition, not by tradition, not by any sort of external authority, but by a forecast and balancing of consequences. This was not only true, but the truth most requiring to be stated at the time, and Bentham applied it to contemporary social problems with incomparable power. But he maintained (ii) that the only consequences to be considered in one's forecast are consequences in pleasure and pain, because in the expectation of pleasure or pain lies the sole motive which is psychologically capable of determining the will. This doctrine, connecting an ethical maxim with a psychological law, has been shown to be wrong in ethics, wrong in psychology, wrong in the supposed connection between its psychology and its ethics. But while what

1. Mill, *Essay on Bentham in Dissertations.*

was false in Benthamism was precisely the part on which Bentham chiefly plumed himself, what was true remained its active principle which could not thus be nullified. The doctrine of consequences coupled with the doctrine of pleasure may be likened to the arsenic and incantations which Voltaire said would kill sheep. It was obvious that those who used arsenic and incantations did kill more sheep than those who depended, let us say, on the effect of the evil eye. In like manner legislators who used in reform the two parts of Benthamism were extraordinarily successful in their warfare upon abuses. But it was for a later age to distinguish the element in their method which was efficacious.

III

With a zeal fit for more important investigation, philosophers have hunted for the first appearance of the rule called "Utility" in morals and government; also for the origin of the phrase "greatest happiness of the greatest number." Though Bentham has been well called the inventor and patentee of legal reforms, he can be allowed no patent for either of these. "Greatest happiness of the greatest number" seems to have been first used by Hutcheson in 1725. Bentham's statement that he got it from Priestley's book, which appeared more than forty years after Hutcheson's, is open to the objection that though the sense is much the same, Priestley's language is substantially different, while Bentham reproduces Hutcheson's very words. His memory, tenacious as it was, had an occasional lapse. And, for whatever we may think it worth, it is beyond doubt that the term "Utilitarian" came from Canada. For John Galt not only gave his own name to an Ontario town, but in his *Annals of the Parish* suggested to John Stuart Mill the term "Utility" as the badge of a philosophic school.

It was through the portal of law that Bentham entered the mansions of philosophy. Like many another youth, Renan for example—who was first made aware of the case for religious scepticism when he met it "under cover of feeble refutations"¹—he began to realize the sting of a philosophic problem through the manifest collapse of his instructor's attempt to solve it. His intellectual debt to Blackstone was thus incalculable. But to appreciate the practical value of the crusade he undertook in the name of "Utility", we must be familiar with the contemporary literature of resistance to reform. When Bentham wrote in the *Fragment* about the spirit of "obsequious quietism" inculcated in an Oxford

1. Renan, *Souvenirs d'Enfance et de Jeunesse*.

lecture-room, he can have had but a faint idea of the paralysis which that spirit was ere long to impose upon social growth of every kind. He was to see his warning fulfilled in the society of Cockburn's *Memorials of My Time*—when a schoolmaster in Edinburgh could not talk to his boys about the expulsion of the Tarquins and the struggles of the plebs without having spies set to watch him and report to the Edinburgh police.¹ But it was not only such phenomena as the Gagging Acts and the prohibition of all public meetings that might furnish examples of what Bentham meant. He was to see the basis for all this laid in philosophic or quasi-philosophic publications. He was to see Blackstone's argument reinforced by citations in the same sense from Coke and Selden. He was to see Burke's *Reflections* demonstrating that neither the Petition of Right nor Magna Carta involved any fundamental change, that each was but a restoration of what had been temporarily in abeyance, that each was justified by this very fact of its antiquity—the giving back of an inheritance, "rights not of men, but of Englishmen." The same tone runs through countless passages in De Quincey, incessant tributes to every aspect of the old English order, including the Game Laws; and although this last feature made too great a demand upon the humane spirit of Sydney Smith, even he was extremely suspicious of any "revolutionary" proposal, for example, to make prisons educative or humanizing, and to revise the theory on which the traditional rigour reposed. This too was accepted as part of what Disraeli called the matchless creation of our ancestors, which had survived a moral earthquake and outlived a mental hurricane.

Of the two great objects of Bentham's detestation—British common law (that is, judge-made law) and Natural Rights, it was the former that he found the more formidable in his own country, and against which his attack was chiefly directed. Coleridge used to thank God that "Jacobins" in England had been for the most part atheists, because this had rendered them uninfluential. But the British Conservatives were very influential indeed, and men of high talent—like Coleridge—were furnishing them with a persuasive philosophy of their position. Bentham, as the apostle of progress, assailed this, first of all, in its account of English law. The comparative freedom of Great Britain from the revolutions so common elsewhere was ascribed to the perfection of her legal system. His critical treatment of that myth in his two greatest treatises, his *Principles of the Penal Code* and his *Rationale of Evidence*, will serve to illustrate the thesis of this paper in regard

1. Cockburn, *Memorials*, Vol. I, p. 6.

to him; that his rule of utility was the beginning of vast reforms, but that these were in no way dependent on the hedonistic sense he gave to that rule when stating it,—and splendidly forgot when applying it. Another, and in many respects his most unfortunate, book, the *Constitutional Code*, written in his later years, will similarly illustrate what must happen when the strictly hedonistic reference ceases to be an innocuous appendage of the rule, and becomes its central principle.

The horrors of the criminal courts in Bentham's time are known to all students of social history, but it is a common mistake to suppose that these horrors were limited to savage and indiscriminating vengeance. On the contrary, the indulgence was as chaotic and as reckless as the severities. Capital sentences, authorized for an enormous number of crimes, were in the great majority of cases remitted. The working of the machine was obstructed by the ingenious devices of a judge excluding—on some technical ground—the evidence he didn't want to hear, or by what Bentham has himself called the humane perjury of jurymen. It is to him we owe the first really effective demand that reliance shall no longer be placed on counteracting one sort of scandal by another, putting the devices of merciful mendacity against the ruthlessness of a machine. In demanding this he was no sentimentalist, for the scientific penal system which he sought to substitute for inherited chaos might just as often catch offenders who before escaped as spare those who before were caught.

His appeal was for a real criminology. He would first think out what exactly punishment is meant to achieve, dismissing as mere superstition—preserved like many superstitions by traditional nomenclature—the idea that it is exacting an equivalent for crime. See how varied are the supposed equivalents, in the systems of different countries! Such “mental travelling,” as Bentham liked to call it, was enough to educate one out of that supposed intuition. If, then, punishment is merely deterrent, how shall the sanctions of the penal law be used to deter most effectively? How shall they so operate upon the individual that he will find his own interest coinciding with the public interest? Here, I think, the great distinction of Bentham lies not in the principle, which he borrowed from Beccaria, as Beccaria had borrowed it from others, but in the extraordinary and most suggestive fullness of detail with which he worked it out in application. It was this which rivetted the attention of Brougham and Denman and many others, so that—although they were practising lawyers—they began to think there was something in philosophy after all. First among Bentham's

deductions was the rule that certainty of punishment is of greater value as a deterrent than its severity; a suggestion of importance at all times, but laden with significance then. Next came the distinction between offences which merit only social censure and those which call for legal penalty, the distinction to be based on no sterile formula, whether British Conservative or French Jacobin, but on utilitarian considerations—such as the possibility of discovery, the risks of making the punishment a worse social evil than the offence, or of affording incitement to a grosser in preference to a slighter crime. Next we have the classifying of offences, ranging them in their degrees of heinousness or extenuation, again in the light of predictable consequences. For punishment should always be *frugal*, inflicting the minimum that will achieve its purpose, and also *equal*, susceptible of variation though the offence be the same, if differences of age and sex, race, climate, and surroundings indicate the need for this. Very obvious points these, are they not? And very familiar? So we are tempted to observe, like the sweet old lady who said she liked Shakespeare very much, but could not forgive him for so many unacknowledged quotations! As Morley said of Voltaire, we may say of Bentham, that he was supremely the man for his time. His suggestions too of the ineptitude of solitary confinement and enforced idleness in prison, together with his scheme for a prison farm, show how enormously he was ahead even of the best thought of his contemporaries.

In the field of civil law, his *Rationale of Evidence* was a piece of similar reasoning, and his plea was for a like irreverent treatment of old superstitions. Bentham liked to compare judge-made law to priest-made religion, and he regarded numerous dogmas in both as under the sensitive guardianship of those who profited by their obscurity. For example, that cabinet of historical curiosities which an English country-gentleman must always purchase yet another time as often as he effected a settlement of his estate! On the question what constitutes evidence, and who should be admitted as witnesses, Bentham invites his reader to revert to the one great test—what, on the whole, in the light of experience, are the best precautions we can take against mendacity? We want the truth; let us, without much regard to ancient habits, whose origin was often in some long exploded superstition, lay down rules for ourselves as to whom we shall hear in court, and with what differing degrees of confidence. He pursues this enquiry tirelessly into the last detail: What is the value of cross-examination? How should evidence be recorded? How far can a man be a valuable witness in his own case? Or a wife in her husband's case?

IV

In pursuit of the same purpose, he made the demand by which he is now best known;—namely, that the whole body of English law should be reduced to a written code.

This was a project which he thought so obviously desirable that resistance to it was a disgrace. It was work, he said, “which public necessity cries aloud for, at which professional interest shudders, and at which legislative indolence stands aghast.”¹ Despairing of his own country, he adjured the nascent American republic to close its ports against “the common law” as against the plague, and to extirpate at once any fragment of the unclean thing which might already have found an entrance.

In our time, Codification—like Socialism—has ceased to be a matter of Yes or No, and has become one of More or Less. English lawyers are nearly all codifiers of some sort and in some degree. They may be unalterably opposed, like Mr. James Coolidge Carter, to a code of *private* law, regulating the transactions between individuals, while enthusiastic for a code of *public* law, setting forth the obligations of society as a whole. Even within the private sphere, they may favour the consolidation of the principles of the so-called “common” law on such matters as merchant shipping, bills of exchange, and much more. A glance at treatises on jurisprudence will show, too, that many lawyers now view with alarm the idea of a complete and abrupt codification, but would reconstruct separate areas at a time, enacting as definite statutes the slow accumulation of decisions. This group is known as the “gradual” or “progressive” codifiers. But to Bentham, as the initiator of the movement in England, they have all to look back.

He thought of law as Cromwell had thought of it, when he used the lurid phrase “a tortuous and ungodly jumble;” or as Mr. H. G. Wells now thinks of it, when he speaks of “the muddled secret of the legal profession.” Its remediable defects seemed to be (i) its variability, and (ii) its obscurity. Bentham urged that law could and should be rendered definite, uniform, hence easily accessible to the average man without judicial interpretations and in general without an expert guide. It was of the first importance that what was required not only in public duty but in private relationship should be widely and clearly known. A written code, he held, would establish unity, by preventing the capricious decisions of different judges. It would thus leave transgression less excusable, and it would make litigation less expensive.²

1. *Fragment on Government*, V.

2. Cf. *Principles of Legislation*, pp. 156, 7: “The law would then be truly known to everyone; deviation from it would be manifest; every citizen would be its guardian; its violation would not be a mystery, its explanation would not be a monopoly, and fraud and chicanery would no longer be able to elude it.”

The lapse of a century has clarified judgment on this side of Bentham's apostolate. That he was right against contemporary criticism, that the reasons by which he justified codification were relevant and apposite, while the counter-argument of Lord Eldon and his circle was merely obstructive, is now plain. It is also plain that the codifying Bentham demanded for the whole of English law has now been carried out, with excellent results, for a part of it. But there was a defence against Benthamite innovation here, much better than Lord Eldon could construct. It rested, not on the prescriptive authority or the ancient prejudice which philosophic Radicals would mock, but on the very maxim of utility which they were bound to reverence. The greatest happiness of the greatest number would not be served by a rigorous code covering not only the obligations of the individual to the State, which are comparatively simple and definable, but the relations of individuals with one another, in which the cases are exceedingly complex and very seldom alike. To fix these too under a written code would mean that instead of guiding precedents we should have rigid commands; instead of the flexible system which combines identity of principle with variety of application, and thus avoids individual injustice while preserving corporate order, we should have once again the old scandal branded by the satire of antiquity as the cast-iron jurisprudence of Medes and Persians. It is notorious that in the Province of Quebec the working of the *Code Napoleon* has been greatly assisted by just that accumulation of recorded decisions under it with which the original codifiers thought it both possible and desirable to dispense. Slowly, under the name of *jurisprudence*, the old habit of consulting precedents has crept back where it was least expected, for in French Canada they have proved how true was Napoleon's own comment on his *Code* that "oversimplicity has turned out the enemy of precision." A century's experience has shown, too, how stereotyping of rules must check if not terminate that wholesome growth of law, adjusting itself with increasing accuracy to the special features of special cases, which Bentham himself—in a mood at once of more liberal thinking and of more picturesque description—has so eloquently celebrated.

V

More serious than the excesses of his codifying project are the faults which later criticism has found in his argument for *laissez faire*. The sequence of his thought here is quite plain. First having laid down the very sound doctrine that actions and policies

are to be judged by their consequences, next having made the plausible but groundless assumption that the only consequences to be considered are pleasures and pains, he infers that State interference should be reduced to a minimum because the individual is always best judge of what will please and pain him. Hence the amazing *Defence of Usury*, in which Bentham argued that no restriction whatever should be placed on the rate of interest which a lender might lawfully exact from a borrower's desperate necessities. He did not live to witness the struggle over the Factory Acts, and the Acts regulating employment in mines; but the ways of thinking he had inspired were very obvious in the resistance to this so-called "Paternalism" by economists such as Nassau Senior. Of like origin was his extraordinary plea for "vindictive satisfaction"¹ in punishment, and for judicious use of the "pleasures of malevolence," on the ground that by the exhilarating spectacle of distress in an enemy the person wronged will be indemnified for the pain he was made to suffer or the pleasure he was made to forgo. There is even a paragraph of indescribable reasoning in support of occasional punitive "mutilations."

The proposition that the individual is always best judge of his own greatest happiness should have seemed to Bentham at least as good an example of what he called "anarchic fallacy" as anything in *Declaration of Independence* or the *Declaration of the Rights of Man*. It could never have imposed upon him if he had not begun by confusing happiness with sum of pleasures, a mistake which Plato, whom he so despised, had exposed twenty-two centuries before. The enterprises best left to individual discretion have to be separated with great care from those best restrained or promoted by law, and no sweeping doctrine of *laissez faire* will suffice. Bentham's use of this maxim wholesale might be expected, then, to prove sometimes a support for wise and sometimes an apology for unwise policies, and this is just what experience shows it to have been. It promoted the repeal of the Navigation Laws and the amendment of the Combination Law, the passing of the Marriage Act and the legalization of the Limited Liability Company, all of which are immensely to Bentham's credit. But though such changes were urged on the ground that they would promote the sum-total of pleasures, it was because they had consequences by no means translatable into pleasures that they have been such a success; and a glance through his *Theory of Legislation*

1. *Principles of the Penal Code*, Chap. xvi: "Every kind of satisfaction, as it is a punishment to the offender, naturally produces a pleasure of vengeance to the injured party. That pleasure is a gain; it calls to mind Samson's riddle; it is the sweet coming out of the terrible, it is honey dropping from the lion's mouth."

will show that it is quite other consequences Bentham himself often had in mind, though he would hark back to his formula as to the repetition of a creed. On the other hand, where it was pleasures and nothing but pleasures that he had definitely before him, the effect of his principle was most disastrous. If it did not avail to stop legislation against usury, and against inhuman conditions in factory or mine, this was because the spirit of Bentham was successfully resisted by others.

Of like origin was the amazing insistence in his later books upon the maxim "Minimise confidence." His picture of the ideal parliament was of an assembly not of representatives but of delegates, ineligible for re-election except at wide intervals, so that their services would cease to be available just about the time when experience had begun to give them value. He often writes as if he would favour what is now called Referendum and Recall. The closest possible check was to be kept by constituents continuously upon their members, so as to make private self-seeking—of which alone a member was capable—to coincide with seeking the good of those represented! A sort of Panopticon for M. P.'s, so that like criminals or paupers on the public land they should be kept always under watch; as he put it himself, a machine for grinding rogues honest and idle men industrious.¹ Parliament would thus be a mere mirror of the aggregate, as against what Rousseau called the general will. Burke's maxim, that the people never knows what it wills, seemed to Bentham a perfect paradox.

But all this, so remote from what a genuine use of the principle of utility should prescribe, is a necessary result of using that principle merely to add and subtract pleasures and pains. My representative may know much better than I know what will promote my greatest happiness, but I am certainly best judge of what will yield to me the greatest sum of pleasures. And to say that, every man thus judging his own pleasure, the pleasures of the community will be served by adding them up, with no criterion for their distribution, is—as Aristotle once said of an argument in Plato—mere "empty talk."

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One who was predisposed to the friendliest criticism said of Bentham that he had not only great endowments but also great deficiencies for philosophy, and that he could not compensate by his extraordinary skill in method for his scantiness of material on

1. *Works* x, p. 226. Elsewhere varying the metaphor, Bentham makes the same point no less picturesquely: "If it be true, according to the homely proverb, that the eye of the master makes the ox fat, it is no less so that the eye of the public makes the statesman virtuous. For it is thus, and only thus, that public service is to be won from the jaws of private greed."

which to exercise it. John Stuart Mill, in one of his most penetrating essays, has thus dwelt upon the gaps in Bentham's knowledge of human nature, upon his inability to understand the strength in other men of feelings which were weak in himself, upon his profound lack of imagination, and upon his inexcusable neglect to acquaint himself with the work of other thinkers. A life so detached as his cannot be favourable to enquiry in the social sciences. The details of his isolation were such as became woven into a legend, and the lawyers, led by the resentful Brougham, sought to lighten the weight of his onslaught on themselves by recalling how he had vilified everyone else. He had said, indeed, that nothing short of a miracle could raise a thorough-paced English attorney to the moral level of the average citizen. But had he not also written of his youthful associates at Oxford that such of them as were not dissipated were stupid, that the very streets of the city were paved with perjury, and that his own attitude to the public was to desire as little as possible of their company with as much as possible of their esteem? Retailers of anecdote loved to recall how Madame de Stael's message, that she had resolved to meet no one in London till she had met the great Bentham, elicited only the ungallant reply that in that case she must be satisfied to meet no one at all. And they would illustrate his controversial methods by pointing out that when he differed from the Lord Chancellor on a constitutional problem, he set this forth in a letter headed *Truth versus Ashurst*, just as his severance from his own best friend was intimated in the pamphlet *Lord Brougham Displayed*.¹

But those who knew him best had no patience with the tale that he was a misanthrope. He was indeed eccentric, as is sufficiently shown by the condition he attached to the bequest of his fortune to University College Hospital,—that his own skeleton should be placed in the chair at all future meetings of the Hospital Board! But his friends knew that so far from being insensible—as the common report alleged—to aesthetic interests, Bentham kept throughout life much of the tenderness of childhood, disguised, as shy men will always disguise it, under an affectation of severity. They remembered his passion for music, the seven pianos in seven rooms of his house, his love of pictures (though, suggestively enough, of Hogarth for preference), his record at Oxford for Greek and Latin verse whose elegance pleased even the fastidious Johnson, his linguistic gift which made his French prose even better than the terse and admirable English of his early books, and his sensibility

1. Probably the most picturesque of all his titles was this one: "*History of the Warfare between George III and Jeremy Bentham, by One of the Belligerents.*"

that could always be made to weep over *Clarissa* or to roar with merriment over *Gulliver*. His personality in old age has been sketched in an unforgettable paragraph by one surely as unlike him as any man could be to another. Where could one find a greater contrast than between Jeremy Bentham and William Hazlitt? But though Bentham could have had no patience with Hazlitt, Hazlitt used to watch Bentham with fascinated eye, often looking over the garden wall of the old house at Westminster where the great codifier lived for forty years "reducing law to system and the mind of man to a machine." He noted many a strange habit of the place; the personnel of the callers—an Opposition member seeking hints for further assault on the Liverpool Government or further exposure of Lord Eldon; perhaps some expatriated patriot from the continent of Europe; or a transatlantic adventurer desiring a plan of laws for "some lone island of the watery waste." Bentham would be negligent in his attire, almost like a Puritan but for his double chin and a suggestion of sleek prosperity—a sort of cross between Benjamin Franklin and Charles James Fox! He would have his visitors walk with him, or rather run after him, up and down his garden, for he economised his time by making such visits the occasion of his turn in the open air. He talked much, and from others he listened only to facts, cutting short the proffered opinions, for in truth—says Hazlitt—he regarded the people about him no more than the flies of summer, and did but "meditate the next Age."¹

To rehearse again the defects of the Benthamite ethic is needless. Tried by the criteria of our generation, they are such as "go before unto judgment," and they are judged in every ethical text-book. But when such a psychologist as McDougall has proved that Bentham's hedonistic psychology was false; when such a moralist as G. E. Moore has proved that Bentham's professed analysis of "good" was a mere account of accompaniments, without touching the essence; and when such a metaphysician as Henry Sidgwick has proved that even though Bentham's psychology and Bentham's ethic had both been right, he would remain altogether wrong in the connection he asserted between them;—after all this has been done, we have still to concede that, on a basis so largely unsound, Bentham constructed a reform of law with which the work of only a very few others in all legal history can be compared.

What does that suggest? Surely this—that for the reform of law, Bentham's faults were not merely harmless; they may well have been, indirectly, even an advantage to him. If he had not

1. Hazlitt, *The Spirit of the Age*, Essay on Bentham.

mistaken for the ultimate standard what is no more than a convenient practical test, he would have had no sufficient faith in it to press forward his "greatest happiness principle." The enthusiasm thus generated in himself by a theoretical illusion kept him, as such enthusiasm has kept many others, tirelessly at a job of great practical value. When he said that to contrive, no matter at what cost to other values, the greatest possible increase of pleasure and diminution of pain is the supreme end of government, he asserted what Bacon would have called "an axiom of the highest generality," and it is now generally condemned by the best ethical critics as false. But if you think of it as what Bacon called an "intermediate principle," included among *vera illa et media axiomata*, and remember how—as the great aphorism proceeds—on such intermediate principles depend the affairs and fortunes of men, you can see how the change which Bentham based on a theoretical illusion was the very redeeming touch his Age required.