

APPENDIX B*

Facienda (June 1801)¹

[017_211] [20 June 1801]

*Cases which call for the interposition of government: or Facienda on the part of government.*²

Measures *proper* to be taken by government. General Rule. No step ought to be taken or attempted by government in the view of causing an augmentation to take place in the national mass of wealth, with a view either to subsistence or enjoyment, without some special reason. *Be quiet* ought on these occasions to be the motto or watch word of government.³

For this quietism there are two main reasons.

1. Generally speaking, any interposition for this purpose on the part of government is *needless*. The wealth of the community is composed of the wealth of the several individuals belonging to it taken together. But to increase his particular portion is, generally speaking, among the constant objects of each individual's exertions and care. Generally speaking, no one who knows what it is for your interest to do, as you yourself: no one who is disposed with so much *ardour* and *constancy* to pursue it.

* [Editor's Note: The text of all but one folio of this Appendix—UC xvii. 218 (22 August 1801)—was drafted by Bentham on 20–21 June 1801, some eight months after the discussion reproduced in Appendix A. Since Bentham returned to the subject of 'Agenda' or 'Facienda' on 23 August 1801, in drafting Appendix C, it seems most probable that he viewed this discussion, including the folio added on 22 August 1801, as superseded by that later discussion at UC xvii. 209–10, although it is possible that he would have chosen to retain both discussions sequentially had he brought the work to publication.]

¹ This Appendix reproduces the text of a discussion of government *Facienda* in political economy, almost all of which was drafted by Bentham for 'Method and Leading Features of an Institute of Political Economy' on 20–21 June 1801, some eight months after the discussion reproduced in Appendix A. On 22 August 1801, the same day that he began to draft the material reproduced in Appendix C, Bentham added a folio—UC xvii. 218 (22 August 1801)—to his discussion of June 1801, providing some evidence that he intended to incorporate the June discussion into his new text. On 23 August 1801 however, Bentham drafted the sequence at UC 209–10 headed 'AGENDA.—Cases in which, and measures by which, the common end may be promoted by the hand of government', which is reproduced in Appendix C, pp. 000–000 below, and which it appears most likely was intended to supersede the discussion of June. [To UC xvii. 209–10, Appendix C] It is, of course, possible that Bentham would have retained both discussions had he brought the work to publication.

² Bentham has noted in the text at this point: 'This before *Non Facienda an d°*.'

2. Generally speaking, it is, moreover, likely to be *prejudicial*, viz: by being uncondusive, or even obstructive, with reference to the attainment of the end in view. Each individual, bestowing more time and attention upon the means of preserving and encreasing his portion of wealth than is or can be bestowed by government, is likely to take a more effectual course than what, in his instance and on his behalf, would be taken by government.

3. It is, moreover, universally and constantly pernicious in another way, by the restraint or constraint imposed on the free agency of the individual. Pain is the general concomitant of the sense of such restraint, wherever it is experienced.

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4. Without being productive of such coercion, and thereby of such pain—in a way more or less direct—more or less perceptible, with this or any other view, the interposition of government can hardly take place. If the coercion be not applied to the very individual whose conduct is endeavoured to be made immediately subservient to this purpose, it is at any rate applied to others—indeed to the whole community taken together. In the coercive measures so called, it is only to that individual that the coercion is applied: in the case of measures of encouragement, the field of coercion is vastly more extensive. Encouragements are grants of money, or money's worth, applied in some shape or other to this purpose. But, for this any more than any other purposes, money is not raised but by taxes: and taxes are the produce of coercive laws applied to the most coercive purpose.

This would not be the less true though the individual pieces of money thus applied happened to come from a source which had not been fed by any such means. In all communities, by far the greatest share of the money disposed of by government being supplied by taxes, whether this or that particular portion of money so applied be supplied from that particular source makes no sort of difference.

To estimate the good expected from the application of any particular mass of government money, compare it always with the mischief produced by the extraction of an equal sum of money from the most burthensome species of tax. For, by forbearing to make application of that sum of money, you might forbear levying the amount of that same sum of money from that tax, and thereby forbear imposing the mass of burthen that results from it.

[017_213] [20 June 1801]

It would be a gross error, and an extremely mischievous one, to refer to the defalcation thus

³ In the margin, Bentham has noted at this point: 'Laissez-nous faire'.

resulting from the mass of liberty or free-agency, as affording a conclusive objection against the interposition of the law for this or any other purpose. Every law which does not consist in the repeal, total or partial, of a coercive law, is itself a coercive law. To reprobate as a mischief resulting [from] this or that law, a property which is of the very essence of all law, is to betray a degree of blindness and ignorance one should think hardly possible on the part of a mind accustomed to the contemplation of any branch of the system of laws—a total unacquaintance with what may be called the logic of the laws.

Yet, so imperfect is the state of legal knowledge, marks of this perfectly surprizing, as it will one day be, as well as much lamented, ignorance are to be found among the most experienced pens—not to mention the most loquacious tongues. They are to be found in Adam Smith.⁴ Not to mention those houses of authoritative prating, in which an invective on this ground is heard in concert with so many others on grounds equally substantial—such as those against informers, without regard to the necessity of information to execution, and against encrease in the multitude of penal laws without regard to their extent.⁵

[017_214] [21 June 1801]

Power, knowledge or intelligence,^a and inclination—where these requisites concur on the part of him on whom the production of the desirable effect in question depends, it is

⁴ See p. 000 n. above. [To UC xvii. 169, Appendix A]

⁵ Bentham almost certainly had in mind the condemnations by the Whig opposition of the Habeas Corpus Suspension Indemnity Bill (enacted as 41 Geo. III, c. 66) in the Houses of Parliament in June 1801. In the House of Commons on 5 June 1801, Charles Grey (1764–1845), later second Earl Grey, Viscount Howick and Baron Grey, First Lord of the Admiralty 1806, Foreign Secretary 1806–7, Leader of the Administration as First Lord of the Treasury and Leader of the House of Lords 1830–4, then MP for Northumberland, argued that the Bill, ‘was only part of a system by which prosecutions were to be carried on against individuals, upon secret informations, while the executive government was pleased to have it so. He thought it fairer to say, at once, that we should be under a form of law which subjected us to the inquisition of Venice—that the safety of the state and the freedom of the individual were incompatible with each other—that the danger of popular commotion was such, that individual liberty was to be sacrificed for the protection of the state’. On 11 June Richard Brinsley Sheridan (1751–1816), Under-secretary of state for foreign affairs 1782, Secretary to the Treasury 1783, Treasurer of the Navy 1806–7, then MP for Stafford, argued, ‘But let this bill once be passed, and constitutional opposition to what was conceived an invasion of the national liberties was at an end; the hope of the injured was annihilated, and encouragement was given to the endless increase of secret informers—a set of men abhorrent to the principle and the habits of a free state.’ On 19 June, the day before Bentham wrote this paragraph, Henry Herbert (1741–1811), Baron Porchester 1780–93, Earl of Carnarvon from 1793, had stated in debate on the second reading of the bill in the House of Lords, that, ‘The essential maxim, of the responsibility of ministers is now for the first time infringed, and, with the destruction of the liberties of the subject, undermines the security of the throne.’ See *Parliamentary History* (1800–1) xxxv. 1517, 1532, 1537.

produced—when any one of them is wanting, it is not produced.

^a Knowledge may be considered as a branch of power. It is power so far as depends upon the mental condition of the party whose *power* is in question. Power, in the narrower sense of the word, depends upon the state and condition of objects exterior with reference to him.

Where, with reference to the production of any effect operating in addition to the mass of wealth, these requisites exist in perfection on the part of the members of the community taken respectively in their individual capacities, it will be produced without the interference of the sovereign: and as his interference is never a matter of pure indifference—never otherwise than hurtful where it is not beneficial—all these cases are among the cases in which that interference is not desirable.

In the cases where any one of these requisites is deficient—in so much that for want of it the effect can not be produced—in such case, the interposition of government may be desirable or not, according to the state of the account: according as the inconveniences attached to the measure in which the interposition of government consists, preponderate or fail of preponderating over the advantage attached to the effect which it is proposed should be produced.

[017_215] [21 June 1801]

If, without the interposition of government, the effect fails of being produced for want of any one or more of these requisites, it is by the supply of the requisite or requisites so wanting that the action of government will display itself. Thence, on every such occasion, [four]⁶ questions present themselves for consideration:

1. Whether the effect in question fails of being produced in the degree in which it might be produced?
2. To the want of what requisite or requisites such failure is to be ascribed?
3. What are the means by which such failure may be supplied by government at the least expence?
4. When the expence necessary for the purpose in question is reduced to its least dimensions, is the advantage such as to preponderate over the expence?

⁶ MS 'three'.

[017_216] [21 June 1801]

In a general view—of the three requisites, inclination appears least of a nature to be deficient on the part of the individual. The general mass of national wealth is composed of the particular masses appertaining to individuals. On the part of the individual, there is seldom any deficiency in respect of the inclination to make additions to the amount of that particular mass which has fallen to his share. Uncommercial hands exist indeed, almost every where, but every where they are much out-numbered by commercial. The rashly enterprizing Projectors in one [class], the negligent, the prodigals, and the unprosperous in both [classes] are to be found: but they are much out-numbered by those in whose instance prudence is supported and seconded by fortune.

It is in respect to the two other requisites—power and intelligence—that deficiency is much more apt to take place.

[017_217] [21 June 1801]

To these deficient aspects, the abilities of government are happily adapted. Inclination it could not give—it has not power to give—in the great mass of cases: not by punishments, on account of the expensiveness and, in such cases, the comparative inefficacy of such means: not by reward—for want of a sufficient stock of that scarce and valuable matter which is not to be extracted but by taxes—that is by punishments.

Intelligence and *power* are administered by government at an infinitely cheaper rate. Intelligence, because a mite of reward when skilfully applied is often sufficient to raise an immense *light house* of intelligence. Power—because, in many instances, to confer the sort and degree of power requisite frequently requires nothing more than the removal of coercion from one hand to another, or even the repeal of it altogether, the operation in either case not being attended, in the shape of pain, with any perceptible effect.⁷

[017_218] [22 August 1801]

The⁸ two most extensive descriptions of the cases in which it is necessary or expedient to interfere for the purpose of regulating the exertions of individuals in respect to the encrease of the

⁷ In the margin, Bentham has noted at this point: ‘Supplying *capital* is supplying power. Supplying capital by taking off *quoad hoc* the restraints imposed on the accumulation of capital by partnership.’

⁸ This paragraph, its accompanying footnote and the two following paragraphs were added to this sequence by Bentham on 22 August 1801.

matter of wealth, are those in which it is necessary to measure out⁹ at attention the several objects in view, according to the order of importance: in giving to the matter of wealth those forms which [adapt]¹⁰ it to the several purposes of *subsistence* and *defence*, security in respect of subsistence and security in respect of *defence*, in preference to that which adapts it to the mere purpose of enjoyment.^b

^b Reason. He has the whole benefit of the enjoyment produced by the instruments of enjoyment he uses and consumes. He shares with others, commonly with even the whole of the community, the benefit of what he does for the mere increase of the mass of instruments of enjoyment.

With few exceptions, and those not very considerable ones, the attainment [of] the maximum of enjoyment will be most effectually secured by leaving each individual to pursue the attainment of his own particular maximum of enjoyment in proportion as he is in possession of the means. Inclination in this respect will not be wanting on the part of any one. Power—the species of power applicable to the case—wealth—pecuniary power—could not be given by the hand of government to one without being taken from another: so that by such interference there would not be any accession of power upon the whole.

The gain to be produced in this article by the interposition of government is principally on the score of knowledge. There are cases in which, for the benefit of [the] public at large, it may be in the power of government to cause this or that portion of knowledge to be produced and diffused which, without the demand for it produced by government, would either not have been produced or not have been diffused.

[017_219] [20 June 1801]

*Non Facienda on the part of Government*¹¹

We have seen the grounds on which the general rule on this behalf—*Be quiet*—rests.¹² We have seen a list of cases, forming, on the grounds there stated, so many exceptions to that rule.¹³

If that list be compleat, and if it could be proved to be so, it would be sufficient, if any

⁹ MS orig. ‘regulate the pursuit of’.

¹⁰ MS ‘adapts’.

¹¹ Bentham has noted in the text at this point: ‘This not till after *Facienda*’.

¹² See pp. 000–000 above. [To UC xvii. 211–12, this file]

¹³ See p. 000 above. [To UC xvii. 217–18, this file]

measure were proposed as a proper one to be taken by government in this view, *that it is not in the list.*¹⁴

But inasmuch as, besides those that are in the list, (of which some have and some have not as yet been employ'd), there are others that, though not in that list, have been employ'd, and still continue to be employ'd with great energy and anxiety by many, by most, and almost by all governments, it will [be] of use to make out something of a list of these *rejected* measures,¹⁵ with an indication of the respective grounds for their rejection.

¹⁴ Bentham considered inserting at this point a note at UC xvii. 219b, which was drafted on 10 March 1804, on the differences between the categories of *Sponte Acta*, *Agenda*, and *Non Agenda*. In the present volume the note appears in Ch. I, p. 000 n. above. [To UC xvii. 219b, Ch. I]

¹⁵ Bentham has noted in red ink below this paragraph: 'Mode of *classing* those *Facta non Facienda*? [i.e. 'Things done which ought not to be done'] 1. Object or end in view? 2. Subject matter &c?'