Encyclopedia of Criminological Theory

Bentham, Jeremy: Classical School

Jeremy Bentham was born in Houndsditch, London, on February 15, 1748, and died there on June 6, 1832. He entered Queen's College, Oxford, in 1760, at the age of 13, graduating in 1764, after which he studied law at Lincoln's Inn. Though he qualified to practice law, he never did so, instead spending from 8 to 12 hours each day writing, principally on legal theory.

By the 1780s, Bentham had come to know a number of the leading liberal (Whig) politicians and lawyers, but his ideas remained largely unappreciated. He wrote extensively on theoretical matters, though he also authored a number of practical proposals for social and political reform. In 1785, he briefly joined his brother Samuel in Russia, where he devised plans for the Panopticon—a model prison which he had hoped would interest the Czarina Catherine the Great. After his return to England in 1788, Bentham pursued the idea in Britain—at great expense, but fruitlessly. By the late 1790s, Bentham's work began to have some impact on legal and political reformers, yet his influence was greatest on the continent.

Bentham's writings reflected the major social, political, and economic upheavals of the period—the Industrial Revolution, the rise of the middle class, and the revolutions in France and America. At his death, he left tens of thousands of manuscript pages, intended for publication. Bentham also left a large estate, in part to finance University College, London. In accordance with his instructions, his body was dissected, embalmed, dressed, and placed in a chair at University College, where it still resides.

Method

Bentham's analytical and empirical method emphasized conceptual clarity and deductive argument. It was influenced by the *philosophes* of the Enlightenment, such as Cesare Beccaria, Claude **[p. 89 ↓]** Helvétius, Denis Diderot, and Voltaire, and also by John Locke and David Hume. Bentham followed the example of Locke in emphasizing the importance of reason over custom and tradition, and of precision in the use of terms. Hume provided Bentham with insights into human psychology as well as a secular version of the principle of utility, which had frequently been annexed to theological views.

Bentham's method is evident in his criticisms of the law and the moral and political uses of language. He was influenced by Beccaria not only concerning issues of crime and punishment and the relevance of utility but also on exactness in legal discourse. One of Bentham's principal targets was the presence of "fictions" in the law. Terms like *relation*, *right*, *power*, and *possession* were "fictional"—that is, they involved taking a part or aspect of a thing in abstraction from, and as, the thing itself—with the result that people were deceived or confused. In those cases where the terms or "wholes" could be justified by explaining their properties or how they followed from their "parts," and where nothing was left at an abstract level, Bentham allowed that the terms could continue to be used. Otherwise, they were to be abandoned. One particular fiction that Bentham hoped to eliminate was the legal claim that there was some original contract that explained why there was any law at all.

Human Nature

Bentham held that morals and legislation must be based on an accurate account of human nature. Just as nature is explained through reference to the principles of physics, so human behavior can be explained by reference to principles of human nature—ultimately, the two primary motives of pleasure and pain. This is the theory of psychological hedonism. At the beginning of the *Introduction to the Principles of Morals and Legislation published in 1789*, Bentham writes,

> Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it.

Bentham argued that one can make a scientific determination of value on this basis. Pleasure and pain are objective states, and they can be described in terms of seven properties—intensity, duration, certainty, proximity or propinquity, fecundity, purity, and extent—and measured. Such characteristics not only provide a basis for calculating the

value of a thing but also allow us to compare things. This is called the hedonic or felicific calculus.

Bentham's account of human nature is ultimately individualistic. The community is but "the sum of the interests of the several members who compose it"; it is a fictitious body. Bentham's view is that the individual is the basic unit of the social sphere. A person's relations with others, even though important, are not essential and describe nothing that is, strictly speaking, necessary to its being what it is.

Bentham also believed that human beings have a natural, rational self-interest. In his "Remarks on Bentham's Philosophy," John Stuart Mill cites Bentham's *The Book of Fallacies* that "[i]n *every* human breast … self-regarding interest is predominant over social interest; each person's own individual interest over the interests of all other persons taken together." This psychological egoism underlies all human action, and reason—which is a natural capability of persons—is subservient to it.

Moral Philosophy

Bentham's moral philosophy is detailed principally in his *Introduction to the Principles of Morals and Legislation*. He is one of the classical exponents of utilitarianism, but his "greatest happiness principle" or "principle of utility" is derived from Helvétius, Hume, and Beccaria. Utility is not just a matter of the usefulness of things or actions, but is concerned with the extent to which these things or actions promote the general happiness. Specifically, what is morally obligatory is that which produces the greatest amount of happiness for the greatest number of people, happiness being determined by reference to the presence of pleasure and the absence of pain.

[p. 90 ↓]

While Bentham's account of human nature explained why pleasure and pain are the primary motivators, he also explained why another's happiness—or the *general happiness*—should count. Bentham's concern for the interests of others—*universal egoism*—is based, first, on his observation that, in acting, individuals refer either explicitly or implicitly to the interests of others. Bentham also argues that, if pleasure is

the good, then it is good irrespective of whose pleasure it is. Thus, the moral injunction to pursue or maximize pleasure has force independently of those whose specific interests are involved. Bentham notes, as well, that people recognize that others' interests are inextricably bound up with their own, and so they would reasonably seek the general happiness. There are other reasons. The principle of utility also shows a commitment to human equality. It presupposes that "one man is worth just the same as another man" and so, in calculating the greatest happiness, "everybody [is] to count for one, nobody for more than one" (Mill, 1867, p. 93). Most importantly, pleasure and pain can be described and measured objectively. The principle of utility accordingly allows us to make decisions in situations where there are conflicts among individuals.

For Bentham, then, the greatest happiness principle and his psychological hedonism and egoism are not inconsistent. Moral philosophy or ethics can be simply described as "the art of directing men's actions to the production of the greatest possible quantity of happiness, on the part of those whose interest is in view" (Bentham, 1962, vol. 1, p. 142).

Theory of Law

In the *Principles of Morals and Legislation*, Bentham states that the fundamental purpose of the law is to prevent mischiefs. Law, then, is by its nature "negative"—a restriction on liberty and "painful" to those whose freedom is restricted. H. L. A. Hart suggests that this model of law is based on English criminal law. Bentham, however, at least implicitly accepts that the law may have a positive rationale in other contexts.

According to Bentham, "A law may be defined as an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power" (1962, p. 160). Law is, then, the command of the sovereign and an imperative. This view is called legal positivism and is frequently associated with Bentham's friend and colleague, John Austin. It holds that the validity of a law does not rest on its morality. A law which commands morally questionable or even evil actions is still a law.

Although the separation of law and morals is generally a defining characteristic of legal positivism, Bentham held that morality is relevant to law. The principle of utility is the criterion for determining what should properly become a law. Still, Bentham rejects the idea that legal rights and obligations have a moral derivation, and he famously dismisses the idea of natural rights as "nonsense upon stilts." This reflects his view that words like *obligation* and *right* are confusing abbreviations of moral or legal arguments rather than simple descriptive terms.

The practical side of Bentham's theory of law is particularly significant. Some of his earliest work, included in *A Fragment of Government*, consisted of a general attack on the common law and William Blackstone's famous *Commentaries on the Law of England*. Bentham disputed Blackstone's defense of tradition in law and rejected the idea that our legal obligations originate in the state of nature and social contract. His antipathy to the common law was also based on the obscurities of legal practice. In the *Principles of Morals and Legislation*, he describes the written records underlying the common law as "the most inconvenient for reading or consulting" (Bentham, 1970, p. 186). These records "are kept locked up in places where not one in ten thousand of those whose conduct is to be guided by them and whose fate depends on them can know how to find them: much less to make anything of them when found" (Bentham, 1970, p. 186). Bentham also disparaged many of the procedural elements in the common law, which had their origins in feudal times.

On a more fundamental level, Bentham complained vigorously that the common law had allowed the judiciary to impose its moral and social views on the rest of society. He also objected to the retrospectivity of the common law, which decides cases on an individual basis, and therefore **[p. 91 ↓]** ex post facto. This leaves the law uncertain. Bentham accordingly argued that the law should be codified. This would give legislators the responsibility for making law. It would also provide a clear conceptual plan of the law, and thereby clarify and systematize legislation. Every provision, Bentham believed, should be accompanied by a brief rationale, setting out its purpose and justification, in order to prevent any deviations in its application. This approach has been criticized, however, for its failure to recognize the intricacies that arise in individual cases.

Theory of Punishment

Bentham's theory of punishment follows the general outline of Beccaria's *On Crimes and Punishments*. Bentham's account is nevertheless more scientific than Beccaria's and should be seen as part of a larger theory of social control. Both theorists argue that punishment cannot be based on simple emotions like anger or desire for revenge and must be rationally defended. This was a major development in the history of punishment.

Bentham's views on punishment are spread over a number of texts. *The Rationale of Reward* and *The Rationale of Punishment* were both based on his *Théorie des Peines et des Récompenses*, edited and published by his disciple, Etienne Dumont, in 1811—but they contain interpolations that make any account of Bentham's own views problematic. Still, the essential dynamic on which Bentham's theory is based is simple enough. Since individuals have the ability to choose, and are rational and self-interested, it is possible to have them change their behavior. This is the purpose of punishment.

The logic of Bentham's theory is based on two moral axioms: (1) punishment consists of the infliction of pain on an offender; and (2) punishment is (accordingly) an evil. It follows that only the minimum punishment should be inflicted. Punishments need only outweigh "the profit of the offense."

Punishment also requires justification. This is true on both a general and a specific level. The general justification is that it increases the security of the public and protects freedom. It accomplishes this end in two ways: (1) it deters other members of the public from acting in the same way as the offender; and (2) it reforms the behavior of the offender. These principles have made their way into the common law under the name of general and specific deterrence, though "reform" seems to indicate something more than deterrence. The emphasis here is on the correction of behavior rather than on punishment per se.

Bentham's work on punishment is notable for its lists and classifications. In the *Principles of Morals and Legislation*, he sets out 12 rules governing the proportion of

punishments to offenses. Some of these may seem surprising, such as Rule 8, which suggests that punishment should be increased in accordance with the length of time that has elapsed since the commission of the crime. This is explained by the increased difficulty in changing the offender's behavior. The fact that a crime was committed out of habit is another consideration, while Bentham's attention to the particular sensitivities of the offender seems to permit a wide range of possible sentences for a particular offense. Although these lists show considerable insight, they have an eccentric cast (he includes "violation of sleep" as a significant aggravating factor) and are inevitably incomplete. Bentham's *Collected Works* also include a "Specimen of a Penal Code," which sets out other aggravations that would justify an increase in punishment.

Prison Reform

Bentham is best known in contemporary criminology for his design of the Panopticon, or Inspection-House. The fundamental idea behind the Panopticon is that inmates are housed in cells that permit them to be observed by the "Inspector" at any time. This explains the word *Panopticon*: observing (*opticon*) all or everything (*pan*). Although Bentham designed the Panopticon for any establishment that required observation, such as schools and hospitals, it is best known as a model for prisons.

Bentham exhibited a solid grasp of the psychological dynamics of behavior modification in designing the Panotpicon. Since the Inspector remains unseen inside the central inspection tower, at any particular time the inmates can only assume that they are being watched, and behave accordingly. As a result, each begins to watch himself or herself. It is this internalized habit of watching oneself that then becomes the psychological mechanism that controls behavior. In his celebrated **[p. 92 ↓]** book, *Survellir et punir: Naissance de la prison*, translated as *Discipline and Punish: The Birth of the Prison*, Michel Foucault sees the Panopticon as an exemplary, if disturbing, manifestation of a new form of social control. This is not, however, entirely fair. The evidence suggests that while Bentham's earliest views on punishment were based on a draconian regime of solitude, darkness, hard labor, and a frugal diet, which was designed to break the spirit of the rebellious offender, his design of the Panopticon was part of a more enlightened scheme to serve society, the offender, and the institution simultaneously. The Panopticon, then, provides a utilitarian solution to the problem of punishment,

which involves the infliction of pain and therefore shares implicitly in a prima facie immoral action. Moreover, Bentham's design incorporated a number of reforms, some as simple as the provision of adequate heat to the cells.

While Bentham's plan to build the Panopticon did not succeed in his lifetime, his view had a pronounced effect on the architecture of modern prisons, which have often featured a central tower, surrounded by cells that fall under the constant surveillance of guards. Bentham was nevertheless unrealistic in several respects, and he did not recognize that his plan to run prisons for profit would lead to abuses.

Contributions of Bentham to Popular Understanding

Bentham wished his work to be educative, and one of his motivations for codifying the law was that it would be available to every citizen. He also advocated teaching hospitals and championed usury, on the ground that it would stimulate the spirit of invention.

Bentham's positions on many moral issues are close to contemporary views. He believed that sodomy, for example, should be taken out of the criminal law, though he did not publish his comments in his lifetime. Bentham is also important for his position on animals, which have historically been classified as property (and therefore as "things") in the law. He is frequently cited for his view that, because animals experience pain, they should be brought into the hedonic calculus.

Bentham also had progressive views on medicine. The supply of cadavers for medical research in 19th-century England was limited, since the only bodies that could be legally used for such purposes were those of convicted murderers. This gave rise to a lucrative black market in corpses, and even to the murder of the poor. Bentham believed that legislation was needed to address the problem, and he drafted a bill that would allow medical research to make use of the bodies of people who died in the course of treatment. Bentham also donated his own body to medical research, on the condition that his head and skeleton would be reassembled and kept for posterity. His motivations in wanting his body preserved in this way are unclear, though his desire to

flaunt the moral prejudices of the day undoubtedly played a part in it. This may explain why, in his last years, he carried in his pockets the glass eyes that were to be used for this purpose.

Bentham played a prominent role in the social movements of early-19th-century Britain. Many of the political reforms introduced during this period (such as the secret ballot, advocated by Bentham's friend, George Grote) reflect his views. Bentham's insistence that the legislature is the proper agent of change in society has also been influential. His opinion of the common law has had an enormous impact in England, where the prevailing view—in spite of its inaccuracy—has been that judges only apply and interpret the law made by Parliament. The vocabulary used by legal and political theorists (e.g., *international law*, *maximize*, *minimize*, and *codification*) is indebted to Bentham's proclivity for inventing terms.

It would be out of the question to summarize the entire range of reforms that Bentham explored and advocated in the course of a long and varied life. It is nonetheless typical that he advocated a public prosecution service, at a time when private prosecution was still a feature of the criminal law. He also saw the need to collect and maintain statistical data regarding crime, primarily because this would provide information that legislators needed to fulfill their responsibilities. All of this can be seen as a natural extension of his general interest in the reform of public institutions, which led him to endorse a systematic and professional civil service.

Bentham deserves credit for the movement to codify the criminal law in England. A draft *Criminal Code* was prepared by James Fitzjames Stephen, a follower of Bentham who is considered **[p. 93 ↓]** the foremost authority on the criminal law in England. The proposal came to nothing when the Conservative government went down to defeat in the general election of March 1880. It nevertheless provided much of the impetus for the codification of the criminal law in those countries following the common law. It is also significant that utilitarianism was largely successful in undermining the validity of retribution as a legitimate principle in sentencing, to the point where American courts have held that retribution for its own sake violates the restriction on cruel and unusual punishment.

Criticisms

Bentham is important for identifying a number of deficiencies in the common law. He failed to recognize, however, that the origins of the common law lie more in custom and moral consensus than in judicial opinion. This is particularly true in the area of the criminal law. Related concerns are that his legal theory leaves the authority to make law entirely in the hands of the legislature, and that the majority may disregard the rights and needs of minorities. This continues to present difficulties for legal positivists.

Bentham also neglected the importance of the social sciences in the study of human behavior. Although he was influenced by Helvétius, who saw the importance of social circumstances in determining behavior, Bentham neglected these considerations. His work fails to recognize the pathological aspects of criminal behavior or differentiate from other kinds of decisions, the decision—if it is a decision—to commit a crime. Bentham was also only incidentally concerned with the etiology of crime, which is one of the central preoccupations of modern criminological theory. This may reflect his liberal stance, since he seemed reluctant to judge criminal acts, except so far as they represented a threat to the general good.

Problems in Bentham's moral theory also surface in his views on the nature of crime and punishment. Bentham took a different position than Beccaria on torture and believed that it would be justified in situations where the pain to the individual defendant was outweighed by the larger benefit to those who would be spared unnecessary pain. Many commentators have also argued that there are many situations where utility and the greatest happiness may be served by prosecuting the innocent. Finally, Bentham's work sometimes fails to catch the moral and emotional complexities of human circumstances.

Relevance to Criminology Today

Bentham's primary contribution to criminology lies in his theory of punishment. His work is relevant as well in light of the current reappraisal of classical theory, which focuses on the capacity of individuals to choose. This is a more complicated matter than generally

acknowledged, since the classical view, which still persists in the courts, also rests on the immoral nature of the decision to commit a crime. Bentham's work and the hedonic calculus focus instead on the rational aspects of criminal conduct.

This resurgence of interest of criminologists in Bentham's work is also related to the contemporary influence of decision theory. On this view, crime is explained through an analysis of the specific decisions made by those who commit crimes. Although this is in keeping with liberal views in philosophy and political theory, it runs against the sociological and psychological grain of much academic work in criminology. It also presents issues for public policy, which has usually proceeded on the basis that the causes of crime are to be found in larger social, economic, or political conditions in society.

There is a certain irony in the fact that Bentham's work, in spite of its liberal foundations, led him to formulate an institutional approach that has justified increasing the level of social control in modern society. The critical and Marxist schools of criminology have noted that the criminal law has been used, historically, as a means of preserving the economic and social order. Foucault relates this to the birth of prisons, and many sociologists would agree that Bentham's work sets out the mechanisms of isolation and surveillance that are still used to maintain social order in modern western society.

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See also

- Beccaria, Cesare: Classical School
- Becker, Gary S.: Punishment, Human Capital, and Crime
- Cornish, Derek B., and Ronald V. Clarke: Rational Choice Theory
- Pogarsky, Greg: Behavioral Economics and Crime

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Encyclopedia of Criminological Theory: Bentham, Jeremy: Classical School

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