

## Jeremy Bentham (1748-1832)

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### Biography

Jeremy Bentham held that all human and political action could be analysed in terms of pleasure and pain, and so made comprehensible. One such analysis is how people actually do behave; according to Bentham, seeking pleasure and avoiding pain. Another such analysis is of how they ought to behave. For Bentham, this is that they should maximize utility, which for him is the same as producing the greatest happiness of the greatest number, which, again, is the same for him as maximizing pleasure and minimizing pain. His chief study was planning how there could be a good system of government and law; that is, how laws could be created so that people being as they actually are (seeking their own pleasure) might nevertheless do what they ought (seek the greatest pleasure of all). The instruments which government use in this task are punishment and reward, inducing action by threats and offers. For Bentham, punishment is done not for the sake of the offender, but to deter other people from doing the same kind of thing. Hence on his theory it is the apparent punishment which does all the good, the real punishment which does all the harm.

Bentham thought that the primary unit of significance was the sentence, not the word. He used this idea to produce profound analyses of the nature of law and legal terms, such as 'right', 'duty' or 'property'. These are what he calls names of fictions – terms which do not directly correspond to real entities. However, this does not mean that they are meaningless. Instead, meaning can be given to them by translating sentences in which they occur into sentences in which they do not occur. Thus legal rights are understood in terms of legal duties, because sentences involving the former can be understood in terms of sentences involving the latter; these in turn can be analysed in terms of threats of punishment or, again, pleasure and pain. This gives sense to legal rights, but sense cannot be given in the same way to natural rights. For Bentham, we have no natural rights and the rights that we do have, such as property rights, are created by government, whose chief task is to protect them. Bentham also worked out how people could be protected from government itself, designing an elaborate system of constitutional law in which representative democracy was a central element.

Bentham invented the word 'international', and when he died he had an international legal and political influence. His chief influence in philosophy has been as the most important historical exponent of a pure form of utilitarianism.

### 1. Life and writing

Writing was the centre of Bentham's life. He shut himself away in remote cottages and even when in London described himself as a 'hermit'. Increasingly, the hermit merely produced large sheets of manuscript, and the task of selecting from these and turning them into books was left to others, such as the young John Stuart Mill, who produced five large volumes of Bentham's

thought on evidence from a much larger mass of nearly illegible manuscript. When Bentham died he left 70,000 sheets of foolscap manuscript behind him – theoretical work, but also highly detailed designs for states, prisons, banknotes, and much else. His principal writings on language, ontology and the philosophy of law were only published posthumously.

Jeremy Bentham was born in London on 15 February 1748. He was the son and grandson of lawyers and was educated to follow them making money from the practice of law. However he soon became revolted at the current condition of the law and so, instead of making money from it, devoted the rest of his life to a study of how it could be improved. He started to design a perfect penal code; then diverted to write a criticism of the leading current legal thinker, William Blackstone; then diverted again from the main body of this criticism to write a lengthy refutation of one of Blackstone's digressions. This was published as *A Fragment on Government* (1776). He returned to working on the principles of penal legislation and printed the main part of his introduction to them in 1780. However, seeking to work out the identity conditions for a single law, he became entangled in a 'metaphysical maze' which meant that he had to lay the uncompleted book aside. He buried himself away and produced his main work on the philosophy of law, only published a century after his death. The work laid aside was finally published in 1789 as *An Introduction to the Principles of Morals and Legislation*. It had a new preface, but it was neither complete in itself nor accompanied by the worked-out penal code to which it was meant merely to be the introduction.

Since the Introduction and the Fragment are Bentham's two best known works, it is worth noting that they are both parts of much larger uncompleted works. The Fragment is a fragment, the Introduction an introduction, and much of his most profound thought of the time, if it gets in at all, only makes the footnotes. They are also both relatively early works. However they do have the advantage, unlike most of what followed, that they were published by Bentham himself rather than by one of his disciples.

While the Introduction lay fallow, printed but not published, Bentham switched into writing in French with the hope of interesting Catherine the Great of Russia in his proposals for legal reform. He visited Russia, where his brother was living, and found a suitably remote cottage. He wrote on the principles of a civil code and of reward. Yet even when Catherine was near, he remained in his seclusion and failed to exert any influence. On his return to England he finally published the Introduction. However, it was the year of the French Revolution; public attention was elsewhere; and the work was half consumed by rats. Bentham bombarded the new French revolutionary government with proposals which had no effect beyond his being created an honorary citizen of their new republic. Then, in the chief diversion of his life from writing, he turned his attention to pushing the British government for a contract to build and manage a panopticon prison.

The idea of the panopticon, a circular building in which the unseen overseer in the centre would observe the inmates, derived from Bentham's brother in Russia. At first Bentham wrote about it relatively light-heartedly as a 'simple idea in architecture' which would solve all manners of different problems (such as allowing Turkish seraglios to be run with fewer eunuchs) (Bentham 1791). Editions of the work were printed in Dublin and Paris. A circular prison was built in

Edinburgh. However, when Bentham tried to obtain a contract from the British government to manage the country's prisoners, matters became much more serious. He bought the iron and other materials, nearly ruined himself, and energetically lobbied the government for permission to build his 'mill for grinding rogues honest'. Several times in the 1790s it looked as if he would succeed; but the project was effectively over by 1803 (although not completely killed until 1813).

While Bentham was trying to get his panopticon contract, Etienne Dumont was working on his manuscripts. In 1802 Dumont produced the three volumes which first made Bentham's name, the *Traité de législation civile et pénale* (1802). Dumont moved on to editing other Bentham manuscripts, while Bentham returned to full-time production of the supply. In the 1800s Bentham wrote on economics, evidence and judicial organization. In the next decade he expanded into logic, language, ontology, and criticisms of the religious and legal establishment. His central concern became constitutional law. He offered to draft constitutional codes for all nations, and worked hard on the ideal code. This and pamphleteering for a more democratic government were his chief concerns in the 1820s. His reputation was now established. Newly created countries consulted him. Dumont's work was translated into English. A team of disciples produced other work from the manuscript. The *Fragment* and the *Introduction* were republished in second editions. A Benthamite journal was founded. His place in philosophy was secured, his influence being transmitted most of all by J.S. Mill, who was as a young man a great admirer and Bentham editor, and who arranged meetings of the younger utilitarians in Bentham's house. Bentham died in London on 6 June 1832.

## **2. The principle of utility**

Both in the *Fragment* and the *Introduction* Bentham calls his central normative principle the 'principle of utility'. Utility provides the 'standard of right and wrong'. 'By the principle of utility', he says in the *Introduction* (I 2), 'is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question'. Utility is therefore to be understood in terms of happiness; and the *Fragment* starts with the famous formula, declared as an 'axiom', that 'it is the greatest happiness of the greatest number that is the measure of right and wrong'. This formula reappears in his late work, and is stated in the *Constitutional Code* (1830), as the proper end of government. In this later work Bentham came to prefer 'the greatest happiness principle' as the best description of his central principle. However, in spite of Bentham's preference, the term 'utility' has stuck, and Bentham is normally thought of as a utilitarian. Indeed the prescient young Bentham dreamed once that he founded a 'sect of utilitarians'.

He founded a sect, but neither utility nor happiness originate with Bentham. They were plucked from the surrounding Enlightenment air. Bentham says that he used 'utility' because of Hume, and the famous 'greatest happiness' formula appears in the Italian legal theorist Cesare Bonesana Beccaria, whom Bentham much admired. Originality was not the point; indeed the more agreed, or hackneyed, the statement of the final goal was, the better. Bentham's purpose was to work out in detail the means by which this goal could be achieved.

The greatest happiness is therefore the appropriate end of action. The next question is whose happiness. The famous formula says 'of the greatest number'; but this could render the formula indeterminate between recommending that the greatest happiness be achieved and recommending that the greatest number get happiness. In fact Bentham makes it clear that he always means the former: happiness is to be maximized whomever it may belong to. He therefore occasionally recommends omitting the 'of the greatest number' part of the formula, noting that otherwise the slight pleasures of a majority would count more than the severe pains of a minority.

'Pleasure' and 'pain' seem to introduce yet more alternative sources of value. However this promiscuous use of terms does not for Bentham indicate any diversity or conflict of values. For him these terms are all convertible. He says in the Introduction (I 3) that 'benefit, advantage, pleasure, good, or happiness' all 'come to the same thing' as also do their opposites, 'mischiefs, pain, evil, or unhappiness'. 'Interest' is also to be understood in these terms; something is in someone's interest when it tends to increase their pleasure. Bentham's is a monistic and consequentialist system of value. There is only one ultimate value, although it may have different descriptions, and actions should be done so as to bring about those states of affairs which have most of this value.

Bentham usually takes the proper aim of government to be concern with the greatest happiness of the people composing the country for which it is the government. This is less than all the people there are, which is the standard universalistic sense given to the ground principle of utilitarianism. This might be taken as a merely practical recommendation, so that Bentham is still supposed to have universal happiness as his end but is taken to be claiming that this is best achieved if every government restricts itself to maximizing the happiness of its own people. Or it could be taken, as David Lyons (1973) holds, to be explicitly intended by Bentham as a necessary feature of his brand of utilitarianism.

Another claim of Bentham's would, conversely, give his principle a wider scope than the standard utilitarianism. For, as he puts it in the Introduction (XVII 4.n), 'the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?' So Bentham's utilitarianism goes beyond people and extends to all sentient creatures; animals also count.

In these statements of Bentham's ground principle there is constant use of the word 'tend'. Hence application of them inevitably has a generalizing effect. The precise utilities which follow on a single occasion of action are not as important as the general tendencies of that kind of action.

### **3. Duty and interest**

At the start of chapter one of the Introduction (I 1), Bentham says that we are under the 'governance of two sovereign masters, *pain* and *pleasure*', and adds, 'it is for them alone to point out what we ought to do, as well as to determine what we shall do'. Two different things are involved here. On the one hand there is a standard of right and wrong determining what people ought to do. On the other hand there is a psychology of human action determining what they will actually do. Bentham is writing for legislators who have the task of bringing about the goal of

maximizing happiness while working with people as they actually are. The legislator needs therefore to understand both the goal and also how people are; both value theory and psychology. These are both treated in the Introduction, but much more space is devoted to psychology than to value theory. Its central idea is that people seek their own happiness. Preventing pain and providing pleasure are the ways in which people, as they actually are, can be influenced in their actions.

‘The state’, says Bentham, ‘has two great engines, *punishment* and *reward*’ (Introduction: XVI 18). This does not mean that they have to be used. Follower of Adam Smith, Bentham realized that the desired end could often be achieved by leaving people alone to get on with their lives. So his chief economic prescription to the legislator is ‘be quiet’. He even out-Smithed Smith in an early work, *The Defence of Usury* (1787), arguing against Smith’s claim that interest rates should be controlled. However, interference is not ruled out in principle. It all depends upon what is needed to maximize happiness. Bentham was prepared, for example, to allow the control of corn prices in times of starvation; and he believed that relief of extreme poverty should be the concern of the state rather than being left to private charity.

People are moved in many ways. Bentham (1776, 1789) lists the ‘sanctions’, as he calls them, which operate on them. The central one he is concerned with, the great engines of punishment and reward, he calls the ‘political’ (sometimes ‘legal’) sanction. There is also the ‘moral or popular’ sanction, which is Bentham’s name for public opinion. Then there is the religious sanction, the force exerted by God’s displeasure. These are the only ones mentioned in the Fragment, but Bentham brings it up to four in the Introduction by adding the ‘physical’ sanction: purely natural processes which influence behaviour (such as the pain of falling out of a window). Later he added the ‘sympathetic’ sanction, where people are moved merely by the pleasures and pains of others, but which he thinks is much weaker than the others.

If people are going to do the right thing under the operation of one of these other sanctions, the legislator does not need to interfere with them by use of the political sanction. The legislator may, however, seek to strengthen the other sanctions by what Bentham calls ‘indirect legislation’ – for example, by education. Sometimes, however, more direct action is required. In spite of the non-political sanctions, people seeking their own pleasure sometimes cause greater unhappiness to others and so diminish overall happiness. Then the legislator has to interfere, deploying the political sanction, and threatening punishment. By having a code of criminal law, which announces in advance the kinds of penalties that are attached to particular kinds of behaviour, the legislator changes the payoffs. Self-interested people who might otherwise have done these things are now deterred by the threat of punishment.

For Bentham all punishment is a pain. It is therefore, for him, an evil. Its justification is therefore indirect: it is a present harm done so that good may come (rather like drilling a tooth to prevent future toothache). In fact, as Bentham points out, it is the apparent pain which does all the good, the real pain which does all the harm. So if people could only appear to be punished, this would be even better. Punishment is not done for the sake of the offender, as in retributive theories, but for the future benefit of others. The amount of punishment is accordingly fixed as the minimum

amount which is necessary to deter a sufficient number of similar actions by others; it does not depend directly on the seriousness of the offence.

The legislator can only calculate this amount with knowledge of psychology – that is, of how a typical individual calculates the value to themselves of a portion of pain or pleasure. Bentham thinks that the chief factors involved are, in his words, intensity, duration, certainty (or probability), and propinquity. That is, as well as obvious facts like the length or unpleasantness of punishment, the deterrent effect also depends on how imminent the threatened punishment is and how likely someone is to be caught.

Bentham developed this psychology in his Civil Code writings (1802), where he laid down what he calls ‘axioms of mental pathology’ (this is part of the material that was first published by Dumont in the *Traité*s). Crucial among these is that equal increments of a good do not produce equal increments of happiness. In other words, the utility produced by goods diminishes at the margin. Therefore, other things being equal, happiness is maximized by an equal distribution of goods.

When Bentham moved on to design of prisons and poorhouses, and eventually to constitutional law, the root idea was similarly to distinguish between the *is* and the *ought* of human action, and then make them work together. The idea is, as he puts it in his work *Pauper Management Improved* ‘to make it each man’s interest to observe on every occasion that conduct which it is his duty to observe’ (II iv. 2), which Bentham calls the ‘duty and interest junction principle’. Similarly, the ground idea of the Constitutional Code is to construct a system of political offices, such that each office can be occupied by purely self-interested people who will nevertheless be led to behave as they ought to behave if the system as a whole is to deliver good government (that is, promote the greatest happiness).

#### **4. Public reason**

Both the prisoners in the panopticon and the guard in the centre will be led to behave well by the force of publicity. Publicity solves the old problem of who is to guard the guards. The same applies in the Constitutional Code, where a central role is given to what Bentham calls the ‘public opinion tribunal’. Similarly, judges are to be forced to give public reasons for their decisions. This, he thinks, leads to better law.

So far, this is deployment of the ‘popular’ sanction. ‘The eye of the public’, as Bentham puts it, ‘makes the statesman virtuous’ (1843, vol. 10: 145). But it is also centrally connected with Bentham’s espousal of his chief evaluative principle. For he thinks that only utility (and its cognates) are appropriate for use in such public justification. In the utility chapter of the Introduction (I 2) Bentham allows that ‘that which is used to prove everything else, cannot itself be proved’; but he does add some considerations designed to make people ‘relish’ the principle of utility. Chief among these is that there would not otherwise be any public standards of justification; anyone’s opinions would be worth just as much or as little as anyone else’s; and this would be ‘despotical’ if someone imposed them, ‘anarchical’ if not. In other words, unless all argument is to be ‘at an end’, utility must be taken as the standard. Only utility can be used in public reasoning.

Bentham puts this as a way of giving a ‘meaning’ to ‘the words *ought*, and *right* and *wrong*, and others of that stamp’ (I 10). His concern, here and elsewhere, is to give meaning; to clarify; to make things comprehensible. The chief justification of his foundational evaluative principle is that, by connecting *right* and *wrong* with pleasure and pain, it gives them public meaning.

## 5. Fiction and paraphrasis

Bentham carries his clarificatory mission into the centre of the law. His aim is that the central legal terms, such as ‘right’, ‘duty’, or ‘property’, should be understood. To make something clear for Bentham is to connect it with perception. These legal terms are names of what he calls fictional entities; and fictional entities are understood by connecting them with perceivable real entities like pleasure and pain.

For terms like ‘duty’ or ‘obligation’ Bentham invented the technique he called *paraphrasis*, most fully described in his Essay on Logic. For Bentham the primary unit of meaning is the sentence rather than the word, and he uses this insight to relate the tricky legal terms to perception. They do not themselves refer to things that can either be perceived or directly inferred from perception. However, Bentham’s proposal is that if the difficult term is placed in a sentence, the whole sentence may then be given meaning by being translatable into another sentence the words of which can be more easily understood.

Armed with his technique of paraphrasis, Bentham accordingly analyses fundamental legal terms. Rights, for example, are analysed in terms of duties. That is, a sentence about rights, such as ‘John has a right to wear his coat’, can be translated into a sentence about duties, such as ‘Everyone has a duty not to prevent John wearing his coat’. We are now still in the realm of fiction. But Bentham proceeds to the analysis of duty. Someone is said to be under a duty when they are threatened by punishment for non-performance. But the threat of punishment is the threat of pain. So, at last, we reach pain, an immediate object of experience; the law has been clarified and made comprehensible to all. As he puts it in the Preface to the Fragment, ‘*pain and pleasure*, at least, are words which a man has no need, we may hope, to go to a Lawyer to know the meaning of’.

For Bentham, rights are the benefits created by the imposition of duties. He analyses the varying kinds of rights according to the different kinds of duties, and in an embryonic deontic logic brings out the different connections between obligation and permission. Thus analysis of fictions (such as Bentham conducts in his *Of Laws in General* (1770)) gives clarification. The point of calling them ‘fictions’ is not to designate them as merely imaginary items which can be disregarded. Such things (ghosts; the pagan gods) Bentham calls, by contrast, ‘fabulous’ entities. Legal rights and obligations have what he calls a ‘verbal’ reality, and the paraphrastic analysis shows what this consists in: if I disobey a (verbally real) obligation, then I am liable to real pain.

Bentham holds that fictions are necessary for the use of language, yet he also sometimes uses ‘fiction’ in a merely pejorative way to stigmatize something as merely imaginary; so care has to be taken as to which use he intends on a particular occasion. He is being merely pejorative in the Fragment when he talks of the supposed original contract, which was meant to justify political obligation, as the ‘sandy foundation of a fiction’, or when he talks of ‘pestilential breath of

Fiction' poisoning the operations of law. In these cases he is talking about what he calls the lies of lawyers – of justification on the basis of purely imaginary happenings.

Bentham's account of natural rights illustrates both his techniques of analysis and this problem. 'From *real* laws come *real* rights', he says, 'from *imaginary* laws come imaginary ones' (Anarchical Fallacies, conclusion). Natural rights are just fictions. But, it might be objected, since all rights are fictions for Bentham, why can natural rights not also be given a meaning by paraphrastic analysis? The answer is as follows. Since (sentences about) rights can be analysed in terms of (sentences about) duties, the problem is not with natural rights, as such. They can be analysed in terms of natural duties. The problem is with the next step, where duties are analysed in terms of threats of pain (punishment). With the supposed natural duties there is, for Bentham, no such threat. There is no legislator. As he puts it in Supply without Burthen (1795), 'a natural right is a son that never had a father' (1952, vol.1: 334).

For Bentham, people talking of natural rights are really saying that they wished that there were (real, political) rights. But, as he says, 'want is not supply; hunger is not bread'. Even worse, for him, is when people suppose, as did the framers of the French Declaration of the Rights of Man and of the Citizen, that such rights are unalterable (imprescriptible). As Bentham famously puts it, 'natural rights is simple nonsense, natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts' (Anarchical Fallacies art. II).

## 6. Government

So, in Bentham, for real rights we need real laws. We need government. The argument for the states and for government is therefore straightforward: they confer the benefits we gain from the possession of rights. Of these benefits the chief, for Bentham, is security; and hence the principal task of government is to provide for the security of individuals. Possessing security, they can plan ahead in confidence, realize their plans, and increase their happiness. Bentham's main concern is to protect areas in which individuals may maximize their own utilities rather than having a government that constantly interferes to promote happiness. In this sense he is on the side of liberty – although this is a liberty which is only produced by government and does not predate it in the way that supposed natural liberty would.

Property is included by Bentham under security. Again, it is the creation of law and does not predate it. This means that Bentham avoids the problems about taxation or obedience to the state which philosophers run into when they start with natural rights to property. With John Lockewe get an original contract argument for government, whereby people antecedently having property contract into government. Bentham mocks such arguments in the Fragment. For him justification of obedience is a matter of utilitarian calculation, of whether the 'probable mischiefs of obedience are less than the probable mischiefs of resistance' (I 43). Analogously, there are no problems about taxation. Government creates property and it can remove the property it creates.

As well as security, Bentham lists three other 'subordinate ends' of government in the Civil Code: subsistence, abundance, and equality. The utilitarian argument for equality was noted above; and both subsistence and abundance are naturally positively correlated with utility. They are therefore appropriate goals for the legislator, although it should be noted that this emphasis



upon subordinate ends shows Bentham's indirect utilitarian aspect: the legislator protects security or provides subsistence rather than directly promoting utility. Security easily outranks the others, being thought by Bentham a necessary condition for their achievement.

When Bentham was writing the Civil Code he was happy to appeal to enlightened dictators to get his legal proposals put into effect. However he came to realize that the chief power against which people need security is the power of government itself. Hence his turn in his later writings to the construction of a constitutional code; and hence also his turn to democracy.

The argument for democracy follows simply from the central principles outlined above. Since, by the principle guiding human action, people tend to act in their own interest, so also do governors. Kings look after the interests of kings; oligarchs after the interests of the oligarchy; and so on. Yet the proper end of government is not just a sectional but a general interest. It is general happiness. The solution is to make the governors as far as possible the people themselves. The greatest happiness of the greatest number is safest in the hands of the greatest number. Merely by following their own interest, in accordance with the chief factual principle, they will also promote the general interest, in accordance with the chief evaluative principle.

The kind of democracy promoted is representative democracy. Bentham distinguishes between 'constitutive' and 'operative' powers. The people as a whole are to be the supreme constitutive power, electing governments and having final authority. But they elect, and can dismiss, the operatives. The operatives have to be controlled. Hence the Constitutional Code. As before, the guards are to be guarded. Politicians are to be forced by all the available sanctions so that, acting merely selfishly, they in fact promote general happiness.

### **List of works**

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Bentham, J. (1776) *A Fragment on Government*, Cambridge: Cambridge University Press, 1988.

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(A selection which also contains *Fragment on Ontology*; the complete *Panopticon* writings are only in Bentham (1843).)

Bentham, J. (1802) *Traité de législation civile et pénale*, Paris; greater part translated in J. Bentham, *The Theory of Legislation*, London: Kegan Paul, 1932.

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### **References and further reading**

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(Uses the Civil Code material to argue for an indirect utilitarianism account of Bentham.)

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(Particularly full on the not yet published early manuscript material.)

Lyons, D. (1973) *In the Interest of the Governed*, Oxford: Oxford University Press, revised 1991.

(Innovative reading of Bentham claiming that he held that people should seek particular rather than the universal interest.)

Postema, G. (1989) *Bentham and the Common Law Tradition*, Oxford: Oxford University Press.

(A fuller account than the title suggests. A central problem considered is Bentham's thought about legal adjudication.)

Rosen, F. (1983) *Jeremy Bentham and Representative Democracy*, Oxford: Oxford University Press.

(Accessible description of Bentham's later political thought, including the *Constitutional Code*.)