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**PIONEERS IN CRIMINOLOGY**

**VII. Jeremy Bentham (1748–1832)**

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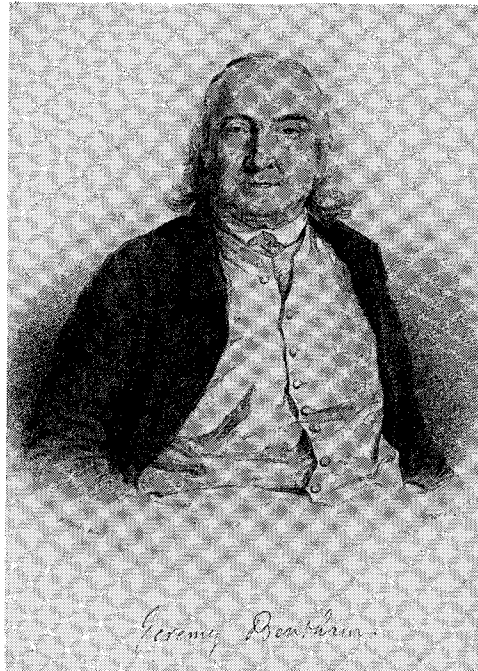
The copy from which the print below has been made is in his possession. The original was published for the proprietors of the *European Magazine* in May, 1923.—Editor.

They say he cherished men,  
Their happiness, and then  
Calmly assumed one could  
Devise cures for their good  
Believing all men the same  
And happiness their aim

He reckoned right and wrong  
By felicity—lifelong  
And by such artless measure  
As the quality of pleasure  
For pain he had a plan  
Absurd old gentleman.<sup>1</sup>

Jeremy Bentham was an eccentric personality, an incredibly prolific writer, a thinker who had the colossal temerity to attempt to catalogue and to label all varieties of human behavior and the motivations giving rise to them. With this information in hand, as he pointed out with disarming simplicity, he believed that he could select the precisely proper procedures to control human actions and direct them into desirable channels.

It is periodically fashionable to resurrect an old philosopher, such as Bentham, dust him off, and present him as the author of contemporaneously significant prose. This is probably a function of the vested interest the researcher acquires in his subject. In some cases, undoubtedly, a writer actually has been unduly neglected.



JEREMY BENTHAM

<sup>1</sup>HELEN BEVINGTON, *A Bomb for Jeremy Bentham*, in *NINETEEN MILLION ELEPHANTS AND OTHER POEMS*. Boston: Houghton Mifflin, 1950, p. 33. Reprinted by permission of Miss Bevington.

Such is not the case, however, with Bentham. A very large part of Bentham's thought is badly dated. Reading his works may not arouse the froth that drove Karl Marx to immortalize Bentham (in a certain way, at least) with the bombastic assertion that "in no time and in no country has the most homespun commonplace ever strutted about in so self-satisfied a way."<sup>2</sup> But neither will it likely impress the present-day criminologist with its immediate relevance, particularly in the sphere of criminological theory.

With the above in mind, then, the direction of the present paper can be labeled. No attempt will be made to detail all of Bentham's major postulations, but only those will be treated which appear to have interest or value for contemporary times. This will lead to a skewed portrait of Bentham's production. Often minor points will be taken out of context if the remainder of the context is not presently relevant. Thus, for instance, an elaborate reproduction of Bentham's catalogue of types of crimes would appear meaningless now; yet, within this catalogue there is an occasional differentiation which has today the germ of a neat analytical separation.

This paper will discuss: First, Bentham's life and times; second, his theories of criminality; and third, his unique contribution to penology—the Panopticon prison design.

#### BENTHAM'S LIFE AND TIMES

All sources comment on Bentham's extreme precocity, both intellectual and artistic. This precocity combined with a retarded physical growth during his early years to give rise to a badly unbalanced developmental pattern. One can further note briefly the few Freudian-tinted remarks that biographers have placed on the record.<sup>3</sup>

Bentham's relationship with women, for instance, was very unusual. His mother died when he was eleven and Bentham did not get along well with his stepmother. He never married and is said to have formed a close romantic attachment with only one woman in his life; indeed, it is reported that at the age of 57 he proposed to this lady but was rejected.

Bentham did not get along easily with other persons. "He shrank from the world in which he was easily browbeaten to the study in which he could reign supreme," one writer notes,<sup>4</sup> providing background explanation, perhaps, for one of the most

<sup>2</sup> KARL MARX, *CAPITAL: A CRITIQUE OF CAPITALISTIC PRODUCTION*. New York: Modern Library, n.d., p. 668. Marx applied a further epithet to Bentham which has since become a Soviet cliché. "Bentham," he wrote, "is a genius of bourgeoisie stupidity."

<sup>3</sup> The standard biography of Bentham is considered to be that by his executor, JOHN BOWRING, *THE WORKS OF JEREMY BENTHAM*. Edinburg: Tait, 1843, vol. I and vol. XI. This work is used extensively and often exclusively in later studies for biographical information on Bentham.

Everett, however, maintains that Bowring ("who had in some way wriggled his way into the old man's esteem") wrote a "hasty and inaccurate Life." (CHARLES WARREN EVERETT, *Editor's Introduction*, in JEREMY BENTHAM, *THE LIMITS OF JURISPRUDENCE DEFINED*. New York: Columbia University Press, 1945, p. 28). EVERETT'S OWN work, *THE EDUCATION OF JEREMY BENTHAM*. New York: Columbia University Press, 1931, is an interesting source containing much new information on Bentham's life as gleaned from the voluminous unpublished Bentham papers stored in the University College and the British Museum in London.

<sup>4</sup> LESLIE STEPHEN, *THE ENGLISH UTILITARIANS*. New York: G. P. Putnam's, 1900, Vol. I, p. 175.

telling criticisms of Bentham's work on crime—its total failure to consider criminals as human beings, as live, complicated, variegated personalities.

Sir Norwood East neatly puts a finger on this shortcoming: "It is interesting to note," East points out, "that in the index to the text of Bentham's volume on *The Theory of Legislation* reference is made to crime, offenses, and criminality, but none to criminals or offenders. In fact, although (Bentham's) school was seriously concerned with abolishing injustices and the vindictiveness of punishment, and believed that the function of punishment was solely deterrent, it paid little attention to the individuality of the offender."<sup>5</sup>

It is likely that Bentham's need for neat catalogues—catalogues which could be stated with specific details and without the diverse elements inevitably occurring when the human being per se is considered, accounts for the philosopher's concentration on crime in the abstract. His was arm-chair criminology, in which a keen, rather pedantic mind inductively derived sweeping principles of human behavior and supported them sometimes with historical citations and, more often, with constructed examples. The advantage was that the trivia of empirical minutiae did not obstruct far-ranging insight; the disadvantage, that the reality of empirical truth was not allowed to infiltrate into mental machinations.

Bentham, of course, was intensely influenced by the times in which he worked. Against these times, he towers as a giant, fearlessly challenging the assumptions of criminal law. Phillipson characterizes the criminal codes of Bentham's time as "a mass of incongruities, absurdities, contradictions and barbarities" and notes further that:

There had been a capricious, unsystematic accumulation of statutes aimed at the same crime for which earlier provisions were allowed to remain unrepealed. Different penalties existed for the same offenses. Different forms of indictment were necessary for crimes which were similar fundamentally, but varied in certain minor particulars. Thus in the case of receiving stolen goods, several laws were applicable; but one referred exclusively to pewter-pots, another was confined to precious metals; and neither could be used as against receivers of horses or banknotes. . . .

There was no consistency, no harmony, no method whatever in the legislation. The law was in theory one thing, and in practice it was often another. The infliction of punishments was to a large extent left to the arbitrary and capricious discretion of the judge . . . so that from circuit to circuit practices varied to an extraordinary degree, sometimes being marked by ferocious violence, at other times by unpardonable weakness. The punishments threatened by law could not be more rigorous. The spasmodic prescription of measures of extreme severity and ferocity was evidently thought to be an effective panacea for the preventing or curing of the country's criminal ills. Many laws were laid down whose violation was actually disregarded. The somewhat indiscriminate classification of crimes into felonies and misdemeanors, the outworn technical rules respecting "benefit of clergy" were fertile sources of abuse, evasion and injustice. Innocent persons were liable to become the victims of an irrationally applied law; the guilty could cherish a hope of impunity—and very frequently were their hopes fulfilled.<sup>6</sup>

It was against this chaotic background—a background, incidentally, that finds some echoes in contemporary conditions—that Bentham did his work. He attempted to arrange affairs into a harmonious unity, and brought to bear on illegal behavior a

<sup>5</sup> NORWOOD EAST, *SOCIETY AND THE CRIMINAL*. Springfield, Ill.: C. C. Thomas, 1951, p. 98.

<sup>6</sup> COLEMAN PHILLIPSON, *THREE CRIMINAL LAW REFORMERS: BECCARIA, BENTHAM, ROMILLY*. New York: Dutton, 1923, pp. 166-168.

multiplicity of analytical concepts such as felicity calculus, greatest happiness, pain and pleasure, and utility.

#### BENTHAM'S THEORIES OF CRIME

Bentham undertook the gigantic task of expounding a comprehensive code of ethics, but believed that such an undertaking alone was sterile—too non-utilitarian—and he therefore put great emphasis on the practical problem of eliminating or at least decreasing crime. He was in this sense aiming at a system of social control; a method of checking human behavior according to a general ethical principle. The ethical principle was utilitarianism: An act is not to be judged by an irrational system of absolutes but by a supposedly verifiable principle. The principle—one that had been enunciated by a long line of thinkers prior to Bentham<sup>7</sup>—was that of “the greatest happiness for the greatest number” or simply “the greatest happiness.”

An act, Bentham said, possesses utility “if it tends to produce benefit, advantage, pleasure, good or happiness (all this in the present case comes to the same thing) or (which again comes to the same thing) to prevent the happening of mischief, pain, evil or unhappiness to the party whose interest is considered.”<sup>8</sup> To measure the “goodness” or “badness” of an act Bentham introduced the pseudo-mathematical concept of felicity calculus. In his writings, however, statements of felicity calculus invariably deteriorate into long-winded attempts to explain verbally the method of arithmetically arriving at the quantitative weights to be attached to various items of behavior. But the actual carrying out of the operation is not undertaken nor are the ultimate implications of such a procedure considered.

Bentham was certainly aware of the infinite ramifications of any given act—criminal or non-criminal—but this did not deter him from the claim that these ramifications could be tagged and weighed within his conceptual framework. At one point, for instance, Bentham notes that the single honking of a goose some thousand years previous undoubtedly had significant effects on every aspect of life today, and he even attempts to name some of these effects and to rate their importance. The presumptuousness of such an effort appears incomprehensible to humbler minds, particularly since Bentham had no criteria but his own feelings for determining the ultimate utility of an act and of the endless waves that it sets into motion.

Bentham's basic concern with “happiness” rather than with “utility” again reflects his dedication to practical affairs. He was thinking, one commentator declares, “of the . . . welfare . . . of the community as composed of individuals” rather than being “merely concerned with barren speculative theory.”<sup>9</sup> It is the failure to lay a sound theoretical foundation, however, that has undermined the lasting value of Bentham's work.

Bentham, nonetheless, possessed an extremely fertile mind and it turned its

<sup>7</sup> For a detailed discussion of the background of the concept see *The Principle of Utility and Bentham's Place in its History* in DAVID BAUMGART, *BENTHAM AND THE ETHICS OF TODAY*. Princeton: Princeton University Press, 1952, pp. 33–60.

<sup>8</sup> JEREMY BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION*. Edited by Laurence J. Lafleur. New York: Hafner, 1948, p. 2.

<sup>9</sup> WILLIAM L. DAVIDSON, *POLITICAL THOUGHT IN ENGLAND: THE UTILITARIANS FROM BENTHAM TO J. S. MILL*. New York: Henry Holt, 1916, pp. 48–49.

attention on many problems which later thinkers have often not solved but only avoided. These are some of the criminological concepts that form segments of Bentham's work:

*Motivation.*—The influence of psychiatric theory on the interpretation of criminal action has primarily been in terms of a concentration on the motives underlying human behavior. Human beings, we now believe, attempt to satisfy their needs in a number of ways, some legal and some illegal (social definitions), but the thesis that some needs are universal has had extensive implications for criminological theory.

In contrast to the seeming sophistication of the present psychiatric stress on motivation, Bentham's efforts appear rather juvenile. He was unaware, reasonably enough, of the unconscious genesis of human behavior. Bentham believed that all men pursued their ends deliberately, after rational consideration of the divergent elements involved. Persons today, on the other hand, as Larrabee points out, "have been made [aware], as Bentham never was, of the more insidious dangers of deceiving themselves. . . . Bentham . . . was much too sure that he was always on the side of the angels, and that his opponents were plagued by evil motives rather than by apathy and ignorance."<sup>10</sup>

Motives—or "springs of action" as Bentham labels them,<sup>11</sup> using a term from mechanics to suit his so-called dynamic morality<sup>12</sup>—refer to "anything that can contribute to give birth to or even to prevent, any kind of action." Beyond the definition, Bentham's exposition is more interminable than illuminating. His exhaustive list of motives can be well summarized with the not-undeserved sarcasm it drew from a contemporary reviewer:

"In multiplying these distinctions and divisions . . . Mr. Bentham appears to bear resemblance . . . to one of the old scholastic doctors, who substituted classification for reasoning, and looked upon the ten categories as the most useful of all human inventions," the critic wrote. "Though much acuteness and industry may be displayed in finding them out, the discovery is just as unprofitable to science as the enumeration of the dissyllables in the decalogue would be to theology."<sup>13</sup>

Sophistical as they are, the tables of motives are stage setters for the future elaboration of Bentham's theory. For basically, he avows, all human action is reducible to one simple formula of motivation: The pursuit of pleasure and the concomitant avoidance of pain.

"Motive necessarily refers to action," Bentham writes. "Pleasure, pain, or other events prompt the action." And, "It follows, therefore, immediately and incon-

<sup>10</sup> HAROLD A. LARRABEE, *Editor's Preface*, in JEREMY BENTHAM, *HANDBOOK OF POLITICAL FALLACIES*. Baltimore: Johns Hopkins Press, 1952, p. ix.

<sup>11</sup> Bentham's writings on motives can be found in various sections of *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION*, and in *A Table of the Springs of Action* which is reprinted in BOWRING, *WORKS*, Vol. I, pp. 195-219.

<sup>12</sup> ELIE HALÉVY, *THE GROWTH OF PHILOSOPHIC RADICALISM*. Translated from the French by Mary Morris. New York: Macmillan, 1928, p. 459. The best bibliography of Bentham's works has been compiled by Everett and appears in this volume, pp. 522-546.

<sup>13</sup> FRANCIS JEFFREY, *CONTRIBUTIONS TO THE EDINBURG REVIEW*. London: Longman, Brown, Green and Longman, 1855, pp. 619-620. The original appeared in the *EDINBURG REVIEW* of April, 1804.

testably, that there is no such thing as any sort of motive that is in itself a bad one." It is only the consequence of the motive that can be bad because of its effect on others, because of its ultimate influence.

Bentham does point out, amusingly, a criminal court lesson in semantics as he proceeds through his labyrinth of motive delineation. He calls attention to the ethical valuation that is deeply rooted in the language of motivation and notes the preponderance of defamatory words in contrast to praiseworthy denominations and even more so in contrast to neutrally-toned designations. The love of wealth, for example, possesses a large number of derogatory names such as "avarice, covetousness, rapacity, niggardliness" and only a few relatively appreciative labels such as "frugality." But the motive, regardless of the connotation of the word chosen to tag it, remains precisely the same.

Bentham flirts continuously in his discourse on motivation with one of the most important tenets of criminological theory; namely, that criminal behavior is generally learned behavior. But he actually never comes to intimate grips with the idea. He deserves considerable credit, nonetheless, for his adherence to a theory of social (i.e., pleasure pursuit) causation of crime rather than a concept of biological, climatic, or other non-social causation.

The problem of why certain persons pursue criminal patterns in their quest of happiness while others do not is not considered deeply by Bentham. His only answer would seem to be that the external given situation is such that, without adequate deterrence (pain), any person in the situation would act in a criminal manner. This fails to take cognizance of the variations in the individuals facing the given situation. It is not the individuals who vary, Bentham believes, but the situations which are different. Bentham could easily incorporate stereotyped acts in his theory. But he avoids examples which are, to him, promiscuous variations of clearcut, readily understandable behavior. And his understanding and interpretation of behavior is always in terms of his own perception of what seems reasonable in a given context.

Put another way: It appears to be futile to attempt to determine how much pain (punishment) can effectively deter homicide, even after homicide is broken down into innumerable analytical categories in terms of exact amounts of premeditation and precise particles of malice aforethought. A general, statistical answer can be given to the question, but the basic fact that evaded Bentham is that there are some individuals who simply do not conceive of homicide as one of a number of solutions to whatever problem presses them, while others turn to homicide immediately as representing the only possible solution.

Mitchell has adequately summarized the shortcomings of Bentham's work on motivation. "The real reason we find this concept artificial," he notes, "is that we have another stock of ideas about behavior with which Bentham's views are incompatible."<sup>14</sup>

*Social Control.*—It is obvious that all persons might derive considerable pleasure from uncontrolled orgies of criminal behavior if there were no checks—no pains—

<sup>14</sup> WESLEY C. MITCHELL, *Bentham's Felicific Calculus*, POLITICAL SCIENCE QUARTERLY, 33 (June, 1918), p. 183.

attached to this behavior. These checks, or *sanctions* as Bentham designated them, may be set up by legislation, and they serve to bring the individual's pursuit of his own happiness in line with the best interests of the society as a whole.

The bold assumption is further made that the gain of individual happiness by a person in the society inevitably contributes to the total happiness of the society as a whole. As Sorokin has pointed out, Bentham does not take into account the basic idea that what gives happiness to the greatest number of human beings does not necessarily bring the maximum of happiness to some individuals; and what gives the most happiness to some persons does not necessarily give the maximum happiness to all.<sup>15</sup>

Bentham clearly recognized that any legal sanction must be acceptable to the majority of the people before it will be effective. He was aware of other items of social control too, items oftentimes more effective than the legislated don'ts. He called the sanctions physical, political, moral (or popular), and religious. Everett illustrates their operation and differentiation with a case of drunkenness:

If a man suffers from a headache as a result of drunkenness, that may be styled a punishment of the physical sanction; if he is fined or imprisoned by the sentence of a magistrate, it is a punishment of the political sanction; if his neighbors refused to associate with him on account of dislike for his moral character, that is a punishment of the moral sanction; if a Mohammedan, he may suffer from the fear of God's displeasure for having violated a precept of the Koran, and is thus punished by the religious sanction.<sup>16</sup>

Bentham advocated social engineering primarily in the realm of political sanctions since this is the most malleable area in the pleasure-pain equation. He dismissed any idea of recourse to traditional or natural law ("nonsense on stilts" he caustically labelled the latter).

*Deterrence and Punishment.*—The nature of conduct could be evaluated, Bentham believed, by considering its consequences. Present criminologists, on the other hand, would probably say that the consequences of an act (and this is particularly true in the sociolegal handling of juvenile delinquents) are not nearly as important as the personality and the attitudes of the offender. Though the law would not pose the question, the criminologist should: What difference in terms of the offender does it make whether a bullet, intended to kill, proves lethal or merely injures slightly?

Bentham made very worth-while advances in the rationalizing of criminal jurisprudence by insisting that the function of law should not be to achieve vengeance for a criminal act, but to prevent the commission of the act. That he did not clearly understand the connection between laws and their effect on deterring crime is not surprising. We still do not adequately comprehend the complexities of this relationship, and our laws still are a mosaic of disjointed ideas without empirically-founded substance.

On capital punishment, for instance, Bentham pointed out that afflictive executions, as he calls executions in which extraordinary brutality is used to carry out the killing, are not satisfactory punishments because they produce more pain than is

<sup>15</sup> PITRIM A. SOROKIN, *SOCIETY, CULTURE, AND PERSONALITY: THEIR STRUCTURE AND DYNAMICS*. New York: Harper, 1947, p. 575.

<sup>16</sup> EVERETT, *THE EDUCATION OF JEREMY BENTHAM*, p. 190.



necessary for the purpose. In general, Bentham's reasoning on capital punishment is very keen. Consider, for example, his arguments against extensive capital punishment statutes when public opinion does not support them. In such cases, he notes, the following occurs:

1. It makes perjury appear meritorious, by founding it on humanity;
2. It produces contempt for the laws, by rendering it notorious that they are not executed;
3. It renders convictions arbitrary and pardons necessary. . . . [And] all these causes of uncertainty in criminal procedure are so many encouragements to malefactors.<sup>17</sup>

Punishment is considered an evil, but a necessary evil to prevent greater evils being inflicted on the society and thus diminishing happiness. Bentham presumably does not consider the possibility that an outlawed act might actually serve to increase human happiness; the dilemma so brilliantly portrayed by Dostoyevsky in *Crime and Punishment* in which a murder is defined, with considerable justification, as a social good by its perpetrator and thus morally justifiable.

The application of the principle of utility to criminal behavior produced, among other things, one valuable insight that today is still not totally incorporated into criminal jurisprudence. An offense, Bentham reasoned, must be productive of evil (unhappiness: pain); otherwise, it is not an offense. Thus Bentham's measuring stick of criminal behavior represents a neat distinguishing instrument between acts which a society may consider meretricious and those which it should label as criminal.

Bentham in this vein declaims against what he calls "imaginary offenses"—"acts which produce no real evil, but which prejudice, mistake, or the ascetic influence have caused to be regarded as offenses." To illustrate his point, Bentham points to the case of vestal virgins who were buried alive for unchastity. Many commentators on the criminal codes today, with Professor Kinsey in the vanguard, would undoubtedly echo a fervent agreement with the Bentham distinction between imaginary and real offenses, particularly with the position that "offenses which originate in the sexual appetite, when there is neither violence, fraud, nor interference with the rights of others, and also offenses against one's self, may be arranged under this head."<sup>18</sup>

There is another capsule of advice in Bentham's discussion of remedies—means short of incarceration for preventing crime—that is of relevance to contemporary events. "Never use a preventive means of a nature to do more evil than the offense to be prevented," Bentham cautions. It is a lesson that still must be learned.

<sup>17</sup> JEREMY BENTHAM, *THE RATIONALE OF PUNISHMENT*. Translated from the French by Richard Smith. London: Robert Heward, 1830, pp. 196-197. This book has an odd printing history that is not atypical of Bentham's works. It first formed the second volume of *THÉORIE DES PEINES ET DES RÉCOMPENSES* (Londres, 1811) and represented the initial publication of a Bentham manuscript which had been translated into French by Etienne Dumont. The material for the English edition was drawn primarily from the Dumont work and is thus a translation of Bentham back into his native language.

<sup>18</sup> JEREMY BENTHAM, *THEORY OF LEGISLATION*. Translated from the French of Etienne Dumont by R. Hildreth. London: Kegan Paul, 1905, pp. 245-246.

Bentham is at his logical nadir when he attempts to impose his felicity calculus on criminal jurisprudence in an effort to state the amount of punishment necessary to deter various acts. His moral arithmetic falls short of reasonableness; it is, as the poem at the outset of this discussion suggests, "an artless measure." Man is not, to employ the words of two commentators on Bentham's work, "a human calculating machine."<sup>19</sup> Bentham's theory of criminal behavior, to mention another criticism, is unduly individualistic, intellectualistic, and voluntaristic, and "assumes freedom of will in a manner which gives little or no possibility of further investigation of crime or of efforts to prevent crime."<sup>20</sup>

But Bentham's penology—in contrast to his theories of criminal jurisprudence—often reaches a summit that present-day climbers are still scrambling to attain. It is short on positive suggestions, but it is strikingly sophisticated in its criticisms of illogical punishment. Penology is not the heart of Bentham's work but, to this writer, his pronouncements on the subject constitute the most lasting segment of his extensive publications in criminology.<sup>21</sup>

Bentham is particularly adept at analyzing the various types of punishment in terms of their pragmatic usefulness to the society. The aims of punishment, he avers, are to prevent recidivism and to deter others from the commission of similar offenses. Here, Bentham cannot separate the two goals in a workable fashion (and he is certainly not alone in this). He has no logical answer, for instance, to the problem of the murderer who commits a single offense and then no longer, by statistical probability, represents a threat to the society. In Bentham's theory of utility, for any offense that can be regarded as an isolated incident, the like of which will never recur, punishment is considered useless because it adds a further pain to an original one without purpose.

Punishment should not be an act of anger, resentment, or vengeance. These types of punishment are berated: (1) Where the punishment is groundless, since there is no offense because consent has been given, or where the evil is more than compensated for by an attendant good, such as in justifiable homicide; (2) Where the punishment is inefficacious because it has no power to affect the will, such as in cases of nonage, insanity, or under circumstances where the act appears to be absolutely involuntary; (3) Where the punishment is unprofitable because the evil of punishment exceeds that of the offense. It would be wise, Bentham notes in this connection, to pardon an offender who is protected by a foreign state whose goodwill it is essential to obtain; and (4) Where the punishment is needless because the end may be obtained as effectually at a cheaper price "by instruction, for instance, by informing the understanding . . ."<sup>22</sup>

<sup>19</sup> HARRY ELMER BARNES AND HOWARD BECKER. *SOCIAL THOUGHT FROM LORE TO SCIENCE*. Boston: D. C. Heath, 1938, Vol. I, p. 259.

<sup>20</sup> EDWIN H. SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY*. Revised by DONALD R. CRESSEY. 5th edition. Philadelphia: Lippincott, 1955, p. 53.

<sup>21</sup> This judgment, it might be said, is shared by at least one Benthamite. Atkinson has written that "no part . . . is more luminous, or possesses greater living interest, than the author's enunciation of the general principles of punishment." CHARLES MELNER ATKINSON, *JEREMY BENTHAM, HIS LIFE AND WORK*. London: Methuen, 1905, p. 139.

<sup>22</sup> BENTHAM, *RATIONALE OF PUNISHMENT*, pp. 23-26.

Also enunciated are two principles which still have not obtained adequate recognition: First, the general concept that the less certain the punishment the more severe it must be if it is to have any possibility of deterrence; and second, that overtly equivalent punishments are not really equivalent because of the variations among the offenders. A fine to the rich man may be a mild punishment, while the same fine to the poor man may impose severe hardships.

Bentham's notes on imprisonment also have a contemporary ring: "An ordinary prison is a school in which wickedness is taught by surer means than can ever be employed for the inculcation of virtue. . . . United by a common interest, the prisoners assist each other in throwing off the yoke of shame. . . . Upon the ruins of honor is built a new honor, composed of falsehood, fearlessness under disgrace, forgetfulness of the future, and hostility."<sup>23</sup>

Bentham also devotes considerable attention to a philosophy of crime prevention along the lines that today underlie the theory of delinquency control. He notes that the problem can be approached both by making it impossible for a person to acquire knowledge necessary to commit an offense or by redirecting the will to commit the offense. The pre-delinquent may then be acted upon both physically and psychologically. One can, for instance, prohibit the sale of instruments used in counterfeiting, and one can also work to change the course of dangerous desires, to channel inclinations towards amusements compatible with public interest, and to arrange it so that a given desire may be satisfied without injury to the society. In a more general fashion Bentham advocates attention to "the culture of honor, the employment of the impulse of religion, and the use to be made of the power of instruction and education."<sup>24</sup>

Bentham, however, misses the mark badly in his understanding of criminal motivation when he proposes reciprocal punishments of the type that fit the crimes' motivations. Fines should be leveled against those motivated by avarice; those who commit offenses because of idleness should be assigned compulsory labor. Here, in philosophically compounding a felony, Bentham displays a basic misunderstanding of the roots of crime. We now believe that motivation must be treated rather than attacked. We seek to ascertain why the man was idle. Bentham, a dynamo of activity himself, would answer in terms of his own feelings. It would be a perverse trait—laziness. In this sense, Bentham's criminology becomes highly subjective.<sup>25</sup>

#### THE PANOPTICON PRISON

The much-maligned scheme for a utopian prison, Bentham's ill-fated Panopticon plan, represents the philosopher's most tangible contribution to penology.<sup>26</sup> It is a story of eccentricity in action. To Bentham's credit it must be remembered that imprisonment represented a rather novel form of treatment during this period.

<sup>23</sup> BOWRING, WORKS, Vol. I. (PRINCIPLES OF PENAL LAW, Pt. II).

<sup>24</sup> BOWRING, WORKS, Vol. I. (PRINCIPLES OF PENAL LAW, Pt. III).

<sup>25</sup> For an excellent discussion of this point, see LEON RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: THE MOVEMENT FOR REFORM, 1750-1833*. New York: Macmillan, 1948, pp. 370-377.

<sup>26</sup> The major points of Bentham's work on the Panopticon can be culled from BOWRING, WORKS, Vol. I, pp. 498-503; Vol. IV, pp. 37-248; and Vol. XI, pp. 96-170.

Capital punishment, fines, pillory, transportation, and assignment to prison hulks constituted the usual method of disposing of convicted felons.<sup>27</sup>

There were two intriguing facets to the Panopticon plan. One concerns the unusual architectural pattern for the prison, and the other the method of running the institution.

Architecturally, the Panopticon was to be a circular building with a glass roof and containing cells on every story of the circumference. It was to be so arranged that every cell could be visible from a central point. The omniscient prison inspector would be kept from the sight of the prisoners by a system of blinds "unless . . . he thinks fit to show himself."

The philosophy behind the proposed prison operation was admirable, but the precise method of carrying it out often shows more vivid imagination than practical knowledge. The pivotal figure in the prison was to be the manager who would employ the convicts in contract labor. The manager would derive a proportion of the money earned by the prisoners. Meanwhile, he would be financially liable if felons once under his charge subsequently committed offenses. Further, if more than a specified number of prisoners were to die in a given period, the manager would have to pay a certain sum to the government. These fines were to provide incentive for high-minded supervision of the Panopticon population. The manager would care for the prisoners because he would be "forced to do for his own interest anything that he was not inclined to do for them."

The prison was to be placed near the center of the city so that it would be a visible reminder of the fruits of crime. Within the Panopticon, idleness would be eliminated and the prisoners would be taught profitable trades. There would be a segregation policy by classes of offender, and religious services were to be adjusted to the special needs and tastes of the inmates. Finally, there is some anticipation of today's pre-release units. Bentham bewails the fact that prisoners are transferred directly from the prison into society and he recommends an intermediate stage in this process.

Bentham was convinced that the Panopticon would produce all of the following admirable results: "Morals reformed, health preserved, industry invigorated, instruction diffused, public burdens lightened, economy seated as it were upon a rock, the Gordian knot of the poor laws not cut but untied."

The Panopticon idea was something of a monomania with Bentham; its abortive history occupies a large proportion of his time, correspondence, and thoughts. His travail in attempting to have a Panopticon built by the British government need not be detailed here. The episode reflects to the high credit of the various committees of Parliament that reviewed the scheme and rejected it so that in England, to use one writer's term, the "monstrosity" was never built.<sup>28</sup> From Bentham's viewpoint, the Panopticon represents a prolonged case study in extraordinary frustration.

There was some little diffusion of the Panopticon idea outside of England. In France, for instance, the National Assembly had Bentham's work printed for study,

<sup>27</sup> An excellent description of these conditions can be found in SIDNEY AND BEATRICE WEBB, *ENGLISH PRISONS UNDER LOCAL GOVERNMENT*. New York: Longmans, Green, 1922.

<sup>28</sup> HARRY ELMER BARNES AND NEGLEY K. TEETERS, *NEW HORIZONS IN CRIMINOLOGY*, 2nd edition. New York: Prentice-Hall, 1951, p. 388.

but the project never went any further.<sup>29</sup> Other efforts were made to have it adopted in Ireland. A committee reported adversely upon it in New York in 1811.<sup>30</sup>

Two Panopticon-type prisons actually were constructed in the United States. The Western State Penitentiary which opened at Pittsburgh in 1826 was modeled to some extent on Bentham's plan. But the prison, "wholly unsuited for anything but a fortress", was ordered rebuilt in 1833.<sup>31</sup>

In addition, from 1926-1935, Illinois constructed the Stateville prison, six miles from Joliet, upon the Panopticon plan. After four of the circular cell houses were built and occupied their impracticability was so obvious that it was decided to change to a more conventional plan in completing the institution.<sup>32</sup> The construction drew from a noted prison architect the comment that it was "the most awful receptacle of gloom ever devised and put together with good stone and brick and mortar."<sup>33</sup>

One of the major drawbacks at Stateville has been aptly described by a former inmate of the institution:

I stood in the cell looking out through the bars, which were paneled with glass. In the center of the house was a tower of tubular steel. On top of it was a round porchlike affair with large oblong openings. Through these openings the guard kept constant watch on the cells surrounding him.

I remembered what Carl had said: "They figured they were smart building them that way. They figured they could watch every inmate in the house with only one screw in the tower. What they didn't figure is that the cons know all the time where the screw is, too."<sup>34</sup>

#### CONCLUSION

A summing up of Bentham's contributions to criminology need not concern itself overlong with detailed criticism. Many of the weak points in his theory have been pointed out in the foregoing paragraphs. On the positive side, a backward look clearly shows Bentham standing as a towering landmark along the road of criminology. Whatever its shortcomings, the positivistic school, in which the name of Cesare Beccaria, in particular, is associated with that of Bentham, focused a penetrating light on illegal behavior and strenuously attempted to illuminate the avenues leading toward control of such behavior.

Bentham attacked, and in innumerable ways succeeded in reforming, what Phillipson has described as "the caprice, the barbarity, the inconsistency, the blundering aimlessness, the arbitrary attitude, the indiscriminate excessive punishments, . . . the disastrous jail system, and the other evils, all conspiring to make criminal law and penal administration nothing less than a consummate national folly."<sup>35</sup> The

<sup>29</sup> ELMER LOUIS KAYSER, *THE GRAND SOCIAL ENTERPRISE: A STUDY OF JEREMY BENTHAM IN HIS RELATION TO LIBERAL NATIONALISM*. New York: Columbia University Press, 1932, p. 89.

<sup>30</sup> FREDERICK HOWARD WINES, *PUNISHMENT AND REFORMATION*. New York: Crowell, 1910, p. 146.

<sup>31</sup> HARRY ELMER BARNES, *THE EVOLUTION OF PENOLOGY IN PENNSYLVANIA: A STUDY IN AMERICAN SOCIAL HISTORY*. Indianapolis: Bobbs-Merrill, 1927, pp. 138-141.

<sup>32</sup> *HANDBOOK OF AMERICAN PRISONS AND REFORMATORIES*. Edited by WILLIAM B. COX, F. LOWELL BIXBY, AND WILLIAM T. ROOT. 4th edition. New York: Osborne Association, 1933, Vol. I, p. 145.

<sup>33</sup> ALFRED HOPKINS, *PRISONS AND PRISON BUILDING*. New York: Architectural Book Publishing Co., 1930, p. 43.

<sup>34</sup> PAUL WARREN, *NEXT TIME IS FOR LIFE*. New York: Dell, 1953, p. 139.

<sup>35</sup> PHILLIPSON, *THREE CRIMINAL LAW REFORMERS*, p. 191.

practical results, rather than the theoretical heritage he left behind, stand as major monuments to Bentham. He was not a great philosopher, but he was a great reformer.

Reference might be made to just a small number of the reforms suggested by Bentham which have either partially or wholly been enacted into law since his time: There was the mitigation of the severity of criminal punishment; the abolition of transportation; the adoption of a prison philosophy stressing example and reformation; removal of certain defects in jury systems; substitution of an effectual means of appropriating and realizing a debtor's property for the practice of imprisonment; abolition of usury laws; abolition of law taxes and fees in courts of justice; removal of the exclusionary laws in evidence.<sup>36</sup> Bentham's "untiring attacks" on the complacency of lawyers in the face of judicial injustice are credited by Frank with the "elimination of some of the worst features of judicial practice."<sup>37</sup> "He found the practice of law an Augean stable," another writer notes. "He turned the river into it, . . . sweeping away mound after mound of its rubbish."<sup>38</sup>

Maine's panegyric on Bentham is widely quoted: "I do not know of a single law reform effected since Bentham's time which cannot be traced to his influence,"<sup>39</sup> he wrote. In a sense this is the highest tribute that can be raised to Bentham for it underscores the practical utility of his achievements rather than the theoretical wisdom of his philosophy.

<sup>36</sup> The list is adapted from HILDA G. LUNDIN, *The Influence of Jeremy Bentham on English Democratic Development in* UNIVERSITY OF IOWA STUDIES IN THE SOCIAL SCIENCES, Vol. III, No. 3, 1920, p. 82.

<sup>37</sup> JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE*. Princeton: Princeton University Press, 1950, p. 91. One of the few humorous remarks in Bentham's works, which are notoriously deficient in humor, is typical of his scorn for the legal profession. "Only the lawyer," he wrote sarcastically, "escapes punishment for his ignorance of the law."

<sup>38</sup> JOHN STUART MILL, *MILL ON BENTHAM AND COLERIDGE*. London: Chatto & Windus, 1950, p. 75. The essay originally appeared in MILL'S DISSERTATIONS AND DISCUSSIONS, 1838, Vol. I, pp. 330-392.

<sup>39</sup> HENRY JAMES SUMNER MAINE, *LECTURES ON THE EARLY HISTORY OF INSTITUTIONS*. New York: Henry Holt, 1875, p. 397.