

LECTURE ON A MASTER MIND

BENTHAM

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IN 1838 when John Stuart Mill wrote his famous essay on Bentham,¹ Bowring's edition of Bentham's works, which included much not previously published, was still in progress. Mill says that at this time 'except for the more slight of his works' Bentham's readers had been few. It seems that the completion in 1843 of the Bowring edition did not vastly increase their numbers. In 1864 Richard Hildreth, an American lawyer and moralist, embarked on the strange project of translating back from French into English Dumont's very free version of some of Bentham's writings on the Principles of Legislation. Hildreth tells us in the preface to his translation that he was inspired to publish it because, in spite of their fame abroad, Bentham's works 'in England and America, though frequently spoken of, are little read'. This is still true; and a very great proportion of Bentham's published work has for long been relegated to an intellectual lumber room visited only by the historian. It is clear that the discouraging close print and double columns of the Bowring edition are not solely responsible for this. Even when the new and splendid edition to be published by the Athlone Press of the University of London becomes available, the reading of the largely unread Bentham will not prove easy. The difficulties are well known: so many of the major controversies to which his writings relate are dead or transformed; so many of the reforms demanded in the name of Utility have long been conceded; often only an historian with a detailed knowledge of the period could judge how far the Benthamite reforms which were not adopted would have been an improvement and what the total effect was of those reforms which were adopted. There is, moreover, along with the diverting wit and splendid invective,

¹ *Dissertations and Discussions*, vol. i, pp. 330-92. 'Bentham' first published in the *London and Westminster Review*, 1838.

much eccentric and exasperating pedantry in Bentham's later style with its proliferation of invented 'Greek-sprung' technical terms and his exploration in infinite detail of every project.

Nonetheless, the legend of Bentham's unreadability is disturbing and it is worth attempting an amateur estimate of the amount of Bentham's published work which is, in fact, read at the present time. For most readers without a very specialized interest, Bentham's thought is represented by the *Fragment of Government* and the *Principles of Morals and Legislation*. These are easily accessible in modern editions, and are the only works of Bentham's which could be described as widely read and which at the present time enter regularly, though (*crede experto*) by no means in their entirety, into the academic teaching of political philosophy or politics or jurisprudence. The specialist in the philosophy of law—a small enough class in this country—reads the two brilliant works discovered by Mr. Charles Everett among the Bentham folios: *The Comment on the Commentaries*¹ and *The Limits of Jurisprudence Defined*.² Mr. C. K. Ogden's book, published in 1933 on Bentham's *Theory of Fictions* with its collection of passages from the essays on Logic, Ontology, and Universal Grammar, brought to the notice of philosophers, in most cases almost certainly for the first time, the fact that Bentham had anticipated by a century part of Bertrand Russell's doctrine on logical constructions and incomplete symbols. That doctrine, at the time of Mr. Ogden's publication, was looked upon by many English and American philosophers as the paradigm of philosophical method and the prime solvent of philosophical perplexities. Finally, Dr. Starks's recent three-volume anthology³ of the economic writings, much of which had not been previously published, has done something to show to economists the range and power of Bentham's thought on monetary theory, investment, and employment. It is clear that there is cause to question Lord Keynes's judgement that 'Bentham was not an economist at all'.⁴

Quantitatively the works I have mentioned constitute a tiny fragment of the whole. They amount together to about 750,000 words. But the Bowring edition alone, if we exclude the last two volumes (which are occupied with correspondence and biography), must on a conservative estimate contain about 5

¹ Oxford: Clarendon Press, 1928.

² Columbia University Press, 1935.

³ Allen and Unwin for the Royal Economic Society (London, 1952).

⁴ *The End of Laissez-Faire*, p. 19.

million words and it is by no means the whole of what will appear in the new edition now planned. How far does this matter? Do the few works which are commonly read and lectured upon or discussed in universities and elsewhere represent adequately all that is still of living speculative interest in the product of Bentham's mind? Is it true that the rest for all its bulk and diversity of subject-matter is only of historical interest? Constitutional Code, Education, Model Prison, Legislative Procedure, The Law of Evidence, Usury, Taxation, Declarations of Rights—is it true that all this is mere application and painful elaboration in detail of the few principles which can be adequately understood from the few works that are still constantly read? John Stuart Mill's essay may, I think, have done something to spread the impression that this must be so. For in his assessment of Bentham's qualities Mill asserts that the novelty and value of what he did 'lay not in his opinions but in his method' which Mill described as the 'method of detail'. My own view which I shall shortly attempt to substantiate is that this is a misleading dichotomy between opinions and methods. Methods sufficiently novel, as some of Bentham's were, cannot be mere innovations of method. They presuppose too fundamental a reorientation of the direction of inquiry, and too radical a shift in the conception of what is to be considered an acceptable answer. We are too often forced to the conclusion that Bentham has provided us with a new question, rather than merely a new answer, for his innovation to be considered matters of method alone.

Mill says that Bentham's novelty of method lay in his remorseless insistence on the criticism of existing law and institutions, and in his schemes of reform on 'treating wholes by breaking them down into parts, abstraction by resolving them into things and generalisations by distinguishing them into the individuals of which they are made up'. These are of course among the habits of thought and the modes of investigation of the scientist, and it may well be thought that when they are used in the application of the principles of Utility to such subjects as the Panopticon prison, or the reform of the Poor Law or the Court of Chancery, nothing of lasting speculative importance is likely to emerge. Haphazard experimentation with what I shall call (of course inaccurately) the unread Bentham, is apt to confirm this impression. A *sors Benthamiana* made with the finger at random is likely to bring to light a passage prescribing, perhaps, the precise shape and size of the beds or the form of central heating to be used in prisons, or the clothes or even the bedding

to be used in workhouses. The following passage on the paupers' bedding perhaps conveys the flavour sufficiently well:

Beds stuffed with straw: one side covered with the cheapest linen or hempen cloth for summer; the other with coarse woollen cloth for winter. Stretching the under sheet on hooks pins or buttons will save the quantity usually added for tucking in. In cold weather that the woollen may be in contact with the body the sheet might be omitted. A rug and two blankets and an upper sheet to be of no greater width than the cell and to be tacked on to one of the blankets . . . Straw, the more frequently changed the better particularly in warm months. To the extent of the quantity wanted for littering cattle, the change will cost nothing, and beyond that quantity the expense will only be the difference between the value of the straw as straw and the value of it as manure.¹

It is perhaps difficult when immersed in this—or indeed sunk in it—to remember that this is a philosopher writing; but two things should prevent our forgetting it. The first is that embedded even in this kind of detail there are bold and provocative reaffirmations of the general principles which gain in clarity and in a sense reveal more of their meaning when applied to small things. Thus only eight pages before this disquisition on bedding there is a discussion of 'the only shape which genuine and efficient humanity [in dealing with the indigent poor] can take'.² As in the state so in the poor house 'the duty-and-interest-juncture-principle' is to be applied so that throughout it shall be in the interests of the managers to look after those in their care. The salaries of the governor is to be reduced for every woman who dies in childbirth and to vary with the number of juvenile inmates who survive from year to year. Extra premiums and bounties are to be awarded for less than average mortality. Why so? Because, says Bentham,

every system of management which has disinterestedness pretended or real for its foundation is rotten at the root, susceptible of a momentary prosperity at the outset but sure to perish in the long run. That principle of action is most to be depended upon whose influence is most powerful, most constant, most uniform, most lasting and most general among mankind. Personal interest is that principle and a system of economy built on any other foundation is built upon a quicksand.³

¹ *Outline of Pauper Management Improved* (Bowring, vol. viii, p. 389) first published in Young's *Annals of Agriculture*, 1797.

² *Op. cit.*, p. 381.

³ *Ibid.*

A study of the duty-and-interest-juncture-principle thus applied by Bentham as early as 1797 to the microcosm of the poor-house would correct many errors in the interpretation of Bentham's radicalism. It would kill the common theory that to the objection that on his principles there was no reason why the legislator should make such laws as would secure the greatest happiness of the greatest number, Bentham could only reply by making the assumption that the legislator was a person who *happened* to find his own happiness in promoting that of others.¹

But, secondly, the extraordinary combination in Bentham of a fly's-eye view of practical detail with boldness or even rashness in generalization, especially about human nature, is of more than psychological interest. It was part of the intellectual tactics if not the strategy of the campaign for reform. It was said by Bentham's critics that he believed mistakenly that if he could articulate to the last detail the application of a general theory, he believed that this showed the theory to be sound.² This interesting criticism is, I think, false; what is, however, true is that he thought the criticism of existing institutions unaccompanied by demonstrably practical alternatives was worthless; and he believed this not only because criticism, like everything else, was to be judged by its Utility, but because hatred of anarchy and disorder was as strong a passion with him as hatred of blind custom and conservatism. For all his vehemence against the oppressors of his day and their abettors the judges and lawyers, his advice was 'To obey punctually; to censure freely'³ until a sober calculation in terms of utility showed a clear profit in disobedience. But to criticize and destroy *without* a clear conception of what was to follow was, for Bentham, the mark of the anarchical

¹ Some ambiguity in the expression 'legislator' (as between the framer of an ideal Benthamite Constitution and those possessing legislative authority in actual governments) may have befogged the issue. See A. J. Ayer in *Jeremy Bentham and the Law* (London, 1948), p. 213, where Bentham is said to have made this assumption about the 'lawgiver' or 'legislator'. Professor Ayer cites in support the Introduction to the *Constitutional Code* (Bowring, vol. ix, p. 7) but here Bentham merely says that the only reason why he himself desires that form of government to be adopted, which would bring about the greatest happiness of the greatest number, is that this would be 'in the highest degree contributory to my own greatest happiness'. He does not assume that this is true of the rulers of any society; their interest must be *made* to coincide with the universal interest by the institution of representative democracy and the other applications of the 'duty-and-interest-juncture-principle' enjoined in Bentham's Constitutional Code.

² Leslie Stephen, *The English Utilitarians*, vol. i, p. 283.

³ *A Fragment on Government*, Preface, para. 16. Bowring, vol. i, p. 230.

spirit, and the now tiresome blueprints with their forests of detail did more than manifest Bentham's strange temperament. They were intended to be a demonstration that a middle path between conservatism and anarchy was possible, and this was itself to destroy the neurotic fear of innovation which was one of the major obstacles to reform.

II

Still the question remains: What sort of speculative interest remains now to be extracted from the vast unread areas of Bentham? Will better acquaintance with them widen the scope of the discussion of his ideas which has for very many years been confined to a very few topics expounded in relatively few of Bentham's pages. For the topics have been few as well as the pages. In this century little of Bentham's thought has been regularly expounded, discussed, and criticized apart from the philosophical and psychological doctrines of utility which concern the relation of pain and pleasure to desire and action on the one hand, and to morality and the criticism of social institutions on the other. So it is, I think fair to say, that Bentham has become almost exclusively a text (often indeed displaced by Mill's *Essay on Utilitarianism*) for the debate of a few questions regarded of prime importance in the teaching of moral philosophy. Is all desire for pleasure or the avoidance of pain? Is it possible to compare the pleasures and pains of different persons? Is moral arithmetic, that is a calculus of pleasures and pains, intelligible and if intelligible is it applicable to all or only some types of moral issues or questions of legislative choice? Can Justice be accommodated within an analysis of all moral ideas in terms of Utility as merely the most efficient means of distributing pain or pleasure? Or can one accommodate it and other apparently recalcitrant moral notions with the aid of the refinement—or device—known as 'restricted utilitarianism' at which Bentham himself at least hinted¹ and which treats Utility not as the criterion of particular actions but of general rules and social institutions?

All these are of course immensely important questions in philosophy and with major changes in the general tone and temper of the philosophy of mind such as have taken place in the past thirty years, new life has been given to them. Thus, for

¹ e.g. in his explanation of the binding force of alienations of property and contracts. See *Principles of Civil Code*, Bowring, vol. i, p. 332.

example, in the light of the new understanding of the concept of pleasure which has been gained largely from a more detailed and philosophically more sensitive scrutiny of the vast diversity of the *idioms* of pleasure it seems no longer possible to treat pleasure, as Bentham for the most part does, as always the name of an identifiable sensation¹ having the modalities of intensity and duration and the other 'dimensions' which he attributes to it. Nor is it possible to differentiate between the different kinds of pleasure as Bentham appears to do, that is by distinguishing the different *causes* which produce the identifiable sensation of pleasure. It is of course true that we take pleasure in eating or drinking; that we enjoy a walk; that we are pleased with a child's progress, or by someone's good fortune, or at the news of an inheritance, or of Hitler's defeat. These are examples of what Bentham describes as the pleasures of sense, of property, of expectation, and so on. But nothing but an obstinate loyalty to the philosophy of mind of the eighteenth century could make us say that these are all cases where a sensation of pleasure occurs and is produced by so many different causes. What we *do* mean by referring to these as cases of pleasure has, no doubt, not yet been exhaustively or even sufficiently explained. But the outlines at least of a new and more realistic analysis are clear. The

¹ Interpretations of Bentham's concept of pleasure have sometimes been given which divorce it from sensation or even enjoyment. Thus Burton in his Introduction to the Bowring edition (vol. i, pp. 22 et seq.) claimed that 'the term nearest to being synonymous with pleasure [in Bentham] is volition. What it pleases a man to do is simply what he wills to do.' Though this resembles some modern analyses of pleasure there are formidable objections to it as an interpretation of Bentham: (1) Bentham frequently refers to pleasures as sensations, e.g. in the *Principles of Morals and Legislation*, chap. iv, ss. 5 and 6, and most strikingly the manuscripts published as Appendixes 4 and 5 in Baumgardt's *Bentham and the Ethics of Today* (Princeton U.P., 1952) especially pp. 556, 557, and 577. (2) Bentham gave fifty-eight synonyms for pleasure including in them 'enjoyment' but not 'volition', 'choice', or 'preference' or any cognate idea (see *Table of the Springs of Action*, Bowring, vol. i, p. 205). The idea of pleasure is said to 'apply itself' to the will and to have as its 'effects' or 'consequences' *velleity*, *volition*, and *action* (op. cit., p. 209). (3) For Bentham pleasure and pain are 'real entities' whereas *all* other psychological entities including volition are 'fictions' (op. cit., p. 211, and Bowring, vol. viii, pp. 207-8). Pleasure and pain are said to be 'susceptible of existence' without the rest and 'as often as they come unlooked for do actually come into existence' without them (Bowring, vol. i, p. 211).

Notwithstanding these objections it is certainly arguable that Bentham did not think of the connexion between voluntary action and pleasure as merely contingent. But if he did not, it seems likely that he thought 'volition' definable in terms of pleasure and pain rather than vice versa.

elements previously treated as mere empirical evidence of a separately identifiable sensation of pleasure have now been introduced into the analysis of pleasure.¹ The wish for prolongation of the activity or experience enjoyed; the resistance to interruption; the absorbed or rapt attention; the absence of some further end beyond the activity enjoyed—these are surely conceptually and not merely empirically linked with pleasure, and this revision in analysis must call for a restatement of the propositions of psychological hedonism and so for a fresh criticism of them. For the proposition that all desire is for pleasure (or the avoidance of pain) has now lost its simple outline which depended on treating pleasure as always some sensation caused by our activities: and it was this which made the idea appear easily intelligible even if it was empirically false.

Similarly, the idea of a calculus of pleasures and pains must be reinterpreted in the light of a different and, I should say, better understanding of the concepts of pain and pleasure, if only because it seems clear that they do not have the logical symmetry which Bentham ascribes to them. But it is by no means clear that Bentham will, on all points, be the loser by this process of re-interpretation; on some points the wheel will perhaps be seen to come full circle. Thus thirty years ago both philosophers and economists of repute said and indeed wrote that it was logically impossible, not merely difficult, in fact to compare one man's pleasure or satisfaction with another's.² On this view, assertions that a starving man gets more satisfaction than a rich man from a loaf of bread or an extra £1 could never rank as a statement of fact though this status *was* allowed to an individual's comparisons between his own satisfactions as when he says that he got more pleasure from his breakfast than from his lunch. On this theory, dominant thirty years ago and perhaps still flourishing in some quarters, interpersonal comparisons of the intensity of pleasures or satisfactions were nothing but disguised value judgements of a non-utilitarian kind. They expressed the moral or conventional judgements that it was better to give the loaf to the starving man than to the rich man, better, not because it gave more pleasure or satisfaction or happiness but simply because it

¹ See T. Penelhum, 'The Logic of Pleasure', *Philosophy and Phenomenological Research*, 1957, p. 488; G. Ryle and W. B. Gallie, 'Pleasure', *Proceedings of the Aristotelian Society* (Suppl. vol. 28), 1954, p. 135; B. A. Williams and E. Bedford, 'Pleasure and Belief', *ibid.* (Suppl. vol. 33), 1959, p. 57.

² Robbins, *The Nature and Significance of Economic Science* (London, 1937), pp. 138 et seq.

was 'in itself' better. This sceptical doctrine which would equally deny the status of factual statement to the assertion that one man was more angry or more frightened than another is now exceedingly difficult to sustain, whatever other objections there may be to Bentham's moral arithmetic. For it seems to depend on two dogmas: the first was that the intensity of pleasure is the intensity of a pure sensation; the second was that while the intensity of such sensations could be experienced by and so known to the subject, it could never be known or even inferred with reasonable certainty by others. Both these ideas seem now mistaken, and the second only to be acceptable as part of a total scepticism about the very existence of 'other persons' minds and feelings' which those who held that interpersonal comparisons were value judgements certainly did not intend to espouse. It may well be that for the purposes of an economic metric there were, and are, many good reasons for shifting from talk of satisfactions to 'indifference curves' or 'revealed preferences'. Such comparisons as we can make between different persons' pleasures are no doubt often too crude for the economist's purposes and may be useless to him unless we can not only compare the intensity of different persons' pleasures but *measure* the differences and say by how much one exceeds the other. Nonetheless, the old epistemological arguments against Bentham's doctrine seem wrong. His doctrine needs to be weighed again with the new weights provided by a different understanding of his fundamental concepts of pain and pleasure and the logical relation between them and their manifestations.

III

So though, as I have claimed, the proportion of Bentham's writings that are still texts for discussion is a tiny one, their importance is still very great and their vitality seems to be inextinguishable. I doubt, however, that on these central traditional Benthamite themes very much new light will be thrown as more of his work becomes physically more readable and in fact more read. It is rather a question of deciding what we shall say on these old themes when we look at them afresh through the framework of a new philosophy. I am, however, sure that there are buried amid the detail of the less-read works, new topics which ought to be added to the discussion and I shall devote the rest of this lecture to some examples of these which are pertinent

to the disciplines of law and philosophy on which alone I have any right to speak.

I have already said that Bentham was as much inspired by hatred of anarchy and revolution as he was by hatred of the apologist for the established order and the worship, as he called it, of 'dead men's bones'. Now Bentham thought in a wholly original way of these two sets of adversaries blocking the path of rational criticism and reform. This is hardly represented in the few texts of his which are regularly discussed. For he thought of them as both equipped with poisoned weapons¹ for blinding men to their real interests and making them, on the one hand, submissive to tyranny and the oppression of the many by the few and, on the other, prone to insurrection and violence. These poisoned weapons were, in a sense, intellectual ones and are vastly heterogeneous. Some of them were old and false saws or fallacious maxims repeated so often and handed down so long that they have acquired a spurious patina of sanctity. Bentham thought that they stood in the path of the rational criticism of law and social institutions, just as the maxims of scholastic philosophy, wrongly held to be both universally applicable and self-evidently true, stood in the way of progress in the natural sciences:² as if, to take a modern example, Darwin's evolutionary theory with its supporting evidence had been met with some hoary causal maxim of the Middle Ages such as 'The less cannot produce the greater' ('Minus nequit gignere plus').

A great many of these stale shibboleths of reaction are collected, criticized, and exploded in Bentham's vastly entertaining *Book of Fallacies* which was conceived by him as an assault on the rhetoric of despotism. The general neglect of this work in the teaching of political theory seems to me strange;³ for it is as readable and entertaining as it is instructive and it is full of contemporary relevance. Here are dissected The Chinese Argument or the argument from the Wisdom of Our Ancestors; The Hobgoblin Argument or 'No Innovation'; the argument called the Official Malefactors Screen with its slogan, still used, 'Attack us and you Attack all Government'. Here, too, is 'Non Causa pro Causa', by which the cause of progress and obstacles to it are confounded: as when the influence of the Crown and the presence of Bishops in the House of Lords are represented as the

¹ *The Book of Fallacies*, Bowring, vol. ii, p. 486.

² *A Fragment of Government*, Preface, para. 24, n. 2.

³ It was published as a paperback in 1962 (Harper Torch-books, New York).

cause of good government, or the education provided at Oxford and Cambridge as the causes of the spread of useful national learning. Yet for all their importance fallacies of this sort were not the most dangerous poisoned weapons in the armoury of reaction nor did their identification and exposure call for the most original of Bentham's talents. For these fallacies, however beguiling, were largely of the nature of false statements of fact. Many of them are indeed pseudo-truisms and their exposure consisted very largely in rubbing people's noses in the earth of plain fact and plain language about plain fact. Why speak of learning from the wisdom of our ancestors rather than their folly? 'It is from the folly not the wisdom of our ancestors that we have so much to learn.'¹ After all, the best informed class of our wise ancestors were grossly ignorant on many subjects compared with the lowest literate class of the people in modern times.² How many of the laity in the House of Lords in the time of Henry the Eighth could even read? 'But even supposing them all in the fullest possession of that useful art, political science being the science in question, what instruction on the subject could they meet with at that time of day?'³ So Bentham urges what are called old times—the wisdom of old times—ought to be called 'young' or 'early' times; for to give the name old to earlier and less-experienced generations is not less foolish than to give the name of old man to an infant in its cradle.⁴ So in the very name 'old times', says Bentham, 'there is virtually involved a false and deceptive proposition'.⁵ As the last point shows, Bentham passes easily from a criticism of fact to a critique of language, and *The Book of Fallacies* has much to say under the headings of 'question-begging appellatives',⁶ 'passion-kindling appellatives',⁷ and 'impostor terms'⁸ concerning the use, in political and moral argument, of what is now called emotive language and persuasive definition.

But behind these sources of deception Bentham saw others more insidious and less easy to identify which arose quite naturally from the very forms of human communication and reasoning. Language was, he thought, an ambiguous instrument in the sense that though possession of it raised men above the beasts (for not only communication but thought itself depended on it), yet its complex forms contained possibilities of both

¹ *The Book of Fallacies*, Bowring, vol. ii, p. 401.

² *Op. cit.*, p. 400.

³ *Ibid.*

⁴ *Op. cit.*, pp. 398–9.

⁵ *Op. cit.*, p. 398.

⁶ *Op. cit.*, p. 436.

⁷ *Op. cit.*, p. 438.

⁸ *Ibid.*

confusion and deception which had been exploited consciously or unconsciously by reactionary and revolutionary alike. Bentham's writings on language and on logic are among the most unsatisfactory of the Bowring texts, and a recension of them by an understanding editor is certainly overdue. Yet the main lines of his doctrines are clear. In the first place he insists on the practical utility of these studies and says they are subordinate branches of the study of Human Happiness.¹ Logic had not come to an end with Aristotle and the scholastics are blamed by Bentham both for conceiving of the subject in too narrow² a way and for failing to make clear what was the utility which they claimed for it.³ In insisting on its utility, Bentham was not making an automatic gesture to his own principles. He really did think that the possibility of sane judgement in politics, and indeed in the conduct of life, depended on an awareness of the snares latent in the very texture of human discourse, the clarification of which was the province of logic.

I do not mean that his logical writings are only of value as so many blows against reaction and revolution. Besides the theory of logical constructions or 'fictions' there are many things of great speculative importance. Among these I should count his insistence on the pregnant truth 'that nothing less than the import of an entire proposition is sufficient for the giving full expression to any the most simple thought'⁴ with its important corollary that the meaning of single words are the result of 'abstraction and analysis' from sentential or propositional forms. This idea—that sentences not words are the unit of meaning—was not to appear again in philosophy for fifty years. It was then asserted by Frege⁵ and stressed in Wittgenstein's *Tractatus Logico-Philosophicus*.⁶ Bentham's main innovations as a philosopher are based on this insight; for he believed that the relation of language and so of thought to the world is radically misunderstood if we conceive of sentences as compounded out of words which simply name or stand for elements of reality and thus as having meaning independently of sentential forms. Philosophy—and not only philosophy—has been perennially beset by the false idea that whenever a word has a meaning there

¹ *Essay on Logic*, Bowring, vol. viii, pp. 221–2, 240–1.

² *Op. cit.*, pp. 220, 232.

³ *Op. cit.*, pp. 232–4.

⁴ *Essay on Language*, Bowring, vol. viii, p. 322.

⁵ 'Nur im Zusammenhange eines Satzes bedeuten die Wörter etwas', *Die Grundlagen der Arithmetik* (Breslau, 1884), p. 73.

⁶ London, 1933. Propositions 3.3 and 3.3:4.

must be some existent thing related to it in some simple uniform way appropriate to the simple uniform atoms of language. Unfortunately Bentham makes this seminal point in the context of a characteristically sketchy genetic theory. He rightly contrasts his own doctrine with the Aristotelian doctrine of terms and ridicules the idea which he thinks is implicit in it: the idea that at some stage in the history of mankind 'some ingenious persons, finding these terms, endowed each of them somehow or other with a signification of its own, at a subsequent time took them in hand and formed them into propositions'.¹

How much of the course of later philosophy would have been altered had Bentham been interested enough in his own doctrine to expound it carefully and at length, or even if his few observations had been read by philosophers no one can say. Certainly no modern philosopher familiar with the metaphysical and logical perplexities which from Plato to Lord Russell were generated by the assumption that words have references or meaning apart from sentential forms, would fail to recognize the importance of Bentham's denial that this is so. But the fate of these philosophical discoveries (for such they were) of Bentham's, was the same as the fate of his best thoughts on economic analysis and policy which anticipated modern views of the power of the State to raise the level of employment and investment. In both cases, ideas now accepted as true and important lay ignored for a century. Some of them were buried unpublished in the cellars of University College; others were published but scarcely less effectively entombed in the print of the Bowring edition.

Sometimes Bentham writes about logic in his very wide sense with an eye very closely on political argument and on the strategy for educating men into a proper awareness of its snares and pitfalls. Thus he believed that, in general, tyranny and oppression in politics were possible only where claims to infallibility of judgement were presumptuously made and stupidly conceded. It was necessary to oppose to these arrogant claims the truth that all human judgement, 'opinion', or 'persuasion' is fallible. This truth, says Bentham, 'whether for the exclusion of obstinate error, or for the exclusion of arrogance, overbearingness, obstinacy and violence [to which he added in a later passage 'bigotry']² ought never to be out of mind'.³ John Stuart Mill rightly identified this as a very important element in Bentham's teaching, and his own vindication of freedom of

¹ Bowring, vol. viii, p. 322.

² Op. cit., p. 321 n.

³ Op. cit., p. 300 n.

thought and opinion in his essay *On Liberty* is an elaboration of this same theme; for his central argument is that just because individual human judgements are fallible, freedom of thought and discussion are indispensable. But Mill does not attempt to explain why the claim to infallibility, so often made in defence of authority or the *status quo*, is false. Bentham did attempt to do this but I think failed. He thought that the falsity of all such claims to infallibility was a consequence of some simple truths about the character of human judgements; but here I think his limitations as a philosopher begin to appear. For his doctrine is the surely false one that 'of no matter of fact external to, of no matter other than that which passes in a man's own mind can any immediate communication be made by language'. He adds (using a dangerously ambiguous phrase) 'That to which expression is given, that of which communication is made is always the man's opinion nor anything more.'¹ So, according to Bentham, most of our ordinary statements of fact are elliptical and even the simplest is complex in a way not suspected by Aristotle. If, to take Bentham's example, I say that Eurybiades struck Themistocles, all I really assert and all I can assert is: 'It is my opinion that Eurybiades struck Themistocles. This is what I can be sure of and it is all that, in relation to the supposed matter of fact, it is in my power to be assured of.'²

This way of disposing of claims to infallibility must be mistaken. No doubt there is an intimate and important connexion between the statement (call it *p*) made by a speaker (call him *X*) on a given occasion, and the statement that *X* believed *p*. The natural way of expressing this connexion is that *in* saying *p*, *X* implied that he believed it. Of course the sense of a *person* implying something by stating something needs to be clarified and distinguished from the logical relation between two statements where one entails the other. That is, we must distinguish what is implied by *what* a man says from what is implied by *his* saying it. This is perhaps not easy to do; though it is a distinction as important in the law of evidence as it is in philosophy and logic. The analysis of this relationship shows it to be of a general kind in which Bentham himself in his writings on logic and language was much interested. For it seems clear that the intimate connexion between *X* saying *p* and his believing it, and the strangeness of saying '*p* but I do not believe *p*', depend on the fact that one of the purposes for which human beings make statements is to invite or induce others to believe them by showing

¹ Bowring, vol. viii, p. 321.

² Ibid.

that the speaker believes them too. It may even be true that human discourse could not function as it does unless there is a generally, though not universally, respected convention that we do not say what we do not believe. But none of this supports the theory that the simplest statement is logically complex, so that in asserting *p* we are asserting that we believe *p*. Well-known paradoxes follow from such a theory.¹ So I fear Bentham's demonstration of the fallibility of human judgements fails. Some independent analysis is required of what it is to form and hold a belief or, as Bentham calls it, an 'opinion' or 'a persuasion about matters of fact'.

I have considered this unsuccessful doctrine of Bentham's not particularly to show his limitations, but rather to show that what looks like a Philistine insistence that all studies, logic and metaphysics included, must be shown to contribute to human happiness, was in fact no such thing. For the practical ends to be served were conceived by him in no small-minded way. It was no less than that of making men conscious of the seeds of deception and confusion buried in the very texture of human thought, and so to arm them against those who would use deception and confusion to cheat them of their happiness.

IV

So much for the intellectual armament of one set of adversaries. When Bentham turned from the logical and linguistic defences of blind custom and oppressive authority to his other adversaries—the forces of revolution and anarchy—he thought their principal appeal lay in their exploitation of the idea of an individual right. Here was the centre of the fallacies of Anarchy which tempted men to insurrection and violence by playing upon the very terminology of the law. To dispel the dangerous confusions which, as he thought, had grown or been woven round the idea of an individual's rights, he drew heavily on his doctrine of logical fictions, but his views are not merely an application of that doctrine but also of a less-explicit restrictive doctrine concerning the notion of a *reason* for an action or for feeling. His complete views on the idea of rights, legal and moral,

¹ It would follow that two speakers would not be contradicting each other if one of them said 'This is red' and the other 'No; it is not'; they would simply be comparing autobiographical notes about their beliefs. Also if the theory were correct the truth of the statement 'I do not believe this is red' would entail 'this is not red'.

have to be collected from a number of different texts; as widely different in subject-matter and date as the *Essays on Anarchical Fallacies*,¹ the *General View of A Complete Code of Laws*,² the *Pan-nomial Fragments*,³ *The Limits of Jurisprudence Defined*,⁴ *The Essay on Supply without Burden*,⁵ and the writings on Ontology⁶ and Logic.⁷ It seems to me that Bentham really was afraid not merely of intemperate invocations of the doctrine of Natural Rights in opposition to established laws, but sensed that the idea of rights would always excite a peculiarly strong suspicion that the doctrine of utility was not an adequate expression of men's moral ideas and political ideals. There is, I think, something strident or even feverish in Bentham's treatment of rights which betrays this nervousness.

Bentham used his doctrine of logical fictions to dissipate the idea that words like 'duty', 'obligation', and 'right' were names of mysterious entities awaiting men's discovery and incorporation in man-made laws or social rules. Because names of logical fictions had been confused with names of real entities and had been thought to have the same simple relation with reality 'they have raised', says Bentham, 'those thick vapours which have intercepted the light. Their origin has been unknown; they have been lost in abstractions. These words have been the foundation of reasoning as if they had been external entities which did not derive their birth from the law but which on the contrary had given birth to it.'⁸ Words like 'duty', 'obligation', 'right' did indeed, according to Bentham, require the special methods of analysis which he invented for logical fictions as a substitute for the straightforward form of definition by genus and species which he held inapplicable to them. Yet, though complex in this way, statements about men's rights or duties were reducible by proper methods to statements of plain unmysterious fact. We cannot say what the words 'obligation' or 'right' name or stand for because, says Bentham, they name nothing; but we can say what statements employing these words mean. 'Obligation', indeed, was Bentham's pet example of a logical fiction and he often uses⁹ as a paradigm of his methods his demonstration

¹ Bowring, vol. ii, pp. 500-5.

² Ibid., vol. iii, pp. 158-60, 181-6.

³ Ibid., vol. iii, pp. 217-21.

⁴ (Everett ed.), pp. 55, 85, 316-18.

⁵ Jeremy Bentham's *Economic Writings* (ed. Stark), vol. i, pp. 332-7.

⁶ Bowring, vol. viii, p. 206.

⁷ Op. cit., pp. 245-8.

⁸ Bowring, vol. iii, p. 160.

⁹ e.g. Bowring, vol. iii, p. 180 and vol. viii, pp. 247-8.

that to say that a man has an obligation, legal or moral, is to say that he is likely, in the event of his doing or failing to do an action, to incur the 'sanction' of official punishment or popular disapproval.

My immediate concern here, however, is with the idea of a right which Bentham considered to be 'a kind of secondary fictitious entity resulting out of a duty'¹ and in the analysis of it he certainly made some strides. The notion of an individual's right to do something or to be treated in a certain way as distinct from the notion of the right thing to do has proved most elusive even in jurisprudence where only legal rights are at stake. Part of the difficulty is that the idea is not univocal either in law or morals. There are several distinct, though not unrelated, applications of the idea of a right and theorists have often become obsessed with one of them to the exclusion of the others. Hobbes, for example, is almost wholly preoccupied with the important sense in which to ascribe a right to a person is to say no more than that he is neither bound to do or not to do a specific action, or (as Bentham puts it) a sense in which a right 'exists from the absence of obligation'.² But of course we do not mean merely this when we say that a person has a right to be paid £10 under a contract or a right to exclude others from his garden. These are cases where the right springs, as Bentham says, not from the absence of a duty but from the presence of a duty upon someone else. Here, Bentham says, what we mean in saying that a person has a right is that he stands to benefit by the performance of a duty³; so that all duties necessarily have correlative rights except those 'barren' duties or 'ascetic' obligations which come into existence when, as only too often, the law-maker flouts the requirements of utility altogether and creates duties which benefit no one.⁴ So much for legal rights. As for natural rights or any rights except legal rights these are not logical fictions. To talk of them is nonsense. To assert their existence is like talking of 'a species of cold heat, a sort of dry moisture, a kind of resplendent darkness'.⁵ Most often men speak of such rights when bent on having their way without giving a reason for it. Such talk is 'the effusion of a hard heart operating on a cloudy mind'.⁶ At its most respectable the assertion that a

¹ *The Limits of Jurisprudence Defined*, p. 316.

² Bowring, vol. iii, p. 181.

³ *Op. cit.*, p. 220.

⁴ *Op. cit.*, pp. 181 and 221 ff.

⁵ Jeremy Bentham's *Economic Writings* (ed. Stark), vol. i, p. 335.

⁶ *Ibid.*

natural or non-legal right exists is a confusing and usually confused way of asserting that there are good reasons why men should have certain legal rights.¹ Even this is respectable only where the good reasons are those of Utility. Most often the proffered reason is Natural Law and then all is confusion; for, argues Bentham, a reason for a right is not a right (any more than hunger is food) and Natural Law is not a law.²

Bentham's analysis of legal rights and the accompanying *reductio ad absurdum* of the idea of non-legal rights seems to me to be mistaken. But his mistakes are illuminating. They were inherited by Mill who struggled against them with only partial success, and I do not think that the later part of Mill's *Utilitarianism* where he has much to say about both rights and duties is comprehensible until we understand the difficulties to which Bentham's analysis gives rise. These difficulties spring indeed from certain fundamental features of Bentham's thought, which lie beneath the surface in many different parts of his works. They need to be brought to the surface and carefully examined. Here I can only indicate in outline the form which I think criticism should take.

Bentham's first error seems to me to be his assertion that in ascribing a legal right to an individual we are simply saying that he is a person who is likely to benefit by the performance of a correlative legal duty incumbent on another person. This view would have as its consequence that all laws, including criminal laws, which imposed duties that were capable of benefiting anyone would confer correlative rights.³ It would follow that laws requiring military service or payment of income tax would confer legal rights on those who stood to benefit; and similarly a contract between two persons for the benefit of a third party would confer legal rights on him even if he could not himself enforce the contract. In fact, neither lawyers nor laymen treat rules of law which impose beneficial duties as always conferring rights. When they do think and speak of laws as conferring rights it is because as well as imposing duties such laws also

¹ Jeremy Bentham's *Economic Writings* (ed. Stark), vol. i, p. 335, and Bowring, vol. ii, p. 501.

² Bowring, vol. ii, p. 501, vol. iii, p. 221.

³ Bentham expressly says that this is the case. 'All those words *rights obligations services offences* which necessarily enter into the civil laws are equally to be found in the penal laws. But from considering the same objects in two points of view they have come to be spoken of by two different sets of terms. *Obligations rights services* such are the terms employed in the civil code; *injunction, prohibition, offence*—such are the terms of the penal code.' Bowring, vol. iii, p. 160.

provide, in a distinctively distributive way, for the individual who has the right. He is not merely one of an aggregate or class who are likely to benefit from the performance of some legal duty; for the idea of a right, even a legal right, is an essentially *distributive* one. According to the strict usage of most modern English jurists following Austin¹ only the rules of civil law such as torts, trusts, or contracts confer rights. Here the person who has a right is something more than a possible beneficiary of duty; he is the person who may, at his option, demand the execution of the duty or waive it. He has, in effect, a limited sovereignty over the person who has the duty and it is neither necessary nor sufficient (though it is usually true) that he will also benefit from the performance of it.

It is, however, also true that a somewhat wider usage of the expression 'a right' is common among non-lawyers and especially among writers on political theory who might not hesitate to say, for example, that when the *criminal* law forbids murder and assault it thereby secures to individuals a right to security of the person, even though he is in no position to waive a duty imposed by the criminal law. But even in this wider usage the person said to have the right is not viewed merely as a member of a class who as a class may be indiscriminately benefited by the performance of a duty. The duty not to kill or wound or assault is unlike a duty of military service; for breach of the former duty necessarily involves the infliction of harm upon a specific or (in Bentham's language) 'assignable' individual, whereas breach of the latter duty does not but at the most merely makes it likely that the community as a whole will be less secure.² Thus even this extension beyond the stricter legal meaning of the idea of a right, to include *some* cases where the relevant rule and duty is one of *criminal* law, preserves still some element of the distributive character of the idea.

Thus this analysis even of a legal right fails because it neglects the peculiar provision for individuals considered distributively made by laws which confer rights. But Bentham's *reductio ad absurdum* of non legal rights also fails because it too neglects,

¹ *Lectures on Jurisprudence*, Lecture XVII, 5th edition, p. 400. For Austin all the duties of the criminal law were 'absolute duties', i.e. had no correlative rights. For Bentham the only absolute duties were those the performance of which could benefit no one.

² Bentham distinguishes between offences against assignable individuals and against an 'unassignable' class or 'indefinite multitude' of individuals. But he nowhere restricts correlative rights to the former class. See *Principles of Morals and Legislation*, chap. xvi, ss. 2-10; Bowring, vol. i, pp. 97-98.

though in a different way, the essentially distributive character of the idea of a right. While disapproving of all talk of non-legal rights he allows, as I have said, that it sometimes has a meaning, viz. when it is simply an obscure way of asserting that there are good utilitarian reasons for creating a legal right with its corresponding duty. But here it is important to stress that though we may often insist that certain legal rights should be created simply because we believe society in the aggregate will on the whole be better off if this is done, this is not what is meant by the assertion that someone has a moral right.

A simple example may serve to show what we do mean. At the end of the last war it was decided, because of the needs of the economy, to give coal-miners the right of an early release from the forces. This was widely approved, but no one who thought they should be given this right of early release on this ground of general utility expressed his approval by saying that the coal-miners on these grounds had a moral right to early release. For that statement would imply that there was a quite different sort of reason for giving them this right; such as that the miners had served longer than others, or more arduously, or had special needs. I do not wish to say these references to deserts and needs *exhaust* the class of reasons which are logically appropriate supports for the ascription of moral rights, but they illustrate the general character which such reasons must have. They must refer to the present properties or past actions of the individuals who are said to have moral rights as in themselves sufficient grounds for treating them in a certain way independently of the beneficial consequences to society of doing so.

It is perhaps plain from this example why Bentham could not, without serious modification of his fundamental principles, accommodate this aspect of non-legal rights and would have felt bound to dismiss it as nonsense. For it involves treating something as a reason for action which could not, according to Bentham, *ever* be a reason. It involves looking upon something such as the individual's deserts or past services as a reason in itself for now doing something for him rather than for someone else. Thus to invoke the past as in itself a determinant of the present distribution of social benefits (or burdens) was, in Bentham's eyes, mere *ipse dixitism*—a form of intellectual bad faith which uses the language of reason to express personal 'antipathy or sympathy', mere irrational sentiment.

It is the principle of antipathy which leads us to speak of offences as *deserving* punishment. It is the corresponding principle of sympathy

which leads us to speak of certain actions as *meriting* reward. This word *merit* can only lead to passion and error. It is *effects* good or bad which we ought alone to consider.¹

This restriction on what can count as a reason dictates the character of much that Bentham has to say on responsibility, on reward, and on moral and legal obligation as well as on rights. It may also account for omissions of which Mill complained such as that of conscience from the Tables of the Springs of Action: for conscience essentially involves accepting past wrongdoing as in itself a reason for remorse and making reparation. It is indeed plain that if we were to accept Bentham's doctrine we should have to discard many concepts besides that of moral or non-legal rights; and we may interpret Bentham not as analysing but as inviting us to discard all such concepts and to substitute others more consistent with the idea of reason implicit in his general philosophy. In either case I think we have here a subject which, for two different reasons, is of considerable contemporary importance. First, the philosophical criticism of Bentham would gain in freshness and precision if it shifted from the now traditional questions to consider the extent to which his philosophy can accommodate these concepts which constitute so much of the framework of any morality. Secondly, there are many contemporary voices calling for a revision on Benthamite lines (though not exclusively for Benthamite reasons) of these concepts. Among these instances of Benthamism revived are some modern attempts to dissolve the problem of free will and to eliminate or dispense with the idea of responsibility (in some at least of the senses of that Protean word) in the treatment of offenders against the criminal law.²

Here I can only briefly indicate the impact of Bentham's thought on these important concepts. It is clearest perhaps in his account of the mental conditions of responsibility. According to conventional thought a very fundamental principle of justice is

¹ *Theory of Legislation* (trans. Hildreth, 2nd ed., London, 1867), p. 76. This quotation is wrongly referred to Bowring, vol. i, pp. 383, 391, by Halévy in *The Growth of Philosophical Radicalism*, p. 55. According to C. K. Ogden the chapter ('False methods of Reasoning on the subject of Legislation') from which this quotation is taken is not to be found in the Bowring edition, though the original manuscripts of it are preserved in the University College Collection (Nos. 29 and 32). See *The Theory of Legislation*, ed. C. K. Ogden (London, 1931), p. xxxviii.

² See Barbara Wootton, *Social Science and Social Pathology* (London, 1959), chaps. viii and xi, and 'Diminished Responsibility', *Law Quarterly Review* (1960), p. 224.

embodied in the doctrine that a man who has done what, so far as outward conduct is concerned, the law forbids, should not be liable to punishment or blame, if at the time of his act he was insane, a young child, or did not know that he was doing what the law forbids, or was under duress, or could not control his bodily movements. This is the doctrine, accepted in all civilized legal systems, that makes what English lawyers call *mens rea* a necessary condition of liability for serious crime. Bentham accepts this doctrine but consistently with his general principles turns its face to the future away from the past. We are to observe such restrictions on the use of punishment not because there is any intrinsic objection to punishing a man who at the time of the crime lacked 'a vicious will' or lacked the 'free use of his will' but because his punishment will be 'inefficacious'. But Bentham does not show why such punishment *must* be useless.¹

Bentham's analysis of obligation legal and moral similarly looks to the future away from the past, and it is this feature which, I think, renders it defective as an analysis of our actual moral and legal discourse of obligations. Stripped of its interesting complications, due to Bentham's employment of the methods of analysis which he held necessary for logical fictions ('archetypation', 'phraseoplerosis', and 'paraphrasis'),² the essentials of his doctrine is that to say that a man is under an obligation to do some action is to say that in the event of failure to do it he is likely to suffer: in the legal case at the hands of officials and, in the moral case, from the manifestations of general 'ill will' by the community or by his associates.³ So, in this analysis a central place is assigned to the probability or predictability of 'sanctions', i.e. future suffering in the event of non-compliance. There is no doubt an important general connexion between the probability of sanctions or of social pressure and obligation; yet the connexion is not so close that the statement that someone is under an obligation is a mere assessment of the chance of suffering in the event of disobedience; for the relation between past disobedience and later suffering is not a mere *de facto* relationship of usual concomitance. This is shown by the fact that whereas in any particular case the statement that someone has an obligation to do some action may be easily combined with the assertion that he is in fact (for any of a variety of reasons) unlikely

¹ *Principles of Morals and Legislation*, chap. xv, Bowring, vol. i, pp. 84-85 and 844. See for criticism of this argument my 'Prolegomenon to the Principles of Punishment', *Proceedings of the Aristotelian Society* (vol. 60), 1959, s. 4.

² *Essay on Logic*, Bowring, vol. viii, pp. 246-8.

³ *Op. cit.*, p. 247.

to suffer for neglecting it, it cannot be combined with the statement that his neglect of it is no *reason* why he should suffer. This is so because there is analytically involved in statements, even of legal obligation, acceptance of the idea that past action or failure to act is a reason or justification in terms of legal rules for the infliction of 'sanctions'. Where the sanctions are predictable, this is a derivative consequence of the fact that the connexion between disobedience and sanctions is looked upon in this non-predictive justificatory way.

Among the concepts which adhesion to this aspect of Bentham's thought would force us to discard or at least revise is gratitude. Here Bentham who thought and wrote much about the connected idea of reward made his position particularly clear. According to our present concept of gratitude, if we are correctly said to feel gratitude and show gratitude for past benefits it must be the case that we acknowledge past services as a reason in themselves for present feeling or action towards our benefactor. We should no longer be said to be or to feel grateful or to be applying our present concept of gratitude if our reasons for returning the past service was that we should thereby encourage our benefactor or others to repeat or extend their beneficence. Saying 'Thank you' is not just a device for getting more—even for others. Bentham in thinking out when there should be *legal* rights to remuneration for past voluntary services insists that the services alone could never be reason for a reward. Only if the practice of reward is likely to lead to beneficial consequences could there be any reason for reward. 'Reward for past services is an instrument for creating future services.'¹ As a theory of the principles on which the law should compel payment for past services this is no doubt all very good sense; but as a deduction from a philosophical doctrine concerning the idea of a reason for acting it raises disputable issues of vast importance.

What is to be said for and against accepting the restrictive concept of reason, implicit and sometimes explicit, in these parts of Bentham's work? It seems impossible to claim that this is the actual concept of reason which we already have. Yet, at certain points in his attacks on the abuse of sympathy and antipathy or *ipse dixitism*, Bentham attempts to show that it is. His arguments are chiefly developed in connexion with the case of contracts or agreement where he condemns those who have failed to see that a past promise is 'no reason in itself', or in itself no 'justifying base' for an obligation. If a promise or agreement constituted a

¹ *Principles of Civil Code*, Bowring, vol. i, p. 340.

reason in itself it would always be binding but, says Bentham, it is universally agreed that certain contracts of 'pernicious tendency' should not be binding and all legal systems treat them as void. It is therefore the useful tendency of the agreement that renders it valid.¹ This argument seems to me fallacious, or at least inconclusive, though again the legal policy derived from it is very good sense. At the most such argument shows that Utility is a paramount reason which in certain cases of conflict may override other reasons. The argument shows these other reasons to be subordinate to Utility but does not show that they are derived from it.

John Stuart Mill followed very closely Bentham's analyses of obligations and rights and in chapters III and V of his Utilitarianism sought to avoid some of the consequences. He added the 'internal sanction' of conscience to Bentham's list of the sanctions which are 'constitutive' of obligations, and he sought to make the analysis of a moral or non legal right acceptable by insisting on the 'extraordinarily important and impressive kind of utility' on which the assertion of such rights may rest. I may be wrong in thinking that these expedients do not avoid the difficulties inherent in Bentham's restrictive doctrine of reason, but until the ramifications of this doctrine throughout both the work of Bentham and Mill have been fully considered and discussed I do not think we shall have an adequate critique of the Utilitarian philosophy.

These then are some of the topics which I think should be added to the exposition and critical discussion of Bentham. I have no doubt that an economist or political theorist could make at least as good a selection as I have made as a philosopher and a lawyer. But there are some tasks which cannot be adequately performed by one man without the co-operation of others. I hope I have made abundantly clear my conviction that of such necessarily co-operative tasks lecturing on the unread Bentham is one.

¹ *Principles of Civil Code*, Bowring, vol. i, p. 341. Cf. *Rationale of Reward*, chap. vi, Bowring, vol. ii, p. 203.