Jeremy Bentham: philosopher and reformer

Wholesale legal reform, political radicalism, religious scepticism, and sexual liberty were features of Bentham's utilitarianism.

By Philip Schofield

Jeremy Bentham was born in Houndsditch, London—not far from present-day Aldgate underground station—on 4/15 February 1748 and died at his home in Queen's Square Place, Westminster—the site of his enormous garden is now occupied by the Ministry of Justice—on 6 June 1832. He grew up in the Age of Enlightenment, lived through the American and French Revolutions, witnessed the beginning of the Industrial Revolution, and died at the height of the Romantic period. He spent most of his life in London, though for two-and-a-half years in the late 1780s he journeyed to and stayed with his younger brother and naval engineer Samuel (1757–1831) at Krichëv in Russia, had summer retreats at farms in Hendon and Oxted, and in 1813–17 rented the idyllic Ford(e) Abbey, Devon (now Somerset). Bentham's father Jeremiah was a successful lawyer, who accumulated a large property portfolio, including the house and garden in Queen's Square Place which Jeremy inherited in 1792. His mother Alicia Whitehorn, the widowed daughter of Thomas Grove, a mercer from Andover, died in 1759, having borne seven children, of whom only Jeremy and Samuel survived. Jeremy was learning Latin and Greek before his fifth birthday, was sent, aged seven, as a lodger to Westminster School, and such was his precociousness in 1760, aged twelve, began his studies at Queen's College, Oxford. He took his BA degree in 1764, aged sixteen, reputedly the youngest person up to that time to graduate, and was admitted to the bar on his twenty-first birthday in 1769. His father had ear-marked him for a career in law, hoping that he would rise to the summit of the legal profession as Lord Chancellor of England. Bentham decided, however, that such was the absurdity of English law, rather than practising it, his vocation lay in reforming it. Having been born into a politically conservative and religiously orthodox upwardly mobile middle-class metropolitan family—his step-brother (his father re-married) Charles Abbot would distinguish himself as Speaker of the House of Commons and

be raised to the peerage as Baron Colchester—Bentham would become one of the most severe critics of Britain's political, legal, and religious establishments that the country has ever known.

It was again in 1769, in what he termed 'a most interesting year', that Bentham formulated the ethical doctrine we now know as classical utilitarianism. A theological version of the doctrine, which had been first expounded in 1731 by John Gay, a Cambridge don, would receive its most popular statement in William Paley's *Principles of Moral and Political Philosophy* (1785). According to the theological utilitarians, it was God's will that we should promote the happiness of his creatures, and if we did so, we would be rewarded with the pleasures of heaven, but if we inflicted pain and misery, we would be punished by the pains of hell. According to Bentham, who developed his secular utilitarianism independently of the Cambridge theologians, the right and proper action was that which promoted 'the greatest happiness of the greatest number', with happiness being understood as a balance of pleasure over pain, and conversely misery or suffering as a balance of pain over pleasure. Terms such as right and wrong, and good and evil, only made sense when they were related to pleasure and pain: the only good was pleasure and the only evil was pain. Taking into account all its consequences, an action was right when it led to a preponderance of pleasure and wrong when it led to a preponderance of pain. In Bentham's hands, the principle of utility was a critical standard by which institutions, laws, and practices could be examined and, if found wanting, reformed.

Bentham's secularism was a product of a religious scepticism that was evident by the time he took his degree. He was required to subscribe to the Thirty-nine Articles of the Church of England. He was reluctant to do so. The dilemma he faced was between compromising his intellectual integrity and disappointing his father. He subscribed, but resented it for the rest of his life—a resentment that eventually bore fruit in his scathing *Church-of-Englandism and its Catechism Examined* (1818), which was ostensibly a call to divorce the provision of education from any religious test, but which exposed the corrupt practices of the established Church and made mockery of its doctrine. A major influence which drove Bentham towards his radical secularism was the ancient Greek philosopher Epicurus, or rather modern writers in the Epicurean tradition and particularly writers associated with the materialist wing of the French Enlightenment. He took two crucial lessons from the Epicureans: first, all that mattered was reducible to pleasure and pain; and second, our senses had access to

nothing beyond the physical world. Given that our knowledge was founded on sense-experience, in other words our perceptions of the physical world, we could know of nothing beyond that physical world. All talk of the supernatural, whether of angels, devils, or God, was either fantasy or nonsense. Bentham was not an atheist insofar as that implied a belief that there was no God. The proper basis for belief was evidence—faith was belief without evidence—but there could be no evidence to claim that God either existed or did not exist. Underlying Bentham's utilitarianism, therefore, was a materialist ontology. For a proposition to make sense, it had ultimately to be related to 'real entities', that is to objects existing in the physical world. Bentham invented the technique of 'paraphrasis' in order to make sense of propositions that included abstract terms, such as right, obligation, and power, and which as such did not represent a real entity. To say that a person had a legal right to a service meant that another person lay under an obligation to provide that service, and to lie under an obligation meant that one faced the prospect of suffering a pain imposed by a legislator. Hence, talk about legal rights made sense because such propositions could be translated into other propositions referring to such real entities as persons, objects, and sensations. The problem with 'natural rights', as instanced in the French Declaration of Rights of 1791, was that they were, at best, wishful thinking, since no legislator had created them: hence, 'Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts.'

Bentham's career through to the outbreak of the French Revolution in 1789 was dominated by his efforts to draw up a complete penal code based on his utilitarian science of legislation. In 1764 he had returned to Oxford to listen to the lectures of William Blackstone, which would be published as the famous *Commentaries on the Laws of England* (1765–9). Bentham was far from impressed by Blackstone's celebration of the English common law, which, in his view, was characterized by '[f]iction, tautology, technicality, circuity, irregularity, [and] inconsistency'. Made up by judges, the common law was 'dog law'—equivalent to a man beating his dog in his yard for doing something of which he disapproved, and then expecting all the other dogs in the neighbourhood to know that they would be beaten if they did the same thing. Bentham advocated a codified system, enacted in a publicly accessible way, by the legislator, the only proper source of legal authority. Certain states, such as Prussia and later France under Napoleon, had introduced law codes, but, according to

Bentham, these schemes were no more than consolidation, where, instead of the law consisting of several little piles of rubbish, it was heaped up into one big pile. In contrast, the legislator should proceed logically, beginning with the general principle that no action should be designated an offence, and thereby subjected to punishment, unless it caused harm. Such harm could be caused to one's self, to a particular individual, to a part of the community, or to the community as a whole. In the case of the individual, he or she might be harmed in person, property, reputation, or condition in life (status); and in the case of person, in mind or body; and if in body by corporal injury, restraint or compulsion, banishment or confinement, and homicide; and so on. The result of such a classification would be a 'map of Jurisprudence'. If an action did not find a place on the map, then it was no offence and people should be left at liberty to perform it. Bentham devised a detailed set of recommendations for the organization of a complete code of laws, explaining, for instance, the distinction and relationship between civil, penal, constitutional, and procedural law in a form radically different to that accepted by Blackstone and other English lawyers of the time. Bentham's basic approach was that the law should be 'cognoscible' and justice accessible. Make it easy for everyone to know the relevant law and give everyone easy access to a judge whenever they needed it.

Bentham is perhaps best known as the promoter of the panopticon prison scheme and for his 'auto-icon', the combination of skeleton, stuffing, clothes, and wax head that for many years resided in a pair of wooden boxes in the South Cloisters of University College London, but has recently been moved to a glass case in the University's new Student Centre. He would have approved of the openness and transparency of his new lodgings, for these were features he incorporated into the design of the panopticon, a circular or polygonal building in which a central inspector could supervise the activities of those on the periphery. Samuel Bentham invented the idea, or at least first applied it to practice, in workshops in Russia. When Jeremy visited, he realized that it could be adapted to any institution that would benefit from central inspection, whether a factory, hospital, school, or prison. At the time Bentham was writing, building national penitentiaries for male and female prisoners was on the government's agenda, since some alternative to transportation to America, which had been curtailed by the War of Independence, had to be found. The government did find an alternative destination—in 1787 the First Fleet sailed to Botany Bay—but the colony could not cope with large

numbers of convicts, while others were not liable to be transported. To meet the demand for a penitentiary, Bentham proposed his panopticon, which led to the passing of the Penitentiary Act of 1794 authorizing its construction. Having suffered a series of rebuttals and delays, Bentham was put in possession of a site at Millbank, but was eventually informed by government in 1803 that the panopticon would not be built. When a penitentiary was eventually constructed at Millbank and opened in 1816, it was a confusing, dark labyrinth made up of six interconnected pentagons, rather than the open and light-filled iron and glass circular structure that Bentham had envisaged. Bitterly disappointed, Bentham felt that a decade of his life had been wasted. He had made one last determined effort in 1802–3 to save panopticon. Drawing on his general position that colonies produced expense, war, corruption, and bad government, he argued that the penal colony in Australia was objectionable not only on the grounds that it was a colony, but because it could not achieve any of the proper ends of punishment—example, reformation, deterrence, compensation, and economy— that would be achieved by the panopticon.

One of the effects of the failure of the panopticon scheme, and perhaps of the government's refusal to listen to various other schemes that Bentham proposed in the 1790s and early 1800s — including the housing of the nation's poor in a network of pauper panopticons and measures of financial reform—was to drive Bentham to political radicalism. The political system was dominated by the monarchy and aristocracy, though there had been increasingly vocal demands since the American War of Independence for a widening of the franchise. In 1809 Bentham began writing in favour of 'democratic ascendancy', whereby effective power would be placed in a House of Commons elected annually by universal manhood suffrage (though Bentham had advocated women's suffrage as early as 1789, he saw no prospect of achieving it until other reforms had been implemented), and from around 1818 committed himself to republicanism. His 'Constitutional Code', the major endeavour of the final decade of his life, was a detailed blueprint for a representative democracy. Rejecting the standard doctrine of a separation of powers between executive, legislative, and judiciary, Bentham insisted on the primacy of the electorate—'[t]he sovereignty is in *the people*'—to whom the legislative power, vested in a single assembly, would be subordinate, while the executive and judicial powers would each be subordinate to the legislative. Early in his career,

Bentham had accepted that rulers wished to promote the well-being or interests of their subjects, but lacked the relevant legislative science to understand how to do this effectively. He had intended to present a penal code to a monarch like Catherine the Great of Russia, who would recognize its merit and order its adoption. His experience with the panopticon prison scheme drew him to the conclusion that rulers did not want to further the interests of their subjects, but their own interests. This opposition of interests between rulers and subjects could be resolved by a democratic system of government organized in such a way that rulers could promote their own interests only by promoting the interests of the community as a whole. In this respect, the eighteenth-century Bentham of the Enlightenment made the transition to the nineteenth-century Bentham of political radicalism, and thereby made Enlightenment values relevant to the democratic age.

Less acceptable to the Victorians, had they known much about them, however, would have been Bentham's writings on religion and sexual morality. The typical attitude towards homosexuality had been expounded by Blackstone: 'the crime against nature' had received its divine condemnation in the destruction of Sodom and Gomorrah, and was rightly punished by death. As early as his first major published work *A Fragment on Government* (1776), Bentham had argued that consensual male-male sex should be decriminalized, on the grounds that the law should only prohibit and punish practices that caused harm overall (and not always then), but that there was no harm in consensual sexual activity. People engaged in them because they expected pleasure. He developed these ideas in detail in essays written in 1785 and again in the mid-1810s (for the latter see *Of Sexual Irregularities, and other writings on Sexual Morality* (2014) and the online edition of 'Not Paul, but Jesus: Volume III'). Bentham argued that the dominant attitude, whereby all sexual activity apart from that between one man and one woman within the confines of marriage for the procreation of children was condemned, had its origin in the Mosaic Law and the teachings of St Paul. Bentham's strategy was to draw a distinction between the teachings of Jesus and those of Paul—while the latter was an adherent of asceticism (favouring pain over pleasure or at least the denial of pleasure), since it furthered his purpose of gaining control of the followers of the nascent Christian religion, Jesus himself was a proto-utilitarian. Bentham suggested that Christians, if they were seriously committed to their religion, should adhere to Jesus' acts and teachings, and reject the contrary injunctions of Paul. There

was evidence in the Gospels that Jesus was not an asexual being, as the orthodox portrayed him, but was bisexual, given the presence of many women as well as 'the disciple whom Jesus loved' among his followers. There was, moreover, 'the stripling clad in loose attire' who stayed with Jesus in the Garden of Gethsemane after all the disciples had fled (Mark 14: 51–2), appeared to be a male prostitute, and may have been Jesus' lover. As for Sodom and Gomorrah, if any crime had been condemned by their destruction, it was not male-male sex, but gang rape.

There is much more besides in Bentham's corpus awaiting our discovery. We are still far from being able to offer a definitive account of Bentham's thought because the authoritative edition of his works is still in progress. An incomplete and poorly edited version of *The Works of Jeremy Bentham*, issued between 1838 and 1843 'under the superintendence' of Bentham's literary executor John Bowring, has traditionally been the main resource for Bentham scholars, at least for those who go beyond the opening chapters of his best-known work *An Introduction to the Principles of Morals and Legislation* (1789). Bentham himself printed or published around fifty works, ranging from short pamphlets to the massive 2,500 page *Rationale of Judicial Evidence* (1827), edited by the youthful John Stuart Mill. When Bentham printed or published a text, he usually destroyed the manuscripts on which it was based. Nevertheless, there survives an archive of around 100,000 pages of his writings, divided between the larger collection in University College London Library and the smaller in the British Library. While some of this material consists of correspondence and family papers, the bulk of it is related to works that Bentham did not publish or only partially published. UCL's Bentham Project was established in 1959 in order to produce a new authoritative edition of Bentham's works and correspondence under the generic title of *The Collected Works of Jeremy Bentham*. To date, thirty-four volumes have been published, but it will take around eighty to bring the edition to completion. There is no other comparable project of its size and philosophical importance in the Western world, with the possible exception of the Marx-Engels edition in Germany. *Transcribe Bentham*, an award-winning online scholarly crowdsourcing initiative, is an innovative attempt to accelerate the production of the *Collected Works*. Volunteers select a manuscript image, enter the text into a transcription box, and submit it to the Bentham Project, where it is checked and added to an online digital repository. Since 2010 members of the general public have transcribed over 23,000 pages of

Bentham's manuscripts, but there remain tens of thousands of pages still to do. If you happen to have a little bit of time on your hands, the Bentham Project would welcome your involvement.

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