

# A Fragment on Government

Jeremy Bentham

1776

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[Brackets] enclose editorial explanations. Small ·dots· enclose material that has been added, but can be read as though it were part of the original text. Occasional •bullets, and also indenting of passages that are not quotations, are meant as aids to grasping the structure of a sentence or a thought. Every four-point ellipsis . . . . indicates the omission of a brief passage that seems to present more difficulty than it is worth. Longer omissions are reported between brackets in normal-sized type. —For more intensive study of this work, go to the edition of it by J.H.Burns and H.L.A.Hart (Athlone Press). Some of their footnotes will be borrowed in the present version, acknowledged by the label 'B&H'. —A small volume published by Cambridge University Press, with an Introduction by Ross Harrison, contains the *Fragment* and sections III and IV of the Preface written for the second edition.

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## Glossary

**affection:** In the early modern period, ‘affection’ could mean ‘fondness’, as it does today; but it was also often used, as it is in this work, to cover every sort of pro or con attitude—desires, approvals, likings, disapprovals, dislikings, etc.

**censure:** In one remark (not included in this version) Bentham says he is using this word in a ‘neutral’ sense, in which to ‘censure’ something is to look at it with a critical eye, not necessarily unfavourably, this being the role of the ‘censor’ announced on page 3. Most of his uses of it in this work seem to give it the meaning that we do, which is not neutral; but the neutral meaning may sometimes be hovering in the background.

**endowment:** Personal quality.

**harmful(ness):** Used throughout to replace Bentham’s ‘mischievous(ness)’. See entry below on **mischief**.

**invidious:** quarrel-producing.

**junction:** ‘a joint, a junction’ (OED) in the course of events.

**method:** In a few places Bentham uses ‘method’ in the sense of ‘system of classification’.

**mischief:** This meant ‘harm, hurt, damage’—stronger and darker than the word’s meaning today.

**of course:** On page 22 Bentham takes this to mean what we would mean by ‘as a matter of course’. That was a standard meaning of the phrase in his day.

**party:** Bentham regularly uses ‘the party’ to mean ‘the individual or group of individuals’. In assessing some action by a government, the ‘party’ whose interests are at stake could be you, or a political party, or the entire community.

**peculiar:** This usually meant ‘pertaining exclusively to one individual’; but Bentham often uses it to mean ‘pertaining exclusively to one *kind* of individual’.

**perfect:** Often used here with the same sense that we give it. But in much of chapter 1, starting on page 18, it probably has its older meaning of ‘complete’; similarly ‘perfectly’/‘completely’.

**science:** In early modern times this word applied to anybody of knowledge or theory that is (perhaps) axiomatised and (certainly) conceptually highly organised.

**sentiment:** For Bentham a sentiment could be a feeling or an opinion. In this version, where it *clearly* means ‘feeling’ it is replaced with that word. In other occurrences, it is allowed to stand, leaving it to you to pick.

**sinister:** Of the various inter-related senses that the OED gives for this word, the one that seems to fit best with Bentham’s usage is ‘suggestive of evil or malice’. The phrase ‘sinister interest’ now a technical term in legal theory, was first used by Bentham.

**synopsis:** Used here in its now-rare sense of ‘general view or prospect’ (OED).

**tendency:** Likely consequences.

## Preface

The age we live in is a busy one in which knowledge is rapidly advancing towards completion. In the natural world, especially, everything teems with discovery and improvement. The **a** most distant and little-known regions of the earth traversed and explored—the **b** all-vivifying and subtle element of the air so recently analysed and made known to us—are striking evidences, were all others lacking, of this pleasing truth.<sup>1</sup>

Corresponding to **discovery** and improvement in the natural world is **reformation** in the moral world, if the common view that in the moral world there is no longer anything to discover is true. But perhaps it is not true; perhaps among the best grounds for reformation are some observations of matters of fact which—having previously been noticed either incompletely or not at all—would when produced seem able to count as discoveries. An example is this fundamental axiom:

It is the greatest happiness of the greatest number that is the measure of right and wrong;

because its consequences have until now been developed with so little method and precision.

Be that as it may, if it is possible to make (and useful to publish) discoveries in the natural world, surely it is not much less possible to make (and useful to propose) reformation in the moral world. If it is important and useful to us to be made acquainted with distant countries, surely it is not much less important and useful to us to be made better and better acquainted with the chief means of living happily in our own country. If it is important and useful to us to know the principles of the element we breathe, surely it

is not much less important and useful to us to •understand the principles and to •attempt to improve laws by which alone we breathe that element in security. If we imagine an author—especially a famous author—to be and to declare himself to be a determined and persevering enemy of such an attempt, what should we say of him? We should say that the interests of reformation, and thus the welfare of mankind, were inseparably connected with the downfall of his works, or at least of a great part of the esteem and influence these works might have acquired.

It has been my misfortune (and not only mine) to see—or at least fancy I saw—such an enemy in the author of the celebrated *Commentaries on the laws of England*, an author whose works have had incomparably wider circulation and more esteem, applause, and consequently influence than *any* previous writer on that subject, their influence being something to which they were in many ways entitled.

That is why a while ago I conceived the plan of •pointing out some of what seemed to me to be the chief blemishes of that work, especially this grand and fundamental one of hostility to reformation; or rather •of laying open and exposing the sloppiness and confusion that seemed to me to pervade the whole. For, indeed, such an ungenerous antipathy seemed to indicate that there must be a general vein of obscure and crooked reasoning from which no clear and sterling knowledge could be derived; so intimate is the connection between some of the gifts of the understanding and some of the affections [see Glossary] of the heart.

It is with this in mind that I took in hand that part of the first volume to which the author has called its *Introduction*. This part of the work contains

•whatever comes under the label ‘general principles’;

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<sup>1</sup> [Footnotes by B&H explain that these are references to **a** the exploratory travels of Captain James Cook and **b** Joseph Priestley’s investigations into ‘different kinds of air’.]

- the preliminary views that he thought fit to present concerning certain topics (real or imaginary) that he found to be linked with his subject *law* by identity of name: two or three sorts of laws of nature, the revealed law, and a certain law of nations;
- remarks on several topics that relate to all laws or institutions in general, or at least to whole classes of institutions without relating to any one more than to another;
- his definition, such as it is, of the whole branch of law that he had taken for his subject.

Some people would consider that ‘branch’ to be a main stock, and would call it simply ‘law’. He calls it ‘municipal law’, to distinguish it from the other ‘branches’. He gives an account, such as it is, of the nature and origin of •natural society, the mother of municipal law, and of •political society, its daughter (begotten in the bed of metaphor)—this division, such as it is, of an individual law into what he fancies to be its parts; also an account, such as it is, of the method to be adopted for interpreting any law that may occur.

He gives an account

- of the division of the Law of England into its two branches, the so-called ‘statute’ or written law, and the common or unwritten law (these are distinguishable from one another not in their content but only in respect of their source);
- of **a** what are called ‘general customs’, or institutions in force throughout the whole empire or at least the whole nation;
- of **b** what are called ‘particular customs’, institutions of local extent established in particular districts; and
- of **c** adopted institutions of a general extent that belong to what are called the ‘civil’ and the ‘canon’ laws;

all three **a b c** being taken as so many branches of what is

called the ‘common law’. In short, he offers a general account of **a** *Equity*, that capricious and incomprehensible mistress of our fortunes, whose features neither our author nor perhaps anyone else can delineate properly; of Equity, who having started as a rib of **e** Law but has since in some dark age been plucked from her side when she was sleeping, by the hands not so much of God as of enterprising judges, and now lords it over **e** her parent sister.

All this, together with an account of the different districts of the empire over which different portions of the Law prevail, or over which the Law has different degrees of force, composes the part of our author’s work that he calls the ‘Introduction’. The whole thing is prefaced by an eloquent ‘Discourse on the study of the Law’, which I shan’t trouble with because it is of the rhetorical rather than of the instructive kind.

Rather than vainly trying to travel over the whole of so vast a work, I planned to take a portion of it that might provide a fair and adequate sample of the character and tone of the whole. And I thought that the part marked here ·in this Preface· would abundantly suffice for this purpose. Though narrow in extent, it was the most conspicuous, the most characteristic part of our author’s work, and that which was most his own. The rest was little more than compilation [lists and assemblages of details]. In pursuing my examination thus far, I thought I would be pursuing it as far as was necessary for my purpose. . . .

That project took me as far as the middle of the definition of municipal law, but there I was surprised to find the **digression** that makes the subject of the present Essay. This created a puzzle for me:

- it would seem strange to by-pass in silence such a large and significant part of the work I was examining; on the other hand,

- I saw no possibility of examining this anomalous dissertation without cutting in pieces the thread of my discourse.

Under this doubt, I decided to pass it by, at any rate for the present, encouraged in this by the fact that I could not see any connection between the digression and anything that came before or after. That's what I did: continuing my examination of the definition from which it digressed, I travelled on to the end of the 'Introduction'.

Then I had to come to some definite decision concerning this ill-fitting digression. I was reluctant to leave the enterprise I had begun, with this bit of it unfinished; so I sat down to give what I intended to be a very slight and general survey of it. But the further I went in examining the digression

- the more confused and unsatisfactory it seemed to me to be,
- the harder I found it to know what to make of it, and
- the more words I needed to say so.

That was how the present Essay grew to the size in which the reader sees it. When it was nearly completed, it occurred to me that just as the digression I was examining was unconnected with the text from which it starts, so also my critique of that digression need not be connected with my critique of the text. The former was much too large to be engrafted into the latter; and since if it accompanied it at all it could only be in the form of an appendix, there seemed no reason why the same publication should include them both. So I decided to deal with the digression as thoroughly as I could and as I thought necessary, and to publish this treatment separately, with the possibility of publishing the rest at some later time. . . .

This enterprise—this attack on the 'digression'—may strike most people as extraordinary and many as unacceptable, so in self-defence I shall try to state with some degree

of precision the grounds of the war I think myself bound to wage against this work, waging it in the interests of true science [see Glossary], and of liberal improvement. For this purpose I shall mark out the points of view in which it seems principally reprehensible, not forgetting those in which it seems still entitled to our approval and applause.

Everyone who finds anything to say on the subject of law may be said to adopt either of two characters: that of the expositor and that of the censor. It is the expositor's role to explain to us what he thinks the Law *is*; the censor's role is to observe to us what he thinks it *ought to be*. So the former is principally occupied in stating or looking for *facts*; the latter in discussing *reasons*. The expositor's work gives him no concern with any faculties of the mind except apprehension, memory, and judgment; the censor's requires him to take some account of the affections [see Glossary], because of the feelings of pleasure or displeasure that he finds occasion to annex to the objects under his review. What *is* law is widely different in different countries, whereas what *ought to be* law is in all countries the same to a great degree. So the expositor is always a citizen of some particular country, while the censor is or ought to be a citizen of the world. It is for the expositor to show what the legislator and his underworkman [Bentham's word] the judge have done already; it is for the censor to suggest what the legislator ought to do in future. In short, it is for the censor to teach the science which others convert into an art that the legislator practises.

Let us now return to our author. Of these two perfectly distinguishable functions, only the expositor's fell necessarily within his province. His professed aim was to explain to us what the laws of England were. . . . The work of the censor was to him a mere decorative extra—a work which, if aptly executed, would be a great ornament to the principal one, and highly instructive and entertaining to the reader, but

which he could have omitted without being accused of any deficiency. If he—or any of those who had gone before him on the same line—had added this extra to the principal, this would lay him under additional obligations and impose on him new duties. But however it might differ from the principal work, the ‘extra’ should agree with it in this: it should be carried out with impartiality or not at all.

If a hasty and indiscriminating •condemner of what is established may expose himself to contempt, a bigoted or corrupt •defender of the works of power becomes (in a way) guilty of the abuses he supports; the more so if he tries by oblique glances and sophisticated glosses to guard from reproach, or recommend to favour, things that he doesn’t know how—and dares not attempt—to justify. To a man who contents himself with simply describing an institution as he thinks it is, no-one would think of aiming at *him* any reproach or applause the institution may be thought to deserve. But if he is not content with this humbler function and undertakes to give reasons on behalf of it, whether the reasons are made by him or found by him, the situation is very different. Every false and sophisticated reason that he helps to circulate can be charged against him. He ought also to be held guilty of reasons that he delivers as from other writers without censure [see Glossary]. By officiously adopting them, he makes them his own—almost as much when he delivers them under the names of the respective authors as if he delivered under his own name. For the very idea of a *reason* indicates approval; so that to deliver a remark under that character, without censure, is to adopt it. So a man won’t present an argument that he doesn’t really want to see approved without giving some indication of his disapproval of it. He will find *some* way to wash his hands of it, to let men see that he is merely reporting the judgment of someone else and not presenting one of his own. He will then lay the blame

on that other person; or at least he will take care to repel it from himself. If he omits to do this, the most favourable cause that can be assigned to the omission is *indifference*, indifference to the public welfare, which is itself a crime.

It is astonishing how quick some people have been to look on it as a kind of presumption—and ingratitude, rebellion, cruelty, and I know not what else—to •allege that an old-established law could in any respect be a fit object of condemnation, or even to •allow anyone to imagine such a thing. I shan’t go into the reasons for this attitude, whether it comes from

- a kind of personification that treats the Law as a living creature, or
- a routine, unthinking veneration for antiquity, or
- some other delusion of the fancy.

For my part, I can’t think of any good reason why the merit of justifying a good law should be thought greater than the merit of censuring a bad one. Under a government of laws, what is the motto of a good citizen? **To obey punctiliously; to censure freely.**

This much is certain: a system that is never to be censured will never be improved; if nothing is ever to be found fault with, nothing will ever be mended; and a resolution to justify everything and disapprove of nothing is a resolution which (in the future) must stand as an effective bar to all the additional happiness we can ever hope for, and (in the past) would have robbed us of the share of happiness that we enjoy already.

And the disposition to find ‘everything as it should be’ is at variance with itself. The commonplace arguments in support of it don’t *justify* what is established any more than they *condemn* it, because whatever is now established was once innovation!

•Let us not worry about the possibility that censure may

come too quickly and not be justified. Precipitate censure of a political institution recoils on the head of the person who casts it. If the institution is well grounded, it can't suffer from such an attack, and the attack may even do some good. If it makes no impression on anyone, it's as though it hadn't happened, and we can ignore it. If it does make an impression, it naturally draws people to defend against it. For if the institution really is beneficial to the community in general, there are bound to be individuals who have an interest in its preservation. Their work will bring to light the reasons on which it is based; and from seeing those reasons, those who previously accepted it on trust now embrace it on conviction. Thus, even censure that is ill-founded has no effect on an institution except to subject it to the test that cries down the value of those on which mere prejudice has stamped a currency, and confirms the credit of those of sterling utility. [Note Bentham's coinage metaphor: stamp, currency, credit, sterling. He resorts to this often, e.g. 'coining facts' and 'spending argument' on page 25.]

When censure is passed on legal institutions, it usually does not arise from passion and ill-humour. When men speak from passion and ill-humour, they are in ill-humour with men, not laws; it is men, not laws, that are the butt of arrogance. Spleen and turbulence may indeed prompt men to quarrel with living individuals; but when they complain about the dead letter of the Law—the work of now-dead lawgivers against whom they can't have had any personal antipathy—it is always because they see, or at least believe, that they have a real grievance. The Law is no man's enemy; the Law is no man's rival. Ask the clamorous and unruly multitude: it is never the Law itself that is in the wrong; it is always some wicked interpreter of the Law who has corrupted and abused it.

So there is no basis for the terrors, or pretended terrors, of

those who shudder at the idea of a free censure of established institutions. So little does the peace of society require men to be taught to accept *anything* as a reason to give the same abject and indiscriminating homage to the laws in this country as are given to despots elsewhere. The fruits of such tuition are visible enough in the character of that race of men who have always occupied too large a space in the circle of the legal profession—a passive and enervated race, ready to swallow anything, and to acquiesce in anything; with intellects that can't distinguish right from wrong, and with affections [see Glossary] that can't do so either; insensible, short-sighted, obstinate, lethargic (yet liable to be driven into convulsions by false terrors); deaf to the voice of reason and public utility; obsequious only to the whisper of interest and to the wink of power.

This kind of mischief [see Glossary] is perhaps included in the former, i.e. in the general category of harm to the country. For why is it an evil to a country that the minds of those who have the Law under their management should be thus enfeebled? It is because it makes them unable to undertake any enterprise of improvement.

Not that a race of lawyers and politicians of this enervated breed is much less

- dangerous to the continuance of such felicity as the state has at any given period than it is
- fatal to its chance of attaining more.

If the designs of a minister are harmful to his country, who will best serve him as an instrument or a dupe? Surely, the sort of man who is always on his knees before the footstool of authority, and who thinks that when those above him or before him have pronounced, it is a crime to have an opinion of his own.

Those who duly consider on what slight and trivial circumstances, even in the happiest times, the adoption or



rejection of a law so often turns, circumstances that have nothing to do with that law's utility;

- those who consider the desolate and abject state of the human intellect during the periods when so many of the present institutions had their birth;

- those who consider most men's reluctance to tilt against the Colossus of authority except when they are spurred by personal interests or resentments;

if they give these considerations their due weight, will perhaps not be quite as zealous as our author has been to terrify men from setting up what is now 'private judgment' against what once was 'public', or to thunder down the harsh epithet of 'arrogance' on those who, with whatever success, are occupied in bringing rough bits of legislation to the test of polished reason. They will rather do what they can to cherish a disposition that is so useful and so rare,<sup>1</sup> and which is so little nourished by the propensities that govern the multitude of men. They will. . . .acknowledge that if there are some institutions which it is 'arrogance' to attack, there may be others which it is effrontery to defend.

•The discernment that enables a man to perceive—and the courage that enables him to avow—the defects of a system of institutions is of a piece with •the detailed sharpness of conception that enables him to give a clear account of it. No wonder then, in a treatise partly of the expository sort and partly of the censorial, that when the latter part is filled with imbecility [here meaning 'is thoroughly incompetent'], symptoms of the same weakness also appear in the former.

But the former part of our author's work is something that I would hardly have wanted to get involved in for its own sake. The business of simple exposition is a harvest that

seemed likely enough to have plenty of labourers; so I had little ambition to thrust my sickle into it.

[Bentham writes at some length about the tone he would have adopted if he had been writing solely about the expository part of the work of 'our author'. He concludes:] To lay open and if possible repair the imperfections of the expository part might indeed do service; but I thought it would do more service to weaken the authority of the censorial part.

Under the sanction of a great name, every string of words however unmeaning, every opinion however erroneous, will have a certain currency. Reputation adds weight to sentiments [see Glossary] that had no part in creating the reputation, and that might have been regarded as negligible if they had stood alone. Popular fame does not concern itself with fine distinctions. Merit in one department of scholarship provides a natural (and in a way unchangeable) presumption of merit in another, especially if the two departments appear to be closely related.

A man who is for whatever reason admired as an adviser has an amazing influence over young minds. Those who have (or think they have) derived knowledge from what he knows (or appears to know) will naturally want to judge as he judges, reason as he reasons, approve as he approves, condemn as he condemns. For that reason, when a work is unsound throughout, it may be useful to attack the whole of it without distinction, even if the parts of it that are noxious as well as unsound are only scattered here and there.

So it may be useful to show that the work before us, in spite of the merits that recommend it so powerfully to the **imagination** and to the **ear**, is not given by those merits any entitlement to have the influence which it might, if it weren't

<sup>1</sup> Its rarity may be seen in the multitude of expositors whom the jurisprudence of every nation furnished before it provided a single censor. When Beccaria came, he was received by the intelligent as an angel from heaven would be by the faithful. He may be styled the father of censorial jurisprudence. [His 1764 work *on Crimes and Punishments* condemned torture and the death penalty.]

examined critically, continue to exercise over the **judgment**.

The 'Introduction' is the part to which, for reasons I have given, I always intended to confine myself. The present Essay is concerned with only a part of this 'Introduction'. I decided to begin with •this small part because of how easily I could separate •it from everything that precedes or follows it. I will deal with this in more detail in another place.<sup>1</sup>

It is not that this part is one of those that seemed most open to attack. This part does not display especially strong traces of that spirit in our author which seems so hostile to reformation and to the liberty that heralds reformation.

It is not here that he •tramples on the right of private judgment, that basis of everything that an Englishman holds dear; •insults our understandings with trivial reasons; •stands forth as a professed champion of religious intolerance; or •openly opposes civil reformation. It is not here, for example, that he

- a tries to persuade us that a trader who occupies a booth at a fair is a fool for his pains, and therefore not fit for the Law's protection;
- b gives the presence of one man at the making of a law as a reason why ten thousand others that are to obey it need know nothing about it;
- c after telling us explicitly that a burglary requires an 'actual breaking', goes on almost immediately to tell us equally explicitly where burglary *can* occur without actual breaking, because 'the Law will not suffer itself to be trifled with';
- d after describing the laws by which peaceable Christians are made punishable for worshipping God according to their consciences, pronounces in an equally peremptory and confident way that

'everything'—yes, *everything*—'is as it should be.'

- e commands us to believe—on pain of forfeiting all claims to 'sense or probity'—that our system of jurisprudence is over-all and in every part the very quintessence of perfection;
- f assures us as a matter of fact that there never has been an alteration made in a law that men have not afterwards found reason to regret;. . . .
- g turns with scorn on the beneficent legislators who have wanted to pluck the mask of mystery from the face of jurisprudence.

And although here as everywhere he is eager to hold the cup of flattery to high rank, in this place he stops short of idolatry.

·BENTHAM'S FOOTNOTES TO ITEMS a THROUGH g·

a 'Burglary', says our author, 'cannot be committed in a tent or a booth erected in a market fair, though the owner may lodge therein: for the Law regards thus highly nothing but permanent edifices—a house, or church; the wall, or gate of a town—and it is the folly of the owner to lodge in so fragile a tenement.' To save himself from this charge of folly, it is not altogether clear which of two things the trader ought to do: quit his business and not go to the fair at all, or leave his goods without anybody to take care of them.

b Speaking of an act of Parliament, he says: 'There needs no formal promulgation to give it the force of a Law, as was necessary by the Civil Law with regard to the Emperor's Edicts: because every man in England is, in judgment of Law, party to the making of an Act of Parliament, being present at it by his representatives.' This may for all I know be good judgment of Law, because anything can be called

<sup>1</sup> [He means that he will deal with everything in the *Commentaries* apart from the tiny bit of it that is his present topic. He did so in his enormous *A Comment on the Commentaries*, a work that he left uncompleted and was not published until long after his death.]

judgment of Law that comes from a prominent lawyer; but it does not seem to be much like anything that can be called judgment of common sense. . . .

c His words are: 'There must be an actual breaking, . . . a substantial and forcible irruption.' In the next sentence but two he continues: 'But to come down a chimney is held a burglarious entry; for that is as much closed as the nature of things will permit. So also to knock at a door, and upon opening it to rush in with a felonious intent; or under pretence of taking lodgings, to fall upon the landlord and rob him; or to procure a constable to gain admittance, in order to search for traitors, and then to bind the constable and rob the house; all these entries have been adjudged burglarious, though there was no actual breaking: for the Law will not suffer itself to be trifled with by such evasions.' Can it be more egregiously trifled with than by such reasons? . . .

d 'In what I have now said', says he, 'I would not be understood to derogate from the rights of the national Church, or to favour a loose latitude of propagating any crude undigested sentiments in religious matters. Of *propagating*, I say, for merely *having* them, without an endeavour to diffuse them, seems hardly cognizable by any human authority. I only mean to illustrate the excellence of our present establishment by looking back to former times. Everything is now as is should be: unless, perhaps, that heresy ought to be more strictly defined, and no prosecution permitted, even in the Ecclesiastical Courts, till the tenets in question are by proper authority previously declared to be heretical. Under these restrictions it seems necessary for the support of the national religion' (the national religion being such, we are to understand, as could not support itself if anyone were allowed to make objections to it) 'that the officers of the Church should have power to censure heretics but not to exterminate or destroy them.' . . .

e I am not quite sure how far back he meant this opinion to extend itself—whether he meant it to apply only to •the institutions that happened to be in force at the time when he was writing or also to •such opposite institutions also as, within any given distance from that time, had been in force or were about to be. His words are as follows: 'All these rights and liberties it is our birthright to enjoy entire; unless where the Laws of our country have laid them under necessary restraints. Restraints in themselves so gentle and moderate, as will appear upon further enquiry, that no man of sense or probity would wish to see them slackened. For all of us have it in our choice to do everything that a good man would desire to do; and are restrained from nothing, but what would be pernicious either to ourselves or our fellow citizens.' If the reader wants to know what these rights and liberties are, I answer him (out of the same page) they are those 'in opposition to one or other of which every species of compulsive tyranny and oppression must act, having no other object upon which it can possibly be employed.' The liberty, for example, of worshipping God without being obliged to declare a belief in the XXXIX Articles is a liberty that no 'good man', 'no man of sense or probity', 'would wish for'.

f If no reason can be found for an institution, we are to suppose one: and it is upon the strength of this supposed one we are to cry it up as reasonable. . . . The words are 'Not that the particular reason of every rule in the Law can, at this distance of time, be always precisely assigned; but it is sufficient that there be nothing in the rule flatly contradictory to reason, and then the Law will *presume* it to be well founded. And it has been an ancient observation in the Laws of England' (he might with as good ground have added 'and in all other Laws') 'that whenever a standing rule of Law, of which the reason perhaps could not be

remembered or discerned, has been *wantonly* broke in upon by statutes or new resolutions, the wisdom of the rule has in the end appeared from the inconveniences that have followed the innovation.’ When a sentiment is expressed and—whether from caution or from confusion of ideas—a clause is put in by way of qualifying it that turns it into nothing,<sup>1</sup> we can fairly take it that the probable effect of the whole passage is what it would be if no such clause were there. . . . Taking the qualification into the account, the sentiment would make no impression on the mind at all; if it makes any, the qualification is dropped and the mind is affected in nearly the same way as it would if the sentiment stood unqualified. This, I think, we may conclude to be the case with the passage quoted above. The word ‘wantonly’ is, in pursuance of our author’s standing policy, inserted by way of salvo.<sup>2</sup> With it the sentiment is as much as comes to nothing. Without it, it would be extravagant. Yet if it has any effect on the reader, it is probably in this extravagant form. The comic part of the contrivance is the mention of ‘statutes’ and ‘resolutions’ (the latter meaning decisions of courts of justice) in the same breath, as if it made no difference which of these broke in on a rule of Law. For a new **resolution** to break in upon a standing rule is indeed something that is big with mischief. But this mischief depends not on the rule’s being a reasonable one but on its being a standing, an established one. A new resolution made in the teeth of an old established rule is mischievous because it shakes whatever confidence men may have in the stability of any rules of Law, reasonable or not reasonable—that stability on which everything that is valuable to a man depends. However beneficial it may be to the party [see Glossary] in

whose favour it is made, its benefit to him can never outweigh the mischief it brings to the community at large. It is what Lord Bacon calls setting the whole house on fire in order to roast one man’s eggs. Here then the salvo is not needed; a new resolution that is contrary to a standing rule is on that very account *wanton*. Let such a resolution be made, and ‘inconveniences’ in abundance will sure enough ensue; and what that will show is not •the wisdom of the rule but—a very different thing—•the folly of breaking in upon it. It is almost superfluous to remark that none of this applies in general to a **statute**. Particular statutes may be conceived that would thwart the course of men’s expectation and thus produce mischief in the same way that irregular resolutions do. A new statute—unless it is simply a declaratory one—must break in upon some standing rule of Law. To tell us that a ‘wanton’ statute has produced ‘inconveniences’, what is that but to tell us that a thing that has been mischievous has produced mischief? Of this type are the arguments of all those senile politicians who, when out of humour with a particular innovation without being able to tell why, set themselves to declaim against all innovation because it is innovation. It is the nature of owls to hate the light: and it is the nature of those politicians who are *wise by rote* to detest everything that forces them either to find (what may be impossible) reasons for a favourite persuasion or (what is not endurable) to discard it.

**g** It is from the decisions of courts of justice that those rules of Law are framed, on the knowledge of which depend the life, the fortune, the liberty of every man in the nation. The records of these decisions are, according to our author, the most authentic histories. These Records were until 45 years

<sup>1</sup> [The ‘clause’ in question is the word ‘wantonly’; in calling it a ‘clause’, Bentham may be jokingly treating it as a legal technicality.]

<sup>2</sup> [Bentham may mean this in either of two meanings given by the OED: •As a legal term for a special kind of saving clause. •‘A dishonest mental reservation, an evasion’.]

ago in Law-Latin, a language which about one man in a thousand used to fancy himself to understand (that is a high estimate). Our author is satisfied they should have been continued in this Law-Latin, because the pyramids of Egypt have stood longer than the temples of Palmyra. He observes that the Latin language could not express itself on the subject without borrowing many words from English, which is to help to convince us that of the two Latin is the fittest to be employed! He says that this Latin was not more unintelligible than the jargon of the schoolmen, some examples of which he produces. And then he goes on: 'This technical Latin continued in use from the time of its first introduction till the subversion of our ancient constitution under Cromwell; when, among many other innovations on the body of the Law, some for the better and some for the worse, the language of our records was altered and turned into English. But at the Restoration of King Charles, this novelty was no longer countenanced; the practisers finding it very difficult to express themselves so concisely or significantly in any other language but the Latin. And thus it continued without any sensible inconvenience till about the year 1730, when it was again thought proper that the Proceedings at Law should be done into English, and it was accordingly so ordered by statute. This was done in order that the common people might have knowledge and understanding of what was alleged or done for and against them in the process and pleadings, the judgments and entries in a cause. Which purpose I know not how well it has answered; but am apt to suspect that the people are now, after many years experience, altogether as ignorant in matters of law as before.' In this scornful passage the words *novelty—done* into English—*apt* to *suspect—altogether* as ignorant—sufficiently show the affection [see Glossary] of the mind that dictated it. It is thus that our author chuckles over

the supposed defeat of the legislature with a fond exultation which all his discretion could not persuade him to suppress.

The case is this. A large portion of the body of the Law was, by the bigotry or the artifice of lawyers, locked up in an illegible character and in a foreign tongue. The statute he mentions obliged them to give up their hieroglyphics, and to restore the native language to its rights. This was doing much; but it was not doing everything. Fiction, tautology, technicality, circuitry, irregularity, inconsistency remain. But above all the pestilential breath of *fiction* poisons the sense of every instrument it comes near. The consequence is that the Law—and especially the part of it relating to Procedure—is still far from being generally intelligible. The fault of the legislature, then, is their not having done enough. His quarrel with them is for having done anything at all. . . .

·END OF FOOTNOTES TO ITEMS a–g STARTING ON PAGE 7·

The principal seat of the poison against which I aim to give an antidote is not this part, or any part, of the Introduction, which is the only passage I have any thoughts of examining. The subject handled in this part of the work does not admit of much to be said in the person of the censor. Employed, as we have seen, in settling matters of a preliminary nature in drawing outlines, this part does not provide occasion to enter into the details of any particular institution. I chose the Introduction in preference to any other part of the work because it provides the fairest specimen of the whole, and not because it provides the greatest scope for censure.

While with this freedom I expose our author's faults, let me not be backward in acknowledging and paying homage to his various merits. I should do this in fairness not only to him but to the public which for so many years has been giving him so much applause, presumably not without reason.

Correct, elegant, unembarrassed, ornamented, his style is such as could hardly fail to recommend to the multitude of readers a work that was even more wrong in its content.

In short, he is the first institutional writer who has taught jurisprudence to speak the language of the scholar and the gentleman; to put a polish on that rugged science [see Glossary]; cleansed her from the dust and cobwebs of the office. And if he has not enriched her with the precision that is drawn only from the sterling treasury of the sciences, he has decked her out from the toilette of classic erudition; enlivened her with metaphors and allusions; and sent her out in some measure to instruct, and in still greater measure to entertain, the most miscellaneous and even the most fastidious societies. The merit to which the work stands indebted for its reputation, as much perhaps as to any, is the enchanting harmony of its numbers [= musicality], a kind of merit that is sufficient to give a certain degree of celebrity to a work devoid of every other. So much is man governed by the ear.

The function of the expositor may be conceived to divide itself into two branches: that of *history* and that of simple *demonstration*. The business of history is to represent the Law in the state it *has* been in, in the past; the business of simple demonstration, in the sense in which I will use the word, is to represent the Law in the state it *is* in right now.<sup>1</sup>

The category of demonstration contains the several businesses of **a** arrangement, **b** narration and **c** conjecture. It can be called ‘narration’ where the Law is supposed to be explicit, clear, and settled; and ‘conjecture’ or ‘interpretation’ where it is obscure, silent, or unsteady. And ‘arrangement’ is distributing the various real or supposed institutions into

different masses, determining the order in which they shall be brought to view in a general survey, and finding a name for each.

[Bentham says that he won’t discuss the **b** narration, the **c** interpretation, or the history presented by ‘our author’, because he has not worked on them. He then continues:]

Among the most difficult and important of the demonstrator’s tasks is the business of **a** arrangement. In this our author has been thought—not without justice, I think—to excel; at least in comparison to anything of that sort that had previously appeared. It is to him that we owe an arrangement of the elements of jurisprudence that may be just about the best that a technical nomenclature will admit of. A technical nomenclature, so long as it is accepted as marking out and naming the principal headings, stands as an invincible obstacle to every arrangement other than a technical one. [After an extremely obscure account of why a **technical arrangement**, i.e. one governed by a technical nomenclature, must be ‘confused and unsatisfactory’, Bentham says that to grasp this properly we need to] understand what a properly so-called **natural arrangement** would have to be.

I take it that any arrangement of the materials of any science can be called *natural* if it characterises them by properties that men in general are, by the common constitution of man’s *nature*, disposed to attend to; in other words, properties that *naturally*—i.e. readily—engage and firmly fix the attention of anyone to whom they are pointed out. The materials or elements we are concerned with here are actions that can be the objects of what we call laws or institutions.

No property of actions is calculated so readily to engage (and so firmly to fix) the attention of an observer as their

<sup>1</sup> The word ‘demonstration’ may seem to be out of place. In our language it is mainly used in the sense in which it is employed by logicians and mathematicians, which is not how I mean it; but on the Continent it is currently employed in many other sciences, as when the French have their *démonstrateurs de botanique d’anatomie, de physique expérimentale*, etc. I don’t know of any other word that will suit my purpose.

relation—whether *tendency towards* [see Glossary] or *divergence from*—the common goal of them all, namely *happiness*. An act's tendency to promote happiness is what we call its *utility*; its divergence from this is what we call harmfulness [see Glossary]. So it is with actions that are among the objects of the Law: the only way to make a man see clearly the property of them that every man is in search of—i.e. the only way to give him satisfaction—is to point out to him their utility or harmfulness.

Utility, then, can give us a principle that may serve to preside over any arrangement we make of the various institutions or combinations of institutions that compose the matter of this science of jurisprudence. This principle, by putting its stamp on the names given to those combinations, can make satisfactory and clear any arrangement that is made of them; and nothing else can do so. Governed in this manner by a principle that is recognized by all men, the same arrangement that would serve for the jurisprudence of any one country would serve almost unchanged for that of any other.

Another advantage: the harmfulness of a bad law would be detected, or at least its utility would be made suspect, by the difficulty of finding a place for it in such a natural arrangement; whereas a technical arrangement is a sink that will easily swallow any garbage that is thrown into it.

With such a natural arrangement, institutions would have to be characterised by the nature of the various modes of conduct that they prohibit, thus making them offences.<sup>1</sup> These offences would be collected into classes labelled by

their various kinds and degrees of harmfulness, i.e. by the properties of them that are reasons for their being made offences. Whether any such mode of conduct *does* have such a property is a question to be answered by experience.

A bad law is one that prohibits a mode of conduct which is not harmful. Thus to classify any mode of conduct prohibited by a bad law as some kind of *offence* would involve asserting something that is contradicted by experience. Thus cultivated, the soil of jurisprudence would be found to repel, in a way, every evil institution. . . .

The synopsis [see Glossary] of such an arrangement would be a compendium of both **a** expository and **b** censorial jurisprudence. It would serve to **b** justify or reprove the legislator at least as effectively as to **a** instruct the subject.

In short, such a synopsis would be both a universal map of **a** jurisprudence as it is and a slight but comprehensive sketch of **b** what it ought to be. That is because it would express the *reasons* for the various institutions it covers through the names the synopsis gives to the classes those institutions belong to (and it would do this uniformly, whereas in our author's synopsis they are expressed in scattered instances). And what reasons? Not *technical* reasons, such as none but a lawyer gives, and none but a lawyer would put up with, but reasons that any man might understand.

Nothing in this need surprise us. The consequences of any law, or of any act that is made the object of a law—the only consequences that men are at all interested in—what are they but pain and pleasure?<sup>2</sup> So they can be named by some such words as 'pain' and 'pleasure', and these

<sup>1</sup> There can be offences of omission as well as of commission. I don't want the complication of treating laws that *command* separately from laws that *prohibit*. My phrase 'mode of conduct' covers omissions or forbearances as well as acts.

<sup>2</sup> The reason for a law, in short, is simply the good produced by the mode of conduct it commands or (which comes to the same thing) the mischief produced by the mode of conduct it prohibits. If this mischief or this good is real, it is bound to show itself *somewhere* in the shape of pain or pleasure.

are words that a man can understand without help from a lawyer! In the synopsis of any arrangement that deserves to be called ‘natural’, the most dominant positions will be occupied by terms such as these. They are terms which, if they can be said to belong to any science [see Glossary], belong to ethics rather than to jurisprudence, even universal jurisprudence.

What then is to be done with the purely technical names of kinds of conduct—for example, with ‘offence against prerogative’, ‘misprision’, ‘contempt’, ‘felony’, ‘praemunires’? What relation do they mark out between •the laws that concern the sorts of acts they stand for and •the common goal, ·happiness·, I have been speaking of? None! So what would become of them in a natural arrangement? They would either •be banished at once to the region of ·metaphysical nonsense such as· ‘quiddities’ and ‘substantial forms’ or •be positioned in the corners and back-alleys of the synopsis—stationed not to give light but to receive it.

To return to our author. Embarrassed, as a man must be, by this blind and intractable ·technical· nomenclature, he will be found, I think, to have done as much as could reasonably be expected from a writer in that situation, and more and better than was ever done before by anyone.

In one part of his synopsis, especially, we find several fragments of a sort of method [see Glossary] that comes close to what may be termed a ‘natural’ one. We read there of *corporal injuries*, and of offences against

•*peace*,

- health*,
- personal security*,<sup>1</sup>
- liberty*,
- property*.

Light is let in, though irregularly, at various places. . . .

To return to our author’s *Commentaries*: even in a censorial view I don’t regard them as altogether without merit. Good reasons are occasionally given for the institutions commented on, where they are capable of good reasons; and that, as far as it goes, achieves one-half of the censor’s task. Nor is the dark side of the picture left absolutely untouched. Under the heading ‘Trial by jury’ there are some very just and interesting remarks on the still-remaining imperfections of that mode of trial; and under the heading ‘Assurances by matter of record’, good things are said about the lying and extortionate jargon of ‘recoveries’. As well as saying what is wrong with these things, he also points out well-imagined remedies for them. But these particular remarks are so out of harmony with the general disposition that appears so strongly throughout the work—indeed so flatly contrary to the general maxims that we have seen—that I can scarcely bring myself to attribute them to our author. One would think some angel had been sowing wheat among our author’s tares [a weed that resembles wheat]. . . .

With regard to this Essay itself, I have not much to say. Its principal and professed purpose is to expose our author’s errors and insufficiencies. The business of it is therefore to *overthrow* rather than to *set up*; and latter task can seldom

<sup>1</sup> This title exemplifies the way a natural arrangement can repel an incompetent institution. What I mean is the sort of filthiness that is called *unnatural* [He is talking about sodomy.]. Our author has ranked this in his class of *Offences against personal security* and in a subdivision of it entitled *Corporal injuries*. In so doing, he has made the factual claim that the offence in question is productive of unhappiness in that way. But in cases where the act is committed by consent, this is manifestly not true. The law against the offence in question would be an entirely bad law if its basis were that false factual claim. The mischief the offence brings to the community in this case is of quite another nature, and would come under quite another class. When against consent, it does belong really to this class; but then it comes under another heading, namely ‘rape’.



be performed to any great advantage where the former is the principal one.

To guard against misrepresentation and make sure of doing our author no injustice, his own words are given all along. Hardly any sentence is left unnoticed, so that what I offer is a kind of running commentary. When a writer builds on a plan of his own, the satisfactoriness of his product depends to a large extent on the order and connection he establishes between its various parts. But in a comment on the work of someone else, no such connection—or at least no such order—can be established conveniently, if at all. The order of the comment is prescribed by the order, perhaps the disorder, of the text.

This Essay, I repeat, is mainly engaged in overthrowing; in the little it does in the way of setting up, I have aimed not so much to think for the reader as to stir him to think for himself. I flatter myself that I have done this on several interesting topics; and that is all that at present I propose.

Among the few views of my own that I have found occasion to advance, some promise to be far from popular, and may well give rise to very warm objections. I do not wonder at these objections, and I have to approve of their motive. ·Thinking of the writer as a *servant* of his readers·, the people are a set of masters whom a man cannot always fully please and at the same time faithfully serve. Anyone who is resolved to persevere without deviation in the line of truth and utility needs to learn to prefer the still whisper of enduring approval to the short-lived bustle of tumultuous applause. . . .

## Introduction

1. The subject of this examination is a passage contained in the part of Sir W. Blackstone's *Commentaries on the Laws of*

*England* that the author has called the 'Introduction'. This introduction of his is divided into four sections:

- (1) his discourse 'On the Study of the Law';
- (2) under the title 'Of the Nature of Laws in General', his speculations concerning the various items, real or imaginary, that are commonly brought under the common name 'law';
- (3) under the title 'Of the Laws of England', general observations on the laws that he thought he should offer as a preliminary to the details of any parts of them in particular;
- (4) under the title 'Of the Countries subject to the Laws of England', his statement of the different territorial extents of different branches of those laws.

2. It is in (2) that we find the passage I propose to examine. It is seven pages long.

3. After treating of 'Law in general', 'Law of nature', 'Law of revelation', and 'Law of nations', ·so-called· branches of the imaginary whole ·that I mentioned on page 2·, our author comes at length to what he calls 'municipal law'. This is the sort of law that men in ordinary conversation would call simply 'law' without addition; the only sort perhaps (unless it be that of Revelation) to which the name can, with strict propriety, be applied: in a word, that sort which we see made in each nation, to express the will of its governing body. On this subject of 'municipal law' he sets out, as he should, with a definition of the phrase itself; an important and fundamental phrase that badly needed a definition, and never as badly as since our author has defined it!

4. This definition is ushered in with no small display of elaborate detail. First it is given entire; then it is then taken to pieces, clause by clause; and every clause is separately justified and explained. In the very midst of these explanations, in the very midst of the definition, he suddenly

pauses. It now occurs to him that this is a good time to give a dissertation, or rather a bundle of dissertations, on various subjects:

- a On how governments were established,
- b On the different forms they take when they are established,
- c On the peculiar [see Glossary] excellence of the form that is established in this country,
- d On the right (he thinks he needs to tell us) that the government of every country has to make laws,
- e On the duty to make laws, which he says governments also have. . . .

5. The digression we are about to examine is not at all involved with the body of the work from which it starts. No mutual references or allusions; no supports or illustrations communicated or received. It can be seen as one small work inserted into a large one, with hardly any connection between the containing and the contained, except what the printing press has given them. This disconnection will help us to examine the digression separately, without breaking in on any thread of reasoning or any principle of order.

6. I have given a general statement of the topics touched on in the digression we are about to examine. I trust it will be found to be a faithful one. But it may not be thought to harmonise well with the following, which our author himself has given us:

This will naturally lead us into a short enquiry into the nature of society and civil government; and the natural inherent right that belongs to the sovereignty

of a state, wherever that sovereignty be lodged, of making and enforcing laws.’

(The first word ‘This’ refers to an explanation he had been giving of a part of the definition I have spoken of.)<sup>1</sup>

7. No very explicit mention here, we may observe, of **a** how governments have been established, or of **b** the different forms they take when established—no explicit indication that these were among the topics to be discussed. None at all of **e** the duty of government to make laws; no mention of **c** the British constitution, though elsewhere he has written much more copiously about this than about any of the other four listed topics. The one that for the moment seems to have swallowed up almost the whole of his attention is **d** the right of government to make laws—a delicate and invidious [see Glossary] topic, as we shall discover when it is explained.

8. Be that as it may, the contents of the dissertation before us, taken as I have stated them, will provide us with the matter for five chapters, to which I shall give these titles: **(1)** ‘Formation of government’, **(2)** ‘Forms of government’, **(3)** ‘British constitution’, **(4)** ‘Right of supreme power to make laws’, **(5)** ‘Duty of the supreme power to make laws’.

<sup>1</sup> To make sure of doing our author no injustice, and to show what it is that he thought would ‘naturally lead us into’ this ‘enquiry’, it may be proper to give the paragraph containing the explanation above mentioned. It is as follows: ‘But farther: municipal law is a rule of civil conduct, *prescribed by the supreme power in a state.*’ ‘For legislature, as was before observed, is the greatest act of superiority that can be exercised by one being over another. Wherefore it is requisite, to the very essence of a law, that it be made’ [he might have added *or at least supported*] ‘by the supreme power. Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other.’

## Chapter 1: Formation of Government

1. The first objective our author seems to have set himself in the dissertation we are about to examine is to give us an idea of how governments were formed. This occupies his first paragraph and part of the second, for the typographical division does not seem to square exactly with the intellectual. My examination of this passage will unavoidably depend in great measure on the words, so the reader should have it under his eye. [Section 2 is quoted from Blackstone, verbatim.]

2. 'The only true and natural foundations of society are the wants and the fears of individuals. Not that we can believe, with some theoretical writers, that there ever was a time when there was no such thing as society; and that, from the impulse of reason, and through a sense of their wants and weaknesses, individuals met together in a large plain, entered into an original contract, and chose the tallest man present to be their governor. This notion of an actually existing unconnected state of nature, is too wild to be seriously admitted; and besides, it is plainly contradictory to the revealed accounts of the primitive origin of mankind, and their preservation two thousand years afterwards; both which were effected by the means of single families. These formed the first society, among themselves; which every day extended its limits, and when it grew too large to subsist with convenience in that pastoral state, wherein the Patriarchs appear to have lived, it necessarily subdivided itself by various migrations into more. Afterwards, as agriculture increased, which employs and can maintain a much greater number of hands, migrations became less frequent; and various tribes which had formerly separated, re-united again; sometimes by compulsion and conquest, sometimes by accident, and sometimes perhaps by compact. But though society had not its formal beginning from any convention of individuals,

actuated by their wants and their fears; yet it is the sense of their weakness and imperfection that keeps mankind together; that demonstrates the necessity of this union; and that therefore is the solid and natural foundation, as well as the cement of society: And this is what we mean by the original contract of society; which, though perhaps in no instance it has ever been formally expressed at the first institution of a state, yet in nature and reason must always be understood and implied, in the very act of associating together: namely, that the whole should protect all its parts, and that every part should pay obedience to the will of the whole; or, in other words, that the community should guard the rights of each individual member, and that (in return for this protection) each individual should submit to the laws of the community; without which submission of all it was impossible that protection could be certainly extended to any.

'For when society is once formed, government results of course, as necessary to preserve and to keep that society in order. Unless some superior were constituted, whose commands and decisions all the members are bound to obey, they would still remain as in a state of nature, without any judge on earth to define their several rights, and redress their several wrongs.'

3. Thus far our author. When leading terms are made to chop and change—sometimes meaning one thing, sometimes another, perhaps in the upshot meaning nothing—and when this happens within a single paragraph, one may judge what the whole context will be like. This, we shall see, is the case with the main words in the passage we have been reading, for example the words 'society', 'state of nature', and 'original contract', not to tire the reader with any more. In one place 'society' means the same as 'a state of nature'; in another place it means the same as 'government'. *Here*

we are required to believe there never has been a state of nature; *there* we are given to understand there has been. Similarly with respect to an original contract: we are given to understand that such a thing never existed, that the notion of it is ridiculous; and at the same time that there is no speaking or stirring without supposing there was one.

4. Firstly: 'Society' as meaning a state of nature. If by 'a state of nature' a man means anything, it is the state men are supposed to be in before they are under government, the state men leave when they enter into a state of government and that they would otherwise remain in. But by the word 'society' it is plain at one point that he means that state. According to him, *first* comes society and *then* comes government. 'For when society is once formed, government results of course, as necessary to preserve and keep that society in order.' And again, immediately after that, he offers as an explanation (and not a bad one) of a state of 'government', namely 'A state in which a superior has been constituted, whose commands and decisions all the members are bound to obey'; and says that if men were not in a state of that description, 'they would still remain as in a state of nature'. So again by 'society' he means the same as by a 'state of nature'; he opposes it to government, and speaks of it as a state which, in this sense, has actually existed.

5. Secondly: That is what he tells us at the beginning of the second of the two paragraphs; but throughout the first paragraph 'society' means the same as 'government'. In shifting from one paragraph to another, society has changed its nature! It is 'the foundations of society' that he first begins to speak of, and he *immediately* goes on to explain to us (after his manner of explaining) the foundations of

government. Soon after, he speaks of a 'formal beginning' of 'society', by which tells us that he means 'the original contract of society', and he says that when this contract is entered into 'a state' is thereby 'instituted', and men have undertaken to 'submit to laws'. While this first paragraph lasts, 'society' plainly has to mean the same as 'government'.

6. Thirdly: All this while too, this same 'state of nature' that men would 'remain' in if it were not for government is a state that men never were in. So he explicitly tells us on the next page: 'This notion of an actually existing unconnected state of nature'

—that is, as he explains himself afterwards, 'a state in which men have no judge to define their rights and redress their wrongs'—

'is too wild to be seriously admitted.' So when he admits it himself on his next page, we are presumably to understand that he is not serious, and that he is teasing us, the second paragraph being a joke, which we wouldn't otherwise have taken it for.

7. Fourthly: We are to understand that the original contract never occurred, perhaps not in *any* state and therefore certainly not in *all*: 'perhaps, in no instance has it ever been formally expressed at the first institution of a state', our author says.

8. Fifthly: Despite all this, we apparently have to suppose that in *every* state 'in nature and reason it must always be understood and implied' says our author. Growing bolder in the course of several pages concerning our own government, he asserts roundly that such a contract was actually made at the first formation of it: 'The legislature would be changed from that which was originally set up by the general consent and fundamental act of the society.'<sup>1</sup>

<sup>1</sup> [This is from the passage that occupies section 3 on page 37.]

9. Let us try to do something towards drawing the meaning of these terms out of the mist in which our author has involved them. The word 'society' seems to be used by him—without warning—in two senses that are opposite. In one, 'society' (or 'state of society') is made **synonymous with** 'state of nature', and stands opposed to government (or a state of government). In this sense it may be called 'natural society'. In the other sense, 'society' is made synonymous with 'government' (or 'state of government'), and stands **opposed to** a state of nature. In this sense it may be called 'political society'. I don't think it will take many words to give a tolerably distinct idea of the difference between these two states.

10. The idea of a natural society is a negative one. The idea of a political society is a positive one. So we should begin with the latter.

When a number of persons (whom we may call 'subjects') are in the habit of paying obedience to a person, or an assemblage of persons, of a known and certain description (whom we may call 'governor' or 'governors'), these persons, subjects and governors, are said to be in a state of *political* society.

11. When a number of persons are in the habit of conversing with each other while **not** being in any such habit of obedience as mentioned above, they are said to be in a state of *natural* society.

12. A little reflection shows that these two states are not as sharply distinct from one another as we might at first expect, given these names and these definitions. It is with them as with light and darkness: however distinct the ideas that those *names* initially suggest, the *things* themselves have no determinate boundary to separate them.

The difference between these two states is the presence or absence of a habit of obedience. This habit has been

spoken of in one case as perfectly [see Glossary] present and in the other as perfectly absent; but neither of these ways of speaking is strictly accurate. There are in fact few if any cases of this habit being perfectly absent; and certainly none of its being perfectly present. Governments, accordingly, recede from or approach a state of nature in proportion to how perfect the habit of obedience is in them; and there may be cases where it is difficult to say whether the habit is perfect enough to constitute a government.

·BENTHAM'S FOOTNOTE TO SECTION 12·

1. A *habit* is simply an assemblage of acts, and in the present context I take 'acts' to include voluntary forbearances.

2. A *habit of obedience*, then, is an assemblage of acts of obedience.

3. An *act of obedience* is any act done in pursuance of an expression of will on the part of some superior.

4. An *act of POLITICAL obedience* (which is what I am talking about here) is any act done in pursuance of an expression of will on the part of a person governing.

5. An *expression of will* is either *parole* or *tacit*.

6. A *parole* expression of will is one that is conveyed by words.

7. A *tacit* expression of will is one that is conveyed signs other than words; the most effective of which are acts of punishment annexed in the past to the non-performance of acts of the same sort as the objects of the will that is in question.

8. A *parole* expression of the will of a superior is a *command*.

9. When a *tacit* expression of the will of a superior is supposed to have been uttered, it may be called a *fictitious command*.

10. If we were free to coin words in the manner of the Roman lawyers, we might call it a *quasi-command*.

11. The STATUTE LAW is composed of commands; the COMMON LAW of quasi-commands.

12. An act that is the object of an actual or fictitious command is—considered before it is performed—called a *duty* or a *point of duty*.

13. With these definitions premised, we are now in a position to give a tolerably precise idea of what is meant by the '(im)perfection' of a habit of obedience in a society.

14. How perfect the habit of obedience is in a given society at a given period depends on the ratio of the number of acts of obedience to the number of acts of disobedience.

15. The habit of obedience in this country appears to have been more perfect in the time of the Saxons than in that of the Britons; unquestionably it is more so now than in the time of the Saxons. It is to be hoped that well constructed and well digested laws will in due course make it even more perfect; but it can never be absolutely perfect until man ceases to be man.

A very ingenious and instructive view of the progress of nations, from the least perfect states of political union to that highly perfect state of it in which we live, may be found in Lord Kaims's *Historical Law Tracts*.

16. For the convenience and precision of discourse it may be useful here to settle the meanings of a few other expressions relative to the same subject. Persons who are in a state of **a** political society with respect to each other may be said also to be in a state of **b** political union or connection.

17. Those who are subjects can be said to be in a state of **c** *submission* or of *subjection* with respect to the governors; the governors can be said to be in a state of **d** *authority* with respect to the subjects.

18. When the subordination is considered as resulting originally from the will—or (it maybe more proper to say) the pleasure—of the governed party, we prefer the word 'submission'; when from that of the governing party, the word 'subjection' is preferred. So the latter term can scarcely be used without apology, or with a note of disapproval; especially in this country, where the habit of considering the consent of the persons governed as being in some way involved in the notion of all lawful (i.e. all commendable) government has gained so firm a ground. . . .

·END OF FOOTNOTE TO SECTION 12·

13. On these considerations, the supposition of a perfect state of nature—a state of society perfectly natural—may rightly be declared to be extravagant, which is what our author seemed briefly to think it to be; but then that of a government that is in this sense perfect—

a state of **a** society perfectly political, a state of perfect **b** political union, of perfect **c** submission in the subject, of perfect **d** authority in the governor

—is no less extravagant. [Bentham has here a long footnote saying that although the relation of infant to parent is virtually one of perfect subjection, this does not make the family a case of 'political society' as this phrase is ordinarily understood: it involves too few people for that, and also the obedience it involves is essentially impermanent, which political obedience is not. In section 16 below he will call it 'political society', presumably meaning this as a technicality that can be understood well enough, although it does not conform to ordinary speech.]

14. To some ears, the phrases 'state of nature' and 'state of political society' may appear to be absolute [here = 'non-relational'] in their signification; as if the condition of a group of men in either of these states depended altogether

on themselves. But this is not the case. No precise meaning can be given to 'state of nature' or 'state of political society' without reference to a party [see Glossary] different from the one that is spoken of as being in the state in question. The difference between the two states, I repeat, has to do with the habit of obedience, and ·obedience is relational·: for one party to obey, there must be another party that is obeyed. But the party who is obeyed may be different at different times. So a single party may be conceived to obey one person (or object of obedience) at the same time as not obeying another. Thus a single party may be said to be at one time in a state of nature and not in a state of nature, according to what party is taken for the object of obedience. In common speech, when no particular object of obedience is specified *all persons in general* are intended; so that when a number of persons are said simply to be in a state of nature, what is meant is that they are so with reference to one another as well as to all the world.

15. In the same manner we can understand how someone who is *governor* with respect to one man or set of men may be *subject* with respect to another; and how among governors

- some may be in a perfect state of nature with respect to each other, like the kings of France and Spain,
- others in a state of perfect subjection, as the Lords of Walachia and Moldavia are with respect to the ·Ottoman· Grand Signior;
- yet others in a state of obvious but imperfect subjection, as the German states are with respect to the Emperor;
- and still others of whom it is difficult to determine whether they are in a state of imperfect subjection or in a perfect state of nature, as the King of Naples is with respect to the Pope.

16. In the same way it may also be conceived—never mind

the details—how a single person who is born (as everyone is) into a state of perfect subjection to his parents, i.e. into a state of perfect political society with respect to his parents, may move from that into a perfect state of nature, and from that successively into any number of different states of more or less perfect political society by passing into different societies.

17. In the same way it may be conceived how in any political society one man may, with respect to the same individuals, be at different times and in different contexts, alternately governor and subject: a man x may on one day have a role in the business of issuing a general command for the observance of the whole society, including another man y in his role as judge, and then on the next day be punished by a particular command of y for not obeying the general command that x himself had issued. I need scarce remind the reader how happily this alternate state of authority and submission is exemplified among ourselves.

18. Here might be a place •to state the different shares different persons may have in issuing one command, •to explain the nature of corporate action, •to enumerate and distinguish half a dozen or more different ways in which there can be subordination between the same parties, and •to distinguish and explain the different senses of the words 'consent', 'representation', and others related to those interesting but perplexing words that are sources of so much debate and sources or pretexts of so much animosity. But the limits of my present design won't allow such protracted and intricate discussions.

19. In the same way it may be conceived how one set of men, considered among themselves, may be in a state of nature at one time and in a state of government at another. For the habit of obedience—in whatever degree of perfection is needed for it to constitute a government—may obviously

be conceived to suffer interruptions. It may occur and cease at different junctures [see Glossary].

20. Examples of this state of things seem not to be infrequent. The sort of society that the American Indians have been observed to have may provide us with one. According to the accounts we have of those people, in most of their tribes the habit I am speaking of appears to be taken up only in time of war, and to cease in time of peace. The need for co-ordinated action against a common enemy brings a whole tribe under the orders of a common chief. On the return of peace, each warrior resumes his original independence.

21. One difficulty about all this has still not been solved, namely to find a characteristic mark by which to distinguish a society where there is, from one where there is not, a habit of obedience at the level of perfection needed to constitute a state of government. I mean: a mark that has a visible determinate beginning, so that the instant of its first appearance can be distinguished from the last at which it had not yet appeared. Only with the help of such a mark can we determine at any given time whether a society is in a state of government or in a state of nature. The only such mark I can find is the establishment of *names of office*—the appearance of a certain man or set of men with a certain name marking them out as objects of obedience, such as ‘King’, ‘Sachem’, ‘Cacique’, ‘Senator’, ‘Burgomaster’, and the like. I think this may serve tolerably well to distinguish a set of men in a state of political union among themselves from the same set of men not yet in such a state.

22. But suppose that a large political society has been formed, and that a small part of it breaks off and ceases to be in a state of political union with respect to the larger, thereby placing itself in a state of nature with respect to the

larger body. How shall we ascertain the precise juncture at which *this* change took place? What is to serve as the characteristic mark in this case? The appointment of new governors with new names? That won’t do, because the situation may be this:

No such appointment takes place. The subordinate governors from whom alone the people at large were accustomed to receiving their commands under the old government are the same men from whom they receive them under the new one. The habit of obedience that these subordinate governors had with respect to the single person (let’s say) who was the supreme governor of the whole is broken off insensibly and by degrees. The old titles that these subordinate governors had when they were subordinate are continued now that they are supreme.

In this case it seems rather difficult to answer my question about the characteristic mark.

23. For an example of this, let us take the Dutch provinces with respect to Spain. These provinces were once branches of the Spanish monarchy. For a long time now they have been universally spoken of as independent states—independent of Spain as much as of every other government. They are now in a state of nature with respect to Spain. They were once in a state of political union with respect to Spain, a state of subjection to a single governor, who was King of Spain. At what precise time did these provinces cease to be subject to the King of Spain? This, I suspect, will be rather difficult to agree on.<sup>1</sup>

24. The difficulty is even greater when the defection begins not by entire provinces (as in the instance of the Dutch) but by a handful of fugitives, a group that grows

<sup>1</sup> I have come to be unsure whether this example is historically exact. If not, that of the defection of the Nabobs of Hindostan may answer the purpose.



as other fugitives join it and gradually becomes a body of men too strong to be reduced. At what precise juncture did ancient Rome or modern Venice become an independent state?

25. In general, then, at what precise point do persons subject to a government come to be, through disobedience to that government, in a state of nature? When is a revolt to be deemed to have taken place? and when is that revolt to be deemed successful enough to have settled into independence?

26. Just as the obedience of individuals constitutes a state of submission, so their disobedience must constitute a state of revolt. Will *any* act of disobedience do as much? The answer Yes is not maintainable, because it implies that there is no such thing as government anywhere. Here a couple of distinctions obviously present themselves.

•Disobedience can be **conscious** or **unconscious**, with respect to the law as to the fact.<sup>1</sup> I don't think anyone will count as a 'revolt' any disobedience that is unconscious with respect to fact or law.

•Disobedience that is conscious with respect to both fact and law can be secret or open, i.e. **fraudulent** or **forcible**.<sup>2</sup> Disobedience that is only fraudulent will also be readily acknowledged not to amount to a revolt.

27. The remaining difficulty is purely concerned with disobedience that is both conscious (with respect to law and to fact) and forcible. Whether such disobedience should count as a 'revolt' seems not to be settled purely by

- the number of those who are disobedient, or
- their acts, or
- their intentions.

All three may be fit to be taken into consideration. But having brought the difficulty to this point, I must now be content to leave it. To go any further in trying to solve it would be to enter into a discussion of particular local jurisprudence. It would be entering on the definition of 'treason', as distinguished from murder, robbery, riot, and other such crimes as are spoken of as being of a more private nature than treason. . . .

28. It would be easy to extend these remarks to a much greater length, and indeed that would be necessary if they were to have a proper fulness, method [see Glossary], and precision. But that would exceed the limits of my present design. ·Incomplete· as they are, I leave them as hints to anyone who wants to give the subject a more exact and regular examination.

29. I have said enough, however, to enable us to judge what truth there is in our author's observation that

When society is once formed, government results of course, as necessary to preserve and to keep that society in order.'

Which we can understand to mean:

'When natural society is once formed, political society (whatever kind or level of obedience is necessary to constitute political society) results of course [see Glossary], as necessary to preserve and to keep that

<sup>1</sup> Unconscious with respect to the fact: the party does not know that he has done the legally forbidden act or that he has done it in circumstances in which it is forbidden. Unconscious with respect to the law: he knows that he has done the act, but does not know that it is legally forbidden in the circumstances in which he has done it. Given the neglect of the business of spreading knowledge of the law, cases of disobedience that is unconscious with respect to the law are bound to be abundant.

<sup>2</sup> Examples: theft is fraudulent disobedience, robbery is forcible. In theft there's an attempt to keep secret the act of disobedience; in robbery the act of disobedience is manifest and avowed.

society in order.’

I take the words ‘of course’ to mean ‘constantly and immediately’ or at least ‘constantly’. According to this, political society (in any sense of that phrase) ought long ago to have been established all the world over. Whether this is so you can judge from the instances of the Hottentots, the Patagonians, and so many other barbarous tribes that travellers and navigators tell us about.

30. But I may have misunderstood his meaning. I have been supposing that he meant to assert a matter of fact, and to have written (or at least begun) this sentence in the role of an historical *observer*; but perhaps he meant only to speak in the role of a *critic*, expressing his approval of a supposed case. In that case he would be trying to persuade us not •that ‘government’ does actually ‘result’ from natural ‘society’ but •that it would be better if it did, as being necessary to ‘preserve and keep’ men ‘in that state of order’ that they benefit from being in. Which of those roles he meant to adopt is a problem I must leave to be determined.

Perhaps the distinction never even occurred to him. Shifting insensibly and without warning from one of those roles to the other is a failing that seems to be deeply rooted in our author; and I shall probably have more than one occasion to call attention to it.

31. Considering the whole paragraph (with its appendage) together, we see that author is struggling to *overthrow* something and to *establish* something. But how he wants to overthrow, or what he wants to establish, are questions I must confess myself unable to answer. The preservation of mankind’, he observes, ‘was effected by single families.’ He assumes this on the authority of the Holy Scriptures, and infers from it that the notion of an original contract (a

notion which he later *adopts*) is ridiculous. I have to admit that I do not see the force of this inference. Mankind was preserved by single families. Be it so. What is there in this to hinder ‘individuals’ of those families (or of families descended from them) from •meeting together ‘afterwards, in a large plain’ (or anywhere else), •entering into an original contract’ (or any other contract), and •choosing the tallest man’ (or any other man) ‘present’ (or absent) to be their governor? The ‘flat contradiction’ our author finds between this supposed transaction and the ‘preservation of mankind by single families’ is what I must admit to being unable to discover. As for the ‘actually existing unconnected state of nature’ that he speaks of, ‘the notion of which’ he says ‘is too wild to be seriously admitted’, I cannot judge whether this is the case with it [i.e. presumably, whether it too is inconsistent with the preservation of mankind by single families] because he has given us no notion of it at all.<sup>1</sup>

32. In one place, however, we seem to have something positive. It concerns these ‘single families’ by which the preservation of mankind was effected—families that our author gives us to understand ‘formed the first society’. This is something to proceed on. A society of one kind or the other was formed—a natural society or a political society. Well now, suppose that in this society no contract had yet been entered into, no habit of obedience yet formed. Was this a merely natural society or rather a political one? According to *my* notion of the two kinds of society as above explained, I have no difficulty in answering this: it was a merely natural society. But which was it according to *our author’s* notion? •If it was already a political one, what notion would he give us of a natural one; and what change would have turned an earlier natural society into this political one? •If it was

<sup>1</sup> The expressions in quotation-marks in this paragraph are all taken verbatim from the passage of Blackstone’s occupying section 2 above, except for Bentham’s ‘flat contradiction’, which echoes Blackstone’s ‘plainly contradictory’.

not a political one, then what sort of a society are we to understand that would be political? By what mark are we to distinguish it from a natural one? To this, it is plain, our author has not given any answer. Yet giving an answer to it was (if anything was) the professed purpose of the long paragraph before us [i.e. the one occupying most of section 2 above].

33. It is time to dismiss this passage of our author. Because it contains some of the most striking expressions that the vocabulary of the subject provides, arranging them in the most harmonious order, nothing can look fairer on a first glance; the show-case of political erudition seldom exhibits a prettier piece of tinsel-work. Step close to it, and the delusion vanishes! It is then seen to consist partly of self-evident observations, and partly of contradictions; partly of what everyone knows already and partly of what no-one can understand at all.

34. Throughout the whole of it, what distresses me is not

- meeting with positions that I think false, but finding it difficult to prove them so, but
- not meeting with any positions, true, or false, that I can find a meaning for (except for the occasional self-evident one).

Finding nothing positive to agree to, I also can't find anything positive to contradict. There is indeed less contradicting for anyone else to do because our author has (as we have seen) done so much of it! The whole passage is a riddle; and the Oedipus who can solve it will have to be much cleverer than I am. Fortunately, nothing in what follows requires that it be solved. Nothing is concluded from it. For all I can find, it has in itself no use, and none is made of it. There it is, and as well might it be anywhere else, or nowhere.

35. If it could be solved, then, there would be no use in solving it; but given that it is (as I think it to be) *really* unsolvable, it would be useful to let it be *seen to be* so.

Peace may by this means be restored to the breast of many a desponding student who, having started with hopes of a rich harvest of instruction, condemns himself for being unable to reap what his author has not sown.

36. As for the **original contract** that is by turns embraced and ridiculed by our author: it may be worthwhile to spend a few pages trying to come to a precise notion about its reality and use. The stress that used to be laid on it—and perhaps still is by some—makes it an object that deserves attention. I had hoped that this chimera had been effectively demolished by Mr Hume, till I observed the notice taken of it by our author. I think we hear less of it now than we used to; the indestructible prerogatives of mankind have no need to be supported on the sandy foundation of a fiction.

·START OF A TWO-TOPIC FOOTNOTE·

·FIRST ABOUT HUME· The reference is to the third volume of his *Treatise of Human Nature*. Our author, one would think, had never so much as opened that celebrated book, of which the criminality (in the eyes of some) and the merits (in the eyes of others) have since been almost effaced by the splendour of more recent productions of the same pen. Perhaps our author high-mindedly scorned to derive instruction from an enemy, or cautiously feared to do so. Or perhaps—and this is more probable—he did not know that the subject had been so much as touched upon by that penetrating and acute metaphysician whose works lie so far off the beaten track of academic reading. But here, as it happens, there is no reason for such fears. I don't think that the men who are most alarmed at the dangers of a free enquiry—who are most firmly convinced that the surest way to truth is by hearing nothing but one side—will find anything that they deem to be poison in this third volume ·of Hume's·. I would not wish to send the reader to any other than this third volume which,

if I remember correctly, stands clear of the objections that have recently been urged so vehemently against the *Treatise of Human Nature* in general by Dr Beattie in his *Essay on the Immutability of Truth*. As for the first two volumes: I am inclined to think that Hume himself is willing to agree with those who hold that they could be dispensed with without any great loss to the science of human nature. The same might be said of a considerable part even of this third volume. But after all retrenchments, enough will remain to have laid mankind under indelible obligations. That *the foundations of all virtue are laid in utility* is demonstrated there. . . .with the strongest force of evidence. . . . No sooner had I read the part of the work that touches on this subject than I felt as if scales had fallen from my eyes; I then for the first time learned to call the cause of the people the cause of virtue.

·THEN ABOUT BENTHAM'S MORAL EDUCATION· Perhaps a short sketch of the wanderings of a raw but well-intentioned mind in its researches after moral truth may be of some use here, for the history of one mind is the history of many. My infant affections [see Glossary] were enlisted on the side of despotism by several causes, including •the writings of the honest but prejudiced Earl of Clarendon to whose integrity nothing was lacking and to whose wisdom little. . . ., and •the contagion of a monkish atmosphere. The spirit of the place I dwelt in [Oxford University], the authority of the state, the voice of the church in its solemn rituals—all these taught me to call King Charles a martyr and his opponents rebels.

- I saw innovation; and there was indeed innovation, but it was a glorious innovation in their efforts to withstand him.
- I saw falsehood; and there was indeed falsehood, in their claims that they were not innovating.
- I saw selfishness and an obedience to the call of passion in the efforts of the oppressed to rescue themselves from oppression.

- I saw the sacred writings giving strong support to monarchic government, and none to any other.
- I saw passive obedience deeply stamped with the seal of the Christian virtues of humility and self-denial.

Conversing with lawyers, I found them full of the virtues of their 'original contract', as a supremely effective recipe for reconciling •the occasional need for resistance with •the general duty of submission. They fed me this drug of theirs to calm my scruples; but my unpractised stomach revolted against their opiate. I told them to open to me the page of history in which the solemnisation of this important contract was recorded. They shrank from this challenge; and when they were pressed with it they could only do what our author has done, namely confess the whole thing to be a fiction. It seemed to me that by bringing a fiction to support their cause they were admitting it to be a bad one. I said:

'To prove fiction, indeed, there is need of fiction; but it is the characteristic of truth to need no proof but truth. Have you then really any such privilege as that of coining facts? You are spending argument to no purpose. If in the course of trying to prove that P is true you indulge yourselves in the licence of supposing Q to be true though it is not, you might as well just *suppose* P to be true and spare yourselves the trouble of trying to prove it.'

Thus I continued, unsatisfying and unsatisfied, till I learned to see that *utility* was the test and measure of all virtue, of loyalty as much as any; and that the obligation to minister to general happiness was an obligation inclusive of every other. Having thus acquired the instruction I stood in need of, I sat down to make my profit of it. I bade adieu to the 'original contract': and I left it to those who think they need it to amuse themselves with this plaything.

·END OF TWO-TOPIC FOOTNOTE·

37. There may have been a time when this and other fictions had their use. I don't deny that instruments of this type may have done some political work, useful work, which in the situation then obtaining could hardly have been done without them. But the season of fiction is now over. . . . The universal spread of learning has raised mankind to a level with each other, compared to what they have been at any former time; no man now is so far elevated above his fellows that he should be allowed the dangerous licence of cheating them for their good.

38. As for the fiction of the original contract, in the role of an *argumentum ad hominem* and managed as it was, it succeeded admirably.

That all compacts ought to be kept, and that men are bound by compacts, are propositions that all men were disposed to agree to, without knowing or enquiring why. They had been accustomed to seeing the keeping of promises pretty constantly enforced. They had been accustomed to seeing kings, as well as others, behave as though they were bound by them. Thus the propositions

- Men are bound by compacts, and
- If one party to a compact does not do his part, the other party is released from his

were ones that no man had any call to prove because no man disputed them. In theory they were assumed as axioms, and in practice they were observed as rules.<sup>1</sup> If it was at any time thought proper to make a show of proving them, this was rather for form's sake than for anything else; and it was done in the way of •memento or instruction to acquiescing hearers, rather than of •proof against opponents. On such an occasion, the commonplace retinue of phrases was at hand: 'justice required it', 'right reason required it', 'the

law of nature commanded it', and so forth; all of which are merely so many ways of signalling that a man is convinced of the truth of a moral proposition, though he either thinks he need not, or finds he cannot, tell why. Men were too obviously and too generally interested in the observance of these rules to have doubts about the force of any arguments they saw used to support them. It is an old observation how interest smooths the road to faith! [In those two sentences, 'interest' involves the notion of having something at stake.]

39. So a compact was said to have been made between the king and the people, in which •the people promised to the king a general obedience, and •the king promised to govern the people in a way that would be conducive to their happiness. I don't insist on the words: I aim only to give the sense, as far as any definite sense can be given to an imaginary engagement so loosely and variously worded by those who have imagined it. Assuming, then,

- as a general rule, that promises ought to be kept, and
- as a point of fact, that a promise to this effect in particular had been made by the party in question,

men were more ready to think themselves qualified •to judge when such a promise had been broken than •to tackle directly and openly the delicate question of **when a king had acted so far in opposition to the happiness of his people that it would be better no longer to obey him.**

40. It doesn't take much thought to find it obvious that nothing was gained by this manoeuvre: no difficulty was removed by it. There was as much need as ever to confront **a** the question that men were trying to avoid by substituting **b** another in its place. To determine whether **b** the promise the king was supposed to have made had been broken, it was still necessary to determine whether **a** the king had acted so

<sup>1</sup> A *compact* or *contract* (for the two words, in this context at least, are used in the same sense) may, I think, be defined thus: a pair of promises by two persons, reciprocally given, each promise in consideration of the others.

far in opposition to the happiness of his people that it would be better no longer to obey him. For **a** that was the **b** purport of his supposed promise.

41. This may be said:

At least a part of this promise was to govern in subservience to Law; so this supposal of a promise lays down a rule for his conduct that is more precise than that other loose and general rule to govern in subservience to the happiness of his people; so the letter of the Law forms the content of the rule.

Well, it is true that governing in opposition to Law is *one* way of governing in opposition to the happiness of the people; because the natural effect of such a contempt of the Law is to destroy—or at least to threaten with destruction—all those rights and privileges that are based on it, rights and privileges on the enjoyment of which that happiness depends. But conformity-to-Law can't safely be taken for the entire force of the promise here in question; and there are four reasons why. **(i)** The most harmful—and under certain constitutions the most practicable—method of governing in opposition to the happiness of the people is by setting the Law itself in opposition to their happiness. **(ii)** It may well happen that a king greatly impairs the happiness of his people without violating the letter of any single law. **(iii)** There may be rare special occasions when the happiness of the people can be better promoted by acting briefly in opposition to the Law than by acting in subservience to it. **(iv)** No single violation of the Law can properly be taken for a breach of the king's part of the contract that releases the

people from the obligation to perform their part. For (to quit the fiction, and resume the language of plain truth) it hardly ever happens that *submitting* to a single violation of the Law can produce more mischief [see Glossary] than the probable mischief of *resisting* it. . . . It is obvious, therefore, that to make any sound decision on **b** the question that the inventors of this fiction substituted for **a** the true one, the latter still had to be decided. All they gained by their contrivance was the convenience of deciding it obliquely, as it were, and by a side wind; that is, in a crude and hasty way without any direct and steady examination.

42. After all, *why* ought men to keep their promises? The only intelligible reason is that it is for the advantage of society that they should keep them, and that if necessary they should be compelled to keep them. It is for the advantage of the whole number •that the promises of each individual should be kept, and •that, rather than their not being kept, individuals who fail to keep them should be punished. . . . The benefit gained (and mischief avoided) by keeping promises outweighs the mischief of so much punishment as is needed to oblige men to keep them. Whether that is a correct account of the balance of benefit and mischief (that is, of pleasure and pain) is a question of fact, to be decided—as are all questions of fact—by testimony, observation, and experience.<sup>1</sup>

43. So this reason—the sole reason—why men should be made to keep their promises, namely that it is for the advantage of society that they should, is a reason that might as well be given at once,

<sup>1</sup> A very striking and satisfactory display of how important promise-keeping is to society's happiness is given in a little fable by Montesquieu, entitled *The History of the Troglodytes*. The Troglodytes are a people who pay no regard to promises, which naturally leads them from one scene of misery into another, and at last to being exterminated. The same philosopher, in his *Spirit of Laws*, copying and refining on the current jargon, invents a law for this and other purposes. . . . How much more instructive on this topic is the fable of the Troglodytes than the pseudo-metaphysical sophistry of the *Esprit des Loix*!

- why kings in governing should in general keep within established laws, and (to speak universally) abstain from all measures that tend to the unhappiness of their subjects; and

- why subjects should obey kings as long as they do behave in that way, and no longer; i.e. as long as the probable mischiefs of obedience are less than the probable mischiefs of resistance; in short

- why, taking the whole body together, it is their duty to obey just as long as it is their interests to do so, and no longer.

This being the case, what need is there to say that the king PROMISED so to govern, and that the people PROMISED so to obey, when in fact they didn't?

44. It is true that in this country, according to ancient forms, some sort of vague promise of good government is made by kings at the ceremony of their coronation. Let us (·for purposes of argument·) concede that the acclamations given by chance persons out of the surrounding multitude—the congregation present at the coronation·, itself a small drop collected by chance out of the ocean of the state—constitute a promise of obedience by the whole multitude; and let us concede that these two promises have created a perfect compact, though neither of them is declared to be made because of the other.

45. Make the most of this concession! There is one thought-experiment by which I think every reflecting man can satisfy himself beyond a doubt that his judgment on all these matters has been solely governed, secretly but unavoidably, by the consideration of *utility*. The experiment is easy and decisive. It is but to suppose a reversal of **a b** the import of the *particular* promises thus feigned, and of **c** the effect in point of utility of the observance of promises *in general*. Suppose **a** the King to promise that he would

govern his subjects not according to Law, not with a view to promoting their happiness; would this be binding on *him*? Suppose **b** the people to promise they would obey him at all events, let him govern as he will; let him govern to their destruction. Would this be binding on *them*? Suppose **c** the constant and universal effect of the keeping of promises were to produce mischief [see Glossary]. Would it then be men's duty to keep them? Would it then be right to make laws and apply punishment to oblige men to keep them?

46. This may be replied:

'No, it wouldn't; but that is because there are some promises that everyone allows are void, and the ones you have been supposing ·in your reversal thought-experiment· are of that kind. It's true that a promise that is in itself void cannot create any obligation. But allow the promise to be valid, and it is the promise itself that creates the obligation, and nothing else.'

It is easy to see the fallacy of this argument. For what is it then that the promise depends on for its validity? What is the ingredient that makes it valid, and the lack of which makes it void? To acknowledge that any one promise may be void is to acknowledge that if any other promise is binding, that is not merely because it is a promise. There must be some further fact on which the validity of a promise depends, and clearly that fact—and not the promise itself—is what causes the obligation that a promise is apt in general to carry with it.

47. A further point: Allow for argument's sake what I have disproved; allow that the obligation of a promise is independent of every other ·circumstance·; allow that a promise is intrinsically binding. Binding on whom? On him certainly who makes it; there's no reason why an individual promise should be binding on those who never made it. The King 50 years ago promised my great-grandfather to govern

him according to Law; my great-grandfather 50 years ago promised the King to obey him according to Law. The King just now promised my neighbour to govern him according to Law; my neighbour just now promised the King to obey him according to Law. So be it! What are these promises—all or any of them—to *me*? Obviously, to answer this question some principle must be resorted to other than that of the intrinsic obligation of promises on those who make them.

48. Now this other principle that keeps coming back to us, what can it be but the principle of UTILITY? That is the principle which provides us with that reason, the only principle that does not depend on any higher reason, and is itself the sole and all-sufficient reason for every thesis about how we should behave.

·START OF FOOTNOTE KEYED TO THE WORD ‘UTILITY’·

The label ‘the principle of utility’ has recently had added to it—or been replaced by—‘the greatest happiness principle’. This is short-hand for

‘the principle according to which the greatest happiness of all those whose interest is in question is the only right and proper and universally desirable goal of human action in every situation, and especially of the functionaries exercising the powers of government’.

The word ‘utility’ does not point to the ideas of pleasure and pain as clearly as the word ‘happiness’ does. Nor does it lead us to the consideration of *how many* people’s interests are affected, this being the circumstance that contributes most to the formation of the standard here in question—the standard of right and wrong by which alone the propriety of human conduct, in every situation, can with propriety be judged. This lack of an obvious enough connection between •the ideas of happiness and pleasure and •the idea of utility, I have sometimes found acting all too efficiently as a bar to

the acceptance that might otherwise have been given to the principle of utility. For further elucidation of the principle of utility (or greatest happiness principle), the reader may like to see a note inserted in a second edition, now printing, of my later work *An Introduction to the Principles of Morals and Legislation*. The note says: ‘I have heard it described as “a dangerous principle”, something that on certain occasions it is “dangerous to consult”. This amounts to saying that it is not consonant to utility to consult utility—i.e. that it is not consulting it, to consult it.’

In the second edition, the following paragraph (written in 1822) is added to this note: [Not given here. It is pretty much the same as section V starting on page 66.]

·END OF FOOTNOTE ON ‘UTILITY’·

## Chapter 2: Forms of Government

1. At the start of this Essay I divided contents of the ‘digression’ we are examining into five parts. I have examined the first of them—concerning how government in general was formed—in chapter 1. We now have to consider the second, concerning the different species or forms that government may assume.

2. The first thing that strikes us in this part of our subject is the theological flourish it sets out with. God might be said to be, though in a peculiar sense, our author’s strength! He quite often uses theology as •an ornament to divert us from discovering the shallowness of his doctrines or as •a source of authority to overawe us into not doing so.

3. He has been showing—in the manner examined in the last chapter—that we must have governors of some sort or other. Now for *endowments* [see Glossary] to qualify them to govern. As though he wanted to make these endowments



show the brighter, and to keep them as much as possible from being soiled by the rough hands of impertinent theoreticians, our author has chosen that they should be of aethereal texture, and has fetched them from the clouds.

'All mankind', he says, 'will agree that government should be reposed in persons who are most likely to have the qualities the perfection of which are among the attributes of Him who is emphatically styled the Supreme Being: the three great requisites, I mean, of wisdom, of goodness, and of power.'

But let us see the whole passage as it stands. [Section 4 is quoted verbatim from Blackstone. Bentham interrupts it at \* to say that by 'society' Blackstone means 'natural society', and at \*\* to conjecture that by 'equal' he means 'equal with respect to political power', of which, he adds, 'none of them as yet have any'.]

4. 'But as all the members of society \* are naturally equal \*\*, it may be asked in whose hands are the reins of government to be entrusted? To this the general answer is easy; but the application of it to particular cases, has occasioned one half of those mischiefs which are apt to proceed from misguided political zeal. In general, all mankind will agree that government should be reposed in such persons in whom those qualities are most likely to be found, the perfection of which are among the attributes of Him who is emphatically styled the Supreme Being; the three grand requisites, I mean, of wisdom, goodness, and of power: wisdom, to discern the real interest of the community; goodness, to endeavour always to pursue that real interest; and strength or power, to carry this knowledge and intention into action. These are the natural foundations of sovereignty, and these are the requisites that ought to be found in every well-constituted frame of government.'

5. Everything in its place! Theology in a sermon, or a catechism. But in this place any purpose of instruction

would have been much better served without the theological flourish. The only purpose I can see for bringing in the idea of that tremendous and incomprehensible Being is to bewilder and entrance the reader, as it seems to have bewildered and entranced the writer. Beginning in this way is beginning at the wrong end: it is explaining *ignotum per ignotius* [= 'explaining the unknown by the more unknown' (Latin)]. Rather than getting from the attributes of the Deity an idea of any qualities in men, we get the feeble idea we can form of the attributes of the Deity from what we see of the qualities of men.

6. We shall soon see whether it is light or darkness that our author has brought back from this excursion into the clouds. The qualifications he has picked on for the people in whose hands government is to be placed are three: wisdom, goodness, and power. One of these, I suspect, will give him some trouble to know what to do with. I mean *power*: he imported it from the celestial regions because, looking on it as a jewel, it seemed that it would give a lustre to the royal diadem. We shan't dispute its being found in heaven, and indeed equally at all junctures [see Glossary]. But the parallel fails. The earthly governors in question, or to speak more properly the *candidates* for government, by the very supposition that they *are* only candidates, cannot have any such thing as power at the juncture he is talking about. Power is the very quality they are now waiting to receive, being entitled to receive it by their already having (supposedly) the other two qualities, wisdom and goodness.

7. By 'power' here I mean political power—the only sort of power our author could mean, the only sort that is here in question. A little further on we shall find him speaking of this endowment as being possessed in the highest degree by a king, a single person. So he clearly can't intend to include *natural* power—mere organic power, the capacity to

give the hardest blows—among the attributes of •this godlike personage.

8. We see then the dilemma our author's theology has confronted him with by getting him to count power among the qualifications of his candidates. Power is either *natural* or *political*. Political power is what they cannot have, for (according to the supposition) that is the very thing they are going to get through the establishment of government. So it would have to be natural power, the natural strength that a man has without the help of government. But if this is what our author is talking about, then he is saying that a single member of a society has more of it than all the rest of the society put together!

9. I think in fact that in what our author has said about 'power' he has been speaking, as it were, by anticipation; and that he means to be speaking not of any power of either kind actually possessed by any man or body of men at the juncture he is talking about, but only a •capacity to *retain* political power and *put it into action* whenever it comes to be conferred. Now, the quantity of actual power that is possessed is exactly the same in every case, for it is precisely the supreme power. But as for the •capacity I have spoken of, there do seem indeed to be good grounds for supposing it to subsist in a higher degree in a single man than in a body.

10. A sketch will be sufficient to display these grounds.

- The efficacy of power is at least partly in proportion to the promptitude of obedience;
- the promptitude of obedience is partly in proportion to the promptitude of command;
- command is an expression of will; and
- a will is sooner formed by one than by many.

I take it that this or something like it is the plain English of our author's metaphor, where he tells us (as we shall see in section 32) that 'a monarchy is the most powerful' (form of

government) 'of any, all the sinews of government being knit together, and united in the hands of the prince.'

11. His next paragraph, short as it is, contains a variety of matter. **a** Its first two sentences tell us that he thinks it proper to set aside the question of how each of the particular governments that we know of has been formed. **b** A third says for the second time that all governments must be absolute in some hands or other. **c** In the fourth and last he favours us with a very comforting piece of news, the truth of which few of us perhaps would have suspected if he had not told us of it. It is that the qualifications he has mentioned as needing to be possessed by all governors of states are—or at least once upon a time *were*—actually possessed by them. 'This is said to be true' according to the opinion of somebody, but of *what* somebody is not altogether clear—whether in the opinion of these governors themselves or of the persons governed by them. Here is the paragraph verbatim.

12. 'a How the various forms of government we now see in the world at first actually began is matter of great uncertainty, and has occasioned infinite disputes. It is not my business or intention to enter into any of them. **b** However they began, or by what right soever they subsist, there is and must be in all of them a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside. **c** And this authority is placed in those hands, wherein (according to the opinion of the founders of such respective states, either expressly given or collected from their tacit approval) the qualities requisite for supremacy, wisdom, goodness, and power, are the most likely to be found.'

13. I shan't venture to decide whether our author means 'founders' to refer to those who became the governors of the states in question, or those who became the governed, or both together. For all I know, he may have meant neither

group but some third person. And indeed I am strongly inclined to suspect that in our author's large conception, at the time this paragraph of his was being written,

- the whole universe was represented by the mighty and extensive domains of Athens and Sparta, of which we read so much at school and at college, each consisting of several score of square miles, and
- the whole period of the history of those states was represented by the respective eras of Solon and Lycurgus.

14. The words 'founders', 'opinion', 'approval'—in short the whole tenor of the sentence—brings to one's view a system of government utterly different from the general run of those we have before our eyes; a system in which neither caprice, nor violence, nor accident, nor prejudice, nor passion seems to have had any share; a system

- uniform, comprehensive, and simultaneous;
- planned with calm deliberation;
- established by full and general assent; and thus
- of the kind commonly thought to have been laid down by Solon and Lycurgus.

If this is the case, what he had in mind when he said 'founders' might be neither governors nor governed but some neutral person; such as those two sages ·Solon and Lycurgus·, chosen as they were as a kind of umpires, might be considered with regard to the persons who were governors and governed under the previous constitution, whatever that was.

15. But all this is mere conjecture. The proposition is not qualified in this or any other way. It is delivered explicitly and emphatically in the character of a universal one. 'In ALL OF THEM', he assures us, 'this authority' (the supreme

authority) 'is placed in those hands, wherein, according to the opinion of the founders of such respective states, these qualities of wisdom, goodness, and power are the most likely to be found.' This throws a singular light on history. I can see no end to the discoveries it leads to, all of them equally new and edifying. For example:

When the Spaniards became masters of the empire of Mexico, a commonplace politician might suppose it was because the Mexicans who had not been exterminated could not help it. No such thing! it was because the Spaniards were of the 'opinion' or the Mexicans themselves were of the 'opinion' (which of the two is not altogether clear) that in Charles V and his successors more goodness (of which they had such abundant proofs) as well as wisdom was likely to be found than in all the Mexicans put together.

The same belief obtained

- between Charlemagne and the German Saxons with respect to the goodness and wisdom of Charlemagne,
- between William the Norman and the English Saxons,
- between Mahomet II and the subjects of John Paleologus,
- between Odoacer and the subjects of Augustulus,
- between the Tartar Ghengis Khan and the Chinese of his time,
- between the Tartars Chang-ti and Cam-ghi, and the Chinese of their times,
- between the Protector Cromwell and the Scotch,
- between William III and the Irish papists,
- between ·Julius· Caesar and the Gauls,
- between the so-called Thirty Tyrants and the Athenians, whom our author seems to have had in view;<sup>1</sup>

<sup>1</sup> [B&H have a footnote here, explaining all of these historical references.]

to mention only these examples, out of as many hundred as might be required. All this, if we may trust our author, he has the 'goodness' to believe; and by such lessons is the penetration of students to be sharpened for piercing into the depths of politics!

16. So much for the introductory paragraph. The main part of the subject is treated of in six others, whose general contents are as follows.

17. In the first he tells us how many different forms of government there are according to the division of the ancients, namely three: Monarchy, Aristocracy, and Democracy. He adopts this division.

18. The next is to tell us that by 'the sovereign power' he means 'the power of making laws'.

19. In a third he tells us the advantages and disadvantages of these three different forms of government.

20. In a fourth he tells us that these three are all the ancients would allow of.

21. A fifth is to tell us that the British form of government is different from each of them; being a combination of all, and having the advantages of all.

22. In the sixth and last he shows us that it could not have those advantages if, instead of being what it is, it were any one of the other three; and he tells us what it is that may destroy it. These last two paragraphs will be examined in my chapter 3.

23. Monarchy is the form of government in which the power of making laws is lodged in the hands of a single member of the state in question. Aristocracy is the form of government in which the power of making laws is lodged in the hands of several members. Democracy is the form of government in which the power of making laws is lodged in the hands of 'all' of them put together.

These, according to our author, are the definitions of the

ancients; so he has no difficulty adopting them. [The next two sections are quoted verbatim from Blackstone.]

24. 'The political writers of antiquity will not allow more than three regular forms of government; the first, when the sovereign power is lodged in an aggregate assembly, consisting of all the members of a community, which is called a democracy; the second, when it is lodged in a council composed of select members, and then it is styled an aristocracy; the last, when it is entrusted in the hands of a single person, and then it takes the name of a monarchy. All other species of government they say are either corruptions of, or reducible to these three.

25. 'By the sovereign power, as was before observed, is meant the making of laws; for wherever that power resides, all others must conform to, and be directed by it, whatever appearance the outward form and administration of the government may put on. For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases; and all the other powers of the state must obey the legislative power in the execution of their several functions, or else the constitution is at an end.'

26. So he has arrived at three regular simple forms of government (setting aside the anomalous complex one that we have in England) and at three qualifications to divide among them. He told us a while ago that each form of government must have some share in each of these qualities, and it is easy to see how their allotments will be made out. Each form of government will have one of these qualities in perfection [see Glossary], taking its chance (so to speak) for a share in the other two.

27. There is not much to choose among these three forms of government, according to our author's account of them. Each of them has a qualification to itself, and each

is completely characterised by this qualification. No hint is given of any rank-ordering of these qualifications. If there were a dispute concerning the preference to be given to any of these forms of government, as proper a method as any of settling it—to judge from our author’s view of them—would be to flip a coin. Hence we can infer that all the governments that ever were or will be (except a very particular one that I shall come to soon, namely our own) are on a par: that of Athens with that of Persia, that of Geneva with that of Morocco; because, he tells us, they are all ‘corruptions of or reducible to’ one of these ·three·. This is good news. A legislator cannot go wrong. He can save himself the expense of thinking. . . .

28. As for our own ·British· form of government, however, . . . being made out of the other three it will have the advantages of all of them put together, with none of the disadvantages—the disadvantages vanishing at the word of command (or even without it) as not being suitable to our author’s purpose.

29. At the end of the paragraph that gives us the above definitions there is one observation that is a little puzzling. Our author tells us that there are ‘other species of government’ besides these ·three·. but that those others are either ‘reducible to’ or ‘corruptions of these’. Well, it is not so easy to understand what there is in any of these to be corrupted. Do not forget that the essence of these three forms of government, according to him, consist solely and entirely in something to do with **number**, specifically in the ratio of the number of the governors (i.e. those in whose hands is lodged this ‘power of making laws’) to that of the governed. If the number of the former stands to the number of the latter as **one to all**, then the government is a monarchy;

if it is **all to all**, then it is a democracy; and if it is **n to all** where n is between one and all, then it is an aristocracy.

Well, if we can conceive a fourth number that is neither •one nor •all nor •something between one and all, we can conceive a form of government that might be shown to be a corruption of one of these three. If not, we must look for the corruption somewhere else, perhaps in our author’s reason.<sup>1</sup>

30. We may indeed meet with several other harsh names for forms of government, but these were only so many names for one or other of those three. We often hear of a ‘tyranny’; but this is simply the name a man gives to our author’s monarchy •when he is out of humour with it; it is the government of number **one**. We sometimes hear of a sort of government called an ‘oligarchy’; but this is just the name a man gives to our author’s aristocracy •in the same case. It is still the government of some number **n** between one and all. And we hear now and then of a sort of government fit to break one’s teeth, called an ‘ochlocracy’ [from Greek meaning ‘mob rule’]; but this is merely the name a man gives to a democracy •in the same case. It is still the sort of government which according to our author is the government of **all**.

31. Let us now see how he has distributed his three qualifications among his three forms of government. We shall find that he has bestowed

- on monarchy, the perfection of power,
- on aristocracy, wisdom,
- on democracy, goodness;

each of these forms of government having (we may suppose) just enough of the two qualifications other than its own peculiar [see Glossary] one to make up the complement of ‘qualities requisite for supremacy’. Kings are (indeed *were*, before they were kings, since this qualification was what led

<sup>1</sup> If we can take his own word for it, there cannot be a more suitable place to look for corruption in. ‘Every man’s reason is corrupt’; and not only that, but ‘his understanding full of ignorance and error’. . . . It would be impolite to challenge what a man tells us about himself, from his own experience!

their subjects to make them kings) as strong as so many Hercules's; but there is not much to say about their wisdom or their goodness. The members of an aristocracy are so many Solomons; but they are not such sturdy folks as your kings; nor—to tell the truth—do they have much more honesty than their neighbours. As for the members of a democracy, they are the best sort of people in the world; but on the whole they are but a puny sort of gentry as to strength, are apt to be a little defective in their understanding. [The next two sections are quoted verbatim from Blackstone.]

32. 'In a democracy, where the right of making laws resides in the people at large, public virtue or goodness of intention, is more likely to be found, than either of the other qualities of government. Popular assemblies are frequently foolish in their contrivance, and weak in their execution; but generally mean to do the thing that is right and just, and have always a degree of patriotism or public spirit. In aristocracies there is more wisdom to be found than in the other frames of government; being composed, or intended to be composed, of the most experienced citizens; but there is less honesty than in a republic, and less strength than in a monarchy. A monarchy is indeed the most powerful of any, all the sinews of government being knit together and united in the hand of the prince; but then there is imminent danger of his employing that strength to improvident or oppressive purposes.'

33. 'Thus these three species of government have all of them their several perfections and imperfections. Democracies are usually the best calculated to direct the goal of

a law; aristocracies to invent the means by which that goal shall be obtained; and monarchies to carry those means into execution. And the ancients, as was observed, had in general no idea of any other permanent form of government but these three; for though Cicero declares himself of opinion, *esse optimé constitutam rempublicam, quae ex tribus generibus illis, regali, optimo, et populari sit modicé confusa*; yet Tacitus treats this notion of a mixed government, formed out of them all, and partaking of the advantages of each, as a visionary whim; and one, that if effected, could never be lasting or secure.'

34. In the midst of this fine-spun ratiocination, an accident has happened, of which our author seems not to be aware. One the qualifications he has been telling us of has somehow become vacant; the form of government he designed it for has unluckily slipped through his fingers in the handling. I mean democracy, which he—and, according to him, the ancients—describe as the government of all. Now 'all' is a great many; so many that I suspect it will be a rather difficult matter to find for these high and mighty personages enough power for them to make even a decent showing with. The members of this redoubtable commonwealth will be even worse off for subjects, I suspect, than Trinculo in the play,<sup>1</sup> or than the potentates whom some later navigators found lording it over a Spanish settlement where there were three members of the government and only one subject. Let him examine it a little and it will turn out to be precisely the sort of 'government' that is in place where there is no government at all. Our author, we may remember, had

<sup>1</sup> [In Shakespeare's *The Tempest* the jester Trinculo thinks of himself as king of an island that has only about three other people on it.]

<sup>1</sup> [This footnote is keyed to the sentence-end at the top of the next page.] It is curious that the same persons who tell you (having read this) that •democracy is a form of government in which the supreme power is vested in all the members of a state will also tell you (having also read this) that •the Athenian commonwealth was a democracy. Now the truth is that in that commonwealth, taking women, children, and slaves to be among the inhabitants of the Athenian state, not *one tenth* of those inhabitants ever partook of the supreme power. (See Mr Hume's essay on the populousness of ancient

shrewd doubts about the existence of a state of nature; grant him his democracy and it contains a state of nature.<sup>1</sup>

35. The qualification of *goodness* belonged to the government of *all* while there was such a government. This having taken its flight, as we have seen, to the region of nonentities, the qualification that was designed for it remains on our author's hands; so he is at liberty to make a compliment of it to aristocracy or to monarchy, whichever best suits him. Perhaps it would be as well to give it to monarchy, because the entitlement of that form of government to its own peculiar qualification, power, is as we have seen a rather equivocal one. Or he may set aristocracy and monarchy to cast lots for it, which may be as good a way as any of settling matters.

### Chapter 3: British Constitution

1. With a set of data such as we have seen in chapter 2, we may judge whether our author can meet with any difficulty in proving the British constitution to be the best of all possible governments, or indeed ·in proving· anything else that he has a mind to. In his paragraph on this subject there are several things that claim our attention. But first we must have it under our eye. Here it is [the next two sections].

2. 'But happily for us in this island the British Constitution has long remained, and I trust will long continue, a standing exception to the truth of this observation.'<sup>2</sup> For, as with us the executive power of the laws is lodged in a single person, they have all the advantages of strength and dispatch that are to be found in the most absolute monarchy; and, as the legislature of the kingdom is entrusted to three

distinct powers entirely independent of each other; first, the King; secondly, the Lords Spiritual and Temporal, which is an aristocratic assembly of persons selected for their piety, their birth, their wisdom, their valour, or their property; and thirdly, the House of Commons, freely chosen by the people from among themselves, which makes it a kind of democracy; as this aggregate body, actuated by different springs, and attentive to different interests, composes the British Parliament, and has the supreme disposal of everything; there can no inconvenience be attempted by either of the three branches, but will be withstood by one of the other two; each branch being armed with a negative power sufficient to repel any innovation which it shall think inexpedient or dangerous.

3. 'Here then is lodged the sovereignty of the British Constitution; and lodged as beneficially as is possible for society. For in no other shape could we be so certain of finding the three great qualities of government so well and so happily united. If the supreme power were lodged in any one of the three branches separately, we must be exposed to the inconveniencies of either absolute monarchy, aristocracy, or democracy; and so lack two of the principal ingredients of good polity, either virtue, wisdom, or power. If it were lodged in any two of the branches; for instance, in the King and House of Lords, our laws might be providently made and well executed, but they might not always have the good of the people in view: if lodged in the King and Commons, we should lack that circumspection and mediatory caution, which the wisdom of the Peers is to afford: if the supreme rights of legislature were lodged in the two Houses only, and the King had no negative on their proceedings, they

nations.) Civil lawyers will solemnly tell you that a slave is *nobody*; as common lawyers will say that a bastard is the *son of nobody*. But to an unprejudiced eye, the condition of a state is the condition of *all* the individuals, without distinction, who compose it.

<sup>2</sup> [This refers to the 'observation' in chapter 2, sections 24–25 that every sound government must have one of the three forms paraded by the ancients.]

might be tempted to encroach on the royal prerogative, or perhaps to abolish the kingly office, and thereby weaken (if not totally destroy) the strength of the executive power. But the constitutional government of this island is so admirably tempered and compounded, that nothing can endanger or hurt it, but destroying the equilibrium of power between one branch of the legislature and the rest. For if ever it should happen that the independence of any one of the three should be lost, or that it should become subservient to the views of either of the other two, there would soon be an end of our constitution. The legislature would be changed from that which was originally set up by the general consent and fundamental act of the society; and such a change, however effected, is, according to Mr Locke (who perhaps carries his theory too far) at once an entire dissolution of the bands of government, and the people would be reduced to a state of anarchy, with liberty to constitute to themselves a new legislative power.'

4. In considering the first of these two paragraphs, the first thing we encounter is a certain *executive power*, that now for the first time bolts out on us without warning or introduction.

The only power our author has been speaking of until now is *legislative power*. It is to this, and only this, that he has given the name 'sovereign power'. It is the different distributions of this power that he makes the characteristics of his three different forms of government. It is with these different distributions of the legislative power that he says are connected the various qualifications laid down by him as 'requisites for supremacy'—qualifications the possession of which constitute all the advantages that can belong to any form of government. Coming then to the British constitution, the superior degree in which its legislative body possesses these qualifications are supposed to constitute its peculiar

excellence. It has the advantage of a monarchy by virtue of possessing the qualification of strength. But *how* does it (according to our author) have the qualification of strength? By any disposition made of the legislative power? By the legislative power's being lodged in the hands of a single person, as in a monarchy? No; but by a disposition made of a new power, which appears as it were parenthetically—a new power that we now hear of for the first time, an executive power that has not been descriptively distinguished from legislative power.

5. What then is this same executive power? I suspect that our author would not find it easy to inform us. 'Why not?' says an objector. 'Is it not that power which in this country the King has in addition to his share in the legislative power?' Be it so: the difficulty for a moment is staved off. But it is far from being resolved, as a few questions will soon show us.

- Is this power only what the King really has, or is it all that he is said to have?
- Does it include judiciary power? If it does, does it include the power of making not only particular decisions and orders but also general, permanent, spontaneous regulations of procedure such as judges sometimes make?
- Does it include supreme military power? In ordinary times as well as in a time of martial law?
- Does it include the supreme fiscal power; and in general that power that extends over the public money as well as over every other article of public property, and may be styled 'dispensatorial'? [Bentham has footnotes explaining what he means by 'fiscal' and 'dispensatorial'.]
- Does it include the power of granting patents for inventions, and charters of incorporation?
- Does it include the right of making bye-laws in corporations? And is the right of *making* bye-laws in corporations superior



to the right of *conferring the power to make* them? If so, there is an executive power that is superior to a legislative one.

- Does this executive power include the right of substituting the laws of war for the laws of peace, and the laws of peace for the laws of war?

- Does it include the right to make treaties with foreign powers that will restrain the trading activities of its own subjects?

- Does it include the right of delivering over, by virtue of the such treaties, large bodies of subjects to foreign laws?

Anyone who wants to •understand what power is executive and not legislative, and what is legislative and not executive; to •delineate the different species of constitutional powers; to •describe what is or what ought to be the constitution of a country, and particularly of this country—let him think of these things!

6. In the next place we are told in parenthesis (it being a matter so plain as to be taken for granted) that ‘each of these branches of the legislature is *independent*’, yes ‘*entirely independent*’, of the other two. Is this really the case? Those who consider •the influence the King and so many of the lords have in the election of members of the House of Commons; •the King’s power at a minute’s warning to put an end to the existence of any House of Commons; •the influence the King has over both Houses through offices of dignity and profit given and taken away again at his pleasure; •the fact that the King depends for his daily bread on both Houses, but more particularly on the House of Commons; not to mention •a variety of other details to the same effect, will judge how precisely our author was writing when he so roundly asserted the affirmative [asserted that the three branches of the English government are entirely independent of one another].

7. One parenthesis more (this sentence teems with parentheses within parentheses): To this we are indebted for

a very interesting piece of intelligence, namely a full and true account of the personal merits of the members of the House of Lords. He is enabled to do this by means of simple and ingenious contrivance, namely of looking at their titles. By looking at men’s titles, our author perceives not merely that they ought to have certain merits, not that there is reason to wish they had them, but that they do actually have them, and that it is by having those merits that they came to have these titles. Seeing that some are bishops, he knows that they are pious; seeing that some are peers, he knows that they are wise, rich, valiant.

·START OF A FOOTNOTE·

Our author tells us that the House of ‘Lords spiritual and temporal’ is ‘an aristocratic assembly of persons selected for their piety, their birth, their wisdom, their valour, or their property’. I think I have distributed these endowments as he must have intended them to be distributed. **Birth** to members of that assembly who have their seat in it by descent; and **wisdom, valour, and property** to those who are there by creation [i.e. were given their peerage instead of inheriting it]. So much for the temporal peers. And **piety**, singly but entirely, among my Lords the Bishops. If these right reverend persons could lay a decent claim to any of the other three endowments, it would be wisdom; but it would be a poor compliment to attribute worldly wisdom to them, and the wisdom that comes from above is fairly included under piety; so I conclude that when they are secured in the exclusive possession of this grand virtue of piety, they have all that was intended for them.

There is a remarkable period in our history at which, measuring by our author’s scale, these three virtues seem to have been at the boiling point. It was in the year 1711 in Queen Anne’s reign. In that auspicious year, **wisdom, valour,**

and **property** issued forth, it seems, with such exuberance as to furnish merit enough to stock a dozen respectable persons who were all made Barons in a day. A right reverend and contemporary historian (see Bishop Burnet's *History of my own Times*) was so little versed in our author's method of 'discerning of spirits' as to fancy that what led to the sudden introduction of so many new members into the House of Lords was merely the need to make a majority. But I leave it to those who are read in the history of that time to judge what basis there can be for so romantic an imagination! As for **piety**, the peculiar endowment of the mitre, the stock there is of that virtue, must be at all times pretty much on a level, and without question always at a maximum. We can be all the more sure of this since in another place he assures us, with regard to ecclesiastical matters, that 'everything is as it should be'.

·END OF FOOTNOTE·

8. The more we consider his way of applying the common-place notions of the three forms of government to our own government, the more aware we'll be of the wide difference between *reading* and *thinking*. He finds our government to be a combination of these three: it has a monarchic branch, an aristocratic, and a democratic. The aristocratic is the House of Lords; the democratic is the House of Commons. No doubt our author had read much, at school and at college, of the wisdom and gravity of the Spartan senate; something, probably in Montesquieu and elsewhere, about the Venetian senate. He had read of the turbulence and extravagance of the Athenian mob. Full of these ideas, the House of Lords were to be our Spartans or Venetians; the House of Commons, our Athenians. With respect then to the point of wisdom (never mind honesty) the consequence is obvious: the House of Commons, however excellent in point of honesty, is an

assembly with less wisdom than the House of Lords. This is what our author makes no scruple of assuring us. A Duke's son gets a seat in the House of Commons; that is enough to make him the very model of an Athenian cobbler!

9. Let us find out, if we can, what can have led to this notion of the lack of wisdom in the members of a democracy, and of the abundance of it in those of an aristocracy. Then we shall then how appropriate it is to transfer such a notion to *our* Houses of Lords and Commons.

In the members of a democracy in particular, there is likely to be a lack of wisdom. Why? Most of them are poor; so when they begin to undertake the management of affairs, they are uneducated; so they are illiterate; so they are ignorant—and unwise, if that is what is meant by 'ignorant'. Depending for their daily bread on the profits of some petty traffic, or the labour of some manual occupation, they are nailed to the work-board or the counter. In the business of government, it is only by fits and starts that they have leisure so much as to *act*; they have no leisure to *reflect*. So: ignorant they start, and ignorant they continue. But to what extent is this the case with the members of our House of Commons?

10. On the other hand, the members of an aristocracy, being few, are rich: either they are members of the aristocracy because they are rich or they are rich because they are members of the aristocracy. Being rich, they are educated; being educated, they are learned; being learned, they are knowing. They are at leisure to reflect as well as to act. They may therefore naturally be expected to become more knowing, i.e. more wise, as they persevere. To what extent is this more the case with the members of the House of Lords than with those of the House of Commons? The fact is, as everybody sees, that the members of the House of Commons are as much at leisure as those of the House of Lords, or if

they are occupied, they are occupied in a way that tends to give them a more than ordinary insight into some particular department of government. In whom shall we expect to find so much knowledge of Law as in a professional lawyer? of Trade as in a merchant?

11. But wait! When our author attributes to the members of an aristocracy more wisdom than to those of a democracy, he has a reason of his own. Let us try to understand it, and then apply it as we have applied the others. It is this: in aristocratic bodies there is more *experience*—at least it is ‘intended’ by somebody that there *should be*, which apparently serves the same purpose as if there *was*:

‘In Aristocracies there is more wisdom to be found, than in the other frames of government; being composed, or intended to be composed, of the most experienced citizens.’

So we are to take it for granted on this ground that the members of the House of Lords have more wisdom among them than those of the House of Commons. This article of *experience* is to provide us with a particular ground for attributing more wisdom to the members of the upper House than to those of the lower.

12. Our author has not told us how a member of an aristocracy, as such, is to have attained more ‘experience’ than a member of a democracy, or what this experience consists of. Is it experience of things that are preparatory to but different from the business of governing? If so, this should be called ‘knowledge’, not ‘experience’. Is it experience of the actual business of governing? Let us see. Suppose that a member of the democracy *starts* on this business on the very same day as a member of the aristocracy. Is one of them more experienced than the other *on that day?* or on that day’s tenth anniversary?

13. Those who recollect what I said in section 9 above may

answer without hesitation ‘on that day’s tenth anniversary’, for the reason I gave there: namely the lack of leisure that most of the numerous members of a democracy must necessarily labour under, more than those of an aristocracy. But what has our author said that even hints at this?

14. So much with respect to aristocracies in general. It happens that the particular branch of our own government that he has called ‘aristocratic’, the House of Lords, *does* actually have greater opportunities for acquiring experience than does the other branch, the House of Commons, which he has called ‘democratic’. But why is this? Not because of anything in the characteristic natures of those two bodies—not to one’s being aristocratic and the other democratic—but to an entirely foreign and accidental circumstance, which we shall see presently. But let us observe his reasoning. The proposition to be proved is: *The House of Lords is an assembly that behoves to have more wisdom in it than the House of Commons.* Now for the proof:

- The former is an aristocratic assembly, the latter a democratic one.
- An aristocratic assembly has more experience than a democratic one; therefore
- The House of Lords has more wisdom than the House of Commons. Q.E.D.

This whole argument rests on the proposition that an aristocratic assembly, as such, has more experience than a democratic one; but our author has given us no reason to believe this concerning aristocratic assemblies in general. It does happen to be the case with respect to our House of Lords in comparison with our House of Commons, simply because the members of the House of Lords, when once they enter it, are there for life, whereas members of the House of Commons are in it for only seven-year terms and sometimes less.

15. By ‘experience’ here I mean ‘opportunity of acquiring experience’; for actual experience depends on other concurrent causes.

16. But it is from superiority of experience alone that our author derives superiority of wisdom. He has indeed the old proverb in his favour: ‘Experience is the mother of wisdom.’ So be it; but then *interest* is the father. There is even an interest that is the father of *experience*. Among the members of the House of Commons, though none are so poor as to be illiterate, there are many whose fortunes are yet to be made. The fortunes of those of the House of Lords (I speak in general) are made already. The members of the House of Commons may hope to become members of the House of Lords. The members of the House of Lords have no higher House of Lords to rise to. •Is it natural for those to be most active have the most interest to be so or those who have the least? •Are the experienced those who are the most active or those who are the least? •Does experience come to men when asleep, or when awake? •Is it the members of the House of Lords that are the most active, or of the House of Commons? To put it plainly: is more business done in the House of Lords or in the House of Commons? •Was it after the fish was caught that the successor of St Peter used the net, or was it before?<sup>1</sup> •In a word is there most wisdom ordinarily where there is least to gain by being wise, or where there is most?<sup>2</sup>

17. A few words more about the characteristic qualifications, as our author states them, of our House of Lords. Because they are an aristocratic assembly, experience is to provide them with wisdom; we have come this far, but he now pushes the deduction a step further. Wisdom is to provide them with ‘circumspection and mediatory caution’—qualifications that we would see nothing of if it weren’t for them. As to ‘circumspection’ I say nothing; I hope that it is not lacking to either House. But what about ‘mediatory caution’? There is so little business that *originates* in the House of Lords that our author seems to forget that there is any. But there is some. When a bill then originates with the Lords and is sent down to the Commons, which of the Houses has to exercise ‘mediatory caution’?

18. So much for these two branches of our legislature, so long as they continue to be what, according to our author’s principles, they are at present: the House of Lords the aristocratic branch, the House of Commons the democratic one. . . . By what characteristic does our author distinguish an aristocratic legislative body from a democratic one? By that of number: by the number of the persons that compose them; by that and that alone, for he has given no other. [Nothing that Bentham has quoted from Blackstone implies that the House of Commons is democratic because of how many people it *contains*; it seems reasonable to credit him with thinking that it is democratic because of how many people it *represents* or how many *voters* it is answerable

<sup>1</sup> Everyone has heard the story of him who rose from being a fisherman to being an Archbishop and then Pope. While Archbishop, it was his custom every day, after dinner, to have a fishing net spread on his table as a reminder, as he used to say, of the meanness of his origins. This farcical display of humility contributed considerably in those days to the increase of his reputation. Soon after his elevation to St Peter’s throne, one of his intimates remarked one day when dinner was over that the table was not decked as usual. ‘Peace!’, answered the Holy Father, ‘when the fish is caught, there is no occasion for the net.’

<sup>2</sup> In the House of Commons itself, is it by the opulent and independent country gentlemen that the chief business of the House is transacted, or by aspiring and perhaps needy courtiers? The man who would persevere in the toil of government with no reward but the favour of the people is certainly the man for the people to choose. But such men are at best but rare. Were it not for the children of corruption I have been speaking of, the business of the state, I suspect, would stagnate.

to. If that is right, Bentham's forthcoming jibe is entirely unfair.] By that criterion, the House of Lords is indeed at present the aristocratic branch, and the House of Commons—at least in comparison with the other—the democratic one. But if the list of nobility swells at the rate we have sometimes seen it do, it may not be so very long before the assembly of the Lords will be more numerous than that of the Commons. Which will then be the aristocratic branch of our legislature? On our author's principles, the House of Commons. Which the democratic? The House of Lords.

19. The goal. . . . of this sublime and edifying dissertation is a demonstration (for by no less a title ought it to be called) he has been giving us of the perfection of the British form of government. It is based, we may have observed, altogether on the properties of numbers. These properties are newly discovered, and have an extraordinary constitution that lets them be moral properties; but it seems that they are nevertheless properties of numbers. If we can find these characteristic properties of the three forms of government anywhere, it is in the nature of numbers. [He goes on to say that a demonstration involving numbers should be expressible in arithmetical form; that Blackstone has the 'substantial honour' of having already provided the demonstration itself; and that he (Bentham) will merely perform the 'humble task' of getting it into that form, 'a mere technical operation'.]

20. [He then offers a bizarre and tiresome piece of pseudo-arithmetic, with pluses and minuses in front of the names of moral qualities. Its absurdity is supposed to count against Blackstone, but it is not well enough done to count for or against anything. It is omitted from this version.]

21. So much for the British Constitution; and for the grounds of that pre-eminence which it boasts—not without

reason, I trust—above all others that are known. Such is the idea our author gives us of those grounds. 'You are not satisfied with it then?', says someone. Not perfectly. 'Then what is your own idea of those grounds?' In truth this is more than I have yet quite settled. I may have settled it with myself, and not think it worth giving; but if I ever do think it worth giving, it will hardly be in the form of *a comment on a digression stuffed into the belly of a definition!* At any rate it is not likely to be much wanted by anyone who has read what has been given us on this subject by an ingenious foreigner;<sup>1</sup> since it is to a foreigner we were destined to owe the best idea that has yet been given of a subject so much our own. Our author has *copied*; but Monsieur de L'Olme has *thought*. The topic that our author has thus brought on the carpet (let anyone judge with what necessity) is in respect to some parts of it that we have seen of a rather invidious [see Glossary] nature. But since it *has* been brought on the carpet, I have treated it with the plainness with which an Englishman of all others is bound to treat it, because an Englishman can treat it thus and be safe. I have said what the subject seemed to demand, without any fear of giving offence, but also without any wish to do so; resolving not to let myself consider how this or that man might take it. I have spoken without sycophantic respects indeed, yet I hope not without decency; certainly without any partisan anger. I chose to leave it to our author to compliment men in the lump, and to stand aghast with admiration [Bentham's phrase] at the virtues of men unknown [see section 7 above]. Our author will do what he finds appropriate. For my part, if I ever sing eulogies to great men, it will be not because they *occupy* their station but because they *deserve* it.

<sup>1</sup> Jean Louis Delolme, *Constitution de l'Angleterre*.

## Chapter 4: Right of the Supreme Power to Make laws

1. We now come to the third topic touched on in the digression, namely what our author calls ‘the right the supreme power has of making laws’. This topic occupies one pretty long paragraph. The title I give it here is the one that he has found for himself in the immediately following paragraph. This is fortunate, because it would have been to the last degree distressing if I had been obliged to find a title for it myself. To give a discourse a title is to represent the drift of it. But to represent the drift of *this* is a task that defies my utmost efforts as long as I confine my consideration to the paragraph itself.

2. Such conjectures as I have been able to make about it are based on another passage or two that we have already seen starting up in distant parts of this digression. But I could not have ventured to rely on them in providing the paragraph with a title framed by myself. There was too much danger of misrepresentation—a kind of danger that imminently threatens a man who ventures to put a precise meaning on a discourse that in itself has none. I will just say that what he is really aiming at seems to be to convince us that in every state there must be a power that is absolute in some hands or other. I mention it thus prematurely so that the reader may have some clue to guide him in his progress through the paragraph; which it is now time I should recite. [It is given, verbatim, in section 3.]

3. ‘Having thus cursorily considered the three usual species of government, and our own singular constitution, selected and compounded from them all, I proceed to observe, that, as the power of making laws constitutes the supreme authority, so wherever the supreme authority in any state resides, it is the right of that authority to make laws; that is,

in the words of our definition, to prescribe the rule of civil action. And this may be discovered from the very goal and institution of civil states. For a state is a collective body, composed of a multitude of individuals united for their safety and convenience, and intending to act together as one man. If it therefore is to act as one man, it ought to act by one uniform will. But in as much as political communities are made up of many natural persons, each of whom has his particular will and inclination, these several wills cannot by any *natural* union be joined together, or tempered and disposed into a lasting harmony, so as to constitute and produce that one uniform will of the whole. It can therefore be no otherwise produced than by a *political* union; by the consent of all persons to submit their own private wills to the will of one man, or of one, or more assemblies of men, to whom the supreme authority is entrusted: and this will of that one man, or assemblage of men is, in different states, according to their different constitutions, understood to be law.’

4. The other passages that suggested the construction I have ventured to put on this will be mentioned by and by. First, let us see what we can make of the paragraph by itself.

5. The obscurity in which the first sentence of this paragraph is enveloped is so great that I don’t know how to bring it to light without borrowing a word or two from logicians. Setting aside the preamble, the body of the sentence, namely ‘as the power of making laws constitutes the supreme authority, so wherever the supreme authority in any state resides, it is the right of that authority to make laws’,

may be considered as constituting the sort of syllogism that logicians call an *enthymeme*. An enthymeme consists of two propositions, a consequent and an antecedent. His **antecedent**: ‘**The power of making laws constitutes the supreme**

**authority.’ His consequent: ‘Wherever the supreme authority in any state resides, it is the right of that authority to make laws.’<sup>1</sup>**

This antecedent and this consequent, for any difference I can perceive in them, if they were correctly worded would mean precisely the same thing. After saying that ‘the power of making laws constitutes the supreme authority’, to tell us that therefore ‘the supreme authority’ is (or has) the power (or the right) of making laws, seems to be giving us much the same sort of information as would telling us that a thing is so *because* it is so. . . . That by the ‘sovereign power’ he meant ‘the power of making laws’, this or something like it is no more than what he had told us over and over and over again, with singular energy and anxiety, on his pages 46, 49, and I don’t know how many other pages. Always taking care, for precision’s sake, to give a little variety to the expression: the words ‘power’ and ‘authority’ sometimes seemingly put for the same idea, sometimes seemingly opposed to each other; both of them sometimes denoting that fictitious being the *abstract quality*, sometimes the *real being or beings*, the person or persons supposed to *have* that quality. Let us disentangle the sense from these ambiguities; let us learn to speak distinctly of •the persons and of •the quality we attribute to them. Then let us try again to find a meaning for this perplexing passage.

6. We may suppose our author to say that by the ‘supreme authority’ ‘I mean the same thing as when I say the power of making laws’. This is the proposition I called attention to above, under the name of *the antecedent*. So this antecedent is a definition of the phrase ‘supreme authority’. Now to define a phrase is to translate it into another phrase that is supposed to be better understood and expresses the same

ideas. So the supposition here is that the reader already had, unaided, a good enough understanding of the meaning of the phrase ‘power of making laws’; and that he had less (if any) understanding of the meaning of the phrase ‘supreme authority’. On the basis of this supposition, he is being given a clear understanding the latter by being informed that it is synonymous to the former. The definition will still be essentially the same, only a little more fully and precisely worded, when the word ‘person’ is added to it: for a person to have the supreme authority is for a person to have the power of making laws. This then is what in substance has been laid down in the antecedent.

7. Now let us consider the consequent, which when detached from the context can be treated as a sentence of itself. ‘Wherever the supreme authority in any state resides, it is the right of that authority to make laws.’ By ‘wherever’, I take it for granted, he means ‘in whatever persons’; by ‘authority’ he means ‘power’ in the earlier part of the sentence, and ‘persons’ in the later part of it. Corrected therefore, the sentence will stand thus: In whatever persons in any state the supreme power resides, it is the right of those persons to make laws.

8. The only word I have not dealt with is ‘right’. And indeed I don’t know what to think of this, whether our author even had a meaning for it. It is inserted only in the later part of the sentence, not in the earlier part. Its omission from the earlier part may have happened by accident, or it may have been made by design. If by accident, then the idea annexed to the word ‘right’ in the later part of the sentence was *meant* to be included in the earlier part as well. In that case, we are not changing the meaning of the sentence if we let ‘right’ be expressed in the earlier part. Then the sentence as a whole

<sup>1</sup> [A normal syllogism has two premises and a conclusion; in an enthymeme, one premise is suppressed, leaving only two propositions, a premise and a conclusion. Bentham focuses on the two-proposition structure, without (it seems) making anything of the notion of a suppressed premise.]

will stand thus:

In whatever persons the right of exercising supreme power in any state resides, it is the right of those persons to make laws.

If it is true—and I am apt to think it is—that the omission of ‘right’ from the earlier part of the sentence was accidental, we see once more, beyond all doubt, that the consequent in this enthymeme is a mere repetition of the antecedent. We may judge then whether we are likely to gain from considering ‘the goal and institution of civil states’ or the like any further conviction of the truth of this conclusion than it presents us of itself. We may also form some judgment concerning what use or meaning there is likely to be in the assemblage of words that is to follow.

9. However improbable it is, it’s possible that the omission I have been speaking of was designed. If so, we are to understand that the word ‘right’ was meant to introduce a new idea into the later part of the sentence, additional to anything meant by the earlier part. . . . The sense of the sentence is then that whatever persons *do actually* exercise supreme power (i.e. according to the antecedent of the enthymeme, the power of making laws), those persons *have the right to* exercise it. But then what is given as a consequence does not in any respect follow from the antecedent; and nothing can be made of it except what is altogether foreign to the rest of the discourse. So much, indeed, that attributing this meaning to the sentence seems less probable, as well as less favourable to our author, than concluding that he had no meaning at all for it.

10. Let us now try what we can make of the remainder of the paragraph. Being ushered in by the word ‘for’, it seems to lay claim to being an argument. We have seen ·in sections

1 and 2 above· that this argument sets out without an object, but now it seems to have found something like one, as if it had picked it up along the way. This object, if I mistake it not, is to persuade men that the supreme power—i.e. the person or persons who exercise the supreme power in a state—ought to be obeyed in everything, without exception. What men intend to do when they are in a state, he says, is to act as if they were ·collectively· ‘one man’. But one man has only one will of his own. So what they intend—or what they ought to intend (a slight difference that our author seems not to be well aware of)—is to act as if they had only one will. The way for them to do this is to ‘join’ all their wills ‘together’. The most obvious way to do this would be to join them *naturally*; but as wills won’t splice and dovetail like deal boards, the only feasible way to do it is to join them *politically*; and the only way for men to do *this* is for them all to consent to submit their wills to the will of one. This one will is the will of the persons who exercise the supreme power; and when there happens to be many of them, their wills must already have been reduced to *one*, though our author has said nothing about the process by which this is done. So far our author’s argument. The above is the substance of it fairly given; not altogether with as much ornament as he has given it, but I hope with somewhat more precision. The whole thing concludes with our author’s favourite identical proposition [see section 5 above] or something like it, now repeated for the twentieth time.

11. Taking it altogether, it is certainly a very ingenious argument: nor can anything in the world answer the purpose better, except just in the case where it happens to be wanted.<sup>1</sup> A veteran antagonist, trained in the discipline of legal fencing, might with due management contrive to give

<sup>1</sup> [Perhaps meaning ‘except in the case where there would be something for it to do, if it were any good’.]



our author a victory. But if some undisciplined blunderer with no knowledge of the niceties of fencing were to attack, I suspect that he would get within our author's guard:

I 'intend'? I 'consent'? I 'submit' myself? 'Who are you, I wonder, to know what I do better than I do myself? As for 'submitting my will' to the wills of the people who made this law you are speaking of, I know that I never intended any such thing. I abominate those people, I tell you, and all they ever did; and I have always said so. As for my 'consent', so far have I been from giving it to their law that from the first to the last I have protested against it with all my might.

So much for our refractory disputant. I know what I would say to him; but what our author could find to answer to him is more than I can imagine.

12. Let us now go back and pick up those other passages [mentioned in section 2 above] that I supposed to be part of the same plan that seems to be in view in the paragraph I have been discussing. First comes the short introductory paragraph that ushers in the whole digression [see Introduction, section 5]. Though it was short, and imperfect [see Glossary] with respect to the purpose of giving a general view of the contents of the paragraphs that follow it, it was intended to expatiate on this subject. On this subject, indeed, he does expatiate with a force of argument and energy of expression that nothing can withstand. 'This', it begins, 'will necessarily lead us into a short enquiry concerning the nature of society and civil government. . . .' That is all the intimation it gives of the contents of the paragraphs I have examined. On the one now before us it touches in terms that are energetic, but more energetic than precise. It continues: '. . . and the natural and inherent right that belongs to the sovereignty of a state, wherever that sovereignty be lodged, of making and enforcing laws.'

13. This is not all. The most emphatic passage is still to come. It is part of that short paragraph which we found [chapter 2, section 11] to contain such a variety of matter. He is there speaking of the various forms of government now in existence: 'However they began, or by what right soever they subsist, there *is* and *must be* in all of them a *supreme, irresistible, absolute, uncontrolled* authority, in which the *jura summi imperii*, or the rights of sovereignty, reside.'

14. The vehemence, of this passage is remarkable. He ransacks the language; he piles up, one on another, four of the most tremendous epithets he can find; and as if the English tongue did not provide sufficiently strong or imposing expressions, he tops the whole with a formidable piece of Latinity. All this agitation makes it plain, I think, that he has very much at heart something that he **a** wants to bring out undisguised but perhaps **b** fears to do so. In several places it bursts out involuntarily, as it were, before he is well ready for it. Eventually a certain **b** discretion gets the upper hand over **a** propensity and, as we have seen, allows it to dribble away in a string of obscure sophisms. . . .

15. Even someone much braver than our author might have hesitated here. The task to be travelled through was the intricate one of adjusting the claims of those two jealous antagonists, *liberty* and *government*. A more invidious [see Glossary] battleground is scarcely to be found anywhere within the field of politics. Enemies encompass the traveller on every side. He can hardly move without being assaulted with the war-whoop of *political heresy!* from one direction or another. Difficult enough is the situation of someone who in this difficult terrain feels himself impelled one way by **b** fear and another by **a** affection.

16. Let us return to the paragraph which it was the more immediate business of this chapter to examine. If our author were not so given to **o**bscurity, one might imagine

that he had gone in for •it on this particular occasion as a way of extricating himself from this dilemma. A discourse thus prudently indeterminate might say enough to •keep in favour with the rulers of the earth without •taking a stand against the prejudices of the people. Viewed by different persons, it might present different aspects:

•To men in power it might recommend itself, right from the start, as a practical lesson of obedience for the use of the people.

•Among the people themselves it might pass muster, for a while at least, as a string of abstract scientific propositions of jurisprudence.

Its true use and efficacy would be brought to light only when there was an occasion for applying it, an occasion—no matter what—when the people begin to murmur and to join together in measures of resistance. Now is the time for the latent virtues of this passage to be called forth. The book is to be opened to them, and in this passage they are to be shown a set of arguments elaborately strung together and wrapped up, in proof of the universal necessity of submission—a necessity that is to arise not out of the reflection that *the probable mischiefs* [see Glossary] *of resistance are greater than the probable mischiefs of obedience*, not out of any such debatable consideration; but out of something that is •intended• to be much more cogent and effectual, namely a certain *metaphysico-legal* impotence, which is to •beget in them the sentiment •of obedience•, and •serve all the purposes of a *natural* impotence. Armed and full of indignation, our malcontents are making their way to the royal palace. In vain. A certain estoppel<sup>1</sup> being made to bolt out on them by the force of our author's legal engineering, their arms are to fall as though by enchantment from their hands. They are told

that it is now too late to disagree, to clamour, to oppose—in short, to take back their wills again. Their wills *have* been legally combined with the rest: they *have* 'united', they *have* 'consented', they *have* 'submitted'. Our author having thus put his hook into their nose, they are to go back as they came, and all is peace. An ingenious enough contrivance! But popular passion is not to be fooled so easily, I suspect. It's true that now and then one error may be driven out, for a time, by an opposite error; one piece of nonsense by another piece of nonsense; but for barring the door effectively and for ever against all error and all nonsense, there is nothing like the simple truth.

17. After our author has taken all this trouble to inculcate unreserved submission, would anyone have expected to see him among the most eager to arouse men to disobedience? and that perhaps on the most frivolous pretences? indeed on any pretence whatever? Yet that is what we shall find him to be if we look back a little. The most enlightened advocates for liberty are content with leaving it to subjects to resist, for their own sakes, on the basis of *permission*, but this will not content our author, who insists on forcing disobedience on them as a point of *duty*.

18. [In this section, 'allowed' replaces Bentham's 'suffered', which used to have that meaning.] In a passage before the digression we are examining but in the same section, speaking of the pretended law of nature and of the law of revelation, our author says 'no human laws should be *allowed* to contradict these'. The expression is remarkable. It is not that no human laws should contradict them, but that no human laws should be *allowed* to contradict them. He then proceeds to give us an example. One might expect an example that would have the effect of softening the dangerous tendency [see Glossary] of

<sup>1</sup> [[estoppel = 'The principle which precludes a person from asserting something contrary to what is implied by his or her previous action or statement' (OED)]]

the rule, but he gives one that is certain to enhance it;<sup>1</sup> and in the application of it to the rule, the substance of the latter is again repeated in still more explicit and energetic terms. Speaking of the act he instances, he says ‘Nay, if any human law should allow or command us to commit it, we are *bound to transgress* that human law, or else we must offend both the natural law and the divine.’

19. The propriety of this dangerous maxim so far as the divine law is concerned is something I must refer to a future occasion for more particular consideration. As for the *law of nature*,

- if (as I trust it will appear) it is nothing but a phrase,

- if the only way to prove any act to be an offence against it is to show the harmful tendency of that act;

- if there is no way to prove a law of the state to be contrary to it except to show the inexpediency of that law, unless someone’s bare unfounded disapproval of it is called a ‘proof’;

- if neither our author nor anyone else has even *pretended* to give a test for distinguishing laws that would be contrary to the law of nature from ones that are merely inexpedient;

- if, in short, there is hardly any law that those who disliked it have not found to be *somehow* in conflict with some supposed law of nature.<sup>2</sup>

I see no upshot but that the natural tendency of such a doctrine is to impel a man, by the force of conscience, to rise up in arms against any law that he happens not to like. I must leave to our author to tell us what sort of government can be consistent with such a disposition.

20. The only clue to guide a man through these straits is the principle of utility, accurately apprehended and steadily applied. It is the only thing that can—if anything can—yield a decision that neither party will dare in theory to disavow. To reconcile men even in theory is something; it brings them nearer to an effective union than when they are at odds in respect of theory as well of practice.

21. In speaking in chapter 1 of the supposed contract between king and people, I have already had occasion to give what seems to me to be the only general description that can be given of the juncture [see Glossary] at which resistance to government becomes commendable, i.e. reconcilable to just notions of legal or at least of moral duty and—if there is any difference—of religious duty. [See chapter 5, section 7.] I said this with reference to the particular branch of government that was then in question, the branch that in this country is administered by the King. But if it was sound in application to that branch of government and in this country, the reason for that would also make it sound for the whole of government in *any* country. For each individual man, then, the juncture for resistance is the moment when

according to the best calculation he can make, the probable mischiefs of resistance (speaking with respect to the community in general) appear less to him than the probable mischiefs of submission.

That is the moment when it first becomes **a** allowable to him, if not **b** incumbent on him—on the score of **b** duty as of **a** interest—to enter into measures of resistance.

<sup>1</sup> It is that of *murder*. In this word there lurks a fallacy that makes the proposition the more dangerous as well as more plausible. It is too important to be entirely passed over, but in this place a slight hint is all I can give. Murder is *killing* under certain *circumstances*. Is the human law then to be allowed to define what those circumstances are? •If yes, the case of a ‘human law allowing or enjoining us to commit it’ is a case that is not so much as supposable because no law could conceivably list all the circumstances in question. •If no, adieu to all human laws: we can burn all that we have been accustomed to calling our ‘law books’; the only law books we can be safe in trusting to are Pufendorf and the Bible.

<sup>2</sup> [The original has ‘some text of scripture’, but this must be a slip.]

22. A natural question here is: by what sign—what common signal equally conspicuous and perceptible to everyone—shall this juncture be known? A question that it is easy enough to ask; and I hope it will be almost as easily seen to be impossible to answer. Common sign for such a purpose? I know of none; anyone who can show us one must be more than a prophet, I think! A particular sign for each particular person? I have already given one: his own internal conviction of a balance of utility on the side of resistance.

23. Unless such a ·common· sign can be shown (which I think it cannot), the field of the supreme governor's authority, though not infinite, must unavoidably be allowed to be indefinite.<sup>1</sup> I can't see any narrower limits to it under this constitution—or under any even freer constitution, if there is one—than under the most despotic constitution. Before the arrival of the juncture I have been describing, resistance would come too soon, even in a country like this one; when the juncture has arrived, the time for resistance has come, even under a government that everyone would call despotic.

24. Then what is the difference between a government that is **a** free and one that is **b** despotic? Is it that the persons who have supreme power have less power in **a** one than in **b** the other, when it is from custom that they derive it? By no means. The difference has nothing to do with what limits there are to power in the two kinds of state; it depends on facts of a very different kind:

- on how the whole mass of power that constitutes the supreme power is, in a free state, distributed among the various ranks of persons who share in it;

- on the source from which their titles to it are successively derived;

- on the frequent and easy changes of condition between governors and governed, whereby the interests of the one class are more or less indistinguishably blended with those of the other;

- on the *responsibility* of the governors, i.e. a subject's right to have the reasons for every act of power that is exerted over him publicly assigned and canvassed;

- on the liberty of the press, i.e. the security with which every man, whether governor or governed, may make known his complaints and remonstrances to the whole community;

- on the liberty of public association, i.e. the security with which malcontents may communicate their sentiments, co-ordinate their plans, and practise every mode of opposition short of actual revolt, before the executive power can be legally justified in disturbing them.

25. It may be true—especially because of this last point—that in a state of this kind the road to a revolution (if one is necessary) seems to be shorter, and is certainly smoother and easier ·than in a despotic state·. There is certainly more likelihood its being a revolution that is the work of a number, and in which, therefore, the interests of a number will be consulted. Grant then that for these reasons the juncture may arrive sooner and on less provocation under what is called a **a** free government than under what is called an **b** absolute one; but even with this granted, until the juncture has arrived, resistance is as much too soon under **a** one of them as under **b** the other.

26. Let us then steadily but calmly admit what our author hazards with anxiety and agitation, namely that the authority of the supreme body cannot, except where limited by express convention, be said to have any definite or certain limits. •To

<sup>1</sup> Unless it is limited by express convention; for example where one state has, upon terms, submitted itself to the government of another; or where the governing bodies of a number of states agree to take directions in certain specified cases from some body that is distinct from all of them, consisting of members, for instance, appointed out of each.

say there is any act they *cannot* do, •to speak of anything of theirs as being *illegal* or as being *void*, •to speak of their exceeding their *authority*, their *power*, their *right* (whatever the phrase is)—all this, however common, is an abuse of language.

27. The legislature cannot make a law to this effect? Why *cannot*? What would hinder them? Many other laws are murmured at as inexpedient yet submitted to without any question of the right; so why pick on this one? With men whose affections are already enlisted against the law in question, anything will go down—any rubbish is good that will add fuel to the flame. But for an impartial bystander, it is plain that he cannot get the smallest satisfaction from anything along the lines of denying the right of the legislature, their authority, their power, or whatever be the word.

28. Grant that there *are* certain bounds to the authority of the legislature; does this get us any further? What is the use of saying this when nobody has ever tried to mark out these bounds to any useful purpose, i.e. in such a way that it might be known beforehand what a law must be like not to transgress them? ‘There are things that the legislature cannot do; there are laws that exceed the power of the legislature to establish.’ What rule does this way of talking provide us with for determining whether any given law is one of them? As far as I can discover, none. Either •the talk goes on in the confusion it began in, consisting in vague assertions and supported by no intelligible argument, or •arguments are drawn from the principle of utility—arguments which, whatever variety of words they are expressed in, eventually boil down to just this: that the tendency [see Glossary] of the ·challenged· law is to a greater or a less degree pernicious. If this is the result of the argument, why not come home to it at once? Why turn aside into a wilderness of sophistry when the path of plain reason is straight before us?

29. When people talk in this way, it is not altogether clear what practical conclusions they mean should be deducible from it, and perhaps they don’t all mean the same. Some who speak of a law L as being *void* (I’ll confine myself to this word rather than travelling through the whole list) want to get us to regard L’s authors as having thereby *forfeited* their whole *power*, not only of giving force to L but also to any other law. If they had arrived at the same practical conclusion through the principle of utility, they would have spoken of L as being pernicious to such a **degree** that if the bulk of the community saw it in its true light, the probable mischief of resisting it would be less than the probable mischief of submitting to it. These call for *hostile* opposition.

30. Those who say nothing about forfeiture are usually less violent in their views. If these folk grounded themselves on the principle of utility and used its language, they would still have spoken of the law as being harmful, but without speaking of it as being harmful to the **degree** that has been just mentioned. The mode of opposition they point to is one that counts as a *legal* one.

31. Admit then that L is ‘void’ in their sense, and see what follows from this. The idea annexed to the word ‘void’ comes from the cases where we see it applied to a private instrument [i.e. legal document]. What follows from a private instrument’s being void is that all persons concerned are to act as if no such instrument had existed. So what follows from L’s being void must be that people shall act as if there were no such law as L, and therefore that if anyone were, on the strength of L, to do something—something involving coercion against another person—that he would be punishable for doing if it weren’t for L, then he would still be punishable by the judicial power. Suppose for example that L imposes a tax: a man who set about collecting the tax by force would be punishable as a trespasser; if he happened to be killed in

the attempt, the person killing him would not be punishable as for murder; if he killed, he himself *would* perhaps be punishable as for murder. Whose role would it be to bring it about that such punishment was inflicted? The judges' role. Applied to practice then, the effect of this language—in which some laws are called 'void'—is to confer on those magistrates a controlling power over the acts of the legislature.

32. A particular purpose might happen to be served by this management, and it might even be a good one. But I can't conceive of any benefit that would come to the body of the people from the general tendency [see Glossary] of such a doctrine, and such a practice in conformity to it. Suppose that a parliament is too much under the influence of the Crown, paying too little regard to the sentiments and the interests of the people. Still, the people had at least some share in choosing the parliament, even if it was a smaller share than they ought to have had. Give to the judges a power of annulling its acts, and you transfer a portion of the supreme power from an assembly which the people had at least some share in choosing to a set of men in the choice of whom they have not the least imaginable share; to a set of men appointed solely by the Crown, appointed—solely, avowedly and constantly—by the very magistrate whose partial and occasional influence is the very grievance they seek to remedy.<sup>1</sup>

33. In the heat of debate, some might say that this management was transferring the whole supreme authority from the legislative power to the judicial. But this would be going too far on the other side. There is a wide difference between a positive and a negative part in legislation. There is also a wide difference between a negative with reasons given and a negative without any. The power of *repealing*

a law, even for reasons given, is a great power—too great indeed for judges—but it is still much inferior to the power of *making* one. [Bentham has here a footnote saying: 'But there is no denying that sometimes an appeal of this sort may very well answer—and has indeed in general a tendency to answer—somewhat the purposes of those who espouse (or profess to espouse) the interests of the people. A public and authorised debate on the propriety of the law is by this means brought on. The artillery of the tongue is played off against the law, under cover of the law itself, so that sentiments unfavourable to the law are impressed on a numerous and attentive audience. As to any other effects of such an appeal, let us believe that in the instances where we have seen it made, the attempt has been encouraged by the certainty of failure.']

34. Let us now go back a little. In denying the existence of any assignable bounds to the supreme power, I added [section 26 above] 'except where limited by express convention', because I had to bring in this exception. Our author, indeed, in that short passage in which he is the most explicit, leaves no room for it. Speaking of the various forms of government, he says 'However they began, and by whatever right they subsist, there is and must be in ALL of them an authority that is absolute.' But

- to say this of all governments without exception;

- to say that no assemblage of men can subsist in a state of government without being subject to some *one* body whose authority is not limited even by convention;

- to say (in short) that not even by convention can any limitation be made to the power of the body in a state which in other respects is supreme, would be saying rather too much, I think. It would be saying

<sup>1</sup> [He means 'appointed by the Crown', using 'magistrate' in a now-extinct sense in which it covers any high-ranking person with a role in the making or administering of laws.]

that there is no such thing as government in the German empire, or in the Dutch provinces, or in the Swiss cantons, or in the ancient Achaean league.

35. I don't see what there is that need surprise us in this kind of limitation of the supreme power. How is any degree of political power established? It is neither more nor less, as I have already had occasion to remark [chapter 1, section 12, footnote], than a habit of and disposition to obedience—'habit' speaking with respect to past acts, 'disposition' with respect to future ones. Unless I am much mistaken, this disposition is easily conceived as being absent with regard to one sort of acts while present with regard to another. Thus, for a body that is in other respects supreme to be conceived as being limited with respect to a certain sort of acts, all that is needed is for this sort of acts to have a description that distinguishes it from every other sort.

36. When there is a convention, then, we are provided with the common signal that we despaired of finding in other cases [see section 22 above].

The instrument of convention specifies a certain act with respect to which the government is precluded from issuing a law to a certain effect, whether to the effect of commanding the act, of permitting it, or of forbidding it. Despite this, a law is issued to that effect.

If the sense of that law is clear, and the sense of the part of the convention that forbids it is also clear, the issuing of the law is a fact notorious and visible to all; so the issuing of such a law is *capable* of being taken for the common signal I have been speaking of. It sets the limits to the authority of the supreme body in question. What is the effect of such a demarcation? At most, that the disposition to obedience confines itself within these limits; beyond them the subject is not prepared to obey the governing body of his own state

any more than that of any other. I can't see that it is any harder to conceive a state of things in which the supreme authority is thus limited than to conceive one where it is not. I find the two states equally conceivable; whether they are equally conducive to the happiness of the people is another question.

37. God forbid that anything I say here should lead anyone to infer that in any society a convention can be made that sets an insuperable bar to something that the parties concerned think to be a reformation; God forbid that any disease in the constitution of a state should be without its remedy! Some might think that to be the case when the supreme body that was one of the contracting parties has incorporated itself with the other party and thus no longer exists to make changes in the engagement. But many ways might be found to make the required alteration without departing from the spirit of the engagement. Although **a** the body that contracted the engagement no longer exists, **b** a larger body from which **a** the first is understood to have derived its title may still exist. Let this **b** larger body be consulted. Various ways might be conceived of doing this, without any disparagement to the dignity of the existing legislature; I mean, of doing it in such a way that if the sense of the larger body is favourable to the alteration, it may be made by a law which in this case ought not to be, and probably would not be, regarded by the body of the people as a breach of the convention. [•He has here a long footnote about how an alteration might be made in the Act of Union between England and Scotland. •Throughout this section, 'the convention' and 'the engagement' refer to the same thing.]

38. To return briefly to the language used by those who speak of the supreme power as being limited in its own nature:<sup>1</sup> what I say here about the impropriety and evil influence of that kind of discourse is not intended to convey the smallest censure on those who use it, as if they intended to bring about the ill effects it has a tendency to produce. It is a misfortune in the language rather than a fault of any person in particular. The origin of it is lost in the darkness of antiquity. We inherited it from our fathers, and despite all its inconveniences I suspect that we are likely to transmit it to our children.

39. I cannot look on this as a mere dispute of words. I cannot help thinking that the disputes between contending parties—between the defenders of a law and the opposers of it—would stand a much better chance of being settled if they were explicitly and constantly referred to the principle of UTILITY. This principle rests every dispute on the footing of a matter of fact—*future* fact, the probability of certain outcomes. If the debate were conducted under the auspices of this principle, either •men would come to an agreement about that probability, or •they would eventually see, after due discussion of the real grounds of the dispute, that no agreement was to be hoped for. In the latter case, they would at least see clearly the point the disagreement turned on. The discontented party would then decide whether to resist or submit, on just grounds, according to

- what appeared to them to be worth their while,
- how important the matter in dispute appeared to them to be,
- what appeared to them to be the probability or improbability of success; in short,
- whether they thought that the mischiefs of submis-

sion would be less or greater than the mischiefs of resistance.

But the door to reconciliation would be much more open when they saw that the ground of quarrel might be not a mere affair of •passion but a difference of •judgment, and that, for anything they could know to the contrary, a sincere one.

40. All else is merely womanish scolding and childish quarrelling, which is sure to annoy and can never persuade:

'The legislature cannot do this.' 'Yes it can!'

'Doing this exceeds the limits of its authority.' 'No it does not!'

It is obvious that a pair of disputants setting out in this manner can go on annoying and perplexing one another for ever, without the smallest chance of coming to an agreement. It is only a procedure of announcing—in an obscure but also peremptory and captious manner—their opposite convictions, or rather affections, on a question of which neither of them sets himself to discuss the grounds. Through all this, the question of utility is probably never even brought on the carpet; and if it is, the language in which it is discussed is sure to be warped and clouded to make it match with the obscure and entangled pattern that we have seen.

41. On the other hand, if the debate had been initially and openly conducted on the footing of utility, the parties might eventually have come to an agreement, or at least to a visible and explicit issue:

'The mischiefs of the measure in question are of amount m.' 'Not so; they are less than that.;

'Its benefits are only of amount b.' 'Not so; they are greater.'

We can see that this is a ground of controversy very different

<sup>1</sup> [It is not clear that this refers to. The phrase 'limited in its own nature' does not occur anywhere else in this work; nor does 'natural limit', which occurs in Bentham's marginal summary at this point.]



from the previous one. The question is now plainly a matter of conjecture about certain future contingent matters of fact; to resolve it, both parties are naturally directed to support their respective opinions by the only evidence the nature of the case admits of—the evidence of past matters of fact that seem to be analogous to those contingent future ones. These past facts are almost always numerous; so numerous that a great proportion of them may well have escaped the observation of one of the parties until they were brought into view for the purpose of this debate; and this might be the whole reason why that party has the belief that sets it at variance with the other. Here, then, we have a plain and open road, perhaps, to immediate agreement; at the worst to an intelligible and explicit issue—i.e. to a ground of difference that may, when thoroughly trodden and explored, be found to lead on to agreement eventually. Once men clearly understand one another, it won't be long before they agree. It is the perplexity of ambiguous and sophistical discourse that, while it distracts and eludes the understanding, stimulates and inflames the passions.

But it is now time to return to our author, from whose text I have been gradually led astray by the delicacy and intricacy of the question it seemed to offer to our view. [He started being 'led astray' in section 20, page 48.]

## Chapter 5: Duty of the Supreme Power to Make laws

1. I now come to the last topic touched on in this digression: a certain 'duty' that our author lays on the supreme power, namely the duty of making laws. Here is his paragraph on this.

2. Thus far, as to the right of the supreme power to make

laws; but further, it is its duty likewise. For since the respective members are bound to conform themselves to the will of the state, it is expedient that they receive directions from the state declaratory of that its will. But since it is impossible, in so great a multitude, to give injunctions to every particular man, relative to each particular action, therefore the state establishes general rules for the perpetual information and direction of all persons, in all points, whether of positive or negative duty. And this, in order that every man may know what to look on as his own, what as another's; what absolute and what relative duties are required at his hands; what is to be esteemed honest, dishonest, or neither; what degree every man retains of his natural liberty; what he has given up as the price of the benefits of society; and after what manner each person is to moderate the use and exercise of those rights which the state assigns him, in order to promote and secure the public tranquillity.'

3. Still as obscure, still as ambiguous as ever! The 'supreme power', according to the definition so recently given of it by our author and so often spoken of, is neither more nor less than *the power to make laws*. We are now told that this power has a *duty* to make laws. From this we learn what? That it is its 'duty' to do what it does; i.e. to be what it is. So this is what the paragraph now before us—with its apparatus of 'fors' and 'buts' and 'sinces'—is designed to prove to us. The initial sentence seems to mean something like this.

4. [This section seems to repeat the complaint of section 3, but with tangles that it doesn't seem worthwhile unthread.]

5. The observation which (if I conjecture right) he really meant to make is one that seems very just indeed, and of considerable importance, but very obscurely expressed and not obviously connected with the purpose of what precedes it. The duty he means to be talking about here is, I take it, a

duty not so much to make laws as to take proper measures to spread abroad the knowledge of the laws that have been made: a duty which (to adopt some of our author's own words) has to do not so much with *issuing* 'directions' as with arranging for those that are issued to be '*received*'.

6. I must confess that I don't much like speaking of the *duties*

- of a supreme power,
- of a legislature (meaning a *supreme* legislature),
- of a set of men acknowledged to be absolute.

Not that I would want the subordinate part of the community to be a whit less watchful over their governors, or more disposed to unlimited submission in their conduct, than if I were to talk with ever so much peremptoriness of the governors' 'duties' and of the 'rights' that their subordinates have against them. What I am afraid of is running into solecism and confusion in discourse.

·START OF A LONG FOOTNOTE·

This note is not addressed to anyone who is not accustomed to what are called *metaphysical speculations*, or who does not intend to engage in them himself, reckoning that the benefit of understanding clearly what he is speaking of is not worth the labour.

1. Something may be said to be my duty (understand 'political duty') to do if you (or some other person or persons) have a right to have me made to do it. I then have a DUTY towards you; you have a RIGHT as against me.
2. What you have a right (understand 'political right') to have me made to do is something that I am liable according to law, upon a requisition made on your behalf, to be *punished*

for not doing.

3. I say *punished* because we can have no notion of right or of duty without the notion of punishment (i.e. of pain annexed to an act, coming for a certain reason and from a certain source).

4. The idea belonging to the word 'pain' is a simple one. To define or more generally to *expound* a word is to resolve the idea belonging to it into simple ones, or to make progress towards doing so.

5. Unless I am much deceived, the only method for informatively expounding the words *duty*, *right*, *power*, *title* [meaning 'entitlement'], and those other terms of the same sort that are so abundant in ethics and jurisprudence, is the one exemplified here. An exposition employing this method is what I call 'paraphrasis'.

6. A word W may be said to be expounded by *paraphrasis* when rather than translating it into other words, some whole a sentence of which W forms a part is translated into b another sentence the words in which express ideas that are simple, or are more immediately resolvable into simple ones, than those of a the former sentence. . . . This is the only way for abstract terms to be helpfully explained; i.e. in terms that raise images of substances perceived, or of emotions. An idea is clear only if drawn from one of those two sources.

7. The common method of defining—the method *per genus et differentiam*, as logicians call it—is no use at all in many cases. Among abstract terms we soon come to ones that have no higher genus. A definition *per genus et differentiam*, when applied to these, obviously can make no advance: it must either stop short, or turn back, as it were, upon itself, in a circulate or a repetend.<sup>1</sup>

<sup>1</sup> [•*per genus et differentiam* is Latin for 'by genus and differentia'. In defining 'triangle' as 'plane closed figure with three straight sides', we could see the first three words as naming the genus and the next four as naming the differentia. •A 'circulate' is something that goes around in a closed loop. A 'repetend' here is a verbal analogue of a repeating decimal.]

8. 'Fortitude is a virtue.' Very well, but what is a virtue? 'A virtue is a disposition.' Good again, but what is a disposition? 'A disposition is a . . . '—and there we stop. The fact is that a disposition has no higher genus; a disposition is not a . . . *anything!* This is not the way to give us any notion of what 'disposition' means. Again: 'A power is a right.' And what is a right? It is a power. Our author says somewhere that an estate is an interest; he might as well have said that an interest is an estate. It is equally impossible to define in this way any a conjunction or b preposition, such as b 'through' or a 'because':

A through is a . . . . .,

A because is a . . . . .

Continue the definitions from there!

9. Some of our author's most fundamental definitions are like that, consequently leaving the reader where they found him. I may discuss this more fully and methodically on some future occasion. In the meantime I have thrown out these loose hints for the consideration of the curious.

·END OF FOOTNOTE·

7. I think I understand pretty well what is meant by the word 'duty' (political duty) when applied to myself; but I don't think I could bring myself to apply it in the same sense, in a regular expository discourse, to people I am speaking of as my supreme governors. It is my duty to do something if I am liable to be punished, according to law, if I do not do it; this is the original, ordinary, and proper sense of the word 'duty'. Have these supreme governors any such duty? No; for if they are at all liable to punishment according to law for doing or not doing something, then they are not supreme governors after all. Those by whose authority they are liable to be punished are the supreme governors.

·START OF A LONG FOOTNOTE·

1. One may conceive three sorts of duties—political, moral, and religious—corresponding to the three sorts of sanctions by which the duties are enforced; that is, the same conduct may be a man's duty for any of these three reasons. To speak of the one of these and then (without warning to the reader) to start speaking of another, or not to let it be seen from the first which of them one is speaking of, is bound to produce confusion.

2. Political duty is created by punishment; or at least by the will ·to punish· of persons who have punishment in their hands, specified **certain** persons, political superiors.

3. Religious duty is also created by punishment, by punishment expected at the hands of one **certain** person, the supreme being.

4. Moral duty is created by a kind of motive which has hardly yet acquired the name 'punishment' because of **uncertainty** about •the persons to apply it to and about •the species and genera in which it will be applied. It comes from various sufferings caused by the ill-will of members of the community in general, a variable and **uncertain** group consisting of those who happen to be connected with the person whose duty is in question.

5. When in any of these three senses a man asserts that a bit of conduct is a duty, he is asserting the actual or probable existence of an external event, namely a punishment issuing from one of these sources in consequence of the conduct in question. This is an event extrinsic to the conduct of the party spoken of, as well as to the speaker's state of mind. If he persists in calling it a 'duty', without meaning this in any one of those senses, then he is only expressing his own internal sentiment. All he means is that he feels pleased or displeased at the thought of the conduct in question, but cannot tell why. If that is what he means, he should outright

*say* so, rather than trying to give undue influence to his individual vote by expressing it in terms that purport to declare the voice of God, or the law, or the people.

6. I do not know which of these three senses of the word our author had in mind when he said that it was the ‘duty’ of supreme governors to make laws. They cannot be subject to political duty; and to attribute to them a duty of the moral or religious kind to this effect seems rather a precipitate assertion. [Those last five words are Bentham’s.]

I suppose that what he really meant was merely that he would be glad to see them do what he is speaking of, namely ‘make laws’—that is (as he explains himself) spread abroad the knowledge of them. Would he so? So indeed would I. If our author were asked why, I don’t know what answer he would give; but I would have no difficulty answering this question when put to me. I answer ·that I would be glad to see the governors make laws· because I am convinced that it is for the benefit of the community that they should do so. This would be enough to entitle me to say that they *ought* to do it. But I would not say that it was their *duty* in a political sense. Nor would I venture to say it was their ‘duty’ in a **a** moral or **b** religious sense until I knew whether they themselves **b** thought the measures were useful and feasible, and whether **a** they were generally supposed to think so.

If I were convinced that **b** they themselves thought so, then I might say that God knows that they do. God, we are to suppose, will punish them if they fail to pursue this course; and it is then their religious duty. If I were convinced that **a** the people supposed the governors thought so, then I might say that the people will also punish them for their neglect by various manifestations of their ill-will; and then it is their moral duty. In any of these senses there can be no more propriety in saying it is the duty of the supreme power to pursue the measure in question than to say it

is their duty to pursue any other proposed measure that would be equally beneficial to the community. To usher in the proposal of a measure in this peremptory and confident manner may be pardonable in a loose rhetorical harangue, but it can never be justifiable in a composition that aims to be exact and informative. There are many kinds of **private** moral conduct whose tendency [see Glossary] is so well known and so generally acknowledged that the observance of them may well be called a ‘duty’. But to apply the same word to the particular details of **legislative** conduct, especially newly proposed ones, is I think going too far, and tends only to confusion.

·END OF FOOTNOTE·

8. The word ‘duty’, then, if applied to persons spoken of as supreme governors, is evidently applied to them in a sense that is figurative and improper; and when it is used in this sense, we can’t infer from any propositions using it the same conclusions that might be drawn from them if it were used in the other sense, which is its proper one.

9. I shall now use the word ‘duty’ in its improper sense: the proposition that it is the legislature’s duty to spread among the people as much as possible the knowledge of its will is a proposition I am most unreservedly inclined to agree with. If this is our author’s meaning, I join myself to him heart and voice.

10. What **particular** duties our author would have found for the legislature under this **general** heading of ‘duty’ is not very apparent, though it would need to have been expressed more precisely than it is if his meaning was to be grasped to any purpose. The difficulty of grasping it is made even greater by a practice that I have more than once already detected him in [chapter 2, section 11; chapter 3, section 7; chapter 4, section 19], a kind of *versatility* that is utterly vexatious to a reader who makes

a point of entering into the sentiments of his author. He sets out with the word 'duty' in his mouth, and in the character of a censor begins with all due gravity to talk to us about what **a ought** to be. In the course of this lecture our Proteus<sup>1</sup> slips aside, takes on the role of a **b** historian, gives an insensible turn to the discourse, and without any warning of the change finishes with telling us **b what is**. Because of the spirit of obsequious quietism that seems constitutional in him, our author hardly ever recognizes a difference between these two points—the **is** and the **ought to be**—opposite as they frequently are in the eyes of other men. In the second sentence of the paragraph he observes that 'it is expedient that they' (the people) 'receive directions from the state' (meaning the governing body) 'declaratory of that its will'. In the very next sentence we learn from him that what it is thus **a** 'expedient' that the state should do it **b** does do. 'But since it is impossible in so great a multitude, to give particular injunctions to every particular man relative to each particular action, therefore the state establishes general rules for the perpetual information and direction of all persons in all points, whether of positive or of negative duty.' He is saying that 'the state', meaning any state at all, does actually establish such rules. Thus far our author; so that whatever he would wish to see done *is* done, indeed is sure to be done, come what may. So that happily the duty he is here so insistently laying on his superiors will not burden them much! That is how far he is from having any determinate instructive meaning in the part of the paragraph in which apparently, and by accident, he comes nearest to it.

11. The passage is not absolutely so remote from meaning that the inventive complaisance of an admiring commentator couldn't find it to be pregnant with a good deal of useful

matter. It at least glances at the •design of disseminating knowledge of the laws, with a show of approval. If our author's writings were as sacred as they are mysterious, and if they were of the sort that stamp the seal of authority on whatever doctrines can be fastened on them, then what we have read might serve as a text from which a man could without undue violence infer the obligation to adopt as many measures as he thought would further that •design. In this oracular passage I might find inculcated . . . .as many points of legislative duty as seemed to further the purposes of digestion and promulgation ·of existing law·. Thus fortified, I might press on the legislature that it was their duty to carry out without delay many a busy project that had previously not been thought of or not heeded. I might call them with a tone of authority to their work. I might bid them to provide immediately

- for bringing to light such scattered materials as can be found of past judicial decisions, individual and neglected materials of common law,
- for registering and publishing all future ones as they arise,
- for transforming the body of the common law thus completed into statute-law, by a digest,
- for breaking down the whole ·body of law· into parcels or codes, one for each distinguishable class of persons concerned in it,
- for introducing to the notice and possession of every person his respective code;

these all being works that public necessity cries aloud for, at which professional interest shudders, and at which legislative indolence<sup>2</sup> stands aghast.

12. All these leading points of legislative management—

<sup>1</sup> [A god in Greek mythology who was said to avoid discovery by changing his shape; cf. 'versatility' few lines earlier.]

<sup>2</sup> Added by Bentham in 1822: Had I seen in those days what everybody has seen since, instead of *indolence* I would have written *corruption*.

with as many points of detail subservient to each as a careful meditation has suggested—I might enforce by our author's oracular authority. For the procedures listed above are all necessary if every man is to be made to know, in the degree in which he ought to be made to know, what (in our author's words)

'to look on as his own, what as another's; what absolute and what relative duties are required at his hands; what is to be esteemed honest, dishonest, or neither; what degree every man retains of his natural liberty; what he has given up as the price of the benefits of society; and after what manner each person is to moderate the use and exercise of those rights which the state assigns him, in order to promote and secure the public tranquility.'

In taking my leave of our author, I finish gladly with this pleasing peroration. Perhaps a scrutinizing judgment would not be altogether satisfied with it; but the ear is soothed by it and the heart is warmed.

13. I now put an end to the tedious and intricate war of words that has gone on especially during these two last chapters: a war that is perhaps wearisome enough and insipid to the reader, but beyond description laborious and irksome to the writer. What remedy? If there had been sense, I would have attached myself to the sense; finding nothing but words, I had to attach myself to them or to nothing. If the doctrine had been merely false, the task of exposing it would have been comparatively easy; but it was worse than false—meaningless. That is why it required all the trouble I have been here taking with it; to what profit let the reader judge.

'Well then', cries an objector, 'the task you have set

yourself is at an end; and the subject of it after all, according to your own representation, teaches nothing; according to your own showing it is not worth attending to. Why then give it so much attention?' I do it

- to do something to instruct, but more to undeceive, the timid and admiring student,
- to arouse him to place more confidence in his own strength, and less in the infallibility of great names,
- to help him to free his judgment from the shackles of authority,
- to let him see that a reader's not understanding a discourse may be the writer's fault rather than his own,
- to teach him to distinguish showy language from sound sense,
- to warn him not to pay himself with words,
- to show him that what tickles the ear or dazzles the imagination will not always inform the judgment,
- to show him what our author can do and has done, and what he has not done and cannot do,
- to get him to prefer fasting on ignorance to feeding himself with error, and
- to let him see that considered as an expositor of the law our author is not he that should come, and that we are still looking for another.

'Who then', says my objector, 'will be that other? Yourself?' No indeed! My mission is at an end when I have prepared the way before him.<sup>1</sup>

<sup>1</sup> [The last few lines echo the gospel according to Matthew: •'Art thou he that should come, or do we look for another?' •'Behold I send my messenger before thy face, which shall prepare thy way before thee.']

## Appendix: Preface written 46 years later

[Written for the second edition (1822), but not published with it]

**[I]** [Bentham says that he plans in this Preface to present detailed facts that will support the general view that has been a theme in most of his work over the intervening decades, namely:] that no system of government ever had or ever could have had for its principal goal the good of anyone other than the very individuals by whom on each occasion its powers were exercised; that in particular this has been the case with the least bad of all bad governments, the English—the government of the Anglo-American United States being the first of all governments to which the epithet ‘good’, in the positive sense of the word, could properly attached. [He adds that in England the main offenders have been highly placed judges who have ‘usurped’ legislative power, pretending that it is only judicial power. He names two previous writers who have shown themselves to have views like his; but remarks that they were not as open and direct as he has always been, and indicates that his ‘narration’ is more credible than theirs, because their relevant work was written for publication post mortem, when the author is ‘out of the way of all personal responsibility in respect of it’.]

**[II]** When the *Fragment* made its appearance, the sensation it produced was for some time not inconsiderable. It constituted the first considerable exception. . . .to the unqualified admiration that the *Commentaries* had for so many years received, that had ever been seen in print. [Because it was published anonymously, there were conjectures about who the author was. Bentham names three people whom some thought to have written the *Fragment*. One was John

Dunning, later Lord Ashburton, whose clear, incisive manner of thought and speech Bentham admires, and thinks he may have learned from. But:] Whatever likeness in respect of certain faculties there may have been between the illustrious advocate [Dunning] and the obscure reformist [Bentham], nothing could be much more opposite than their feelings and wishes with relation to the universal interest [that is, with relation to the welfare of the populace as a whole].

The two other conjectures about the authorship of the *Fragment* were still more completely groundless: and, though coming from professional men, as utterly improbable as conjectures can easily be. I speak of the intrinsic evidence provided by the work, compared with the high political situation and professionally known characters of these reputed authors of it. [One of the two was Lord Mansfield, whom Bentham does not discuss here, though he does later. The other was Lord Camden, a high court judge and then Lord Chancellor, whose improbability as author of the *Fragment* Bentham points out in a passage that includes some ironical self-mockery:] On the hill of forensic ambition, Lord Camden’s place had for years been on the summit; the author’s was at the bottom. Lord Camden, in his situation, could not conceivably have had any inducement to take up and keep up the tone of juvenility and novice-ship that will be seen pervading the work and painting in genuine colours the author’s mind.

For improvements in the state of the law, the author had long been under the stimulus of the appetite that age—the great moderator of most appetites—had left undamped. To Lord Camden, all improvement in that line was an object of undisguised aversion. [He offers ‘the following little history’ as evidence for that:]

Some time after the appearance of the *Fragment*, the House of Commons was found to contain a small knot of

young men who had begun to show themselves disposed to contribute to the improvement of the law. William Eden, who afterwards entered into a diplomatic career and was raised to the peerage with the title *Lord Auckland*, was one of them, probably at the head of them (I have no recollection about the others). The first fruit of their labours was the production of a bill that aimed to clear the Statute Book of a few insignificant samples of its antique rubbish. [He says that they were incapable of doing any good, but didn't do much harm. One of the laws they tried to abolish was a 13th century law forbidding the importation of 'certain pieces of coined metal called *pollards*'.] The danger of an excess of that article could not be very menacing at the time of Mr Eden's bill! In the Commons it was allowed to pass: but in the House of Lords it found armed against it an altogether irresistible authority.

It was Lord Camden's. From such authority, in a place where authority is everything, very few words were sufficient. [Bentham read them in a newspaper, no longer remembers them, but is satisfied that they belonged in a book called *Fallacies*. He says that not even the 'most determined anti-reformists' of the time at which he is writing would describe as 'intemperate' or 'immoderate' the 'reform, if such it may be called', proposed by Mr Eden's bill. He continues:] Seeing it thus dealt with, I was chagrined to the degree that may be imagined: chagrined, and at the same time even astounded; for at that time I had not yet had any suspicion of there being anything wrong with the liberalism of that leader of the whig lawyers.

[III] Among the effects of the work, such as it was, was a sort of *concussion* in the world it belonged to—in the world of politics but more particularly in the world of law.

More particularly still in the higher regions, the inhabitants of which—in this as in other professions—form a sort of celestial conclave, of the secrets of which can be observed from the neighbouring low grounds only through a medium impregnated with awe, admiration, and conjecture.

The peep given here into the mysteries may be found neither uninteresting nor uninformative: it may further the grand purposes that the work itself has for its object—purposes that may be seen containing the germ of everything that has since been sowed on the same field by the same hand. A more particular object is—throwing light into the den of the long-robed Cacus.<sup>1</sup> Cacus felt the light, and trembled.

The more extensive purpose—indeed the all-comprehensive purpose—is to call attention to the imperfections which even at that time of day were seen swarming in the frame of the government, and to the ricketiness of the only theoretical foundations that had ever been brought to support it. All such imperfections brought profit, in some shape or other, to those among whom the power was shared; so their interest was of course that those same imperfections should. . . . remain for ever unimproved, and therefore be at all times as little in view as possible.

As a basis for all operations directed to furthering this purpose, the *Fragment* at the same time. . . . undertook to set up, and so can be seen as actually setting up, the **greatest happiness of the greatest number** as the proper end of government, the only proper and defensible end of it; as the only standard by which any apt judgment could be formed regarding the propriety of any measure, or regarding the conduct of any person opposing or supporting it. At that time of day, the author of the *Fragment* did not see any of those

<sup>1</sup> [A fire-breathing murderous giant in Roman mythology, killed by Hercules.]



imperfections in the general frame of the government as arising from anything worse than inattention and prejudice. He did not see then, what the experience and observations of nearly fifty years have since taught him to see in them so plainly, the elaborately organised and anxiously cherished and guarded products of sinister [see Glossary] interest and artifice.

Under the name of the *principle of utility* (for that was the name adapted from David Hume) the *Fragment* set up, as I have said, the *greatest happiness* principle in the role of the standard of right and wrong in the field of morality in general, and of government in particular. In the field of government it found that in this country the *original contract* was playing that role.

The existence of that pretended agreement (need it now be said?) was and is a fable: the authors of the fable, the whig lawyers. The invention, such as it was, had been made by them for their own purposes, and nothing could have been better contrived: once the existence of the contract had been admitted, the terms remained to be settled; and these would of course be, on each occasion, what the interest of the whig lawyers on the occasion required that they should be. The *Fragment* saw this offspring of falsehood and sinister interest as the phantom that provided the first declared support for the revolution that replaced Stuarts by Guelphs and added corruption to force. The *Fragment* will be seen making declared war against this phantom—the only war but one that had ever been made against it on any side, and the only war without exception that had ever been made against it on the side and in favour of the people. Against this attack thus made, no defence has (I believe) ever been attempted: since that time the chimæra has hardly been seen to show

itself, at any rate under its own name ‘original contract’. Such as it was, it was the offspring of *fiction*, meaning that word in the sense it has in law-language.

A fiction of law may be defined as: a wilful falsehood aimed at stealing legislative power by and for people who could not or dared not openly claim it, and who could not exercise it if it weren’t for the delusion thus produced.

Thus it was that, by means of mendacity, usurpation was on each occasion set up, exercised, and established.

A partnership was thus formed (insofar as there can be a *partnership* between a master and his always-removable servants. Its goal was to extract, on joint account and for joint benefit, from the pockets of the people the largest possible amount of the produce of the people’s work. Monarch found force, lawyers fraud; thus was the capital formed. . . . The representatives of the people, now such convenient partners, were not as yet ripe for admittance back then. There were only two partners in the concern—monarch and lawyers. Whatever was the fraud thus practised, partners on both sides found their account in it, with the interests of both sides provided for as a matter of course.

The monarch, not being acknowledged in the capacity of sole legislator, had everything to gain by allowing these always-removable creatures of his thus to exercise the power belonging to that office; because with the instrument thus constructed and always at hand—an instrument which continually increasing experience showed to be so fit for use—depredation and oppression could at all times be exercised, in shapes and degrees in which he could not have dared to exercise them himself in a direct way, or to propose in an open way to the representatives of the people.

And the authors of this power-stealing system were just

<sup>1</sup> [He means ‘pretend not to notice’, using ‘connive’ in what was its only meaning until ignorance wrenched it into meaning something like ‘conspire’.]

as sure to find *their* account in it; because their master, for the sake of the profit received by him as I have described, could do no otherwise than connive at<sup>1</sup> those *other* lies and devices by which depredation and oppression were carried out by them. Here again was another source of profit to the head partner: for his power of patronage meant that with each vacancy the office with the annexed plunderage became his, his not to retain indeed, but at any rate *his* to give.

*Mendacity* is a name too soft for falsehood applied to such purposes and by men so situated; for the greatest suffering ever produced by anything to which ‘mendacity’ is applied in the relations between individual and individual would be found inconsiderable in comparison with the suffering I have been talking about. There is an obvious and simple way of placing the nature and effects of it in their full and true light. Run over the field of law as laid down in any of the books; pick out the various parts in which a fiction of any kind has been employed. The most extensively and mischievously operative will be found in Blackstone; others will be found in the books of judicial procedure called *books of practice*. Set down the various fictions under the headings they belong to; in each instance, look for

- the particular mischief to the public, and
- the particular profit to the judge or judges of the judicatory (called the *court*, so as to let the servants in for a share of the worship paid to the master).

If they are honestly looked for, in no case would there be much difficulty in finding them; and the purpose of having each fabrication—each fiction—would be seen to be the profit to be made out of it.

There is at least one eminently serviceable and all-comprehensive effect to which every one of them would be found contributory. That is the general debility [= weakness] thus produced in the understanding of the deluded people,

·which serves the purposes of the fiction-mongers· because the more prostrate that debility, the more flagrant the degree of depredation and oppression to which the people might be brought to submit. Men have been in this way made to regard falsehood as not only serviceable to justice but necessary to it; and there can be no better measure of their degree of debility than that.

These appointed guardians of virtue didn’t just punish this vice—lying—in others but also painted it in its proper colours. That which is vice in all others, how could it be virtue in them? ·They would have to reply· that to them belonged the power of making *right* and *wrong* change natures, and determining what shall be *morality* as well as what shall be *law*; thus making each of them depend not on its effects on the happiness of the community at large, but on the ever-changeable good pleasure of the possessors of power, however obtained and however exercised. Thus in regard to morality; and in regard to truth, the power of determining if not what shall *be* true what shall for all practical purposes be *taken to be* true. **To produce ductility, produce debility!** No recipe was ever more effectual; no time at which the virtue [here = ‘power’] of it has been more thoroughly understood than at present. If it weren’t for this, how could judges have been allowed to make law, or priests gospel, as they have been and still are?

Though in the *Fragment* the mask was not taken off as completely or forcibly as it is here, still the effects produced by any such disclosure may without much difficulty be imagined. Nowhere, till this little work appeared, had there been a heart to declare, or even perhaps an eye clearly to see, that in the hands of these arbiters of every man’s destiny this pretended product of matchless wisdom—this object of veneration to the deluded multitude—had never been anything better than a cover for rascality. By no previous

hand had the gauntlet been thrown down in the face of the brotherhood; that gauntlet which, though so repeatedly offered to learned vizards, no-one has yet seen the possibility of taking up.<sup>1</sup>

**[IV]** It is not hard to imagine the effects produced on sinister interest—on sinister interest in these high places—by the wounds thus given to it.

**The next sentence:** But the greatest happiness of the greatest number requires, that they should be not only imagined but proved: and this they shall now be, in so far as natural probability, aided by whatever support it may be thought to receive from the character of the narrator, can gain credence, for the indications given of a set of actings and workings, of which, for the most part, the mind, in its most secret recesses, was the theatre.

**What it means, spelled out a bit:** But *imagining* those effects is not the same as *providing evidence* for what they were; and the latter ought to be done. (Why *ought* it to be done? Well, you know my standard for that: it is *required for the greatest happiness of the greatest number!*) I shall now do it. But I'll be making claims about what went on in the hidden recesses of the minds of the people in question; to get you to believe these claims, I'll have to rely on •natural probability together with •what you know of my character.

The reader will see these effects in the conduct of the various personages—keepers and workers of the state engines—in relation to the present work and another by the same

hand.<sup>2</sup> . . .

He will see the great lawyers of the age—those of the one political party as well as those of the other—concurring (and he will learn to judge whether it was not by concert<sup>3</sup>) in a system of deportment and discourse having for its effect (and he will judge whether it had not also for its goal) keeping covered up in the napkin the talents (such as they were) by which the unwelcome performance had been produced. He will see the hand of a great statesman employing itself at length in the attempt to draw them out of the napkin and put them to use.

If it were not for the great purposes that have been seen, the patience of the public would never have been tried by any such string of personal anecdotes in which an insignificant individual [he means himself] is inevitably the most prominent figure. In themselves the facts are much too trivial to justify time it has taken to bring them to view—a time that cannot be thought of without remorse, given the delay it has caused in the carrying out of other engagements. One consolation is the fact (which is what tempted me into this) that those engagements required the establishment of the all-comprehensive theory that will be confirmed by the particular experience embodied in these anecdotes.<sup>4</sup>

The three fundamental principles of the constitutional branch of the all-comprehensive code now forming

1. *End-indicating* principle, the *greatest happiness* principle.
2. *Obstacle-indicating* principle, the *universal self-preference-announcing* principle.

<sup>1</sup> [This refers to the medieval practice of throwing down a glove as a challenge to a duel. A 'vizard' was a mask worn to protect the face.]

<sup>2</sup> [This refers to Bentham's *Introduction to the Principles of Morals and Legislation*, published in 1789, exactly half-way between the first edition of the *Fragment* and the writing of this preface. A version of this work can be found on the website from which the present text came. ]

<sup>3</sup> [The difference between a 'concurring' and b 'by concert' is the difference between a working towards the same upshot and b doing this by collaborating with one another.

<sup>4</sup> [Up to here Bentham has used 'engagement' only in a sense that roughly equates it with 'contract' or 'agreement', but that can't be what is in play here. Perhaps here he is punningly using 'engagements' to refer both to *commitments* (e.g. to write certain things for publication) and also to *battles*.]

3. *Means-indicating principle, the interest-junction-prescribing principle.*

Anyone who is familiar with the House of Commons' votes or even the newspaper reports of them will find these labels, brief as they are, intelligible and justifiable.

Of all the great men who will pass under review, we'll see just one who seems to have no aversion to the greatest happiness principle or to how the author of the *Fragment* proclaimed and applied it. The cause of the aversion of the others will be seen to lie in the nature of the species, of the class, and of the situation of the class on the one part, and in the nature of individuals on either part. The conduct of any other individuals in that same situation would have been basically the same: the individuals in question being of both political parties; men who are as good (in every sense) as any that are ever likely to be in those same situations as long as the form of government is what it is.

Sinister [see Glossary] interests, two in the same breast: lawyer's interest and ruling statesman's interest. •Lawyer's interest: hostile to the interests of all those who are suitors or may need to become so, i.e. of all who are not lawyers. •Ruling statesman's interest: hostile to all subjects' interests, in a form of government which adds—to the inclination that everyone has—in the ruling hands adequate *power*: enough power to complete the system of *depredation* and *oppression*; power by means of the *corruption* and *delusion* that are the essence of this form of government, in addition to that physical *force* and those means of *intimidation* and *remuneration* that inevitably belong to *every* form of government.

Of the three confederated interests, that of the lawyer tribe is especially mischievous, because •they add to their share of the common sinister interest another one that is peculiar to themselves, and because •by the peculiar strength given to their minds by exercise, they *lead* all the

other members of the confederacy; they are the men whose exertions bring about whatever is most difficult of the things that are wished to be done.

And thus will be seen an instance of the *obstacle-indicating principle*—the *universal-self-preference-indicating principle*.

So long as the form of government continues to be what it is, not better and better but continually worse and worse, the condition of the people must also become worse and worse until it *can't* become any worse because the sinister sacrifice of the interest of the many to the interest of the one or the few has been finally completed. In the present state of Austrian Italy, English Ionia, Ireland can be seen even now that which England is hastening to be. If forms of government continue to be what they are, Englishmen cannot too soon prepare themselves for being shot, sabred, hanged, or transported, at the pleasure of the creatures of a monarch who is free from *all* checks but the useless one of an aristocracy that shares with him the same sinister interest. (They are his 'creatures' because he put them in their places and can take them out whenever he likes.) Precedents have already been established; and whoever made them—whether those who say they are making law or those who while making law deny that they are doing so—everything for which a precedent has been made is seen as justified. The various particular interests of the aristocrat in all his shapes

including the fee-fed lawyer and the tax-fed or rent-fed priest, all prostrate at the foot of the throne constitute the everlastingly and unchangeably ruling interest. Opposite to the interest of the greatest number—opposite through the whole field of government—is that same ruling interest. What it requires is that the **ruling few** should at all times have in their possession and at their disposal as much

a power, b wealth, and c factitious dignity as possible.

What the interest of the **subject many** requires is that the quantity of a power and b wealth at the disposal of the ruling few should at all times be as small as possible: of these necessary instruments, the smallest quantity; of that worse than useless instrument c factitious dignity, not an atom—no such instrument of corruption and delusion; no such favoured rival and all-purpose substitute for meritorious and really useful service; no such disproportionate form of remuneration, when for really useful service the only remuneration would be suitable *recognition*, which in the shape of honour can be proportionate.

Can opposition be more complete? But being governed by men who are under the dominion of an interest opposite to one's own—isn't that being governed by one's enemies?

- In or out of office, having power or expecting it,
- Tories or Whigs, leaning most to the Monarchical side or most to another side equally hostile to that of the people

—what does it matter which of these situations a man is in if he has the interest and the power of an enemy? So there will never be any hope of relief unless and until the form of the government becomes such that •the rulers in chief whose particular interests are opposite to the universal interest are replaced by •others whose particular interests have been brought into coincidence with that same universal interest; in a word, till the *interest-justification-prescribing* principle, as presented above, shall have been carried into effect. In the Anglo-American United States has not this problem been solved?

Six public characters must now be brought upon the stage; Mr or Sir Alexander Wedderburn, Lord Mansfield, Earl of Shelburne, Lord Camden, Mr Dunning, Colonel Barré:

denominations which belonged to them at the time spoken of. [Each of the six had been dead for at least 17 years at the time when this Preface was written.]

In the case of Lord Shelburne, it will be seen how ill-assorted the picture of the statesman is with those of the lawyers that preceded and follow it. But the interpolation is unavoidable; without it, the other personages could not have been brought to view.

**[V]** The first personage to be produced is Wedderburn; at the time here spoken of, Solicitor General. [He lists Wedderburn's later distinctions.]

The *Fragment* had not been out long when a dictum that it had drawn from him showed me all too plainly the alarm and displeasure it had aroused. The audacious work had come upon the carpet, in particular the principle of utility that it so warmly adocates; this principle and its supporting argument, in opposition to the Whig-lawyer fiction of the *original contract*. 'What say *you* to it?' said somebody, looking at Wedderburn. *Answer*: 'It is a *dangerous* one.' [He goes on at some length about the word 'dangerous' being all that he had been told about Wedderburn's response.]

Warm from the mouth of the oracle, the response was brought to me. What I saw all too clearly was the alarm and displeasure that it was evidence of; what I did *not* see was the correct perception that it expressed—I mean the perception of the likely consequences of the principle in relation to the particular interests of the particular class that this lawyer, already elevated, was on his way to being the head of.

[He goes on to say that until recently—he is 'ashamed' to think how recently—he was bewildered by the accusation that the principle of utility is dangerous, and thought that Wedderburn must have been confused; until eventually he realised that *he* had been confused:] The man was a shrewd

man, and knew well enough what he meant, though I did not. By this time, I hope, most of my readers know what he meant as well as he did. [They would express it, he says, in some such way as this:]

By *utility*, set up as the object of pursuit and standard of right and wrong in government, what this man [meaning Bentham] means to direct people's eyes to is whatever it is on each occasion that is most useful to all the individuals taken together over whom government is exercised. But what would be most useful to *them* would in most cases be calamitous to *us*, by whom the powers of government are exercised over them. If this principle prevails, it is all over with us. It is in *our* interest for the mass of power, wealth, and factitious dignity we enjoy at other people's expense to be as great as possible; it is in *theirs* for it be as small as possible. Judge, then, whether it is not dangerous to us. And who should we think of but ourselves?

Thus far Wedderburn. What this one lawyer said, all those others thought. And who knows how many hundred times they may not have said it? [He ends with an anecdote about about an 'icy' meeting with Wedderburn on a social occasion.]

[VI] I come now to Lord Mansfield. [Bentham here gives an enormously long and detailed account of his relations with Mansfield, who at one time was a patron of Bentham's. The narrative of their relations involves about a dozen other people. Mansfield **a** liked the *Fragment*, then **b** turned against it. Mansfield had a significant quarrel with Blackstone, the author of the *Commentaries*, the chief target of the *Fragment*, and this is reflected in the sentence with which Bentham concludes this vast narrative, talking about how Mansfield will have seen different parts of the *Fragment*:] In some were seen the tormentor of his tormentor, hence **a** the delectation:

in others, a liberalism and a logic, threatening his despotism and his logic: hence **b** the aversion.

[VII] [Bentham reminisces about some visits he had with the Earl of Shelburne at his home, **Bowood**, and continues:] One man could not receive from another more unequivocal marks of esteem, and indeed of affection, than I received from Lord Shelburne in the course of about twelve years. Much of that is irrelevant to the great public purpose in view, and I shall leave it out; but one thing will be found relevant to it: my attachment to the great cause of mankind received its first encouragement, and its first development, in the affections I found in that heart, and the company I found in **that house**.

[He reports something that occurred more than 40 years earlier but is 'as fresh in my mind, as if it had been but yesterday'. He has said that an interesting novel might be made out of a 'correct and unvarnished picture' of the incident in question, and his own account of it is curiously detailed. The core of it is Shelburne's rather solemnly asking Bentham 'What is it you can do for me?' and Bentham's replying 'nothing, that I know of'. Then:] If by this rencontre any expectation of his was disappointed, neither his kindness nor the marks of his esteem were lessened. More than once in later years I did happen to *do something for him*. But it was always in pursuit of my own view of things—in pursuit of the *greatest happiness principle*; and whatever was done, he knew nothing of it until after it was done. I shall return to him presently.

[VIII] Another cause may perhaps have had its share in producing the visit of Lord Shelburne to the assailant of the *Commentaries*: a breach (I mean) between the Lord and the Commentator. The fact was once mentioned, but I never knew the time or the details. . . .

Blackstone seems to have had something about him that

made breaches with him not difficult! [Bentham illustrates this with a rather obscure anecdote relating to Blackstone's becoming Law Professor at Oxford university. Then:] Lord Shelburne had been the making of Blackstone. The Lord had been in personal favour with George III. He introduced the lecturer, and made the Monarch sit to be lectured: so he himself told me. The lecturer, as anybody may see, showed the King how Majesty is God upon earth: Majesty could do no less than make him a Judge for it. Blasphemy is saying anything that a Judge can gratify himself—or thinks he can recommend himself to others—by punishing a man for. If decking a man out with God's *attributes*, and under that very name, is blasphemy, none was ever so rank as Blackstone's. The *Commentaries* remain unprosecuted; the poison still injected into all eyes; piety is never offended by it, though perhaps it may be some day, if piety in high places ever ceases to be a tool of despotism and becomes genuine.

I too heard the lectures: age, sixteen; and even then, no small part of them with rebel ears. The *attributes*, I remember, in particular, stuck in my stomach. No such audacity, however, as that of publishing my rebellion, was at that time in my thoughts.

**[IX]** Now to Lord Camden. The preparatory mention of Lord Shelburne was needed to introduce his political associates and advisers, and in particular Lord Camden, their chief. I was already at Bowood when the ex-chancellor and his unmarried daughter made their appearance. The marked kindness and attention shown to me in that family could leave no doubt about the manner in which I had been spoken of to the grave personage. From the very first, however, his manner of address to me seemed to express a sort of

coldness and reserve. [He never said a word to Bentham about the *Fragment*, Bentham reports; but he twice publicly criticised Bentham, once for playing too loudly in his violin accompaniment of the singing of his (Camden's) daughter, and once for eating too much. Bentham winds up his account of Camden with an unflattering account of his mind:]

A man of such celebrity, and who had for so many years occupied the first places in the law, could not fail to awaken in a man in my situation and of *my* turn of mind a desire to form some conception of the bent of *his*. I observed his conversation. I observed the books he opened and set before him. I took [The original has 'watched'; presumably a slip.] with particular interest every opportunity of observing whether the system of law ever presented itself to his mind as being, in any part of it, capable of improvement. I never saw the slightest sign that any such conception had ever entered his head. Apart from an occasional anecdote relating to the sphere he had always moved in, I heard nothing in his talk that might not have been heard in any drawing-room or coffee-house.

**[X]** I come now to John Dunning. It was one evening after dinner at Bowood that he made his appearance. He came fresh from Bristol, where he was a judge. I found him standing in a small group recounting his exploits. The nature of them—combined with the manner in which he spoke of them, and the feelings his countenance expressed—put me in mind of Lord Chief Justice Jeffries.<sup>1</sup> He had been the death of two human beings: he looked and spoke as if regretting there had not been two thousand. Upon my approach, his scowl seemed more savage than before. At that time I had no notion of the cause, but the effect was all too visible.

<sup>1</sup> [1st Baron Jeffreys, Lord Chief Justice of the King's Bench, notorious for the "Bloody Assize" following Monmouth's abortive rising in 1685, when many hundreds were hanged, transported or whipped.] (B&H)]

[Bentham continues by recounting a rather recondite joke that he made in Dunning's presence and at his expense, a kind of pun on 'stone', which could refer to kidney-stones or to 14 pounds weight. Dunning left the next morning. 'I saw no more of him: I had seen quite as much as was agreeable to me.' Then:] In conversation with Lord Shelburne once, I remarked that

what *Junius* says about the practice of the long robe, when calls it 'the indiscriminate defence of Right and Wrong', is not precisely true; because on the whole *Wrong*, in his quality of best customer, enjoys a pretty decided preference.

'Naturally enough', replied my noble friend: 'and I remember hearing it observed of Dunning that he never seemed to do the thing so much *con amore* as when the wrong was on *his* side.'

**[XI]** Last comes Colonel Barré. [Bentham outlines this man's career, in which he fell into and out of favour, spoke in the House of Commons on Shelburne's behalf, and when Shelburne 'became Minister' [perhaps meaning 'became Prime Minister', which he briefly did], his 'protégé' was awarded a pension of £8,000 a year [which is equivalent to at least a million pounds today]. Then:] Now as to what passed at Bowood between him and me. Towards others, his deportment was easy: towards myself, stately, distant, and significant. What (said I to myself) can I do to propitiate this minor deity? Except from the sort of reports which give nothing but the surface, he was altogether unknown to me. I had brought with me two articles—an unfinished quarto in print, of which more presently, and a manuscript of between a dozen and a score of pages. It was an attack upon *Deodands*.<sup>1</sup> It defended the

conclusion that

When a man who has a child and a waggon loses the child by the waggon's going over it, the loss of the child was enough, without the loss of the wagon's being added to it.

The sages of the law have had and still do have a different opinion about this, and so of course have those who worship them. 'English' are all our institutions: this as well as every other.

When I presented the colonel with this specimen of English institutions, I had no thought of encountering in his mind any very formidable adherence to it (he was after all a soldier, not a lawyer). —Vain confidence!

One day, finding him alone at the common reading-table, I put into his hand my little paper. A day or two after, I ventured to ask whether it had been looked at. 'Mr Bentham' (said he) '*you have got into a scrape*. [This uses 'scrape' in the then-current sense of 'an embarrassing or awkward predicament or situation, *esp* one arising from an unwise escapade' (OED).]

'Scrape, Colonel? what scrape? I know of no scrape the case admits of.' No answer. The unfortunate paper was pocketed. I went my way, and there the matter ended.

The only interpretation I could ever find for the appalling riddle was this paraphrase:

'You are a greenhorn: you know nothing of the world. You wrote that book of yours; you made your foolish attacks on the lawyers; you thought it would be a treat to us to see you running at them. You are a silly fellow; you don't know how necessary they are to us. What have we to do with *Deodands*? You thought to cut a figure; you have *got yourself into a scrape*.'

<sup>1</sup> [This astonishing law, finally abolished in 1846, required the forfeiture of any object—a wagon or a windmill or a pig—that causes the death of a human being. The name comes from the Latin *Deo dandum*, meaning 'requiring to given to God'. The offending object was forfeited to the Crown, which was supposed to put it to pious uses.]



A confirmation that this interpretation received will be seen presently.

[The ‘confirmation’ is reported at great and somewhat tedious length. It boils down to this: someone told Bentham that Barré had said ‘I am glad to see Mr Bentham turning his hand to useful things’, referring to Bentham’s plans for prison reform. Bentham reports some of the ups and downs of Barré’s career, speaking of ‘the inaptitude of the showy soldier’, including an occasion when Barré was faced with a public embarrassment, from which Bentham neatly rescued him, earning applause from all present, including ‘the colonel, whom *I* had got out of *this scrape*’.]

**[XII]** The greatest happiness principle had been declared ‘*dangerous*’, including every consistent application of it: this was from Alexander Wedderburn. Comes now a confirmation by Lord Camden and Mr Dunning: words different, for so circumstances required: meaning the same. The *Introduction to Morals and Legislation*. . . had been printed. In the trunk that accompanied me to Bowood was a copy of it; it had not been long there before it was in Lord Shelburne’s hands.

I begged him not to treat the ladies with it at the breakfast table, but in vain. Quite apart from the general nature of it, in one particular it was especially unsuitable for such an audience. In some eight or ten places the reader will meet with the word *sexual*. When the word bolted out, some little embarrassment was the result. [He explains that the word was a second-edition replacement for ‘venereal’, describes the ‘tolerably adequate’ quick-fixes that were made to remedy the embarrassing situation, then:] There had not been many of these readings when an influx of company put an end to

them, to my great relief.

Before I left Bowood, Lord Shelburne—after remarking on how new the subject was to him, and how ill-qualified he was to appreciate a work in which so much depth of thought had been displayed—told me that he intended to submit it to men better qualified than he was •to comprehend its merits and to •derive the profit that was to be derived from it; and for this purpose he specified Lord Camden and Mr Dunning.

Bowood [here presumably meaning the family whose home was Bowood] had not been long in London when I received a visit from Lord Shelburne. ‘I will deal plainly with you’, (said he). ‘I told you I should put your book into the hands of Lord Camden and Mr Dunning. I have done so.’ Lord Camden had acknowledged its merits considered as a theoretical work, but he confessed that he had found some difficulty in comprehending it. ‘And if that is the case with me’, he said, ‘I leave you to imagine how it may be with the general run of readers.’ Thus far Lord Camden.<sup>1</sup> I don’t remember any details of Dunning’s opinion, but it was all too plainly of the same cast.

Here was a second *scrape*; another work by that same man by whom nothing ‘*could be done for*’ the head of a ·political· party; a work that had nothing to do with ‘*useful things*’. That is how incomprehensible it was to the wisest of the wise. It has not been so to babes and sucklings.<sup>2</sup> Two boys of sixteen have been giving a spontaneous reading to it [one of them was probably John Stuart Mill]. . . . It is the basis of the work in French for which so much *use* has been found, or at least thought to be found, in other countries. . . .

**[XIII]** One objection remains; and my hypothesis must if possible be cleared of it. [The ‘hypothesis’, as will become

<sup>1</sup> The original has ‘Shelburne’; presumably a slip.

<sup>2</sup> [‘Psalm 8:2; but Bentham’s antithesis also echoes Matthew 11:25: “thou hast hid these things from the wise and prudent, and hast revealed them unto babes.”’ (B&H)]

clear in the ASIDE just below, is that there is a long-standing **conspiracy** among legislators, judges and lawyers to oppose law-reform and bend everything in their favour. The ‘objection’ is that the five named opponents may have objected to Bentham personally, rather than to his ‘reforms and improvements’. He deals with this briskly with regard to Wedderburn, Mansfield and Barré, not with evidence that they liked him personally but with evidence that they really were hostile to his work. Then:]

For the two remaining cases, I must take other ground. If either or both of the two great lawyers ·Dunning and Camden· had been *personally* disgusted by the author, and so intensely as to create antipathy towards his work, that disgust would surely have been felt even more strongly by ·members of· that sex whose sensibility in such a case is naturally so much more acute.

·AN ASIDE ON THE PERSONAL AND THE POLITICAL·

It is true that this:

what on individual occasions may have been the sort of sentiment produced in the mind of this or that individual of one sex by the person or behaviour of this or that individual of the other

is not in itself of any great political importance. But *this*:

whether those who are obeyed (and paid) as guardians of the happiness of the species are involved in a **conspiracy** *against* that of which they are the professed guardians—a standing conspiracy, and a universal one until the Anglo-American United States provided one exception—

is no such trifle.

To close the evidence against the conspiracy, I must now call two ladies. [They are Miss Pratt, the daughter of Lord Camden, and the wife of Mr Dunning. What Bentham reports

regarding them is confusing, and includes an allegation of extremely bad behaviour by Miss Pratt aimed at Bentham; but somehow out of all this he draws the conclusion he wants:] Much of this is little to the purpose. But what is to the purpose is that in a family where whatever is best in aristocratic manners was at the highest pitch of refinement, any aversion the great law lords had to me was peculiar to the confederacy, and was not shared in by those who, if there had been any ordinary cause of ·personal· disgust, would naturally have been most aware of it. [In this sentence, ‘the confederacy’ refers to Camden’s and Dunning’s share in the **conspiracy** that is the theme of this section and even more of the next.]

**[XIV]** A tolerably satisfactory solution (the reader may now think) has been given for the tardiness of the advances made by Lord Shelburne to the author of the *Fragment*, coupled and contrasted with their cordiality when they were made.

**What he goes on to say:** On this hypothesis, the cognizance he took of it was not less early than that of the lawyer tribe, including his above-mentioned learned advisers. His disposition, towards the author, was thereupon of the kind afterwards manifested. Meantime they, seeing to what it led, and looking upon their influence upon him as endangered by it, concurred in the endeavour to prevent his making any such advances.

**Made a bit clearer:** Lord Shelburne was able to acquaint himself with the *Fragment* without having been beaten to it by his legal advisers; so he was free to adopt a favourable attitude towards its author, the kind he showed to the author personally, once he met him, which he was hoping to do. Before long, his advisers—seeing what the *Fragment* led to, and seeing it as a threat to their influence on him—worked together in trying to prevent him from arranging such a meeting.

At length came some incident or thought that led to his breaking loose from their shackles. And then at last the young intruder [Bentham, who was 28 years old] made his appearance in the circle. That triggered the practice (with or without concert) of doing whatever was possible in that situation towards keeping down his influence and preserving their own views on political subjects from being supplanted by other views as opposite as they saw *his* to be.

In itself nothing can be less important than the little intrigue was (if there was one) no-one can be more fully aware of its unimportance than the person who was the subject of it (if there was one). But with regard to the state and form of government in this country, what it proves—so far as it proves anything—is of considerable importance. It is this:

Under the government under which we live, the particular interest of the rulers is in direct opposition to almost everything that is good: to all reform, to all considerable improvement. . . ., in short to the universal interest. And, just as it is always in their inclination, so it is always in their power, to sacrifice that same universal interest to that same particular and sinister [see Glossary] interest—sacrificing it continually and comprehensively.

Under such a form of government, the ruler in all his shapes •derives an advantage, immediate or unimmediate, from everything that harms the universal interest; •feels that sinister interest assaulted by almost everything that renders any kind of service to the universal welfare,<sup>1</sup> and he sees anyone who tries to render such service as an adversary, not to say an enemy.

As for the lawyer: as well as the sinister interest that he

shares with all those who exercise the powers of government (in a government so constituted), he has another sinister interest, peculiar to his own tribe. It is an interest in that system by which, while only a comparatively few have even a *chance* of justice, even those few are kept in a state of oppression—oppressed by factitious delay, vexation, and expense, created by lawyers (in the role of judges and legislators) for the sake of the profit extracted by the legal fraternity out of the expense.

The consequence is a perpetual and indissoluble confederacy among the ruling few of all classes to defend themselves and one another against all activities that oppose their particular and sinister interest by serving the universal interest. Whatever be the state of the political parties, the ruling men of all parties are members of this confederacy; members linked together against the universal interest by the particular and sinister interest that they all share; for, whatever may be the hostility of the two sinister interests to one another, the hostility of both to the only right and proper interest is much more extensive and unchangeable. Let any serious attack be made on anything that supports the system of corruption, depredation, and oppression, in which they have a common interest, and mutual hostility vanishes, giving place to alliance against the common adversary.

**[XV]** Only one piece of evidence more. It is however a sweeping one. [He reports that he asked an intelligent, honest, unbiased friend of his—who knew a great deal about these matters at the time in question—whether, so far as he could see, ‘anything outside the field of the general scramble for power ever found a place in the affections’ of the ‘personages’ he has mentioned here. And:] The answer was clear, deliberate, and decisive: it was in the negative.

<sup>1</sup> The original has ‘universal service’; presumably a slip.

People may naturally wonder what sort of sensation my little work produced in the mind of the learned author whose great work is the subject of it. It happens to be in my power to provide some small satisfaction to their curiosity. [He reports that someone asked Blackstone if he knew who the author of the *Fragment* was, and Blackstone replied that all he knew was that ‘he is a Scotchman’. Then:] The conjecture had much better grounds than those others that have been mentioned [in section II above]. The Scotch minds were less ill-suited than the English to the sort of business he saw done in the *Fragment*. Because Scotch law is based on Roman law, the range of legal thought among Scotch lawyers is necessarily much less narrow than it is among English lawyers. Their sinister interests, their interest-begotten prejudices, their reputation, are not so directly struck at by the blasphemies in the *Fragment* as are those of their southern brethren. [He talks of specific ways in which Scottish law manages openly things that English law does in an underhand way. Also:] Having less need of insincerity than the English, language has with them been less impudently insincere. When the English said James the second had *abdicated* his throne, the contrary being true in the eyes of everybody, the Scotch said he had *forfeited* it.

[Bentham continues this theme with a joke. Blackstone as a judge had been subordinate to Lord Mansfield, and Mansfield’s initially favourable reception of the *Fragment* might have made Blackstone suspect that] the adversary was a sort of sad dog, of the Scotch breed, set upon him by the overbearing chief.

[Bentham reports that later editions of Blackstone’s *Commentaries* may have been improved a little by the criticisms it had received. (Blackstone himself hinted as much, though without naming Bentham or the *Fragment*.) He notes that the *Fragment* didn’t lead to a lessening of the ‘currency’

of Blackstone’s work, and wasn’t itself a great publishing success. This is natural, he says, because there are many people who want to know what the law is, but relatively few who care about what it ought to be.]

[XVII] We never met; but less than two years later we were on better terms. The Penitentiary System has for its first patrons Mr Eden—(the Mr Eden above spoken of [page 61] and Sir William Blackstone. They framed in conjunction—and without exposure to sale, circulated—the draught of a bill for that purpose. [Someone gave Bentham a copy of it, and he evaluated it in his *A View of the Hard Labour Bill*, published in 1778, and the same someone sent copies of that to Eden and Blackstone. Then:] The tone of this second comment—though free, and holding up to view numerous imperfections—was upon the whole laudatory: for my delight at seeing ever so little disposition to improvement, where none at all was to be expected, was sincere and warmly expressed. From Mr Eden, the communication produced an answer of some length: cold, formal, distant, and guarded; written as a man writes when he *feels* something that he is not ready to acknowledge. No desire expressed of any verbal communication. [Bentham remarks that Eden was ‘on the eve of his departure for the now United States’, with the official purpose of trying to re-shackle ‘the refractory Americans’. He goes on to boast that twenty-odd years later a nephew of Eden’s became of one ‘my declared disciples’ and ‘a valued friend’. Then:]

From the judge I received a note which still exists, I believe, somewhere; I have preserved the memory of everything that is material in it. After thanks and so forth, in the third person, ‘some of the observations’ (said he) ‘he believed had already occurred to the framers of the bill’ (not mentioning himself as one of them), ‘and many others were well deserving

of their attention.’ To anyone—if there is anyone—who reads this work and has also read the *Fragment*, the frigid caution with which the acknowledgment is thus guarded. . . .will not have been unexpected.

That the *Fragment* was not unknown to either of them may readily be imagined: if so, no-one who has read it will find anything wonderful in their reserve.

[Bentham tells us that a friend said to him:]

‘Bentham, don’t you feel now and then some compunction at the thought of the treatment your *Fragment* gives to Blackstone? Of all the men that ever sat on a Westminster Hall Bench, he is perhaps the only one that ever attempted anything that had the good of the people, or the improvement of the law, for its object, independently of professional interest and party politics—think of the treatment he has received from you.’

I did think of it. [What follows is clotted and obscure; but its general drift is to pour scorn on the prison reforms that Blackstone was associated with, as intrinsically unworkable and anyway trivial compared with later reforms. Bentham

caps his refusal to feel bad about how he has treated Blackstone with a strikingly sceptical rhetorical question:] In what instance, by any supporters of ‘*Matchless Constitution*’, has *anything* been done with the least tinge of good in it, except with. . . .the hope of defeating or obstructing something better?

**[XVIII]** ‘Such being the tendency, such even the effects of the work, what became of it? Why is it that until now not so much as a second edition had been made of it?’ Natural enough questions! [Bentham undertakes to answer them. He adduces the lack of advertising, and the harm to his sales of two things: (i) a pirated edition in Ireland, and (ii) the failure to keep the secret of who the author of the *Fragment* was. As regards (ii), for which Bentham blames ‘parental weakness’: while the secret was kept, the public could guess that the *Fragment* was the work of ‘a great man’; after the secret was out, they knew that the *Fragment* was the work of ‘a nobody’. That, Bentham indicates, lessened interest in the work, and also helped encourage ‘the men of politics, and in particular the men of law on all sides’, to do all they could to suppress it.]