

An Introduction to the Principles of Morals and Legislation

Jeremy Bentham

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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.—The numbering of paragraphs in small bold type is Bentham's.—The First Edition of this work was *privately printed* in 1780 and first *published* in 1789. The present version is based on 'A New Edition, corrected by the Author' [but not changed much], published in 1823.

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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.

art: In Bentham’s time an ‘art’ was any human activity that requires skill and involves techniques or rules of procedure. ‘Arts’ in this sense include medicine, farming, painting, and law-making.

body of the work: This phrase, as it occurs on pages 95, 119 and 138, reflects the fact that Bentham had planned the present work as a mere introduction to something much bigger, the body of the work. See the note on page 4.

cæteris paribus: Latin = other things being equal.

caprice: whim; think of it in terms of the cognate adjective, ‘capricious’.

difference: A technical term relating to definitions. To define (the name of) a kind K of thing ‘by genus and difference’ is to identify some larger sort G that includes K and add D the ‘difference’ that marks off K within G. Famously, a K *human being* is an G *animal* that is D *rational*. The Latin *differentia* was often used instead.

education: In early modern times this word had a somewhat broader meaning than it does today. It wouldn’t have been misleading to replace it by ‘upbringing’ on almost every occasion. See especially **18** on page 39.

event: In *some* of its uses in this work, as often in early modern times, ‘event’ means ‘outcome’, ‘result’. Shakespeare: ‘I’ll after him and see the event of this.’

evil: This noun means merely ‘something bad’. Don’t load it with all the force it has in English when used as an adjective (‘the problem of evil’ merely means ‘the problem posed by the existence of bad states of affairs’). Bentham’s half-dozen uses of ‘evil’ as an adjective are replaced in this version by his more usual ‘bad’, as he clearly isn’t making any distinction.

excite: This means ‘arouse’ or ‘cause’; our present notion of *excitement* doesn’t come into it. An ‘exciting cause’ in Bentham’s usage is just a cause; he puts in the adjective, presumably, to mark it off from ‘final cause’, which meant ‘purpose’ or ‘intention’ or the like, though in fact he uses ‘final cause’ only once in this work.

expensive: When Bentham speaks of a punishment as being ‘too expensive’ he means that it inflicts too much suffering for the amount of good it does. See the editorial note on page 92.

fiduciary: Having to do with a trust.

ideal: Existing only as an idea, i.e. fictional, unreal, or the like.

indifferent: Neither good nor bad.

interesting: When Bentham calls a mental event or ‘perception’ *interesting* he means that it hooks into the *interests* of the person who has it: for him it isn’t neutral, is in some way positive or negative, draws him in or pushes him back.

irritable: Highly responsive, physically or mentally, to stimuli.

lot: In Bentham’s usage, a ‘lot’ of pleasure, of pain, of punishment etc. is an episode or dose of pleasure, pain, etc. There is no suggestion of *a large amount*.

lucre: In a now obsolete sense, ‘greed for profit or gain’ (OED).

magistrate: In this work, as in general in early modern times, a ‘magistrate’ is anyone with an official role in government. The phrase ‘the magistrate’—e.g. in paragraph 41. on page 40—refers to the whole legal=judicial system or to those who operate it.

material: When on page 43 Bentham speaks of ‘consequences that are material’ he means consequences that *matter*. He uses the phrase ‘material or important’.

member: Any part or organ of an organic body (not necessarily a limb). When on page 7 Bentham writes of a community as a ‘fictitious body composed of the individuals who are. . . .as it were its members’, this is a metaphor.

method: On pages 2 and 4, and throughout chapter 16, 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. Bentham’s ‘mischievous’ and ‘mischievousness’ are replaced throughout by ‘harmful’ and ‘harmfulness’, words that don’t occur in the original

moral: In early modern times ‘moral’ had a use in which it meant something like ‘having to do with intentional human action’. When Bentham speaks of ‘moral science’ or ‘moral physiology’ he is referring to psychology. In virtually all his other uses of ‘moral’ he means by it roughly what we mean today.

nicety: ‘precision, accuracy, minuteness’ (OED), sometimes with a suggestion of *overdone* precision etc.

obnoxious: ‘obnoxious to x’ means ‘vulnerable to x’.

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 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’. The line he draws on page 108 between •properties of offences that are shared with other things and •properties that ‘are peculiar’, he is distinguishing (e.g.) •being-performed-by-a-human-being from (e.g.) •being-against-the-law’.

positive pain: Bentham evidently counts as ‘positive’ any pain that isn’t a ‘pain of privation’, on which see 17. on page 26.

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

sensibility: Capacity for feeling, proneness to have feelings. (It’s in the latter sense that *quantity* comes in on page 29—the notion of *how* prone a person is to feel pleasure or pain.

sentiment: This can mean ‘feeling’ or ‘belief’, and Bentham uses it in both senses. The word is always left untouched; it’s for you to decide what each instance of it means.

uneasiness: An *extremely* general term. It stands for any unpleasant sense you may have that something in you or about you is wrong, unacceptable, in need of fixing. This usage is prominent in—popularized by?—Locke’s theory that every intentional act is the agent’s attempt to relieve his ‘uneasiness’.

vulgar: Applied to people who have no social rank, are not much educated, and (the suggestion often is) not very intelligent.

Preface (1789)

[Bentham wrote this Preface in the third person, 'the author' and 'he', throughout.] The following pages were printed as long ago as 1780. My aim in writing them was not as extensive as the aim announced by the present title. It was merely to introduce a plan of a penal code *in terminis*, which was follow them in the same volume.

I had completed the body of the work according to my views as they then were, and was investigating some flaws I had discovered, when I found myself unexpectedly entangled in an unsuspected corner of the metaphysical maze. I had to suspend the work, temporarily I at first thought; suspension brought on coolness, and coolness—aided by other causes—ripened into disgust.

Imperfections pervading the whole thing had already been pointed out by severe and discerning friends, and I had to agree that they were right. The inordinate length of some of the chapters, the apparent uselessness of others, and the dry and metaphysical tone of the whole, made me fear that if the work were published in its present form it would have too little chance of being read and thus of being useful.

But though in this way the idea of completing the present work slid insensibly aside, the considerations that had led me to engage in it still remained. I still pursued every opening that promised to throw the light I needed; and I explored several topics connected with the original one; with the result that in one way or another my researches have embraced nearly the whole field of legislation.

Several causes have worked together to bring to light under this new title a work that under its original one had seemed irrevocably doomed to oblivion. In the course of eight years I produced materials for various works corresponding

to the different branches of legislation, and some I nearly reduced to form [= 'had nearly ready to publish']; and in every one of them the principles exhibited in the present work had been found so necessary that I had to •transcribe them piecemeal or •exhibit them somewhere where they could be referred to in the lump. The former course would have involved far too many repetitions, so I chose the latter.

The question was then whether to publish the materials in the form in which they were already printed, or to work them up into a new form. The latter had all along been my wish, and it is what I would certainly have done if I had had time and had been a fast enough worker. But strong reasons concur with the irksomeness of the task in putting its completion immeasurably far into the future.

Furthermore, however strongly I might have wanted to suppress the present work, it is no longer altogether in my power to do so. In the course of such a long interval—nine years sine the initial printing—copies of the work have come into various hands, from some of which they have been transferred, by deaths and other events, into the hands of other people whom I don't know. Considerable extracts of it have even been published, with my name honestly attached to them but without my being consulted or even knowing that this was happening.

To complete this excuse for offering to the public a work pervaded by blemishes that haven't escaped even my biased eye, perhaps I should add that the censure so justly applied to the •form of the work wasn't applied to its •content.

In sending it out into the world with all its imperfections on its head, I think it may be helpful to readers—I don't expect there to *be* many—to be told briefly what the main ways

are in which it doesn't square with my maturer views. . . .

An introduction to a work on the totality of any science [see Glossary] ought •to deal with everything that concerns every particular branch of that science, or at least more than one of them, and ought •not to deal with anything else. Given its present title, this work fails in both ways to conform to that rule.

As an introduction to the principles of morals it ought to have contained, in addition to its analysis of

the extensive ideas signified by the terms 'pleasure', 'pain', 'motive', and 'disposition',

a similar analysis of the

equally extensive though much less determinate ideas annexed to the terms 'emotion', 'passion', 'appetite', 'virtue', 'vice', and some others, including the names of the particular virtues and vices.

But I think that the only true groundwork for the explaining the latter set of terms has been laid by the explanation of the former; and if I am right about that then the completion of such a dictionary (so to call it) would be little more than a mechanical operation.

Again, as an introduction to the principles of legislation in general, the work ought to have included topics related exclusively to the civil branch of the law, rather than ones relating more particularly to the penal branch; because the latter is merely a means of achieving the ends aimed at by the former. so the chapters on punishment ought to have had less weight than—or at least to have been preceded by—a set of propositions that I have come to see as providing a standard for the operations of government in creating and

distributing proprietary and other civil rights. I'm talking about certain axioms of what we may call *mental pathology*, expressing the ways in which •the feelings of the people concerned are related to •the various classes of incidents that the operations of government either call for or produce.¹

Also, the discussion of the classification of offences, and everything else pertaining to offences, ought to have preceded the treatment of punishment; because the idea of *punishment* presupposes the idea of *offence*. . . .

Lastly, I now think that the analytical discussions of the classification of offences should be transferred to a separate treatise in which the system of legislation is considered solely in respect of its form—i.e. in respect of its method [see Glossary] and terminology.

In these respects the work falls short of my ideas of what should be presented in a work with the title 'Introduction to the Principles of Morals and Legislation'. But I don't know of any title that would be less unsuitable. The work's actual contents would not have been indicated as well by a title corresponding to the more limited plan that I had in writing it, namely as an introduction to a penal code.

Most readers are sure to find dry and tedious many of the discussions the work contains, yet I don't know how to regret having written them, or even having made them public. Under every heading I indicate the practical uses to which those discussions appear applicable; and I don't think there is a single proposition that I haven't needed to build on when writing about some detailed matter of the sort that any body of law, authoritative or unauthoritative, must be composed of. I venture to mention in this connection chapters

¹ For example; •It is worse to lose than simply not to gain. •A loss falls the lighter by being divided. •The suffering of a person hurt in gratification of enmity is greater than the gratification produced by the same cause. These. . . .have the same claim to be called 'axioms' as those given by mathematicians under that name; referring to universal experience as their immediate basis, they can't be proved and need only to be developed and illustrated in order to be recognised as incontestable.

6–12 on Sensibility, Actions, Intentionality, Consciousness, Motives, Dispositions, Consequences. Even in the enormous chapter on the classification of offences, . . . pages 137–139 are employed in stating the practical advantages that can be reaped from the plan of classification that it presents. Those in whose sight my ‘Defence of Usury’ has been fortunate enough to find favour can count as one such advantage the discovery of the principles developed in that little treatise. In the preface to an anonymous tract published back in 1776 [Fragment on Government] I had hinted at the usefulness of a natural classification of offences by presenting a test for distinguishing genuine offences from spurious ones. The case of usury is just one instance of the truth of that hint. A note on page 121 below shows how the opinions developed in ‘Defence of Usury’ owed their origin to the difficulty I experienced when trying to find a place in my classification for that imaginary offence. To readers who would like help in wading through an analysis of such enormous length, I would almost recommend beginning with subsection 4 on pages 137–139.

One good at least can result from the present publication, namely that the more I have trespassed on the reader’s patience on this occasion, the less need I will have to do so later on; so that this book may do for my later works the service that books of pure mathematics do for books that combine mathematics with natural philosophy [= ‘natural science’]. The narrower the present work’s circle of readers, the larger may be the number of those to whom my later works are accessible. I may in this respect be in the condition of the philosophers of antiquity who are said to have held two bodies of doctrine, a popular and an occult [= ‘hidden’] one; but with this difference that in my case the occult and the popular will (I hope) be found to be as consistent as those of the ancients were contradictory; and that in my

work whatever occultness there is has been the pure result of sad necessity and not choice.

Having referred to different arrangements that have been suggested by my more extensive and maturer views, I think it may be useful for me to give a brief account of their nature; without such explanation, my occasional references to unpublished works might create perplexity and mistakes. Here, then, are the titles of the works by the publication of which my present plans would be completed. I give them in the order that seems to me best fitted for understanding; it’s the order they would have if the whole assemblage were to come out at once; but the order in which they will eventually appear will probably be affected by extraneous considerations.

Principles of legislation in matters of . . .

- (1) . . . civil law, more distinctively called ‘private distributive law’.
- (2) . . . penal law.
- (3) . . . procedure, with a unified treatment of the criminal and civil branches, between which no line can be drawn that isn’t •very indistinct and •continually liable to shift.
- (4) . . . reward.
- (5) . . . public distributive law, more concisely and familiarly called ‘constitutional law’.
- (6) . . . political tactics; the art of maintaining order in the proceedings of political assemblies so as to direct them to the goal they were created for. . . .
- (7) . . . relations between nation and nation, or—to use a new though not inexpressive label—in matters of ‘international law’.
- (8) . . . finance.
- (9) . . . political economy [= economics].
- (10) Plan of a body of law, complete in all its branches,

considered in respect of its form (i.e. its method and terminology); including a view of the origin and connection of the ideas expressed by the short list of terms the exposition of which contains everything that properly falls within the scope of universal jurisprudence.¹

The principles listed above are to be used to prepare the way for the body of law itself, presented in explicit detail. For this to be complete with reference to any political state it must consequently be calculated for the meridian [meaning?], and adapted to the circumstances of some one such state in particular.

If I had had unlimited time and every other condition necessary, I would have wanted to postpone the publication of each part until the whole thing was complete. The ten parts exhibit what appear to me to be the dictates of *utility* in every line; and what they are *for* is to provide reasons for the corresponding provisions contained in the body of law itself; so the exact truth of the ten parts can't be precisely ascertained until the provisions they are meant to apply to are themselves settled in explicit detail. But the infirmity of human nature makes all plans precarious, and the more so the more extensive they are; and I have already made considerable advances in several branches of the theory without having made corresponding advances in the practical applications; so I think it more than probable that the materials won't be published in what is theoretically the best order. This irregularity will inevitably lead to a multitude of imperfections that might have been avoided if the formulating of •the body of law in explicit detail had kept pace with the development of •the principles, so that each part had been adjusted and corrected by the other. But I am not much swayed by this drawback because I

suspect that it has more to do with my vanity than with the instruction of the public; any amendments in the detail of the principles that might be suggested by the fixed wording of the corresponding legal provisions can easily be made in a corrected edition of the principles after the publication of the law.

In the course of this work references will be found •to the plan of a penal code to which the work was meant as an introduction and •to other branches of the above-mentioned general plan—not always under the titles they have been given here. Giving you this warning is all I can do to save you from the perplexity of looking out for things that don't yet exist. . . . [This refers to, among other things, occurrences of the phrase 'the body of the work' on pages 95, 119 and 138.]

I have referred to some unspecified difficulties as the causes of the present work's publication delay and its unfinished state. Ashamed of this defeat and unable to cover it up, I can't refuse myself the benefit of such an apology as a slight sketch of those difficulties may provide.

They arose from my attempt to solve the questions that will be found at the conclusion of this volume; Wherein consists the identity and completeness of a law? What is the distinction. . . .between a penal and a civil law? And between the penal and other branches of the law?

It is obvious that I couldn't completely and correctly answer these questions until the relations and dependencies of every part of the legislative system with respect to every other part had been ascertained; and *that* could be done only in the light of these parts themselves. The accuracy of such a survey requires the existence of the whole fabric to be surveyed; and this cannot be met with anywhere. The main body of the legal fabric in every country is made up of

¹ Such as 'obligation', 'right', 'power', 'possession', 'title', 'exemption', 'immunity', 'franchise', 'privilege', 'nullity', 'validity', and the like.

what in England is called ‘common law’, and might aptly be called ‘judiciary law’ everywhere, namely that •fictitious composition that has no known person for its author, and no known assemblage of words for its substance.

It is like that imagined ‘ether’ that •supposedly• fills spaces where there is no perceptible matter. Every nation’s legal code is made up of shreds and scraps of real law tacked onto that •imaginary backboard. What follows? That anyone who for any reason wants an example of a complete body of law to refer to must begin by *making* one.

There is—or rather there ought to be—a logic of •the will as well as of •the understanding; the operations of the will are as susceptible of being delineated by rules, and as worthy of such treatment, as are those of the understanding. Of these two branches of that recondite art [see Glossary] Aristotle saw only the latter, and succeeding logicians following in the steps of their great founder have followed him in this. Yet of these two branches it is the logic of the will that is more important; because the operations of the understanding wouldn’t matter if they didn’t direct the operations of the will.

The science of law, considered in respect of its form, is the most considerable branch—the most important application—of this logic of the will. The relation of

(a) the logic of the will to the art of legislation is the same as the relation of

(b) the science of anatomy to the art of medicine; except that in (b) the artist works *on* the subject of anatomy whereas in (a) the artist works *with* the subject of the logic of the will. And the body politic is as much in danger from a lack of knowledge of the one science as the natural human body is from ignorance in the other. One example, among a thousand that might be adduced in proof of this, can be

seen in the note that ends this volume [page 156].

Such then were the difficulties, such the preliminaries; •an unexampled work to achieve, and then •a new science to create—a new branch to add to one of the most abstruse of sciences.

Yet more; even a perfectly complete a body of proposed law would be comparatively useless and uninformative unless it were explained and justified—in every detail—by a continual running commentary of *reasons*. These reasons must be organised into a hierarchy with the top level taken by extensive and leading reasons of the sort called ‘principles’; this is needed so that the comparative value of reasons that point in opposite directions may be estimated, and the joint force of reasons that point in the same direction may be felt. So there has to be not *one* system but *two* parallel and connected systems—one of legislative provisions, the other of political reasons, each giving correction and support to the other.

Are enterprises like these achievable? I do not know. I only know that they have been started and that some progress has been made in all of them. I venture to add that if they are achievable it won’t be by anyone to whom the fatigue of attending to discussions as arid as those in this book would either appear useless or feel intolerable. I am not the first to say, but I repeat it boldly, that truths that form the basis of political and moral science [see Glossary] can only be discovered by investigations that are as severe as—and vastly more intricate and extensive than—mathematical ones. Their terminology is familiar, which may suggest that the subject-matter is easy; but that is quite wrong. Truths in general have been called *stubborn* things, and the truths I am talking about here are stubborn in their own way. •They can’t be forced into detached and general propositions that have no exceptions and need no explanations. •They refuse to

compress themselves into epigrams. •They recoil from the tongue and the pen of the declaimer. •They don't flourish in the same soil as sentiment [see Glossary]. •They grow among thorns, and can't be plucked (like daisies) by infants as they run. Labour, the inevitable lot of humanity, is nowhere more inevitable than along this path. . . . There is no easy road to legislative science, any more than to mathematical science.

[The present version of this work aims to make its content more easily accessible, at the cost of losing much of the colour and energy of Bentham's writing. A good example of this trade-off starts at the ellipsis immediately above, where Bentham wrote; 'In vain would an Alexander bespeak a peculiar road for royal vanity, or a Ptolemy, a smoother one, for royal indolence. There is no King's Road, no Stadtholder's Gate, to legislative, any more than to mathematic science.']

Chapter 1: The Principle of Utility

1. Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. They alone point out what we *ought to* do and determine what we *shall* do; the standard of right and wrong, and the chain of causes and effects, are both fastened to their throne. They govern us in all we do, all we say, all we think; every effort we can make to throw off our subjection to pain and pleasure will only serve to demonstrate and confirm it. A man may claim to reject their rule but in reality he will remain subject to it. The **principle of utility**¹ recognises this subjection, and

makes it the basis of a system that aims to have the edifice of happiness built by the hands of reason and of law. Systems that try to question it deal in sounds instead of sense, in caprice [see Glossary] instead of reason, in darkness instead of light.

But enough of metaphor and declamation! It is not by such means that moral science is to be improved.

2. The principle of utility is the foundation of the present work, so I should start by giving an explicit and determinate account of what it is. By 'the principle'² of utility' is meant

¹ [Note added in 1822.] This label has recently been joined or replaced by the **greatest happiness principle**. This is an abbreviated version of

The principle stating that the greatest happiness of all those whose interests are involved is the right and proper—and the only right and proper and universally desirable—end of human action; of human action in every situation, and in particular in the situation of functionaries exercising the powers of Government.

The word 'utility' doesn't point to the ideas of pleasure and pain as clearly as 'happiness' does; nor does it lead us to the thought of *how many* interests are affected, though this number contributes more than any other factor to the formation of the standard here in question, namely the only standard of right and wrong by which the propriety of human conduct in every situation can properly be tested. This lack of a clear enough connection between •the ideas of happiness and pleasure on the one hand and the •idea of utility on the other has sometimes operated all too efficiently as a bar to the acceptance. . . .of this principle.

² The word 'principle' [he suggests Latin roots for the word] is a term of very vague and very extensive signification; it is applied to anything that is conceived to be a foundation or beginning of a series of operations; in some cases physical operations, but in the present case mental ones. The principle I am discussing may be taken for an act of the mind; a sentiment; a sentiment of approval; a sentiment that when applied to an action approves of its utility, taking that to be the quality of it by which the measure of approval or disapproval of it ought to be governed.

the principle that approves or disapproves of *every* action according to the tendency it appears to have to increase or lessen—i.e. to promote or oppose—the happiness of the person or group whose interest is in question.

I say 'of *every* action', not only of private individuals but also of governments.

3. By 'utility' is meant the property of something whereby it tends •to produce benefit, advantage, pleasure, good, or happiness (all equivalent in the present case) or (this being the same thing) •to prevent the happening of mischief [see Glossary], pain, evil [see Glossary], or unhappiness to the party whose interest is considered. If that party is the community in general, then the happiness of the community; if it's a particular individual, then the happiness of that individual.

4. 'The interest of the community' is one of the most general expressions in the terminology of morals; no wonder its meaning is often lost! When it has a meaning, it is this. The community is a fictitious body composed of the individuals who are thought of as being as it were its members [see Glossary]. Then what is the interest of the community? It is the sum of the interests of the members who compose it.

5. It is pointless to talk of the interest of the community without understanding what the interest of the individual is.¹ A thing is said to 'promote the interest' (or be 'for the interest') of an individual when it tends to increase the sum total of his pleasures or (the same thing) to lessen the sum total of his pains.

6–7. An action then may be said to conform to the principle of utility. . . .when its tendency to increase the happiness of the community is greater than any tendency it has to lessen

it. And the same holds for measures of government, which are merely one kind of action performed by one or more particular persons.

8. When someone thinks that an action (especially a measure of government) conforms to the principle of utility, he may find it convenient for purposes of discourse to •imagine a kind of *law* or *dictate* of utility and to •speak of the action in question as conforming to such a law or dictate.

9. A man may be said to be a 'partisan' of the principle of utility when his approval or disapproval of any action (or governmental measure) is fixed by and proportional to the tendency he thinks it has to increase or to lessen the community's happiness. . . .

10. Of an action that conforms to the principle of utility one may always say that

•it ought to be done,

or at least that

•it is not something that ought not to be done.

One may say also that

•it is right that it should be done; it is a right action;

or at least that

•it is not wrong that it should be done; it is not a wrong action.

When thus interpreted, the words 'ought' and 'right' and 'wrong' and others of that sort have a meaning; otherwise they have none.

11. Has the rightness of this principle ever been formally contested?

next sentence: It should seem that it had, by those who have not known what they have been meaning.

¹ 'Interest' is one of those words that can't be defined in the ordinary way because it isn't a species of some wider genus. [Unlike (for example) 'square' falls under the genus 'rectangle' and can be defined through that and the differentia 'equilateral'.]

perhaps meaning: It seems to have been contested, by people who didn't understand what they were contesting.

Is it susceptible of any direct proof? It seems not, because something that is used to prove everything else can't itself be proved; a chain of proofs must start somewhere. To give such a proof is as impossible as it is needless.

12. Not that there has ever been *anyone*, however stupid or perverse, who hasn't often and perhaps usually deferred to the principle of utility. [The next sentence is exactly what Bentham wrote.] By the natural constitution of the human frame, on most occasions of their lives men in general embrace this principle, without thinking of it; if not for the ordering of their own actions, yet for the trying of their own actions, as well as of those of other men. Yet there may not have been many, even of the most intelligent, who have been disposed to embrace the principle just as it stands and without reserve. There aren't many, indeed, who haven't sometimes quarrelled with it, either •because they didn't always understand how to apply it, or •because of some prejudice that they were afraid to examine or couldn't bear to give up. Such is the stuff that man is made of: in principle and in practice, on the

right path or a wrong one, the rarest of all human qualities is consistency.

13. When a man tries to combat the principle of utility, his reasons are drawn—without his being aware of it—from that very principle itself.¹ If his arguments prove anything, it isn't that the principle is wrong but that he is applying it wrongly. Is it possible for a man to move the earth? Yes; but he must first find out another earth to stand on.

14. To disprove it by arguments is impossible; but from the causes I have mentioned, or from some confused or partial view of it, a man may come to be disposed not to like it. Where this is the case, if he thinks it's worth the trouble to settle his opinions on such a subject, let him take the following steps, and he may eventually come to be reconciled with the principle of utility.

(1) Let him decide whether he wants to discard this principle altogether; if so, let him consider what all his reasonings (especially in politics) can amount to?

(2) If he does want to discard the principle, let him decide whether he wants to judge and act without any principle, or is there some other principle he would judge and act by?

¹ 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.

Addition by Bentham in 1822 .

Not long after the publication of my 'Fragment on Government' (1776), in which the principle of utility was brought to view as an all-comprehensive and all-commanding principle, one person who said something to that effect was Alexander Wedderburn, at that time Attorney General [and Bentham lists his later positions and titles]. He said it in the hearing of someone who passed it on to me. So far from being self-contradictory, the remark was shrewd and perfectly true. . . . A principle that lays down, as the only right and justifiable end of government, the greatest happiness of the greatest number—how can it be denied to be dangerous? It is unquestionably dangerous to every government that has for its actual goal the greatest happiness of *one* person, perhaps with the addition of a comparatively small number of others whom he finds it pleasing or convenient to admit to a share in the concern, like junior partners. So it really was dangerous to the sinister interest of all those functionaries, Wedderburn included, whose interest it was to maximise delay, vexation, and expense in judicial and other procedures, for the sake of the profit they could extract from this. In a government whose goal really was the greatest happiness of the greatest number, Wedderburn might still have been Attorney General and then Chancellor; but he would not have been •Attorney General with £15,000 a year, or •Chancellor with a peerage and a veto on all justice and £25,000 a year, and with 500 sinecures at his disposal.

(3) If he thinks he has found another principle, let him examine whether it is really •a separate intelligible principle rather than merely a •principle in words, a verbal flourish that basically expresses nothing but his own unfounded sentiments—what he might call 'caprice' if someone else had it?

(4) If he is inclined to think that his own (dis)approval annexed to the idea of an act, with no regard for its consequences, is a sufficient basis for him to judge and act on, let him ask himself whether **(i)** his sentiment is also to be everyone else's standard of right and wrong or whether instead **(ii)** every man's sentiment has the same privilege of being a standard to itself?

(5) If **(i)**, let him ask himself whether his principle is not despotical, and hostile to the rest of the human race?

(6) If **(ii)**, let him ask himself:

- Isn't this position anarchic, implying that there are as many different standards of right and wrong as there are men?
- Aren't I allowing that to the same man the same thing that is right today could (with no change in its nature) be wrong tomorrow?
- and that the same thing could be right *and* wrong in the same place at the same time?
- Either way, wouldn't all argument be at an end?

•When one man says 'I like this' and another says 'I don't like it', is there—on my view—anything more for them to say?

(7) If he answers all that by saying 'No, because the sentiment that I propose as a standard must be based on reflection', let him say what facts the reflection is to turn on. If on facts about the utility of the act, then isn't he deserting his own principle and getting help from the very one in opposition to which he set it up? And if not on those facts, then on what others?

(8) If he favours a mixed view, wanting to adopt his own principle in part and the principle of utility in part, *how far* will he go with his principle?

(9) When he has decided where he will stop, let him ask himself how he justifies taking it that far, and why he won't take it further.

(10) Admitting something P other than the principle of utility to be a right principle, one that it is right for a man to pursue; and admitting (what is not true) that 'right' can have a meaning that doesn't involve utility; let him say whether there is any motive that a man could have to pursue P's dictates. •If there is, let him say what that motive is, and how it is to be distinguished from the motives that enforce the dictates of utility; and •if there isn't, then (lastly) let him say what this other principle can be good for.

Chapter 2: Principles opposing the Principle of Utility

1. If the principle of utility is a right principle to be governed by in all cases, it follows that whatever principle differs from it must be a wrong one. To prove that any other principle is a wrong one, therefore, we need only to show it to be •what it is, •a principle whose dictates are at some point different from those of the principle of utility; to state it is to refute it.

2. A principle may be different from the principle of utility either •by being constantly opposed to it, as is the principle of asceticism, . . .

•START OF FOOTNOTE•

‘Ascetic’, a term that has sometimes been applied to monks, comes from a Greek word meaning ‘exercise’. The practices by which monks sought to distinguish themselves from other men were called their ‘exercises’, and consisted in ways they had for tormenting themselves. By this they thought they were ingratiating themselves with the deity:

‘The deity is a being of infinite benevolence. A being of the most ordinary benevolence is pleased to see others make themselves as happy as they can; therefore to make ourselves as unhappy as we can is the way to please the Deity.’

When they were asked what motive they could find for doing all this, they replied:

‘Oh! Don’t think we are punishing ourselves for nothing; we know very well what we are doing. For every grain of pain it costs us now, we are to have a hundred grains of pleasure later on. God loves to see us torment ourselves at present—he has as good as told us so—but this is done only to test us in order to see how we would behave; which he obviously couldn’t

know without making the experiment. Then, from the satisfaction it gives him to see us make ourselves as unhappy as we can in this present life, we have a sure proof of the satisfaction it will give him to see us as happy as he can make us in a life to come.

•END OF FOOTNOTE•

. . . or •by being sometimes opposed to it, and sometimes not, as with the principle of sympathy and antipathy.

3. By ‘the principle of asceticism’ I mean the principle that is like the principle of utility in approving or disapproving of any action according to its apparent tendency to increase or lessen the happiness of the party [see Glossary] whose interest is in question; but in an inverse manner, approving of actions insofar as they tend to lessen his •or their• happiness and disapproving of them insofar as they tend to increase it.

4. It is evident that anyone who rejects *any* particle of pleasure, as such, from whatever source, is to that extent a partisan of the principle of asceticism. It is only on that principle, and not from the principle of utility, that the most abominable pleasure that the vilest malefactor ever got from his crime should be rejected *if it stood alone*. In fact it never *does* stand alone: it is inevitably followed by so much pain (or—the same thing—such a high probability of a certain amount of pain) that the pleasure is as nothing by comparison. This is the only real reason (a perfectly sufficient one) for making the crime a ground for punishment.

5. The principle of asceticism appears to have been embraced by two classes of men of very different characters whose reasons for embracing it have been correspondingly different. They are

moralists, who seem to be driven by **hope**, i.e. the prospect of pleasure; the hope that philosophic pride feeds on, the hope of honour and reputation at the hands of men; and

religionists, who seem to be driven by **fear**, i.e. the prospect of pain; the fear that is the offspring of superstitious fancy, the fear of future punishment at the hands of an angry and revengeful deity.

In the religionists' case I highlight fear, because of the invisible future •fear is more powerful than •hope. These details characterise the two parties among the partisans of the principle of asceticism; the parties and their reasons are different, the principle is the same.

6. But the religious party seem to have carried it further than the philosophical party; they have acted more consistently and less wisely. The philosophical party have scarcely gone further than to •reject pleasure; the religious party have often gone so far as to make it a matter of merit and of duty to •seek pain. The philosophical party have hardly gone beyond making pain a matter of indifference. They have said that it is not an evil but they haven't said that it is a good. They haven't even rejected all pleasure in the lump [Bentham's phrase]. They have discarded only what they have called the gross •pleasures•, i.e. organical [here = 'animal'] pleasures or ones that are easily traced back to those; and they have even cherished and magnified *refined* pleasure. But they haven't called it 'pleasure': to cleanse it from the filth of its impure original, it had to have a different name; it was to be called 'the honourable', 'the glorious', 'the reputable', 'the becoming', the *honestum*, the *decorum*—anything but 'pleasure'.

7. Those are the two sources of the doctrines that have

continually put traces of this principle into the sentiments [see Glossary] of the bulk of mankind; some from the philosophical, some from the religious, some from both. Men of education more frequently get it from the philosophical side, as more suited to the elevation of their sentiments; the vulgar [see Glossary] more frequently get it from the superstitious side, as more suited to the narrowness of their intellect, not expanded by knowledge, and to the abjectness of their condition, continually open to the attacks of fear. [In that sentence, of course, 'superstitious' is Bentham's stand-in for 'religious'.] But the traces derived from the two sources would naturally intermingle, so that a man wouldn't always know which of them influenced him more; and they would often serve to corroborate and enliven one another. This conformity created a kind of alliance between parties that are otherwise so dissimilar; and disposed them to unite sometimes against their common enemy, the partisan of the principle of utility, whom they joined in branding with the odious name 'epicurean'.

8. The principle of asceticism, however, however warmly its partisans may have embraced it as a rule of private conduct, seems not to have been carried far when applied to the business of government. In a few instances it has been carried a little way by the philosophical party—witness the regimen of ancient Sparta. Though that may be seen as •a measure of *security* and •a (hasty and perverse) application of the principle of utility. There have been hardly any instances of much duration by the religious: the various monastic orders, and the societies of the Quakers, Dumplers [a religious sect in Pennsylvania], Moravians, and other religionists have been free societies, whose regimen no man has been subjected to without his consent. Whatever merit a man may have thought there would be in making himself miserable, it seems never to have occurred to them that it may be a merit, let alone a duty, to make others miserable; although it would

seem that if a certain quantity of misery were desirable it wouldn't matter much whether it were brought by each man on himself or by one man on another. It is true that among the religionists a great deal of misery *was* produced in some men by the instrumentality of others, because of other doctrines and practices that had the same source as the principle of asceticism; witness the holy wars, and the religious persecutions. But the passion for producing misery in these cases was based on special reasons; the exercise of it was confined to persons of certain kinds—they were tormented not as •men but as •heretics and infidels. To have inflicted the same miseries on their fellow believers. . . . would have been as blameworthy in the eyes of these religionists as in the eyes of a partisan of the principle of utility. For a man to give himself a certain number of lashes was indeed meritorious (•they thought•), but to give the same number of lashes to another man without his consent would have been a sin. We read of saints who, for the good of their souls and the mortification of their bodies, have voluntarily let themselves be a prey to vermin; but though many people of this kind have ruled nations we don't read of any who have deliberately made laws aimed at stocking the body politic with •such vermin as• highwaymen, burglars or arsonists. •If at any time they have allowed the nation to be preyed on by swarms of idle pensioners or useless placemen [= 'holders of soft, easy government jobs'], it has been through negligence and stupidity rather than any settled plan for oppressing and plundering of the people. •If at any time they have sapped the sources of national wealth by cramping commerce and driving the inhabitants into emigration, it has been with other views and in pursuit of other goals. •If they have declaimed against the pursuit of pleasure and the use of wealth, they have commonly stopped at declamation; they have not (like Lycurgus, •the austere lawgiver of early

Sparta•), made laws specifically for the purpose of banishing the precious metals. •If they have established idleness by a law, it has been not because idleness (the mother of vice and misery) is itself a virtue, but because idleness (they say) is the road to holiness. . . . •If they have established or allowed to be established punishments for the breach of celibacy, they have merely been complying with the petitions of those deluded rigorists, who—dupes to the ambitious and deep-laid policy of their rulers—first put themselves under that idle obligation by a vow.

9. The principle of asceticism seems originally to have been dreamed up by certain hasty theorists who—having seen or imagined that certain pleasures when taken in certain circumstances have in the long run been outweighed by pains they brought with them—set out to quarrel with everything that offered itself under the name of 'pleasure'. After getting that far and forgetting the point they set out from, they pushed on and ended up thinking that it is meritorious to fall in love with pain. Even this, we see, is basically just the principle of utility misapplied.

10. The principle of utility *can* be followed consistently; and it's a mere tautology to say that the more consistently it is followed the better it must be for human-kind. The principle of asceticism couldn't be consistently followed by any living creature. If a tenth of the inhabitants of this earth follow it consistently, in a day's time they will turn it into a hell.

11. Among principles opposed to the principle of utility, the one that seems these days to have most influence in matters of government is what may be called 'the principle of sympathy and antipathy'. . . [to be picked up at page 15]

·START OF LONG FOOTNOTE·

It ought to have been given the broader title ‘principle of caprice’ [see Glossary]. Where it applies to the choice of actions to be marked out for injunction or prohibition, for reward or punishment (in short, marked out as subjects for obligations to be imposed), it may indeed properly be called the ‘principle of sympathy and antipathy’, as it is in the main text. But this is not such a good name for it when occupied in the choice of the events that are to serve as sources of title with respect to rights; where the actions prohibited (the •obligations) and allowed (the •rights) are already fixed, and the only question is: under what circumstances is a man to be •subjected to one or •invested with the other? . . . In this case it may more appropriate to call it ‘the fantastic principle’ [= ‘principle of imagination’]. Sympathy and antipathy are states of feeling; but decisions about entitlements to rights—especially property rights—on grounds unconnected with utility has often been the work not of the feelings but of the imagination.

Lord Coke, defending an article of English common law allowing uncles to succeed in certain cases in preference to fathers, produced a sort of ponderosity [= ‘heaviness’] that he had discovered in rights, disqualifying them from ascending in a straight line! It wasn’t that he loved uncles or hated fathers. The analogy ·with *weight*·, such as it was, was what his imagination presented him with instead of a reason; and once feeling is out of the way, imagination is the only guide for a mind that doesn’t observe the standard of utility or doesn’t know the art [see Glossary] of consulting it.

When some ingenious grammarian invented the proposition *Delegatus non potest delegare* [Latin; ‘No delegated powers can be further delegated’] to serve as a rule of law, surely it wasn’t that he •was hostile to delegates of the second order, or •took pleasure in the thought of the ruin that might

befall the affairs of a traveller whose chosen manager at home has somehow been made unable to serve ·and isn’t allowed to appoint a substitute·. Rather, it was that the incongruity of giving the same law to objects as different as active and passive are, was not to be surmounted, and that *-atus* (·passive·) chimes, as well as it contrasts, with *-are* (·active·).

When that inexorable maxim (whose range is no more to be defined than the date of its birth and the name of its father are to be found) was imported from England for the government of Bengal, and the whole fabric of the judiciary was crushed by the thunders of retroactive justice, it surely wasn’t because

the prospect of blameless magistrates perishing in prison gave enjoyment to the unoffended authors of their misery;

but because

the music of the maxim—·*Delegatus non potest delegare*·—absorbed the whole imagination and drowned the cries of humanity along with the dictates of common sense.

Fiat justitia, ruat coelum, says another maxim, as full of extravagance as it is of harmony. Let heaven go to wreck as long as justice is done; and what is the ruin of kingdoms compared to the wreck of heaven?

[With another example, Bentham develops his idea that certain Latin sentences have a ‘music’ of that appeals to the imagination of lawyers who aren’t thinking hard. He continues:] If this were looked into thoroughly, it would be found that the goddess of harmony has exercised more influence, however latent, over the dispensations of Themis [a mythical Greek Titaness, symbolising divine order, law, and custom] than her most diligent biographers or even her most passionate devotees, seem to have been aware of. Everyone

knows how she (the goddess of harmony) used the services of Orpheus to collect the sons of men beneath the shadow of the sceptre; but it seems that men haven't yet learned—despite continual experience of it—with what successful diligence she has laboured to guide it [= 'law'] in its course. Everyone knows that measured numbers [= rhythmical lines of poetry] were the language of law in its infancy, but no-one seems to have noticed powerfully they have governed it in its maturer age. In English jurisprudence in particular, the connection between law and music, though much less perceived than in Spartan legislation, is not perhaps less real or less close. The formal music of the Church, though not of the same kind as the music of the theatre, is not less musical; music that hardens the heart is not less musical than what softens it; the *sostenutos* are as long, the cadences as sonorous; and these musical events are governed by rules which, though not yet promulgated, are quite determinate. Search indictments, pleadings, proceedings in chancery, conveyances; whatever sins against truth or common sense you find, you won't find any against the laws of harmony. The Anglican liturgy. . . . doesn't have more of it than is commonly to be found in an English act of parliament. Dignity, simplicity, brevity, precision, intelligibility, possibility of being remembered or even understood—all that gives way to harmony. . . .

To return to the principle of sympathy and antipathy—a name that I preferred at first to 'principle of caprice', on account of its impartiality. It is actually too narrow, for the reasons I have given; but I chose it because I hadn't at that time surveyed the civil branch of law except where I had found it inseparably involved in the penal branch. When we come to the former we'll see the fantastic principle looming at least as large there as the principle of sympathy and antipathy does in the latter.

In the days of Lord Coke, the light of utility can scarcely

be said to have shone on the face of common law. A faint ray of it under the name *argumentum ab inconvenienti* [= 'argument from inconvenience'] is to be found in a list of about twenty topics exhibited by that great lawyer as the equal leaders of that all-perfect system, but its appearance in that way in that context is a sure proof of neglect. . . . It stands neither in the front nor in the rear, nor in any post of honour; but huddled in towards the middle without the smallest mark of preference. Nor is this Latin 'inconvenience' by any means the same as the English one. It is distinguished from mischief [see Glossary]; and because the vulgar take it to be less bad than mischief the learned present it as something worse. 'The law prefers a mischief to an inconvenience', says an admired maxim, and the more admired because—as nothing is expressed by it—it is supposed to be well understood.

Not that there is any declared opposition, let alone a constant one, between the prescriptions of utility and the operations of the common law; such constancy we have seen to be too much even for ascetic fervour. From time to time instinct would unavoidably betray them into the paths of reason; instinct which, however it may be cramped, can never be killed by education. The cobwebs spun out of the materials brought together by 'the competition of opposite analogies' must always have been warped by the silent attraction of the rational principle (like needle to magnet), without the conscience coming into it.

[An 1822 addition to this note savagely criticises England's conduct in India, replacing 'the bad system of Mahometan and other native law' by the 'still more harmful system of English judge-made law'; with some English oppressors making fortunes at the expense of 'a hundred million plundered and oppressed Hindus and Mahometans'.]

·END OF LONG NOTE·

[picking up from page 12] . . . By ‘the principle of sympathy and antipathy’ I mean the principle that approves or disapproves of certain actions not •because of their tending to increase or lessen the happiness of the party whose interest is involved, but merely •because a man finds himself disposed to approve or disapprove of them, taking that approval or disapproval as a sufficient reason for itself and denying any need to look for an independent reason. That’s how it works in the general department of morals; and in the particular department of politics it uses the degree of the disapproval as a measure of •how severe punishment should be and of •what should be the grounds for punishment.

12. Obviously this is a ‘principle’ in name rather than in reality. It is not so much a positive principle as a term employed to signify the negation of all principle. What one expects to find in a *principle* is something that points out some external consideration that will support and guide the internal sentiments of approval and disapproval; this expectation is not well fulfilled by a proposition that does neither more nor less than hold up each of those sentiments as a ground and standard for itself.

13. The partisans of this ‘principle’ say the following [to the end of this paragraph and perhaps on into 14]. In looking over the catalogue of human actions to determine that are to be marked with the seal of disapproval, you need only consult your own feelings: anything that you find yourself inclined to condemn is wrong for that very reason. For the same reason it is also fit for punishment; it makes no difference whether, or by how much, it is adverse to utility. But the strength of your feeling of disapproval does make a difference: if you hate much, punish much; if you hate little, punish little; punish as you hate. If you hate not at all, punish not at all; the fine feelings of the soul are not to be overborne

and tyrannised by the harsh and rugged dictates of political utility.

14. The various systems that have been formed concerning the standard of right all come down to the principle of sympathy and antipathy. One account can serve for all of them. They are *all* devices for avoiding the need to appeal to any external standard, and for persuading the reader to accept the author’s sentiment or opinion as a reason for itself. The wording differs but the principle the same.

·START OF LONG FOOTNOTE·

It is interesting to see the variety of inventions men have come up with, and the variety of phrases they have presented, in order to conceal from the world (and if possible from themselves) this very general and therefore very pardonable self-sufficiency.

One man says that he has something made on purpose to tell him what is right and what is wrong, calling it his ‘**moral sense**’; and then he goes to work comfortably, saying that x is right and y is wrong ‘because my moral sense tells me so’.

Another man replaces ‘moral’ by ‘common’, and tells you that his ‘**common sense**’ teaches him what is right and wrong, as surely as the other’s moral sense did. By ‘common sense’ he means a sense of some kind or other, which he says everyone has—and the sense of those whose sense is not the same as his is disregarded as not worth attending to. This device does better than the other: a moral sense is a new thing, and a man may search within himself for a good while without being able to find it; whereas common sense is as old as the creation, and any man would be ashamed to be thought to have less of it than his neighbours. . . .

Another man says that he can’t find that he has any such thing as a moral sense, but that he has an **understanding**, which will do quite as well. This understanding, he says, is

the standard of right and wrong; it tells him so and so. All good and wise men understand as he does; if other men's understandings differ in any point from his, so much the worse for them; it is a sure sign they are either defective or corrupt.

Another man says that there is an eternal and immutable **rule of right**; that this rule of right dictates so and so; and then he begins giving you his sentiments on anything that comes uppermost; and these sentiments (you are to take for granted) are so many branches of the eternal rule of right.

Another man, or perhaps the same man, says that certain practices conform to the **fitness of things**, while others don't; and then he tells you which practices conform and which don't, just as he happens to like a practice or dislike it.

A great multitude of people are continually talking of the **law of nature**; and when they give you their sentiments about what is right and what is wrong you are to understand that these sentiments are so many chapters and sections of the law of nature.

Instead of 'law of nature' you have sometimes 'law of reason', 'right reason', 'natural justice', 'natural equity', 'good order'. Any of them will do equally well. The last of them is most used in politics. It and the two just before it are much more tolerable than the others, because they don't explicitly claim to be anything more than *phrases*; they don't strongly insist on being seen as positive standards, and seem content to be taken as merely ways of saying that the thing in question conforms to the proper standard, whatever that may be. On most occasions, however, it will be better to say 'utility'; that is clearer because it refers more explicitly to pain and pleasure.

We have one philosopher [William Wollaston] who says that there's no harm in anything in the world but in **telling a lie**; and that if, for example, you murder your father this is a way

of saying that he isn't your father. When this philosopher sees anything that he doesn't like, he of course says that it is a particular way of telling a lie. It is saying that the act ought to be done, or may be done, when in truth it ought not to be done.

The fairest and most open of them all is the sort of man who says: 'I am one of the elect [= "the chosen"]; God himself takes care to tell the elect what is right, doing this with such good effect that however much they struggle they *can't help* not only knowing it but doing it. So if you want to know what is right and what is wrong, come to me.'

The principle of antipathy is often at work when such-and-such acts are condemned as being '**unnatural**'; the practice of exposing children [i.e. leaving unwanted children to starve or to die from the weather or predators], established among the Greeks and Romans, is said to have been an unnatural practice. When 'unnatural' means anything, it means 'infrequent'; but that is irrelevant to the present question because the frequency of such acts ·of child-exposure· is perhaps the greatest complaint against them. So in the present context it means nothing—I mean nothing concerning the act itself. All it can do is to express the speaker's disposition to be angry at the thought of child exposure. Whether his anger is appropriate is a question that can be answered rightly only on the principle of utility. . . .

The mischief common to all these ways of thinking and arguing (which we have seen to be *one* way, worded differently) is that they serve as a cloak and pretence and support for *despotism*. Perhaps not a despotism in practice, but a despotism in disposition, which will be all too apt to show itself in practice when the opportunity turns up. The consequence is that a man whose intentions may well be of the purest kind becomes a torment to himself or his fellow-creatures. If his cast of mind is melancholy, he sits in

silent grief bewailing others' blindness and depravity; if it is angry, he declaims with fury and virulence against all who differ from him, fanning the coals of fanaticism and branding as corrupt and insincere everyone who doesn't think, or profess to think, as he does.

If such a man happens to have a good writing-style, his book may do a great deal of mischief before the nothingness of it is understood.

These principles—if they can be called 'principles'—are applied more often to morals than to politics; but their influence spreads to both. A man will be at least as glad in politics as he would be in morals to have a pretence for deciding a question in the way that best pleases him, without the trouble of inquiry. If a man is an infallible judge of what is right and wrong in the actions of private individuals, why not in the measures that public men take to direct those actions? . . . I have more than once known the pretended 'law of nature' set up in legislative debates in opposition to arguments based on the principle of utility.

'But do we *always* base our notions of right and wrong on utility alone?' I do not know; I do not care. Here are three questions about a moral sentiment:

- (i) Can it be originally conceived from any source except a view of utility?
- (ii) Can it, when examined and reflected on, be actually persisted in and defended by a thoughtful person on any other basis than utility?
- (iii) Can it be properly justified by a person addressing himself to the community on any basis except utility?

The two first are questions of speculation; it doesn't matter much how they are answered. The third is a question of practice; the answer to it is as important as any answer to any question can be.

You tell me:

'I feel disposed to morally approve of action A; but not because of any notion of its being useful to the community. I don't claim to know whether it is useful or not; for all I know, it may be harmful.'

I reply: 'But then is A a harmful action? Look into that; and if you can make yourself aware that it is so, then if moral duty means anything it your duty at least •to abstain from doing A, and •to try to prevent it from being done if this lies in your power and wouldn't require too great a sacrifice. You won't be excused by cherishing the notion of A in your bosom and calling it "virtue".'

You say again:

'I feel in myself a disposition to morally detest action B, but this is not because of any notions I have of its being harmful to the community. I don't claim to know whether it is a harmful action; for all I know, it may be a useful one.'

I reply: May it indeed? Then let me tell you that unless duty and right and wrong are just what you please to make them, if someone plans to do B and it really isn't harmful then it is no duty of yours to prevent him. On the contrary, it would be very wrong for you to do so. Detest B within yourself as much as you please; that may be a very good reason (unless B is downright useful) for you not to do it *yourself*; but if by word or deed you do anything to hinder *him* or make *him* suffer for it, it is you and not he that have done wrong. Your setting yourself to blame his conduct or labelling it 'vice' won't make him guilty or you blameless. If you can settle for his being of one mind about B, and you of another, it is well; but if you insist that you and he must be of the same mind, it's for you to get the better of your antipathy, not for him to knuckle under to it.

•END OF LONG FOOTNOTE•

15. It is obvious that the dictates of this principle of sympathy and antipathy will often coincide with those of the principle of utility, even if that isn't what is intended. They probably coincide more often than not. That's why it is that the business of penal justice is conducted on that tolerable sort of basis that we see it carried on in common at this day. For what more natural or more general ground for hatred of a practice can there be than its being harmful? What all men are exposed to suffer from, all men will be disposed to hate. But it is far from being a constant ground, because when a man suffers he doesn't always know what caused his suffering. A man may suffer grievously from a new tax without being able to track the cause of his sufferings to the injustice of some neighbour who has eluded the payment of an old one.

16. The principle of sympathy and antipathy is most apt to err on the side of severity. It favours applying punishment in many cases that deserve none; and in many cases that deserve some it favours applying more than they deserve. There is no incident imaginable, however trivial and far from mischief, from which this principle can't extract a ground of

punishment. Any difference in taste; any difference in opinion on one subject as well as on another. No disagreement so trivial that perseverance and quarrelling won't make it turn serious. Each sees the other as an enemy and, if laws permit, as a criminal.¹

17. But the principle of sympathy and antipathy also sometimes errs by being too lenient. A near and perceptible mischief generates antipathy. A remote and imperceptible mischief, though not less real, has no effect. Instances of this will occur in their proper places in the course of this work.

18. You may be surprised that in all this I haven't mentioned the theological principle, i.e. the principle that professes to look to **the will of God** for the standard of right and wrong. But this is not in fact a distinct principle. It is never anything but one or other of the three before-mentioned principles presenting itself in another form. The 'will of God' that is referred to here cannot be his revealed will, as contained in the sacred writings; for that is a system that nobody ever thinks of invoking at this time of day [= 'at this stage in history'] for the details of political administration; and even to apply

¹ King James I of England conceived a violent antipathy against Arians, two of whom he burnt. He hadn't much difficulty in procuring this gratification for himself: the notions of the times were favourable to it. He wrote a furious book against Vorstius, for being an Arminian, that being the most he could do because Vorstius was at a distance. He also wrote a furious book called *A Counterblast to Tobacco* against the use of that drug, which Sir Walter Raleigh had recently introduced into England. If the notions of the times had co-operated with him, he would have burnt Anabaptists and smokers of tobacco in the same fire. However he had the satisfaction of putting Raleigh to death afterwards, though for another crime. [Arians, Armenians, and Anabaptists held theological views that other Christians regarded as heretical.]

Disputes about the comparative excellence of French and Italian music have generated very serious quarrels in Paris. One of the parties would not have been sorry (D'Alembert reports) to have brought government into the quarrel. . . . (This is one of the ways in which the human race is distinguished—not much indeed to its advantage—from the lower animals.) Long before that, a similar and equally fierce dispute had been kindled at London about the comparative merits of two composers who were there; and in London these days riots between the approvers and disapprovers of a new play are not infrequent. The ground of quarrel between the Big-endians and the Little-endians in the fable [i.e. in *Gulliver's Travels*; two nations at war over the right way to eat an egg] was not more frivolous than many that have laid empires desolate. In Russia, it is said, there was a time when thousands of persons lost their lives in a quarrel, in which the government had taken part, about how many fingers to use in making the sign of the cross. . . .

it to the details of •private conduct, the most eminent divines of all persuasions agree that it first needs a great deal of interpretation—otherwise what use are the works of those divines? And it is also agreed that some other standard must be assumed for the guidance of these interpretations. So the ‘will of God’ that is meant in this context is what may be called the ‘presumptive will’ of God, i.e. what is presumed to be his will by virtue of the conformity of its dictates to those of some other principle. What then can this other principle be? It must be one of the three I have talked about, for we have seen that there cannot be any more. So it is clear that, with revelation being out of the question, no light can be thrown on the standard of right and wrong by anything that can be said about ‘God’s will’. We may be perfectly sure that whatever is right conforms to the will of God; but so far is that from showing us what is right that we have to now first whether a thing is right in order to know whether it conforms to the will of God.

•START OF FOOTNOTE•

The principle of theology refers everything to ‘God’s pleasure’. But what is God’s pleasure? God does not—everyone agrees that he does not *now*—either speak or write to us, so how can we know what is his pleasure? By observing what is our own pleasure and pronouncing it to be his! Accordingly, what is called ‘the pleasure of God’ can only be (revelation apart) the good pleasure of the speaker. How know you it to be God’s pleasure that action A should be abstained from? Why do you even *suppose* that this is so? •Because doing A would, I imagine, be over-all prejudicial to the happiness of mankind’ says the partisan of the principle of utility; •Because doing A brings a gross and sensual, or at least a trifling and transient, satisfaction’ says the partisan of the principle of asceticism; •Because I detest the thought of anyone’s doing A, and I

cannot and ought not to be asked to say why’ says the person who goes by the principle of antipathy. One of those three answers must (revelation apart) be given by the person who professes to take for his standard the will of God.

•END OF FOOTNOTE•

19. There are two things that are very apt to be confused, but that it is important for us to distinguish carefully:

- the motive or cause that operates on the mind of an individual to produce the act; and
- the ground or reason that justifies a legislator or other bystander in regarding that act with approval.

When the act happens in a particular case to be productive of effects that we approve of, and even more if we happen to observe that the same motive may often have similar effects in other cases, we are apt •to transfer our approval to the motive itself, and •to assume, as the real basis for our approval of the act, the fact of its originating from that motive. It is in this way that the sentiment of antipathy has often been regarded as a just basis for action. Antipathy, for instance, in such-and-such a case, is the cause of an action that has good effects; but this doesn’t make it a right ground for action in that case, any more than in any other. Suppose further that the agent sees beforehand that the effects will be good. This may make the action a perfectly right action, but it doesn’t make antipathy a right ground for action. For the same sentiment of antipathy, if implicitly deferred to, may and very often does produce the very worst effects. So antipathy can never be a right ground for action. No more can resentment, which as I’ll show later is just a special case of antipathy. The only right ground of action there can possibly be is, after all, the consideration of utility; and if that is a right principle of action and of approval in any one case, then it is so in every other. Other principles in abundance,

i.e. other motives, may be the reasons why such-and-such an act has been done, i.e. the reasons or causes of its being done; but only utility can be the reason why it could or should have been done. Antipathy or resentment requires

always to be regulated, to prevent its doing mischief; to be regulated by what? always by the principle of utility. The principle of utility neither requires nor admits of any another regulator than itself.

Chapter 3: The Four Sanctions or Sources of Pain and Pleasure

1. It has been shown that the happiness of the individuals of whom a community is composed, i.e. their pleasures and their security, is the only goal that the legislator ought to have in view; and insofar as legislation affects how individuals behave, the legislator should aim to have *their* behaviour conform to this same standard. But there is nothing by which a man can ultimately be made to do something, whatever its goal is, except pain or pleasure. Having taken a general view of these two grand objects (namely pleasure and—what comes to the same thing—immunity from pain) in their role as final causes [= 'goals to be aimed at'], we now have to take a view of pleasure and pain in their role as efficient causes or means.

2. Pleasure and pain can flow from four sources:

- the physical,
- the political,
- the moral and
- the religious.

Because the pleasures and pains belonging to each of them can give a binding force to any law or rule of conduct, they can all be called 'sanctions'.¹

3. Pleasure or pain that occurs in the present life in the ordinary course of nature, not purposely modified by the will of any human being or of any superior invisible being, can be said to come from or to belong to the **physical** sanction.

4. Pleasure or pain that comes from a particular person or set of persons in the community who. . . .have been chosen for the particular purpose of dispensing it by the will of the sovereign or supreme ruling power in the state, it can be said to come from the **political** sanction.

5. Pleasure or pain that comes to a person from persons in the community who happen to be connected with him in some way, according to each man's spontaneous disposition and not according to any settled or agreed rule, it can be said to issue from the **moral** sanction or 'popular sanction'. . . .

¹ *Sanctio* in Latin meant •the act of *binding* and, by a common grammatical transition, •anything that serves to bind a man; to wit, to the observance of such-and-such a mode of conduct. According to the Latin grammarian Servius, the word's meaning is derived by rather a far-fetched process. . . .from the word *sanguis*, blood [and he gives the derivation, which we don't need].

A sanction, then, is a source of obligatory powers or motives. That is, a source of pains and pleasures, which are the only things that can operate as motives by being connected with specific kinds of conduct. See chapter 10.

6. Pleasure or pain that comes immediately from the hand of a superior invisible being, either in the present life or in a future one, may be said to come from the **religious** sanction.

7. Pleasures or pains from the physical, political, or moral sanctions must all be expected to be experienced, if ever, in the present life; those from the religious sanction may be expected to be experienced either in the present life or in a future one.

8. Those that can be experienced in the present life must of course be pleasures and pains of kinds that human nature is capable of having in the present life. . . .; and each of these sources can produce *all* the pleasures or pains that human nature is capable of having in the present life. There are no intrinsic differences between •the pleasures and pains coming from any one of the sanctions and •those that come from the others; they differ only in the circumstances that accompany their production. [The rest of this paragraph states abstractly the very same things that 9 gives with a little more detail.]

9. A man loses his goods or his life in a fire. If this happened 'by accident', as we say, it was a calamity; if by reason of his own imprudence (e.g. he neglected to put out his candle) it may be called a punishment of the physical sanction; if it happened by the sentence of the political magistrate [see Glossary], it may be called a punishment belonging to the political sanction (i.e. what is commonly called, simply, a punishment); if because his neighbour didn't help because he didn't like his moral character, it may be called a punishment of the moral sanction; if it comes from •an immediate act of God's displeasure on account of some sin he has committed, or from •any distraction of mind caused by the dread of such

displeasure, it may be called a punishment of the religious sanction.¹

10. The religious sanction promises pleasures and pains in a future life; what these are like we cannot know, as they don't lie open to our observation. During the present life they are only something to *expect*; and whether our expectation comes from natural religion or revelation, the particular kind of pleasure or pain, if it is different from all those that do lie open to our observation, is something we can have no idea of. The best ideas we can get of such pains and pleasures are altogether silent about their quality. In what other respects our ideas of them may have content will be considered in later. (See chapter 13, 2, note.)

11. The physical sanction is entirely the groundwork of the political and moral sanctions, and also of the religious sanction insofar as it concerns the present life. It is included in each of those other three; it can operate (i.e. any of the pains or pleasures belonging to it can operate) independently of them; but none of them can operate except by means of it. In short, the powers of nature can operate of themselves; but neither the magistrate nor men in general can operate except through the powers of nature, and the same is supposed to hold for God's effects on us in our present life.

12. Finding a common name for these four things that are so alike in their nature seemed useful in two ways. **(a)** It is convenient to have a name for certain pleasures and pains for which no other equally descriptive name seems to be available. **(ii)** It is useful for displaying the efficacy of certain moral [see Glossary] forces whose influence is apt not to be sufficiently attended to. Does the political sanction influence the conduct of mankind? The moral and religious sanctions

¹ A suffering that a man is thought to be inflicted on him by the immediate act of God is often called 'a judgment', which is short for 'a suffering inflicted on him in consequence of a special judgment formed by the Deity and a decision based on it'.

do so too. In every inch of his career the operations of the political magistrate are liable to be aided or impeded by these two foreign powers, who are sure to be either his rivals or his allies. If he leaves them out of his calculations he will

almost certainly find himself mistaken in the result. . . . So he ought to have them continually before his eyes, under a name ['sanction'] that exhibits the relation they have to his own purposes and designs.

Chapter 4: Measuring Pleasure and Pain

1. Pleasures and the avoidance of pains, then, are the legislator's goals; so he ought to understand their value. Pleasures and pains are the instruments he has to work with, so he needs to understand their force, i.e. their value.

2. To a person (considered by himself) the value of a pleasure or pain (considered by itself) will be greater or less according to:

- (1) its intensity.
- (2) its duration.
- (3) its certainty or uncertainty.
- (4) its nearness or remoteness.

3. These are the circumstances that are to be considered when estimating a pleasure or a pain considered by itself. But when the value of a pleasure or pain is considered for the purpose of estimating the tendency of an act by which it is produced, two other circumstances must be taken into the account:

- (5) its fecundity, i.e. its chance of being followed by sensations of the same kind (pleasure by pleasure, pain by pain), and
- (6) its purity, i.e. its chance of not being followed by sensations of the opposite kind (pleasure by pain, pain by pleasure).

These last two, however, are not strictly properties of the pleasure or the pain itself, so they aren't strictly to be taken into the account of the value of that pleasure or pain. They are really only properties of the act or other event by which such pleasure or pain has been produced; so they are only to be taken into the account of the tendency of that act or event.

4. For many people the value of a pleasure or a pain will be greater or less according to seven circumstances—the six preceding ones and one other, namely

- (7) its extent, i.e. the number of persons to whom it extends or (in other words) who are affected by it.

5. Thus, to take an exact account of an act's general tendency to affect the interests of a community, proceed as follows. Of those whose interests seem to be most immediately affected by the act, take *one*, and take an account,

- (1) of the value of each pleasure that appears to be produced by it in the first instance;
- (2) of the value of each pain that appears to be produced by it in the first instance;
- (3) of the value of each pleasure that appears to be produced by it after the first, this being the fecundity of the first pleasure and the impurity of the first pain;

- (4) of the value of each pain that appears to be produced by it after the first, this being the fecundity of the first pain and the impurity of the first pleasure. Then
- (5) Sum up the values of all the pleasures on one side and of all the pains on the other. If the balance is on the side of pleasure, that is the over-all good tendency of the act with respect to the interests of that person; if on the side of pain, its over-all bad tendency.
- (6) Repeat the above process with respect to each person whose interests appear to be concerned; and then sum the results. If this balance is on the side of pleasure, that is the over-all good tendency of the act with respect to the interests of the community; if on the side of pain, its over-all bad tendency.
6. It is not to be expected that this process should be strictly pursued before every moral judgment or every legislative or judicial operation. But it can be always kept in view; and the nearer the process actually pursued on these occasions come to it, the nearer they will come to exactness.
7. This process is applicable to pleasure and pain in whatever form they appear, and by whatever name they are labelled: to pleasure, whether it be called 'good' (that is properly the cause or instrument of pleasure) or profit (that is distant pleasure, or the cause or instrument of distant pleasure) or

'convenience' or 'advantage', 'benefit', 'emolument', 'happiness', and so forth; to pain, whether it is called 'evil' (that corresponds to 'good') or 'mischief' or 'inconvenience' or 'disadvantage' or 'loss' or 'unhappiness', and so forth. [In that sentence, both 'evil' [See glossary] and 'good' are nouns.]

8. This is not a novel and unjustified theory, any more than it is a useless one. What it presents is nothing but what perfectly fits the practice of mankind whenever they have a clear view of their own interest. What makes (for instance) an article of property, an estate in land, valuable? The pleasures of all kinds that it enables a man to produce, and (the same thing) the pains of all kinds that it enables him to avert. But everyone takes the value of such an article of property to rise or fall according to •how long a man has it, •how certain it is that he will get it, and •how long it will be before he gets it if indeed he does. The intensity of the pleasures he may derive from it is never thought of, because that depends on how he in particular chooses to use it, which can't be estimated till the particular pleasures he may derive from it or the particular pains he may exclude by means of it are brought to view. For the same reason, he doesn't think, either, of the fecundity or purity of those pleasures.

So much for pleasure and pain, happiness and unhappiness, in general. I shall now consider the various particular kinds of pain and pleasure.

Chapter 5: The Kinds of Pleasure and Pain

1. Having presented what is common to all sorts of pleasures and pains, I now present separately the various sorts of pains and pleasures. Pains and pleasures may be called by one general word, *interesting* [see Glossary] perceptions. Interesting perceptions are either simple or complex. The complex perceptions are those that *can* be resolved into various simpler ones; simple perceptions are those that *can't*. A complex interesting perception can be composed of •pleasures alone, •pains alone, or •a combination of one or more pleasures and one or more pains. What determines a lot [see Glossary] of pleasure, for example, to be regarded as one complex pleasure rather than several simple ones is the nature of its cause. Whatever pleasures are excited [see Glossary] all at once by the action of a single cause are apt to be regarded as constituting only a single pleasure.

2. The simple pleasures of which human nature is susceptible seem to be the pleasures of

- (1) sense
- (2) wealth
- (3) skill
- (4) friendship
- (5) a good reputation
- (6) power
- (7) piety
- (8) benevolence
- (9) malevolence
- (10) memory

- (11) imagination
- (12) expectation
- (13) association
- (14) relief.

3. The simple pains seem to be the pains of

- (i) privation
- (ii) the senses
- (iii) awkwardnessf
- (iv) enmity
- (v) a bad reputation
- (vi) piety
- (vii) benevolence
- (viii) malevolence
- (ix) memory
- (x) imagination
- (xi) expectation
- (xii) association¹

4. (1) The pleasures of sense seem to be as follows:

- (a) The pleasures of the taste or palate, including pleasures from satisfying hunger and thirst.
- (b) The pleasure of intoxication.
- (c) The pleasures of smelling.
- (d) The pleasures of touch.
- (e) The simple pleasures of the ear, independent of association [i.e. setting aside pleasures that heard speech may give because of what it means].

¹ This is what seemed to be a complete list of the various simple pleasures and pains of which human nature is susceptible; whenever a man feels pleasure or pain, it is either something on the list or is resolvable into ones that are. You might have liked to see an analytical view of the subject, . . . demonstrating the list to be complete. It is in fact the outcome of such an analysis, but I thought it better to omit this as being of too metaphysical a cast, and not strictly within the limits of the present work's design.

- (f) The simple pleasures of the eye, independent of association.
- (g) The pleasure of the sexual sense.
- (h) The pleasure of health, i.e. the internal pleasurable feeling or flow of spirits (as it is called) that accompanies a state of full health and vigour, especially at times of moderate bodily exertion.
- (j) The pleasures of novelty, i.e. the pleasures derived from satisfying curiosity by the application of new objects to any of the senses.¹

5. (2) By ‘the pleasures of wealth’ may be meant the pleasures that a man is apt to get from his awareness of possessing any article or articles that count as instruments of enjoyment or security, especially when he first acquires them; at that time it may be called a pleasure of ‘gain’ or of ‘acquisition’; at other times a pleasure of ‘possession’.

(3) The pleasures of skill, as exercised on particular objects, are those that go with using particular instruments of enjoyment that can’t be used without a considerable amount of difficulty or exertion.²

6. (4) The pleasures of friendship or self-recommendation are the pleasures that can come with a man’s conviction that he is acquiring, or already has, the good will of certain particular people, and thus is well placed to have the benefit of their spontaneous and gratuitous services.

7. (5) The pleasures of a good reputation are the pleasures that accompany a man’s conviction that he is acquiring, or already has, the good will of the world around him, i.e. of such members of society as he is likely to have concerns

with, this being a result of their love or their esteem or both; and thus is well placed to have the benefit of their spontaneous and gratuitous services. These may also be called the pleasures of ‘good repute’, of ‘honour’, or of ‘the moral sanction’.

8. (6) The pleasures of power are those that accompany a man’s conviction that he is in a condition to get people to give him the benefit of their services because they hope to get some service, or fear getting some disservice, from him.

9. (7) The pleasures of piety are those that accompany a man’s conviction that he is acquiring, or already has, the good will of the supreme being, and thus is well placed to enjoying pleasures to be received by God’s special appointment, either in this life or in a life to come. These may also be called the pleasures of ‘religion’, of ‘a religious disposition’, or of ‘the religious sanction’.

10. 8 The pleasures of benevolence are those that result from the view of pleasures supposed to be had by the beings who may **be** the objects of benevolence, namely the sensitive beings we are acquainted with. These are commonly taken to include •the supreme being, •human beings, and •other animals. These may also be called the pleasures of ‘good will’, of ‘sympathy’, or of ‘the benevolent or social affections’ [see Glossary].

11. 9 The pleasures of malevolence are those that result from the view of pain supposed to be suffered by the beings who may **become** the objects of malevolence, namely •human beings and •other animals. These may also be called the pleasures of ‘ill-will’, of the irascible appetite [= ‘of anger’], of

¹ There are also pleasures of novelty, excited by the appearance of new ideas; these are pleasures of the imagination.

² For instance, the pleasure of being able to gratify the sense of hearing by singing or playing a musical instrument. This pleasure is additional to—and perfectly distinguishable from—what a man enjoys from hearing someone else perform in the same manner.

‘antipathy’, or of ‘the malevolent or unsocial affections’.

12. 10 The pleasures of the memory are the pleasures which, after having enjoyed certain pleasures (or even in some case after having suffered certain pains), a man will sometimes experience at recollecting them exactly in the order and in the circumstances in which they were actually enjoyed or suffered. These derivative pleasures can of course be divided into as many species as there are of original experiences from which they may be copied. They may also be called pleasures of ‘simple recollection’.

13. 11 The pleasures of the imagination are the pleasures that can be derived from contemplating pleasures that happen to be suggested by the memory but in a different order and accompanied by different groups of circumstances. So these can be referred to present, past, or future. Obviously they admit of as many distinctions as those of the former class.

14. 12 The pleasures of expectation are those that result from contemplating any sort of pleasure thought of as future, accompanied with the sentiment of belief. These also admit of the same distinctions. All pleasures *other than* them may be called pleasures of ‘enjoyment’.

15. 13 The pleasures of association are the pleasures that certain objects or incidents provide solely because of some association they have contracted in the mind with other objects or incidents that are in themselves pleasurable. An example is experience one can have when playing a game of chess, which gets its pleasurable quality from its association •partly with the pleasures of skill as exercised in the production of incidents pleasurable of themselves and •partly with the pleasures of power. Another example: the pleasure of playing a game of chance when not played for any stakes, which gets its pleasurable quality from its association

with one of the pleasures of wealth, namely the pleasure of acquiring it.

16. 14 Later on we’ll see pains grounded on pleasures; similarly we can now see pleasures grounded on pains, namely the pleasures of relief. These are the pleasures a man experiences when pain that he has been enduring stops or lessens. These can of course be distinguished into as many species as there are of pains, and can give rise to so many pleasures of memory, of imagination, and of expectation.

17. (f) Pains of privation are the pains that can result from the thought of not possessing *now* any of the various kinds of pleasures. Pains of privation can be resolved into as many kinds as there are kinds of pleasures. . . .from whose absence they are derived.

18. There are three sorts of pains that are special cases of the pains of privation. •When the enjoyment of a particular pleasure is particularly desired, but with nothing close to assurance that it will be acquired, the resulting pain of privation is called the pain of ‘desire’ or of ‘unsatisfied desire’.

19. •Where the enjoyment has been looked for with a degree of expectation approaching assurance, and that expectation is suddenly wiped out, the resultant pain is called a pain of ‘disappointment’.

20. A pain of privation is called a pain of ‘regret’ •when it is based on the memory of a pleasure that was once enjoyed and appears not likely to be enjoyed again; and •when it is based on the idea of a pleasure that was never actually enjoyed but is thought of as something that might have been enjoyed if such-and-such a contingency had happened, which in fact it didn’t. [The former of those two uses ‘regret’ in a sense that the word has since lost, a sense in which ‘I regret my youth’ means that I miss my youth, I’m sad about no longer being young.]

21. (ii) The pains of the senses seem to be the following nine: •The pains of hunger and thirst, i.e. the disagreeable sensations produced by the lack of suitable substances in the alimentary canal. •The pains of the taste, i.e. the disagreeable sensations produced by applying various substances to the palate and other upper parts of the alimentary canal. •The pains of the organ of smell, i.e. the disagreeable sensations produced when the effluvia [= 'microscopic particles'] of various substances come into contact with that organ. •The pains of touch, i.e. the disagreeable sensations produced by the application of various substances to the skin. •The simple pains of hearing, i.e. the disagreeable sensations excited in the organ of that sense by various kinds of sounds, independently of association. •The simple pains of the sight, i.e. the disagreeable sensations (if there are any) that may be excited in the organ of that sense by visible images, independently of association. •The pains resulting from excessive heat or cold, unless these relate to touch.¹ •The pains of disease, i.e. the acute and uneasy [see Glossary] sensations resulting from the various diseases and indispositions that human nature is open to. •The pain of

exertion, i.e. the uneasy sensation that is apt to accompany any intense effort of mind or body.

22. (iii)² The pains of awkwardness are those that sometimes result from •the unsuccessful attempt to make use of particular instruments of enjoyment or security, or from the difficulty a man experiences in using them.

23. (iv) The pains of enmity are those pains that may accompany a man's conviction that he is obnoxious [see Glossary] to the ill-will of some particular person or persons (being 'on ill terms with' him or them, as we say), and is therefore obnoxious to pains of some kind that he or they may cause.

24. (v) The pains of a bad reputation are those that accompany a man's conviction that is he is, or is likely to become, obnoxious to the ill-will of the world around him. They can also called the pains of 'ill-repute', of 'dishonour', or of 'the moral sanction'.³

25. (vi) The pains of piety are those that accompany a man's conviction that he obnoxious to the displeasure of •the supreme being; and in consequence obnoxious to certain pains to be inflicted by •his special decrees, either in this

¹ The pleasure of the sexual sense [Bentham's phrase] seems to have no corresponding positive pain [see Glossary]—only a pain of privation, or a mental pain, the pain of unsatisfied desire. If any positive bodily pain results from the lack of such indulgence [Bentham's phrase], it counts as a pain of disease.

² There seem to be no positive pains corresponding to the pleasures of power. The pains that a man may feel from the lack or loss of power—insofar as far as power is distinguished from all other sources of pleasure—seem to be merely pains of privation. The pleasures of novelty have no positive pains corresponding to them. The pain that a man experiences when he doesn't know what to do with himself—the pain that in French is called *ennui*—is a pain of privation, a pain resulting from the absence not only of the pleasures of novelty but of all kinds of pleasure whatsoever.—The pleasures of wealth also have no positive pains corresponding to them; the only pains opposed to them are pains of privation. positive pains resulting from the lack of wealth belong in some other class of positive pains, principally those of the senses. From the lack of food, for instance, result the pains of hunger; from the lack of clothing, the pains of cold; and so forth.

³ Bentham has a footnote distinguishing two cases: •I think that my ill-name will lead people to be less helpful than they would otherwise have been, so I suffer a pain of privation; •I think that my ill-name will lead people to be outright harmful to me, so I suffer a positive pain. He concludes:] The pain of privation and the positive pain in this case run one into another indistinguishably.

life or in a life to come. These can also be called the pains of 'religion', of a 'religious disposition', or of the 'religious sanction'. When the man's belief is seen as well-grounded, these pains are commonly called 'religious terrors'; when it is seen as ill-grounded, 'superstitious terrors'.¹

26. (vii) The pains of benevolence are those that result from the view of pains supposed to be endured by other beings. These may also be called the pains of 'good will', of 'sympathy', or of 'the benevolent or social affections'.

27. (viii) The pains of malevolence are pains resulting from the view of pleasures supposed to be enjoyed by beings who are objects of a man's displeasure. These may also be called the pains of 'ill-will', of 'antipathy', or of 'the malevolent or unsocial affections'.

28. (ix) The pains of the memory can be grounded on any one of the above kinds—pains of privation as well as of positive pains. These correspond exactly to the pleasures of the memory.

29. (x) The pains of the imagination can also be grounded on any one of the above kinds, whether pains of privation or positive pains; in other respects they correspond exactly to the pleasures of the imagination.

30. (xi) The pains of expectation can also be grounded on any one of the above kinds, whether pains of privation or positive pains. They can be also called pains of 'apprehension'.²

31. (xii) The pains of association correspond exactly to the pleasures of association.

32. The pleasures and pains of •benevolence and of •malevolence presuppose, and have regard to, a pleasure or pain of some other person; these two can be called 'extra-regarding' pleasures and pains. None of the other pleasures and pains presuppose any such thing; they can be called 'self-regarding'.³

33. Virtually *all* of all these various sorts of pleasures and pains are liable, on more accounts than one, to come under the consideration of the law.

- Is an offence committed? The mischief of it—and the ground for punishing it—consists in its tendency to destroy some of these pleasures or to produce some of these pains in certain persons.
- The motive or temptation to commit the offence is the prospect of some of these pleasures, or of security from some of these pains.
- The profit of the offence consists in the attainment of those pleasures or that security.
- Is the offender to be punished? That can only be by inflicting on him one or more of these pains.

·START OF A FOOTNOTE THAT ENDS THE CHAPTER·

It would be interesting and somewhat useful to exhibit a catalogue of the various complex pleasures and pains, analysing them into the simple ones of which they are composed. This would take up too much space to be admitted here, but a short specimen, for the purpose of illustration, can hardly be dispensed with.

¹ A footnote here runs exactly parallel to the immediately preceding footnote. You can easily work it out for yourself.

² All pains other than these can be called pains of 'sufferance'.

³ This lets us distinguish the pleasures and pains of •amity more clearly from those of •benevolence; and the pleasures and pains •of enmity from those of •malevolence. The pleasures and pains of amity and enmity are self-regarding; those of benevolence and malevolence are extra-regarding.

The pleasures taken in at the eye and ear are generally very complex. The pleasures of a country scene, for instance, often consists of the following pleasures among others:

Pleasures of the senses: •The simple pleasures of sight, excited [see Glossary] by the perception of agreeable colours and forms, green fields, waving foliage, glistening water, and the like. •The simple pleasures of the ear, excited by the perceptions of the chirping of birds, the murmuring of waters, the rustling of the wind among the trees. •The pleasures of smell, excited by taking in the fragrance of flowers, of new-mown hay, or other vegetable substances in the first stages of fermentation. •The agreeable inward sensation produced by a brisk circulation of the blood, and the ventilation of it in the lungs by air that is purer than is often breathed in towns.

Pleasures of the imagination produced by association:
 •The idea of the affluence resulting from the possession of the objects one sees, and of the happiness arising from it.
 •The idea of the innocence and happiness of the birds, sheep, cattle, dogs, and other gentle or domestic animals. •The idea of the constant flow of health that all these creatures are *supposed* to enjoy—a notion that is apt to result from the occasional flow of health enjoyed by the spectator. •The idea of gratitude, excited by contemplating the all-powerful and beneficent being who is looked up to as the author of these blessings.—These last four are all to some extent pleasures of sympathy.

Depriving a man of this group of pleasures is one of the evils apt to result from imprisonment, whether produced by illegal violence, or as legal punishment.

Chapter 6: Circumstances influencing Sensibility

1. Pain and pleasure are produced in men's minds by the action of certain causes. But the quantity of pleasure and pain does not vary uniformly with the quantity of force exerted by its cause. The truth of this doesn't rest on any metaphysical nicety [see Glossary] in the meanings of 'cause', 'quantity' and 'force'; it will be equally true however such a force is measured.

2. *How* disposed is this man to feel such-and-such a **quantity** of pleasure or pain when acted on by a cause with such-and-such a force? The answer to that question gives the degree or quantum of his sensibility [see Glossary]. We can speak of the degree of his sensibility with reference •to all the causes that act on him during a given period or •to one

particular cause or one sort of cause.

3. People vary in which causes produce this or that degree of pleasure or pain in them. A given person's pattern of feeling-strength in relation to cause-force may be called the **quality** or 'bias' of his sensibility. One man, for instance, may be most affected by the pleasures of taste, another by those of the ear. And when a single cause creates in everyone two pains or pleasures, people can vary (though there's less of this) in which of the two is uppermost. It can happen, for instance, that the same injury causes the same over-all quantity of grief and resentment in x as in y, but x feels more grief than resentment while y feels more resentment than grief.

4. Any incident that serves as a cause of pleasure or pain may be called an ‘exciting cause’ [see Glossary]; if of pleasure, a ‘pleasurable’ cause; if of pain, a ‘painful’ or ‘afflictive’ cause.¹

5. The quantity of pleasure or pain that a man is liable to experience from a given exciting cause will depend not only on that cause but also on some other circumstances—we can call these ‘circumstances influencing sensibility’.²

6. These circumstances will apply differently to different exciting causes; a certain circumstance may greatly influence the effect of one exciting cause while having no influence on that of another. But without going into all that just now, it may be useful if I to sum up all the circumstances that can be found to influence the effect of any exciting cause. Following my earlier procedure, I shall first list them as briefly as possible, and then give a few words to explaining each of them separately. They are:

- (1) Health.
- (2) Strength.
- (3) Hardiness.
- (4) Bodily imperfection.
- (5) Quantity and quality of knowledge.
- (6) Strength of intellectual powers.
- (7) Firmness of mind.
- (8) Steadiness of mind.
- (9) Bent of inclination.
- (10) Moral sensibility.
- (11) Moral biases.

- (12) Religious sensibility.
- (13) Religious biases.
- (14) Sympathetic sensibility.
- (15) Sympathetic biases.
- (16) Antipathetic sensibility.
- (17) Antipathetic biases.
- (18) Insanity.
- (19) Habitual occupations.
- (20) Pecuniary circumstances.
- (21) Connections in the way of sympathy.
- (22) Connections in the way of antipathy.
- (23) Radical frame of body.
- (24) Radical frame of mind.
- (25) Sex.
- (26) Age.
- (27) Rank.
- (28) Education [see Glossary].
- (29) Climate.
- (30) Lineage.
- (31) Government.
- (32) Religious profession

·START OF FOOTNOTE·

An analytical view of all these circumstances will be given in **46** at the end of the chapter. It had to be delayed until then because it couldn’t have been well understood until some of them had been explained.

¹ Three things that are intimately connected: •the exciting cause, •the pleasure or pain produced by it, and •the intention produced by such pleasure or pain in the character of a motive. I fear that I haven’t always been able to keep these sufficiently distinct. Having given you this warning, I hope that there won’t be much confusion if such mistakes do turn up.

² Thus, in physical bodies, the momentum of a ball put in motion by impulse will be influenced—increased or lessened—by the circumstance of gravity. When a ship is put in motion by the wind, its momentum and direction will be influenced by the attraction of gravity, by the motion and resistance of the water, and by several other circumstances.

To •search out the vast variety of exciting or moderating causes that can influence the degree or bias of a man's sensibility, to •define the boundaries of each, to •disentangle them from one another, and to •lay the effect of each of them clearly before the reader's eye—all this constitutes one of the most difficult tasks in moral [see Glossary] physiology. To do this well would require examples. To provide a sufficient collection of such examples would be a work of great labour as well as nicety; history and biography would need to be ransacked; a vast course of reading would be needed. Such a process would. . . .be so enormous that this single chapter would have swelled into a considerable volume. Invented cases can sometimes make the general points tolerably intelligible, but they can't make it palatable. So here, as so often elsewhere, I must confine myself to dry and general instruction, while realising that illustrations would have doubled the power of the instruction. The subject is so difficult and so new that I'll think I have succeeded pretty well if, without claiming to exhaust it, I can mark out the principal points of view and put things in order in a way that will help the researches of more fortunate inquirers.

The great difficulty lies in the nature of words that are not (like 'pain' and 'pleasure') •names of homogeneous real entities, but •names of fictitious entities that have no common genus and therefore must be picked up here and there as

they happen to occur. It would take a vast and roundabout chain of investigation to bring them under any exhaustive plan of arrangement.

•END OF LONG FOOTNOTE•

7. (1) Health is the absence of disease, and thus the absence of all the kinds of pain that are symptoms of disease. A man may be said to be in a state of 'health' when he is not conscious of any uneasy [see Glossary] sensations anywhere in his body.¹ Health affects general sensibility: a man suffering from a bodily indisposition—a man in a state of ill-health—is less sensible to the influence of any pleasurable cause, and more so to that of any afflictive one, than if he were well.

8.(2) Although **strength** is causally closely linked with health, the two are perfectly distinguishable. A man will indeed generally be stronger in a good state of health than *he* will be in a bad one; but one man in a bad state of health may be stronger than another who is in good health. Weakness commonly comes with disease; but a man's radical frame of body [= 'basic physical constitution'] may make him weak all his life long without having any disease. Health, as I have observed, is principally a negative circumstance; strength a positive one. The degree of a man's strength can be measured with tolerable accuracy.²

¹ This negative account of health may seem inadequate to the degree of health where the whole body is filled with a kind of feeling—a 'flow of spirits', as it is called—that could properly be called a positive pleasure. But without experiencing any such pleasurable feeling, if a man experiences no painful one he may be said to be in health.

² The most accurate measure of a man's strength seems to come from the weight he can lift with his hands in a given attitude. This admittedly relates immediately only to his arms; but these are •the organs of strength that are used most, •the ones whose strength corresponds most exactly with the person's bodily strength generally, and •the ones whose quantum of strength is most easily measured. . . .—'Weakness' is a negative term, implying the absence of strength. It is also a relative term: calling someone 'weak' is implicitly comparing him with others. When a man is so weak that it is painful for him to go through the motions of the ordinary functions of life—to get up, to walk, to dress himself, and so forth—that is counted as being in ill-health.

9. (3) **Hardiness** is closely connected with strength, but distinguishable from it. Hardiness is the absence of irritability [see Glossary]. There is

- irritability that is a disposition to undergo more or less **pain** on the application of a mechanical cause such as *whipping* or other procedures by which simple afflictive punishments are inflicted; and
- irritability that is a disposition •to contract **disease** more or less easily on the application of anything that acts on the body through its physiological properties, as when damp air produces fevers, colds, or other inflammatory diseases; or •to experience immediate **uneasiness**, as in the feelings caused by the surrounding air's being too hot or too cold.

Hardiness, even in the sense in which it is opposed to the action of mechanical causes, can be distinguished from strength. The external indications of strength are

- the abundance and firmness of the muscular fibres;
- those of hardiness, in this sense, are
 - the firmness of the muscular fibres, and the thick hardness of the skin.

Strength is more particularly the gift of nature; hardiness the gift of education. Someone brought up as a gentleman may be stronger than a common sailor, but the sailor may be the hardier of the two.

10. (2) By '**bodily imperfection**' we understand the condition a person is in if he is •distinguished by some noticeable deformity, or lacks some part or faculty that persons of the same sex and age generally have; for instance, someone who has a hare-lip, is deaf, or has lost a hand. Like ill-health, bodily imperfection tends in general to lessen the effect of any pleasurable circumstance and to increase the effect of any afflictive one. But there is great variety in the effects of this circumstance, i.e. in the ways in which a man can suffer

in his personal appearance, and in his bodily organs and faculties. These differences will be taken notice of in their proper places.

11. (5) So much for circumstances relating to the condition of the body; we come now to those relating to the condition of the mind. . . . Let us start with the **quantity and quality of knowledge** possessed by the person in question, i.e. of the ideas that he actually has in store, ready to call to mind when needed. I'm talking about ideas that are in some way of an interesting [see Glossary] nature, i.e. that could affect his happiness or that of other men. When these ideas are many, and of importance, a man is said to be a man of knowledge; when they are few or not of importance, he is said to be ignorant.

12. (6) By '**strength of intellectual powers**' I understand the degree of ease with which a man calls to mind •ideas that he has already aggregated to his stock of knowledge and •any other ideas that he comes to want to place there. The words 'parts' and 'talents' commonly come in here. We can include under this heading the qualities of •readiness of apprehension, •accuracy and tenacity of memory, •strength of attention, •clearness of discernment, •amplitude of comprehension, and •vividness and rapidity of imagination. . . .

13. (7) [Bentham's account of '**firmness of mind**' and its opposite 'irritability of mind' involves his notion of the 'value' of an exciting cause—see 2 on page 22. Two contributors to a cause's value are •its size and •its nearness in time; and a man shows firmness of mind to the extent that he attaches more weight to the former than to the latter. Bentham purports to illustrate this, in a footnote, with something that is surely an example of something quite different, namely the firmness of sticking to a decision one has made—a man who has been 'determined by the prospect of some inconvenience

not to disclose a fact', and stays firm in this decision even when he is tortured on the rack. For this to illustrate what it is meant to illustrate, the future 'inconvenience' would have to be in some relevant sense *bigger* than the present agony on the rack.]

14. (8) Steadiness of mind has to do with the time during which a given exciting cause of a given value continues to affect a man in nearly the same manner and degree as at first if no identifiable external event or change of circumstances has intervened to alter its force.¹

15. (9) By the '**bent of a man's inclinations**' I understand his propensity to expect pleasure or pain from certain objects rather than from others. A man's inclinations may be said to have such-and-such a bent when, among the various sorts of objects that give some pleasure to all men, he is apt to expect more pleasure from one particular sort than from another, or more from one particular sort than another man would expect from that sort; or when, among the various sorts of objects that would give pleasure to one man while giving none to another, he is apt to expect, or not to expect, pleasure from an object of such-and-such a sort; so also with regard to pains. The bent of a man's inclinations is intimately connected with the bias of his sensibility, but the two can be distinguished. How much pleasure or pain a man experiences on a given occasion from item x may be influenced by the expectations he has usually had of pleasure or pain from x; but it won't be absolutely determined by them, because pleasure or pain may reach him from a direction from which he isn't accustomed to expect it.

16. (10) The circumstances of moral, religious, sympathetic, and antipathetic sensibility will turn out under scrutiny to be special cases of bent of inclination; but they are important enough to deserve separate treatment. A man's **moral sensibility** may be said to be strong when the influence on him of the pains and pleasures of the moral sanction, as compared with the influence of other pleasures and pains, is stronger than it is with the persons he is compared with. In other words, he is acted on with more than ordinary efficacy by the sense of honour. . . .

17. (11) Moral sensibility seems to concern the *average* effect or influence of the pains and pleasures of the moral sanction on all sorts of occasions to which it is relevant—the average force or quantity of the impulses the mind receives from that source during a given period. **Moral bias** concerns the *particular* acts to which on many particular occasions the force of the moral sanction is seen as relevant. It concerns the quality or direction of those impulses, so there are as many varieties of it as there are dictates that the moral sanction may be conceived to issue. A man may be said to have such-and-such a moral bias, or to have a moral bias in favour of such-and-such an action, when he sees it as one whose performance is dictated by the moral sanction.

18. (12) What I have said about moral sensibility also applies, *mutatis mutandis*, to **religious sensibility**.

19. (13) What I have said about moral biases also applies, *mutatis mutandis*, to **religious biases**.

20. (14) '**Sympathetic sensibility** is a man's propensity to derive pleasure from the happiness of other sensitive beings,

¹ The speed with which children grow tired of their toys and throw them away is an instance of unsteadiness; a merchant's perseverance in his trade or an author's in writing his book are examples of steadiness. It's hard to estimate the quantity of pleasure or pain in these cases except from its effect in producing a motive; and even then it's hard to say whether the change of conduct happens through the extinction of the old pleasure or pain or through the intervention of a new one.

and pain from their unhappiness. Its strength is given by ratio of •the pleasure or pain he feels on their account and •the pleasure or pain he thinks they feel for themselves.

21. (15) Sympathetic bias has to do with *which* parties are the objects of a man's sympathy, and the acts or other circumstances of those persons that his sympathy is excited by. These parties may be

- certain individuals
- any subordinate class of individuals
- the whole nation
- human kind in general
- the whole sensitive creation.

The more numerous these objects of his sympathy are, the more enlarged his sympathy may be said to be.

22. (16, 17) Antipathetic sensibility and **antipathetic biases** are just the reverse of sympathetic sensibility and sympathetic biases. Antipathetic sensibility is a man's propensity to derive pain from the happiness of other sensitive beings, and pleasure from their unhappiness.

23. (18) The circumstance of **insanity** of mind corresponds to that of bodily imperfection. But there can't be as many varieties of it because as far as we can see the soul [here = 'the mind'] is one indivisible thing, not distinguishable into parts as the body is. I'm not including the lesser degrees of imperfection that a mind may be susceptible of, because they seem to fall under the already-mentioned headings of ignorance, weakness of mind, irritability, or unsteadiness—or under others that are reducible to those. My topic here is the extraordinary kinds and degrees of mental imperfection that are in any context as conspicuous and as unquestionable as lameness or blindness in the body. They seem to operate partly by •inducing an extraordinary degree of the imperfections mentioned above and partly by directing the

inclinations in extraordinary and preposterous directions.

24. (19) Under the heading of a man's '**habitual occupations**' I am including both the ones he pursues for the sake of profit and those he pursues for the sake of present pleasure. . . . [Bentham goes on to say that the 'profit' topic will come up in the next paragraph; that it is distressing to be blocked, by punishment or some other cause, from one's habitual occupations; and that your habitual occupations are not the same as the bent of your inclinations—you might be much inclined to go in for some activity that is never possible for you.]

25. (20) Under the heading of '**pecuniary circumstances**' I mean to bring to view the ratio between a man's means and his wants—the sum total of all his means and the sum total of all his wants. A man's means depend on three things:

- (a) his property—everything that he has in store independently of his labour;
- (b) the profit of his labour, whether physical or mental or both;
- (c) his connections in the way of support—i.e. the pecuniary help that he is well placed to receive from any persons (e.g. parents, patrons, relatives) whom he has reason to expect to contribute gratis to his maintenance.

It seems obvious that this list is complete. Anything that a man uses he must have either (a) of his own or from other people, and if from other people then either (c) gratis or (b) for a price. His wants seem to depend on

- (a) his habits of expense: a man's desires are largely governed by his habits; in many cases a desire (and consequently the pain of privation connected with it) wouldn't even exist if it weren't for previous enjoyment.

- (b) his connections in the way of burden—meaning whatever expense he has reason to think he is bound to incur in the support of those who are warranted (by law or the customs of the world) in looking to him for assistance; such as children, poor relations, pensioned servants, other dependents.
- (c) any present casual [here = ‘non-recurring’] demand he may have: there are occasions when a given sum will be worth infinitely more to a man than the same sum would at another time; e.g. when he needs money •to pay for extraordinary medical assistance or •to carry on a law-suit on which his *all* depends or •to pay for transport to a distant country where a job is waiting for him. . . .
- (d) the strength of his expectation: when one man expects to gain or to keep a thing that another does not, the lack of the thing will obviously affect the former very differently from the latter. . . .

26. (21) Under the heading of a man’s **connections in the way of sympathy** I want to exhibit the number and description of the persons whose welfare concerns him in such a way the idea of their happiness brings him pleasure, and that of their unhappiness brings him pain—e.g. his wife, children, parents, near relations, and intimate friends. These will obviously include two groups mentioned in (20) above, namely •those from whom he may expect support and •those whose wants operate on him as a burden. But there may well be others with whom he has no such pecuniary connection; and even when there is such a connection—a dependence ·in one direction or the other·—it is perfectly

distinguishable from the union of affections that is our topic in the present paragraph. These connections here have an influence on the effect of *any* exciting causes, not merely ones involving money. Their tendency is to increase a man’s *general* sensibility, i.e. to increase the pleasure produced by all pleasurable causes and the pain produced by all afflictive ones. When something pleasurable happens to a man, he naturally first thinks of the pleasure it will immediately give him; soon after that (except in a few negligible cases) he begins to think of the pleasure his friends will feel when they come to know of it; and the thought of that pleasure of theirs is often a considerable addition to his pleasure. First comes the self-regarding pleasure; then comes the idea of the pleasure of sympathy that you think this pleasure of yours will arouse in the bosom of your friend; and this idea excites again in your bosom a new pleasure of sympathy. The first pleasure radiating out (as it were) from your bosom •illuminates the bosom of your friend, and reflected back from it •brings new warmth to the point from which it started; and similarly with pains.¹

This effect doesn’t depend wholly on affection. Among near relatives, even when there is no kindness, the pleasures and pains of the moral sanction are quickly propagated by a special kind of sympathy; a man can’t incur any honour or disgrace without its extending a certain distance within the circle of his family. What reflects honour on the father reflects honour on the son; what reflects disgrace, disgrace. . . .

27. (22) There is nothing very special to say about a man’s **connections in the way of antipathy**. Fortunately there’s

¹ This is one reason why legislators generally prefer, in their dealings, married people to single ones, and people with children to childless ones. Obviously, the stronger and more numerous a man’s connections in the way of sympathy are, the stronger is the law’s hold on him; a wife and children are so many pledges a man gives to the world for his good behaviour.

no primeval and constant source of antipathy in a human nature, as there is of sympathy. There are no permanent sets of persons who are naturally and as a matter of course the objects of a man's antipathy as there are who are the objects of his sympathy. Still, causes of antipathy—all too many of them—are apt to spring up in the course of a man's life; and when they do they can influence considerably the effects of various exciting causes. For example, a punishment will be all the more distressing if it separates a man from those he is connected with in the way of sympathy, or if it forces him into the company of those with whom he is connected in the way of antipathy. Notice that sympathy itself multiplies the sources of antipathy: sympathy for your friend gives rise to antipathy on your part against all those to whom he is antipathetic, and to sympathy for those to whom he is sympathetic. In the same way antipathy multiplies the sources of sympathy, though perhaps not as effectively. . . .

28. (23) So much for the factors that can influence the effect of an exciting cause on particular occasions at particular times. But such an influence is also had by other circumstances that relate to a man from the time of his birth. In the first place, everyone seems to agree that something in the **original frame or texture of a man's body** makes him systematically liable to be affected by causes of bodily pleasure or pain in different way from how another man would be affected by the same causes. So we can add to the list of circumstances influencing a man's sensibility his original or radical frame, texture, constitution, or temperament of body.

29. (24) In the next place, everyone seems to agree that something in the **original frame or texture of a man's mind** makes him systematically liable—independently of all other circumstances, even of his radical frame of body—to be affected by various exciting causes differently from how another man would be. So we can add to the list of circumstances influencing a man's sensibility his original (or radical) frame, texture, constitution, or temperament of mind.

30. This circumstance and the preceding one are different: we see persons whose frame of body is as much alike as can be conceived, differing considerably in their mental frame; and vice versa.¹

31. [Bentham says here that changes in a man's mind are not solely due to 'external occurrences', from which he seems to infer that they aren't purely changes in the body. He adds that how a man develops depends partly on 'nature' and partly on 'education', from which he infers (surely invalidly!) that frame of body and frame of mind are distinct from one another.]

32. Distinct though they are, it's clear that at no time in a man's active life can they either of them make their appearance by themselves. They merely constitute the latent groundwork that the other circumstances—the ones in the **(1)–(22)** list—have to work on; whatever influence the original frames of body and mind have is so modified and covered over (as it were) by those other circumstances that it is never separately detectable. The effects of the one influence are indistinguishably blended with those of the other.

¹ Those who maintain that the mind and the body are one substance may object that all we have here is a verbal distinction, and that *therefore* there's no such thing as a frame of mind distinct from the frame of body. But even if we grant the premise, for argument's sake, we can challenge the inference to the conclusion. Even if the mind is only a part of the body, it is very different in kind from the other parts of the body.—No part of a man's bodily frame can alter considerably without the alteration's being immediately indicated in ways the senses can pick up. A man's frame of mind can alter very considerably while his frame of body remains the same to all appearance, i.e. in all the ways that might become known to other men.

[That last sentence is verbatim from Bentham. This puzzling paragraph seems to go as follows: What seemed to be shaping up to be the thesis that neither of these two shows up

by itself, rather than in harness with the other becomes instead the thesis that the pair of them don't show up

by themselves, rather than in harness with other factors.

But then in that interplay between •these two and •the others, the influences of the two run together. In short, 'Distinct though they are, the effects of one are indistinguishably blended with those of the other.']

33. The emotions of the body are rightly regarded as probable indications of the emotional state of the mind, but they are pretty far from conclusive. A man may exhibit the exterior appearances of grief without grieving anything like as much as he appears to, and perhaps without really grieving at all. Oliver Cromwell, whose conduct indicated a more than ordinarily callous heart, was remarkably profuse in tears. Many men can command the outer appearances of sensibility with very little real feeling.¹

34. The remaining items may be called 'secondary' influencing circumstances—secondary, that is, to the ones already mentioned. They do influence the quantum or bias of a man's sensibility [= 'the strength or direction of his feelings'], but only by means of the primary ones. In these events, it's the primary ones that do the business, while the secondary ones are most open to observation; so the secondary ones are most

talked about, which is why I have to discuss them. But their influence can be explained only through the primary ones, whereas the influence of the primary ones will be apparent enough without any mention of the secondary ones.

35. (25) Among the basic facts about the bodily frame that appear to influence the quantum and bias of sensibility, the most obvious and conspicuous are those that constitute the **sex**. The female sex appears in general to have *more* sensibility than the male sex does. The female's health is more delicate than the male's; she is commonly lower on the scale of

- strength and hardiness of body,
- quantity and quality of knowledge,
- strength of intellectual powers, and
- firmness of mind.

Moral, religious, sympathetic, and antipathetic sensibility are commonly stronger in her than in the male. The quality of her knowledge and the direction of her inclinations are commonly different in many respects. Her moral biases are also in certain respects remarkably different: for example, chastity, modesty, and delicacy are prized more than courage in a woman; courage is prized more than any of those qualities in a man. The religious biases in the two sexes are not apt to be remarkably different, except that the female is rather more inclined than the male to superstition, i.e. to

¹ As regards the sort of pain known as 'grief': its quantity is hardly to be measured by any external indications—not (for example) by the quantity of the tears or the number of moments spent in crying. Perhaps the pulse? A man can't control the motions of his heart as he can those of the muscles of his face. But the specific meaning of these indications is still very uncertain; they can tell us •that the man is affected, but not •how or •from what cause; and he can lie about that. . . . Tears of rage he may attribute to contrition. His concern at the thoughts of a punishment that awaits him he may represent as a sympathetic concern for the mischief produced by his offence.—A very tolerable judgment, however, can often be reached by a discerning person who lays together all the external indications a man exhibits and compares them with his actions. . . .—A remarkable instance of the power of the will over the external signs of sensibility is to be found in Tacitus's story of the Roman soldier who raised a mutiny in the camp, pretending to have lost a brother by the lawless cruelty of the General. The truth was, he never had had a brother.—The female sex is commonly better at this than the male; hence the proverbial phrase 'a woman's tears'. To have this kind of command over oneself was the characteristic excellence of the orator of ancient times, and is that of the actor today.

rituals that aren't dictated by the principle of utility; a difference that may be pretty well accounted for by some of the before-mentioned circumstances. Her sympathetic biases are in many ways different: for her own offspring all through their lives, and for children in general while they are young, her affection is commonly stronger than the male's. Her affections are apt to be less broad, seldom expanding themselves to take in the welfare of her country in general, much less that of mankind or the whole sensitive creation; seldom embracing any extensive class or division even of her own countrymen, except in virtue of her sympathy for some individuals that belong to it. Her antipathetic and sympathetic biases are generally apt to conform less to the principle of utility than the male's, mainly because of some deficiency in knowledge, discernment, and comprehension. Her usual pastimes are apt to be in many ways different from the male's. There can be no difference between the sexes regarding connections in the way of sympathy. As for pecuniary circumstances, according to the customs of perhaps all countries she is in general less independent.

36. (26) Age is of course divided into different periods whose number and limits are by no means uniformly settled on. For the present purpose one might distinguish

- Infancy
- Adolescence
- Youth
- Maturity
- Decline
- Decrepitude.

It would be a waste of time to examine each period, observing the indications it gives regarding the various circumstances I have been discussing. Infancy and decrepitude are commonly inferior to the other periods in health, strength, hardiness, and so forth. In infancy the imperfections of

the female sex are greater than at other periods; the male imperfections in infancy are mostly similar in quality but greater in quantity than those of the female in adolescence, youth, and maturity. In the stage of decrepitude both sexes relapse into many of the imperfections of infancy. . . .

37. (27) Station, or rank in life will commonly undergo a number of variations among a civilised people. Other things being equal, the quantum of sensibility appears to be greater in the higher ranks of men than in the lower. The main circumstances in respect of which rank is apt to produce or indicate a difference seem to be:

- quantity and quality of knowledge
- strength of mind
- bent of inclination
- moral sensibility
- moral biases
- religious sensibility
- religious biases
- sympathetic sensibility
- sympathetic biases
- antipathetic sensibility
- antipathetic biases
- habitual occupations
- nature and productiveness of a man's means of livelihood
- connections bringing profit
- habit of expense
- connections implying burden: a man of a certain rank will frequently have dependents in addition to those whose dependency is the result of natural relationship.

As for health, strength, and hardiness, if rank has any influence on these it is only in a remote way chiefly by its influence on habitual occupations.

38. (28) The influence of **education** is still more extensive. Education [see Glossary] stands on a somewhat different footing from age, sex, and rank. Although the influence of these three comes mainly if not entirely through the medium of certain of the primary circumstances I have mentioned, each of them has a separate existence in itself. This is not the case with education: all there is to education is one or more of those primary circumstances. Education may be divided into physical and mental, the education of the body and that of the mind. Mental education divides into intellectual and moral, the culture of the understanding and the culture of the affections. [In that sentence, 'culture' refers to •a process of helping something to grow. But in the rest of this paragraph Bentham is thinking of a man's education primarily as *educatedness*, •the upshot of a process.] The education a man receives comes partly from others, partly from himself. By 'education', then, what is meant is just a man's condition in respect of those primary circumstances, as resulting partly from •the management and contrivance of others, principally of those who have had charge of him in the early periods of his life, partly from •his own. The physical part of his education includes health, strength, and hardiness; sometimes, by accident, bodily imperfection, as when by intemperance or negligence an irreparable mischief happens to his person. The intellectual part includes quantity and quality of knowledge, and perhaps in some measure firmness of mind and steadiness. The moral part includes the bent of his inclinations, and the quantity and quality of his moral, religious, sympathetic, and antipathetic sensibility. All three parts include his habitual recreations, his property, his means of livelihood, his connections in the way of profit and of burden, and his habits of expense. The influence of education with respect to *these* is modified (in a more or less obvious way) by •the influence of exterior occurrences, and (in a way that is very

unobvious and altogether out of the reach of calculation) by •the original texture and constitution of his body and of his mind.

39. (29) Among the external circumstances that modify the influence of education the main ones come under the heading of **climate**. This pushes to the front and demands its own heading not merely •because of how big its influence is but also •because it is conspicuous to everybody and applies indiscriminately to many people at a time. The climate of region *x* depends for its essence on *where* *x* is in relation to the planet earth's revolution round the sun; but its influence depends on the condition of the bodies on *x*'s surface—principally on the quantities of sensible heat at different periods, and on the density, and purity, and humidity of the air. Nearly all the primary circumstances are influenced by this secondary one, partly by its manifest effects on the body, and partly by its less perceptible effects on the mind. In hot climates men's health is apt to be more precarious than in cold ones; their strength and hardiness are less; their vigour, firmness, and steadiness of mind are less, and thence indirectly so is their quantity of knowledge; the bent of their inclinations is different (most noticeably in their greater propensity to sexual enjoyments, and in how early in life that propensity begins to manifest itself); their sensibilities of all kinds are more intense; their habitual occupations are slack rather than active; their radical frame of body is less strong, probably, and less hardy; their radical frame of mind is less vigorous, less firm, less steady.

40. (30) Another item in the list of secondary circumstances is race or **lineage**—the national race or lineage that a man issues from. This, independently of climate, will commonly make some difference to the radical frame of mind and body. A man of negro race, born in France or England, is in many

respects a very different being from a man of French or English race. A man of Spanish race, born in Mexico or Peru, is at the hour of his birth in many respects a different sort of being from a man of the original Mexican or Peruvian race. The influence of race, insofar as it is distinct from the influences of climate, rank, and education, . . . operates chiefly through the medium of moral, religious, sympathetic, and antipathetic biases.

41. (31) Then we come to **government**, the government under which a man has been most accustomed to live. This operates principally through the medium of education; the magistrate [see Glossary] operating as a tutor to all the members of the state by the direction he gives to their hopes and fears. Indeed under a solicitous and attentive government an ordinary teacher—indeed, even a *parent*—is only a deputy (as it were) to the magistrate, whose controlling influence. . . . stays with a man to his life's end. The effects of the magistrate's special power are seen more particularly in its influence over the quantum and bias of men's moral, religious, sympathetic, and antipathetic sensibilities. Under a well-constituted government, and even under a badly constituted government that is well administered, men's moral sensibility is commonly stronger, and their moral biases more in conformity with the dictates of utility; their religious sensibility is often weaker, but their religious biases conform better to the dictates of utility; their sympathetic affections are more enlarged, directed more to the whole community than to the magistrate, and more to the magistrate than to small parties or to individuals; their antipathetic sensibilities

are less violent because •more obedient to well-directed moral biases and •less apt to be excited by ill-directed religious ones; their antipathetic biases conform better to well-directed moral ones, and are correspondingly more apt to be grounded on enlarged and sympathetic affections [see Glossary] than on narrow and self-regarding ones, and accordingly are over-all more in conformity with the dictates of utility.

42. (32) Finally we come to a man's **religious profession**—the religious fraternity of which he is a member. This operates mainly through •religious sensibility and •religious biases; but it also operates, as a fairly conclusive indication, with respect to several other circumstances. With some of them the indication comes mainly *through* •the two just mentioned—for example, the intensity and direction of a man's moral sensibility (sympathetic and antipathetic); perhaps in some cases the quantity and quality of knowledge, strength of intellectual powers, and bent of inclination. With respect to other circumstances religious profession may operate immediately, unaided; this seems to be the case with a man's •habitual occupations, •pecuniary circumstances, and •connections in the way of sympathy and antipathy. A man who in himself cares very little about the dictates of the religion that he finds it necessary to profess may find it hard to avoid joining in its ceremonies and bearing a part in the pecuniary burdens it imposes.¹ By the force of habit and example he may even be led to favour persons whose religious profession is the same as his, and to be correspondingly hostile to those whose profession is different. Antipathy

¹ There are various ways in which a religion may lessen a man's means, or increase his needs. Sometimes it will prevent him •from making a profit by his money or •from setting his hand to labour. Sometimes it will oblige him •to buy dearer food instead of cheaper, •to purchase useless labour, •to pay men for not labouring, •to purchase trinkets on which imagination alone has set a value, •to purchase exemptions from punishment or titles to happiness in the world to come.

against persons of different religious persuasions is one of the last points of religion that men part with. . . .

43. All or many of these circumstances will need to be attended to whenever account is being taken of a quantity of pain or pleasure as resulting from some cause. Has he sustained an injury? they will need to be considered in estimating the mischief of the offence. Is satisfaction to be made to him? they will need to be attended to in fixing the amount of that satisfaction. Is the injurer to be punished? they will need to be attended to in estimating the force of the impression that any given punishment will make on him.

44. The items on my list are not all of equal use in practice. . . . Some apply routinely to whole classes of persons without any great difference in degree; and these can be directly and pretty fully provided for by the legislator. Examples of this include the primary circumstances of bodily imperfection and insanity; the secondary circumstance of sex; perhaps also age; rank, climate, lineage, and religious profession. Others can apply to whole classes of persons but are subject to indefinite amounts of individual variation. These can't be fully provided for by the legislator; but. . . .in each particular case provision can be made for them by the judge or other executive magistrate who can know the details about the relevant individuals. This is the case

- wholly with regard to health,
- to some extent with strength,
- hardly at all with hardiness,
- even less with quantity and quality of knowledge, strength of intellectual powers, firmness or steadiness of mind; except insofar as a man's condition in those respects may be indicated by the secondary circumstances of sex, age, or rank,
- hardly at all with bent of inclination, except insofar

as that latent circumstance is indicated by the more manifest one of habitual occupations,

- hardly at all with moral sensibility or biases, except insofar as they may be indicated by sex, age, rank, and education,
- not at all with religious sensibility and religious biases, except insofar as they may be indicated by religious profession,
- not at all with the quantity or quality of sympathetic or antipathetic sensibilities, except insofar as they may be presumed from sex, age, rank, education, lineage, or religious profession,
- wholly with regard to habitual occupations, pecuniary circumstances, and connections in the way of sympathy.

Neither the legislator nor the executive magistrate can take into account circumstances whose existence can't be ascertained or whose degree can't be measured. They would have no claim to be taken notice of here if it weren't for the secondary circumstances by which they are indicated and whose influence couldn't be well understood without them. I explained earlier what these are.

45.It remains to be considered what the exciting causes are that the legislator has to be concerned with. *Anything* could happen to be such a cause in a particular case; but the ones he has principally to attend to are those of the painful or afflictive kind. (The pleasurable ones are not his business except now and then by accident. It's easy to see why, and I shan't take up space here explaining the reasons.) The exciting causes that he mainly has to attend to are

- the harmful acts, which it is his business to prevent and
- the punishments, by the fear of which he tries to prevent them.

He produces only the latter of these, partly by his own special appointment and partly through the special appointment of the judge. If these people want to know *what they are doing* when they assign punishments, they have to take all these circumstances into account: •the legislator, so that when he applies a certain quantity of punishment to all persons who put themselves in a given predicament he doesn't inadvertently apply to some of them a much more or much less severe punishment than he intended; and •the judge, so that when he sentences a particular person to a particular punishment he doesn't inadvertently make the punishment much more or much less severe than he intended, or anyway than the legislator intended. So each of them ought to have before him

- a list of the various circumstances by which sensibility can be influenced

and

- a list of the various kinds and degrees of punishment that he intends to make use of;

and then, by inter-relating the two lists, to form a detailed estimate of the influence of each circumstance on the effect of each kind and degree of punishment.

There are two procedures either of which might be followed in drawing up this estimate. **(i)** One is to start with the name of the circumstance, and under it to represent the different influences it exerts over the effects of the various

modes of punishment. **(ii)** The other is to start with the name of the punishment, and under it to represent the different influences that are exerted over its effects by the various circumstances. [Bentham says that **(ii)** is 'by far the most useful and commodious' of the two: the legislator thinks first about the punishment, and defines it as he thinks fit; and then he has to relate this to facts about circumstances that are in no way under his control. He concludes:] But on neither procedure can any such estimate be delivered here.¹

46. It may be of use to give some sort of analytic view of the circumstances I have listed, making it easier to see if anything that should have been there has been omitted, and also showing how those that are on the list differ and agree.

In the first place, they may be distinguished into **primary** (those that operate immediately of themselves) and

- secondary**: those that operate only *through* the primary ones: sex, age, station in life, education, climate, lineage, government, and religious profession.

Everything not on that list is primary. The primary circumstances divide into those that are **innate** (namely, radical frame of body and radical frame of mind) and

- those that are **adventitious**, .i.e. that come to the person during the course of his life.

The adventitious circumstances divide into

- those that are **exterior** to him: involving •things he is concerned with (his pecuniary circumstances)² and

¹ [In a footnote Bentham says that he has 'actually drawn up such an estimate' though an incomplete one based on procedure **(i)**, and that he plans to take this further in 'another work'; and refers us to the footnote to paragraph 3 on page 102. Then a further note:] Some of these circumstances give particular labels to the persons they relate to: from bodily imperfections persons are denominated 'deaf', 'dumb', 'blind', and so forth: from insanity, 'idiots' and 'maniacs'; from age, 'infants'. For all these classes of persons particular provision is made in the legal code. . . .

² The causes on which a man's pecuniary circumstances depend don't all belong to the same class. The absolute quantum of a man's property does indeed belong to the same class as his pecuniary circumstances in general; so does the profit he makes from the occupation by which he earns his living. But that occupation itself concerns his own person, and comes under the same heading as his habitual pastimes, as do also his habits of expense. [And Bentham then re-classifies some other contributors to pecuniary circumstances.

•persons he is concerned with (his connections in the way of sympathy and antipathy) and •those that are **personal**. The personal ones divide into •those that concern his **actions** (namely his habitual occupations) and those that concern his **dispositions** either of •**body** (health, strength, hardiness, and bodily imperfection) or of •**mind**; and the latter divide into

•those that concern his **understanding**: quantity and quality of knowledge, strength of understanding, and insanity; and
 •those that concern his **affections**: firmness of mind, steadiness, bent of inclination, moral sensibility, moral biases, religious sensibility, religious biases, sympathetic sensibility, sympathetic biases, antipathetic sensibility, and antipathetic biases.

Chapter 7: Human Actions in General

1. The business of government is to promote the happiness of the society by punishing and rewarding. The punishing part of its business is more particularly the subject of penal law. In proportion as an act tends to disturb society's happiness, i.e. in proportion as its tendency is pernicious, it will create a demand for punishment. (Happiness, we have already seen, consists in enjoyment of pleasures and security from pains.)
2. The general tendency of an act is more or less pernicious according to the sum total of its consequences, i.e. according to the difference between the sum of its good consequences and the sum of its bad ones.
3. Here and from here on when I speak of 'consequences' I mean 'consequences that are material' [see Glossary]. The number and variety of consequences of any act must be infinite; but only the material ones are worth attending to. Now, the consequences of an act that a legislator can regard as material or important are those that consist of pain or pleasure or produce pain or pleasure. . . .
4. In thinking about the consequences of an act we have

to take into account not only •the ones that would have ensued from the act even if there had been no intention but also •the ones that depend on connections between those and the intention. We shall see later that the connection between the intention and certain consequences is a means of producing other consequences. In this lies the difference between rational agency and irrational.

5. What a person *intends* to be the consequences of an act depends on two things:
 - the state of the will or intention with respect to the act itself;
 - the state of the understanding, or perceptive faculties, with regard to the circumstances that do (or may appear to) accompany the act.

The perceptive faculty can be in any one of three states regarding these circumstances:

- consciousness, when the person's beliefs about the circumstances are true and don't omit anything;
- unconsciousness, when there are some circumstances

that he fails to have any belief about; and

- false consciousness, when he believes or imagines that certain circumstances exist which actually don't.

6. Thus, whenever conduct is being examined with a view to punishment there are four things to consider:

- (1) the act itself,
- (2) the circumstances in which it is done,
- (3) the intentionality that may have accompanied it, and
- (4) the consciousness, unconsciousness, or false consciousness that may have accompanied it.

Items (1) and (2) will be the subject of the present chapter; (3) and (4) will be the subjects of chapters 8 and 9 respectively.

7. There are two other things that contribute to the general tendency of an act and to the demand that it creates for punishment: (1) the particular motive or motives that gave birth to the act, and (2) the general disposition that it indicates. These will be the subjects of chapters 10 and 11 respectively.

8. Acts can be classified in various ways for various purposes.

Firstly, they can be divided into **positive** and **negative**. By 'positive' are meant ones that consist in motion or exertion (e.g. striking someone); by 'negative' ones that consist in keeping at rest, i.e. forbearing to move or exert oneself in such-and-such circumstances (e.g. not striking on a certain occasion). Positive acts are called also acts of commission; negative, acts of omission or forbearance.¹

9. Negative acts can be either absolutely negative or only

relatively so. Absolutely, when they involve the negation of all positive agency whatsoever, e.g. not striking at all; relatively, when they involve the negation of such-and-such a particular mode of agency, e.g. not striking Jones or not punching one's fist into the air.

10. Whether an act is positive or negative isn't automatically settled by the words used to name it. An act that is positive in its nature may be characterised by a negative expression—e.g. *not being at rest* is the same as *moving*. And an act that is negative in its nature may be characterised by a positive expression—e.g. *omitting to bring food* to a person in certain circumstances may be the same as *starving* him.

11. Secondly, acts can be divided into **external** (acts of the body) and **internal** (acts of the mind). To *strike* is an external or exterior act; to *intend to strike* is an internal or interior one.

12. Acts of discourse are a sort of mixture of the two—external acts that express the existence of internal ones and wouldn't be in any way material or have any consequences if they didn't do so. To say to someone 'Strike him!', to write to him 'Strike him' and to signal to him to strike him are all acts of discourse.

13. External acts can be divided into **transitive** and **intransitive**. A transitive act is one in which the motion is communicated from the person of the agent to some other body that it affects in a way that is regarded as material—e.g. when a man runs against you or throws water in your face.

¹ The distinction between positive and negative acts runs through the whole system of offences, and sometimes makes a material difference with regard to their consequences. There are reasons for giving the word 'act' such an extensive signification, one that may sometimes appear inconsistent. (i) In many cases where no exterior or overt act is performed the state that the mind of the person who is said to have performed an 'act' is as truly and directly the result of the will as the plainest and most conspicuous exterior act. *Not revealing* a conspiracy, for instance, may be as perfectly an act of the will as *joining* it. (ii) [The second point is that if in a certain context you don't give any thought to whether or not to do A, your not doing it—though not intentional—may still have 'material consequences', and you may properly be regarded as punishable for them.]

An intransitive act is one in which the motion has no material effects on anything but the agent's own body—e.g. when a man runs, or washes himself.¹

14. A transitive act can be said to be 'in its commencement' when the motion is still confined to the agent's body and hasn't yet been communicated to any other body on which it can have material effects—e.g. when a man lifts his hand to strike you. It can be said to be 'in its termination' as soon as the motion or impulse has been communicated to some such other body—e.g. when his hand has reached you. If the act involves the motion of a body that is separated from the agent's body before it reaches the object, it can be said to be, during that interval, 'in its intermediate progress'—e.g. when a man throws a stone or fires a bullet at you.

15. An act of the intransitive kind can be said to be 'in its commencement' when the motion or impulse is still confined to the member or organ of the agent's body in which it originated. . . . It can be said to be 'in its termination' as soon as it reaches some other part of that same body. When a man poisons himself, while he is lifting the poison to his mouth the act is in its commencement; as soon as it has reached his lips it is in its termination.

16. In the fourth place, acts may be distinguished into **transient** and **continued**. Thus, to strike is a transient act; to lean, a continued one. To buy, a transient act; to keep in one's possession, a continued one.

17. In strictness of speech a continued act is different from a repetition of acts. There's a repetition of acts when there

are intervals occupied by acts of different natures; and a continued act when there are no such intervals. To lean, is continued act; to keep striking, a repetition of acts. **17.**

In strictness of speech a continued act is different from a repetition of acts. There's a repetition of acts when there are intervals occupied by acts of different natures; and a continued act when there are no such intervals. To lean, is continued act; to keep striking, a repetition of acts.

18. A repetition of acts is not the same as a habit or practice. The label 'repetition of acts' can be used however brief the intervals are between the acts in question, and however little time is occupied by the sum total of them. We don't speak of a 'habit' unless we think that the acts in question are separated by lengthy intervals and their sum total occupies a considerable space of time. For example, a habit of drunkenness isn't constituted by •having ever so many drinks in a single session, or by •drinking ever so much in a single session; for there to be a habit, the drinking sessions must themselves be frequently repeated. Every habit is a repetition of acts; or—to put it more accurately—when a man has frequently repeated such-and-such acts after considerable intervals, he is said to have contracted a habit; but every repetition of acts is not a habit.²

19. Fifth, acts can be divided into **indivisible** and **divisible**. Indivisible acts are merely imaginary; they are easy to conceive, but can never be known to be exemplified. A divisible act can be divisible with regard to matter or with regard to motion or both. An act that is •indivisible with regard

¹ The distinction arose from the grammarians' distinction between transitive and intransitive *verbs*.—Intransitive acts are more often called neuter, i.e. neither active nor passive. This is a bad label, because rather than being neither they are both at once. •e.g. the man actively *washes* and passively *gets washed*.—The class of acts here called 'intransitive' include the offences called 'self regarding' in paragraph 8 on page 109.

² Why is it not strictly accurate to say that a habit is an aggregate of acts? Because acts are real entities, whereas habits are a kind of fictitious entities or imaginary beings that are supposed to be constituted by—or to result (as it were) out of—the former.

to matter is the motion or rest of a single atom of matter; one that is •indivisible with regard to motion is the motion of a body from one single *atom of space* to its immediate neighbour. [Notice that this paragraph concerns *events* generally, not merely the ones that would ordinarily be called 'acts'.]

Sixth, acts can be divided into simple and complex. Simple acts include striking, leaning, drinking; a complex act consists of many very different simple acts that derive a sort of unity from their relation to some common goal—e.g. giving a dinner, maintaining a child, exhibiting a triumph, bearing arms, holding a court, and so forth.

20. Questions sometimes arise in particular cases:

- Did this involve one act or many? and
- If more than one act, where did one act end and the next begin?

It is now evident that •these questions can often be answered with equal propriety in opposite ways; and that •when they can be answered in only one way, the answer will depend on the nature of the occasion and on why the question is being asked. A man is wounded in two fingers at one stroke—is it one wound or several? A man is beaten at noon and again at 12:08—is it one beating or several? You beat one man and immediately go on to beat another—is this one beating or several? In any of these cases the answer might be 'One' for some purposes and 'Several' for others. I give these examples so as to alert you to the ambiguity of language, so that you won't harass yourself with unsolvable doubts or harass others with interminable disputes.

21. So much for acts considered in themselves; we now come to the circumstances they can be accompanied by. These have to be taken into the account if anything is to be determined regarding the consequences; without knowing the circumstances we can't know whether an act is beneficial or harmful or neither. In some circumstances killing a man may be a beneficial act; in others putting food before him may be a pernicious one.

22. The circumstances of an act are... what? Any objects whatsoever.¹ Take any act whatsoever, there is nothing in the nature of things that excludes any imaginable object from being a circumstance to it. Any given object can be a circumstance to any other.

23. I have already divided an act's consequences into material [see Glossary] and immaterial. Its circumstances can be divided in the same way. Now, 'material' is a relative term:

- applied to an act's consequences it relates to pain and pleasure;
- applied to the circumstances, it relates to the consequences.

A circumstance can be said to be 'material' when it has a visible causal relation to the consequences; 'immaterial' when it doesn't.

24. The consequences of an act are events [see Glossary]. A circumstance can be causally related to an event in any one of four ways:

- (a) in the way of causation or production, when the circumstance is one of those that contribute to the production of the event;

¹ The etymology of 'circumstance' perfectly matches its meaning: *circum stantia*, things standing around; objects standing around a given object. Some mathematician defined *God* as a circle whose centre is everywhere, but whose circumference nowhere. Similarly, the field of circumstances belonging to any act may be defined as a circle whose circumference is nowhere, but whose centre is the act in question. Well, then, just as any act can for the purpose of discourse be regarded as a centre, so any other act or object whatsoever can be regarded as one of the items that are *standing around* it.

- (b) in the way of derivation, when the event is one of those that contribute to the production of the circumstance;
- (c) in the way of collateral connection when that circumstance and that event are both related to some one object that has been concerned in the production of them both, without either of them having any part in the production of the other;
- (d) in the way of conjunct influence, when—whether or not they are related in any other way—they have concurred in producing some common consequence.¹

25. An example may be of use. In 1628 the Duke of Buckingham. . . received a wound and died:

A man named Felton, exasperated at the maladministration of which the Duke was accused, went from London to Portsmouth, where Buckingham happened then to be, went into his antechamber and, finding him engaged in conversation with several people around him, got close to him, drew a knife and stabbed him. In the effort, the assassin's hat fell off, and in the crown of it were found scraps of paper with sentences expressing the purpose he came with. The bloody knife was also found on his person.

Let us focus on one event, the wound received by Buckingham. Then circumstances related to this event in the way of causation or production include

- Felton's drawing out his knife,
- his making his way into the chamber,
- his going from London to to Portsmouth,
- his becoming indignant about Buckingham's administration,
- that administration itself,
- King Charles's appointing such a minister,

and so on, higher and higher without end.² One circumstance related to the same event in the way of derivation is the bloodiness of the knife. Circumstances related to it in the way of collateral connection include finding the hat on the ground, finding the sentences in the hat, and writing them. Circumstances related to Felton's entering the room, going to Portsmouth etc. in the way of conjunct influence include the situation and conversations of the people around Buckingham, because they also contributed to the event by preventing Buckingham from putting himself on his guard on the first appearance of the intruder.

¹ This classification may be illustrated by animal generation. Production: father → son. Derivation: son → father. Collateral connection: siblings. Conjunct influence: marriage and copulation. [Bentham sketches another illustration which he might have used but decided not to because] while it made the subject a little clearer to one man out of a hundred, it might—like the mathematical formulae we see sometimes employed for that purpose—make it more obscure and formidable for the other ninety-nine.

² The more remote a connection of this sort is, of course, the more obscure. It will often happen that a connection the idea of which would at first sight seem extravagant and absurd is made highly probable—indeed indisputable—merely by putting in a few intermediate circumstances. At Rome in 390 BC a goose starts cackling; in 1610 AD a king of France is murdered. Considering these two events on their own, what can appear more extravagant than the notion that one should have had any influence in producing the other? Fill up the gap, bring to mind a few intermediate circumstances, and nothing can appear more probable. The cackling of geese when the Gauls were creeping up on the Capitol saved the Roman commonwealth; if it had not survived and gained ascendancy over most of the nations of Europe, France included, it wouldn't have been humanly possible for the Christian religion to establish itself as it did in France. Even if Henry IV had existed, no-one could have had the motive to kill him that his actual assassin did, because that involved beliefs about the king's relationship to that religion.

26. These relations don't all attach to an event with equal certainty. Obviously, every event must have some circumstance—actually, an indefinite multitude of circumstances—related to it in the way of production; and it must of course have even more circumstances related to it in the way of collateral connection. But it doesn't appear to be necessary that every event should have circumstances related to it in the way of derivation or, therefore, that it should have any related to it in the way of conjunct influence. But of the circumstances of all kinds that actually *do* attach to an event, only a very few can be discovered by the utmost exertion of the human faculties, and even fewer actually come to our attention. How many any individual discovers will depend on the strength •of his intellectual powers and •of his inclination. So it seems that the number and descriptions of the circumstances belonging to an act that appear to a person to be material will be determined by •the nature of things themselves and •the strength or weakness of that person's faculties.

27. Before moving into the consideration of particular sorts of acts with their particular circumstances, it seemed necessary to say this much about acts and their circumstances in general. Every notion of an offence has to include •an act of some sort and •certain circumstances that enter into the essence of the offence because they contribute by their conjunct influence to the production of its consequences. •On this page• I shall label these as 'criminative' circumstances. Other circumstances, •which don't enter into the notion of the offence, i.e. into the meaning of its name•, combine with the

act and the criminative set of circumstances to produce still further consequences. If these additional consequences are beneficial, the circumstances to which they owe their birth are called 'exculpativ' or 'extenuative'; if they are harmful, the circumstances giving rise to them are called 'aggravative'.

•THE REST OF THE PARAGRAPH, UNDOCTORED•:

Of all these different sets of circumstances, the criminative are connected with the consequences of the original offence, in the way of production; with the act, and with one another, in the way of conjunct influence; the consequences of the original offence with them, and with the act respectively, in the way of derivation; the consequences of the modified offence, with the criminative, exculpativ, and extenuative circumstances respectively, in the way also of derivation; these different sets of circumstances, with the consequences of the modified act or offence, in the way of production; and with one another (in respect of the consequences of the modified act or offence) in the way of conjunct influence. Lastly, whatever circumstances can be seen to be connected with the consequences of the offence, whether directly in the way of derivation, or obliquely in the way of collateral affinity (to wit, in virtue of its being connected, in the way of derivation, with some of the circumstances with which they stand connected in the same manner) bear a material relation to the offence in the way of evidence, they may accordingly be called evidentiary circumstances, and may become of use, by being held forth on occasion as so many proofs, indications, or evidences of its having been committed.

Chapter 8: Intentionality

1. So much for the first two items on which an action's bad tendency of may depend—•the act itself and •the general assemblage of circumstances that may have accompanied it. I now turn to the ways in which the particular circumstance of intention may be involved.

2. **First**, then, the agent's intention or will may be directed either at •the act itself or at •its consequences; and the one the intention aims at may be called 'intentional'—an 'intentional act' or 'intentional consequences'.¹ If it aims at both the act and consequences, the whole action may be said to be 'intentional'. And of course if either of those items was not aimed at by the intention, it can be said to be 'unintentional'.

3. An act can be intentional without the consequences' being so: you may intend to touch a man without intending to hurt him, though it turns out that you do hurt him.

4. And the consequences of an act can be intentional without the act's being intentional throughout—i.e. without its being intentional in every stage of it—but this is less common. Here is an example: You intend to hurt a man by running against him and pushing him down; you run towards him,

but a second man suddenly comes between you and the first man, and before you can stop yourself you run against the second man and by him push down the first.

5. But an act's consequences can't be intentional unless the act itself is intentional, at least in the first stage. If the act isn't intentional in the first stage then it is not an act of yours, so there's no intention on your part to produce the consequences—I mean the individual consequences. All you can have had is a distant intention to produce similar consequences by some act of yours at a future time; or else, without any intention, a bare wish to see such an event take place. . . .²

6. **Second**. A consequence can be either •directly intentional or only •obliquely so.

•Directly or lineally intentional: the prospect of producing it was a link in the chain of causes by which the person was determined to do the act.

•Obliquely or collaterally intentional: the person foresaw the consequence as likely to ensue if he performed the act, but the prospect of producing it wasn't a link in the aforesaid chain.

¹ In this context the words 'voluntary' and 'involuntary' are commonly employed, but I abstain from these because they are so ambiguous. A 'voluntary' act may be any act in the performance of which the will has been involved (= 'intentional'); or any act in the production of which the will was determined by motives that weren't painful in nature (= 'unconstrained' or 'uncoerced'); or any act in the production of which the will was determined by motives—whether pleasurable or painful—that occurred to the agent himself without being suggested by anyone else (= 'spontaneous'). The word 'involuntary' is sometimes used in opposition to 'intentional' or to 'unconstrained', but not in opposition to 'spontaneous'. It might be useful to confine the meaning of 'voluntary' and 'involuntary' to one very narrow case, which I'll mention in the next note.

² [Bentham has a footnote here going into further details that might be thought trivial. The first stage of a positive act consists in motion, which has three aspects to which correspond three intentions: did he intend to move his whole arm or only his fore-arm? to move it in that direction? to move it as fast as that? This fine-tuning might sometimes be relevant to proceedings in a criminal trial, Bentham says, and might also, 'in the hands of an expert metaphysician', play a part in 'an exhaustive analysis of the possible varieties of mechanical inventions'.]

7. Third. An incident that is directly intentional may be so either •ultimately or only •mediately.

•Ultimately intentional: it stands last of all exterior events in the aforesaid chain of motives; so that the agent would have aimed to produce it even if there were no prospect of its producing anything else in its turn.

•Only mediately intentional: when the prospect of producing some other incident forms a subsequent link in the same chain; so that the agent would not have been motivated to aim at the former if he hadn't expected it to produce the latter.

8. Fourth. When an incident is directly intentional, it may either be exclusively or inexclusively so.

•Exclusively intentional: only that very individual incident would have answered the agent's purpose; no other incident had any share in directing his will to the act in question.

•Inexclusively intentional: there was some other incident the prospect of which was acting on the agent's will at the same time.

9. Fifth. When an incident is inexclusively intentional, it may be either conjunctively or disjunctively or indiscriminately so.

•Conjunctively intentional with regard to the other incident: the agent intended to produce both.

•Disjunctively: he intended to produce either the one or the other—he didn't care which—but not both.

•Indiscriminately: the agent didn't care whether he produced one or the other or both.

10. Sixth. When two incidents are disjunctively intentional, they may be so with or without preference. . . .¹

11. One example will make all this clear. King William II of England, when stag-hunting, received from Sir Walter Tyrrel a wound from which he died. Let us take this case, and diversify it with a variety of suppositions involving the distinctions I have just presented.

(i) Tyrrel did not so much as entertain a thought of the king's death; or looked on it as an event of which there was no danger. Either way, the incident of his killing the king was altogether unintentional.

(ii) He saw a stag running that way and saw the king riding that way at the same time; he aimed to kill the stag and did not wish to kill the king. But he saw that if he shot, he was as likely to kill the king as to kill the stag; yet he went ahead and shot, and killed the king accordingly. In this case his killing the king was intentional, but obliquely so.

(iii) He killed the king on account of the hatred he bore him, and for no other reason than the pleasure of destroying him. In this case the incident of the king's death was not only directly but ultimately intentional.

(iv) He killed the king, fully intending so to do, not for any hatred he bore him but for the sake of robbing him when dead. In this case the king's death was directly but not ultimately intentional; it was mediately intentional.

(v) He intended neither more nor less than to kill the king; he had no other aim or wish. In this case his killing the king was exclusively as well as directly intentional—meaning exclusively with regard to every other material incident.

(vi) Sir Walter shot the king in the right leg when the king was pulling a thorn out of it with his left hand. He intended by shooting the arrow into the leg through the hand to cripple

¹ There is a difference between •the case where a consequence is altogether unintentional and •that in which it is disjunctively intentional with reference to another, with the other being preferred. . . . All these are distinctions need to be attended to in the use of the particle 'or', a word of very ambiguous import and of great importance in legislation.

the king in both those limbs at the same time. In this case the king's being shot in the leg was intentional, and was so conjunctively with another incident that did not happen, namely his being shot in the hand. [Bentham then adds (vii)-(ix) three variations on this hand/leg scenario, illustrating concepts presented in paragraphs 9 and 10 above.]

12. An act may be unintentional in any stage of it, though intentional in the preceding stage. . . . (See paragraph 14 on page 45.) But if it was unintentional in the last stage, its being or not being intentional in any preceding stage is immaterial with respect to the consequences. The only point with respect to which it is material is the proof about what he intended. In most cases the more stages the act is unintentional in, the more apparent it is that it was unintentional with respect to the last stage. If a man, intending to strike you on the cheek, strikes you in the eye and puts it out, it will probably be hard for him to prove that he didn't intend to strike you in the eye. It will probably be easier if he didn't intend to strike you at all, or didn't intend to strike anything .

13. We often hear men speak of a 'good intention', of a 'bad intention'; and the goodness or badness of a man's intention is a circumstance on which great stress is generally laid. It is indeed of considerable importance when properly understood, but these phrases are utterly ambiguous and obscure. Nothing can be called 'good' or 'bad', strictly speaking, unless it is so •in itself, which is the case only with pain or pleasure, or •because of its effects, which is the case

only with things that cause or prevent pain or pleasure. But in a figurative and less proper way of speaking a thing may be called 'good' or 'bad' •in consideration of its cause. Now, the effects of an intention to do such-and-such an act are what I have been calling its 'consequences'; and the causes of an intention are called 'motives'. So a man's intention on any occasion can be called 'good' or 'bad' because of the act's consequences or because of his motives. . . . The goodness or badness of the consequences depends on the circumstances, and these are not objects of the man's intention. A man intends the act, and by his intention produces the act; but he doesn't intend the circumstances, and just because they are circumstances of his act he doesn't produce them. (He may have produced some of them by previous intentions and acts, but in this present act he takes them as he finds them.) Acts and their consequences are objects of the will as well as of the understanding; circumstances as such are objects of the understanding only. [Why 'circumstances, as such'? Because a circumstance might have been an object of the will in its role as a consequence of an earlier act.] All our man can do with these, as such, is to know or not to know them, i.e. to be conscious of them or not conscious of them. Thus, what is to be said about the goodness or badness of a man's intention as resulting from the consequences of his act comes under the heading of Consciousness (chapter 9), and what is to be said about of the goodness or badness his intention as resulting from his motive comes under the heading of Motives (chapter 6).

Chapter 9: Consciousness

1. That was about how the •will or intention can be involved in the production of any incident; now I turn to the part that the •understanding or perceptive faculty may have played in relation to such an incident.

2. A certain act has been performed intentionally; it was attended with certain circumstances on which certain of its consequences depended; and some of those were purely physical in nature. Now then, take any one of these circumstances C: at the time of performing the act from which those consequences ensued, a man may have been either conscious or unconscious of C; he may have been aware of it or not aware; it may have been present to his mind or not present. In the former case the act may be said to have been an 'advised' act with respect to C; in the other case, an 'unadvised' one.

3. An act can be advised or unadvised with respect to circumstance C because the agent is aware or unaware of •the existence of C or •the materiality of C.

4. Obviously, a circumstance of a present act may exist in the present, the past, or the future.

5. An unadvised act is either •heedless or •not heedless. It is called 'heedless' if it is thought that a person of ordinary prudence and an ordinary share of benevolence would probably have attended to and reflected on the material circumstances sufficiently to have been led to prevent the harmful incident from taking place; and 'not heedless' if that is not thought to be the case.

6. Whether a man did or didn't suppose the existence or materiality of a given circumstance, it may be that he did suppose the existence and materiality of *some* circumstance

that either didn't exist or wasn't material. In such a case the act may be said to be 'misadvised' with respect to the imagined circumstance, and it may be said that in this case there has been an erroneous supposition or a mis-supposal.

7. A circumstance whose existence is thus erroneously supposed may be material either

- in the way of prevention: its effect or tendency, if it had existed, would have been to prevent the obnoxious consequences; or
- in the way of compensation: the effect or tendency would have been to produce, also, consequences whose beneficialness would have outweighed the harmfulness of the others.

8. Obviously such an imaginary circumstance may have been supposed to be present, past, or future relative to the time of the act.

9. To return to the Tyrrel example that I dropped on page 51, ·with some further suppositions·.

(x) Tyrrel intended to shoot in the direction in which he shot, but he didn't know that the king was riding so near that way. In this case his act of shooting was unadvised with respect to the existence of the circumstance of the king's being so near.

(xi) He knew that the king was riding that way; but he didn't know how probable it was that the arrow would reach the king at that distance. In this case the act was unadvised with respect to the materiality of the circumstance.

(xii) Somebody had dipped the arrow in poison, without Tyrrel's knowing this. In this case the act was unadvised with respect to the existence of a past circumstance.

(xiii) At the very instant that Tyrrel drew the bow, the king (screened from his view by some bushes) was riding furiously in such a way as to meet the arrow head-on, this being a circumstance that Tyrrel didn't know of. In this case the act was unadvised with respect to the existence of a present circumstance.

(xiv) The king was too far from court to be able to get anyone to dress his wound until the next day; and Tyrrel was not aware of this circumstance. In this case the act was unadvised with respect to what was then a future circumstance.

(xv) Tyrrel knew of the king's riding that way, being so near, and so forth; but being deceived by the foliage of the bushes, he thought he saw a bank between the place where he was and the place to which the king was riding. In this case the act was misadvised, being based on the mis-supposal of a preventive circumstance.

(xvi) Tyrrel knew that everything was as above, nor was he deceived by the supposition of any preventive circumstance. But he •believed the king to be an usurper, and supposed he was coming up to attack a person whom Tyrrel believed to be the rightful king, and who was riding by Tyrrel's side. In this case the act was also misadvised, based on the mis-supposal of a compensative circumstance.

10. Notice the connection between intentionality and consciousness. When the act itself is intentional, and advised with respect to the existence and the materiality of all the circumstances in relation to a given consequence C, and there is no mis-supposal with regard to any preventive circumstance, then consequence C must also be intentional. In other words,

advisedness regarding circumstances, if clear from the mis-supposal of any preventive circumstance, extends the intentionality from the act to the consequences.

Those consequences may be either directly or only obliquely intentional, but they can't be *not* intentional.

11. Let us go on with the example. If Tyrrel

- intended to shoot in the direction in which the king was riding,
- knew that the king was coming to meet the arrow, and
- knew the probability of the king's being shot in the same part of his body where he *was* shot, or in another part equally dangerous, . . . and
- was not misled by the erroneous supposition of a circumstance that would, if it had existed, have prevented the shot from taking place, . . . it is clear that he couldn't have *not* intended the king's death. Perhaps he didn't positively wish it, but still in a certain sense he *intended* it.

12. What heedlessness is in the case of an unadvised act, rashness is in the case of a misadvised one. A misadvised act may be called 'rash' when the case is thought to be such that an ordinarily prudent and ordinarily benevolent person would •have attended to and thought about the imagined circumstance sufficiently to realise that it was nonexistent, improbable or immaterial, and would thus •have been led to prevent the harmful incident from taking place.

13. In ordinary discourse, when a man does something whose consequences turn out to be harmful, it is often said that his *intention* was good or bad. While this is said about the intention, what is usually at work here is a supposition about the nature of the motive. Although the act turns out to be harmful, it said to be done with a good intention when it is supposed to arise from a motive which is looked on as a good motive, and with a bad intention when it is supposed to arise from a motive that is looked on as a bad motive. But the nature of the consequences intended [by

which Bentham must mean ‘the nature of the intention’] is perfectly distinguishable from the nature of the motive that gave birth to the intention, though they are intimately connected. The intention counts as being a good one if

the consequences of the act would have been beneficial if they had turned out to be what the agent thought them likely to be.

So the intention might properly be called a good one even if •its consequences turned out to be harmful *and* •the motive that gave birth to it was what is called a bad one. And in the same way the intention may be bad even if •its consequences turned out to be good and •the motive that gave birth to it was a good one. [This is the first time in the work that Bentham has spoken of something as being a good motive rather than as being ‘looked on as a good motive’.]

14. [This paragraph deplors at great length people’s tendency to say ‘intention’ when they mean ‘motive’.]

15. An example will make this clear. [Here ‘this’ refers to the penultimate sentence of **13.** above.] Out of malice a man prosecutes you for a crime of which he wrongly believes you to be guilty. The consequences of his conduct are harmful to you (shame and anxiety at least, and the evil of the punishment if you are convicted), and not beneficial to anyone. The man’s motive was also what is called a bad one: for malice will be allowed by everybody to be a bad motive. But if the consequences of his conduct had turned out to be what he believed them likely to be, they would have been good; because they would have included *the punishment of a criminal*, which is a benefit to everyone who could become a victim of a similar crime. . . . I’ll say more about motives in the next chapter.

16. An intention that isn’t bad may be called ‘innocent’ even if it isn’t outright good. Accordingly, even if the consequences have turned out to be harmful, and whatever the motive may have been, the intention may be called innocent if the agent

- didn’t know about one of the circumstances on which the harmfulness of the consequences depended; or
- wrongly thought that some circumstance would serve to prevent or to outweigh the mischief.

17. A few words for the purpose of applying what has been said to the Roman law. [Bentham here presents more than a few words on the proper use of various Latin words that were sometimes used by lawyers. We can safely spare ourselves all this.]

18. The definitions and distinctions that I have presented ·in this chapter· are not only of •theoretical significance; they can be widely and constantly •used in moral discourse as well as in legislative practice. The degree and bias of a man’s intention, ·and· the absence or presence of consciousness or mis-supposal on his part, go a long way towards •settling whether the consequences of his act are good or bad, and for this and other reasons towards •creating a great demand for punishment (see chapter 13). The presence of intention regarding consequence C_o , and of consciousness with regard to circumstance C_i , of the act, will constitute essential ingredients in the composition of this or that offence; and consciousness regarding other circumstances will contribute to an offence’s gravity. And nearly always the absence of intention regarding certain consequences and the absence of consciousness, or the presence of mis-supposal, regarding certain circumstances, will constitute grounds of extenuation.

Chapter 10: Motives

1. Different senses of 'motive'

1. It is an acknowledged truth that every kind of act—and therefore every kind of offence—is apt to have a different character and lead to different effects according to the nature of the motive that gives birth to it. So we need to look into the various motives by which human conduct is liable to be influenced.

2. In the broadest sense that the word is ever given with reference to a thinking being, a *motive* is
 anything that can contribute to give birth to, or even to prevent, any kind of action.

Now an action of a thinking being is the act either of the body or only of the mind; and an act of the mind is an act either of the intellectual faculty or of the will. [Bentham then mentions motives leading to 'acts of the intellectual faculty' that stay within the understanding and have no influence on the will. Those motives have nothing to do with the production of pleasure or pain; they are irrelevant to our present purposes; and Bentham sets them aside.]

3. The only motives we have any concern with are ones that are of the right kind to act on the will. By a *motive* in this sense of the word, then, is to be understood
 anything whatsoever which, by influencing the will of a sensitive being, is supposed to serve as a means of determining him to act, or voluntarily to forbear to act, on any occasion.¹

[The indented passage is verbatim from Bentham.] Motives of this sort, in contradistinction to the former, may be called practical motives, or motives applying to practice.

4. Owing to the poverty and unsettled state of language, 'motive' is used indiscriminately to denote two kinds of objects which have to be distinguished if the subject is to be better understood. Sometimes it is used to denote any of those really existing incidents from which the act in question is supposed to arise; in these uses the word has what may be called its 'literal' or 'unfigurative' sense. At other times it is used to denote a certain fictitious entity, a passion, an affection of the mind, an ideal [see Glossary] being which, on the occurrence of any such ·really existing· incident, is considered as operating on the mind and prompting it to take the course that the influence of the incident is impelling it towards. Motives of this class are avarice, indolence, benevolence, and so forth, as we'll see in more detail further on. This latter may be called the 'figurative' sense of 'motive'.

5. The real incidents to which the name 'motive' is given are of two kinds. •The **internal** perception of an individual lot [see Glossary] of pleasure or pain, the expectation of which is thought likely to determine you to act in such-and-such a manner—e.g. the pleasure of acquiring a certain sum of money, or the pain of exerting yourself on a certain occasion. •Any **external** event the happening of which is regarded as tending to bring about the experience of such pleasure or pain—e.g. the coming up of a winning lottery ticket owned

¹ When the effect or tendency of a motive is to determine a man to forbear to act, it may seem improper to use the term 'motive', since strictly speaking 'motive' means 'something that disposes an object to move'. But we have no acceptable alternative to that improper term. By way of justification, or at least apology, for this popular use of 'motive' I point out that even forbearance to act, or the negation of motion (i.e. of bodily motion), when it is voluntary, presupposes an act of the will that is as much a positive act, as much a case of *motion*, as any other act of a thinking substance.

by you, or the breaking out of a fire in the house you are in, making it necessary for you to get out.

6. Two other senses of the term ‘motive’ need also to be distinguished. ‘Motive’ refers necessarily to *action*: it is a pleasure, pain, or other episode that prompts the person to action. In one sense of the word, then, a motive must be previous to such an event [here = ‘such an action’]. But a man can’t be governed by a motive unless he looks beyond the event that is called his action, looking to its consequences; it is only in this way that the idea of pleasure, pain, or any other event can give birth to it. So he must always look to some event later than the act he is contemplating performing—an event that doesn’t yet exist. . . . Now, because it is always hard and usually unnecessary to distinguish two objects as intimately connected as

(a) the later possible object that is thus looked forward to, and

(b) the present existing object or event that takes place when a man looks forward to (a) the other,

they are both spoken of as ‘motive’. To distinguish them we may call (a) a *motive in prospect* and (b) as a *motive in esse* [= ‘a now-existent motive’; but see the footnote to 7]; and each of these has exterior as well as internal versions. Consider this case:

A fire breaks out in your neighbour’s house; you are afraid of its extending to your own house; you are afraid that if you stay in it you will be burnt; so you run out of it.

Your running out of the house is the act; the other items are all motives to it.

•The fire’s breaking out in your neighbour’s house

is an external motive, and a motive *in esse*;

•the idea or belief of the probability of the fire’s extending to your own house,

•the idea or belief of your being burnt if you stay indoors, and

•the pain you feel at the thought of such a catastrophe,

are all internal events, but still *in esse*;

•the fire’s actually extending to your own house, and

•your being actually burnt by it,

are external motives in prospect;

•the pain you would feel at seeing your house burning,

•the pain you would feel while you were burning,

are internal motives in prospect. These last may in the upshot come to be *in esse*, but then of course they will cease to act as motives.

7. Of all these motives that jointly produce the action, the one that stand nearest to it is the internal motive *in esse* that consists in the expectation of the internal motive in prospect—the pain or uneasiness you feel at the thought of being burnt.¹ All other motives are more or less remote. The motives in prospect are remote in proportion as their expected time of happening is more distant from—and thus later than—the time of the act, and the motives *in esse* are remote in proportion as their time of happening is more distant from—and thus earlier than—the time of the act.

·START OF FOOTNOTE·

Under the term *esse* we must include •past as well as •present existence. They are equally real, in comparison with what is still in the future. Language is seriously deficient in not enabling us to distinguish

¹ In a footnote Bentham says that it may be hard to separate •the expectation from •the pain that accompanies it, and that it isn’t important to do so. Similarly with ‘the other kinds of motives’: sometimes we need to consider them separately, but] it will often be scarcely practicable and not always material to avoid confounding them, as they always *have* been confounded up to now.

•existence as opposed to unreality
precisely from

•present existence as opposed to past.

The English word ‘existence’ and *esse* (adopted by lawyers from Latin) have the inconvenience of appearing to confine the existence in question to some single period considered as being present.

•END OF FOOTNOTE•

8. As I remarked earlier, we have no concern here with motives whose influence does not reach beyond the understanding. So if we have any concern with any objects that are spoken of as motives with reference to the understanding [Bentham’s phrase], it can only be with ones which through the medium of •the understanding influence •the will. That is the only way in which something can in a practical sense act as a motive on the strength of its influence on the sentiment of belief. . . . When we talk of giving reasons, we are often pointing to motives such as these. Your neighbour’s house is on fire; I observe to you •that at the lower part of your neighbour’s house is some wood-work that joins onto yours, •that the flames have caught this wood-work, and so forth. I’m saying this in order to dispose you to believe, as I do, that if you stay in your house much longer you will be burnt. In doing this, I suggest motives to your understanding; and these motives, by their tendency to cause or strengthen a pain that operates on you as an internal motive *in esse*, combine to act as motives on the will.

2. No motives constantly good or constantly bad

9. In all this chain of motives, the principal or original link seems to be *the last internal motive in prospect*; it is to this that •the other motives in prospect owe their materiality

and •the action owes its existence. [Bentham actually wrote ‘and the immediately acting motive owes its existence’; but this passage falls to pieces unless he meant ‘the action’. The phrase ‘immediately acting’ doesn’t occur anywhere else in this work.] This motive in prospect is always some pleasure (which the act is expected to produce or continue) or some pain (which the act is expected to prevent or discontinue). A motive is substantially nothing more than pleasure or pain, operating in a certain manner.

10. Now, pleasure is in itself a good; indeed it’s the *only* good if we set aside immunity from pain; and pain is in itself an evil, and without exception the *only* evil; or else ‘good’ and ‘evil’ have no meaning! And this is equally true of every sort of pain, and of every sort of pleasure. So it follows—immediately and incontestably—that there is no such thing as a sort of motive that is in itself a bad one. Let a man’s motive be ill-will, malice, envy, cruelty—it is still a kind of pleasure that is his motive, the pleasure he takes at the thought of the pain that he sees or expects to see his adversary undergo. Even this wretched pleasure, taken by itself, is good. It may be faint; it may be short; it must be impure; but while it lasts, and before bad consequences arrive, it’s as good as any other pleasure that isn’t more intense.

11. Yet actions are commonly said to come from good or bad motives—always meaning internal motives. This way of speaking is far from accurate, and because it is apt to occur in connection with almost every kind of offence, we need to settle its precise meaning and observe how far it squares with the truth of things.

12. With regard to anything that isn’t itself either pain or pleasure: if it is good, that is because it tends to produce pleasure or avert pain; if it is bad, that is because it tends to produce pain or avert pleasure. This holds for everything, including motives. Now the fact is that from one and the

same individual motive, and from every kind of motive, there may come some good actions, some bad ones, and others that are indifferent [see Glossary]. I will now show this with respect to all the different kinds of motives, as determined by the various kinds of pleasures and pains.

13. This analysis will be found to be difficult, largely because of a certain perversity of structure that prevails more or less throughout all languages. . . . To speak of motives we must call them by their names, but it is rare to meet with a motive whose name expresses only that and nothing more. Along with the motive's name, a proposition is tacitly involved imputing to it a certain quality; and in many cases the quality will appear to include that very goodness or badness that we are here inquiring into. The name of the motive is a word that is employed—as they commonly say—only

- 'in a good sense': meaning that it conjoins the idea of the motive with an idea of approval—i.e. of pleasure or satisfaction that the name-user has at the thought of such a motive; or
- 'in a bad sense': meaning that it conjoins the idea of the motive with an idea of disapproval—i.e. of displeasure that the name-user has at the thought of such a motive.

Such approval is likely enough to be based on the opinion that the object in question is good, and according to the principle of utility that's what it ought to be based on; similarly with disapproval and the opinion that the object in question is bad.

Some motives are almost always named by words that

are used only in a good sense—e.g. the motives of piety and honour. The result is that if a man wants to characterise as 'bad' an action that he says is apt to arise from such a motive, he must appear to be guilty of a contradiction in terms. And there are many more motives that are hard to name except by names that used only in a bad sense—e.g. lust and avarice. (For the reason, see the footnote to paragraph 17 on page 75.) If a man describes as 'good' or 'indifferent' actions that he mentions as apt to result from lust or avarice, he too must appear to be guilty of a similar contradiction.¹

This perverse association of ideas is bound to throw great difficulties in the way of the inquiry now before us. Confining himself to the terms most in use, a man can hardly avoid perpetually seeming to contradict himself. His propositions will appear •false and also •adverse to utility: as paradoxes they will arouse contempt; as harmful paradoxes, indignation. The truths he labours to convey, however important and salutary, do his reader no good and do himself harm. To conquer this inconvenience *completely*, he has only one remedy—nasty medicine!—namely to lay aside the old terminology and invent a new one. Happy the man whose language is ductile enough to permit him this resource! To lessen the inconvenience, where that method of conquering it is impracticable, his only resource is •to enter into a long discussion, •to state the whole matter at large, •to confess that for serious reasons he has violated the established laws of language, and •to throw himself on the mercy of his readers. (Fortunately, language sometimes lets us use two words instead of one, avoiding the inconvenience of

¹ This imperfection of language is the main source of the violent clamours that have from time to time been raised against those ingenious moralists who, travelling off the beaten track of moral theorising, have found more or less difficulty in disentangling themselves from the shackles of ordinary language; for example, Rochefoucault, Mandeville and Helvetius. Doctrines that commonly arose from a lack of discernment on the part of the author, or a lack of skill in matters of language, or perhaps in a few cases from a lack of honesty on the part of a commentator, have often been attributed to the unsoundness of their opinions and—with still greater injustice—to the corruption of their hearts.

inventing new words. Replacing ‘lust’ by ‘sexual desire’ we have a neutral expression; we can replace ‘avarice’ by the neutral expression ‘pecuniary interest’. This is the course I have taken. In these instances, indeed, the combination isn’t novel; the only novelty consists in steady adherence to the one neutral expression, entirely rejecting the terms whose meaning is infected by adventitious and unsuitable ideas.)

3. Matching motives against pleasures and pains

14. From the pleasures of the senses considered all together, arises the motive that can be given the neutral name ‘physical desire’; in a bad sense it is called ‘sensuality’. It has no name used in a good sense. Nothing more can be said about the pleasures of the senses in general; they have to be divided up according to the senses that are involved, which I shall do in 15–16.¹

15. Corresponding to the pleasures of the taste or palate is a motive that has to be given the round-about name ‘love of the pleasures of the palate’, because there isn’t a one-word-name referring to it in a neutral sense. In particular cases it is called ‘hunger’; in others, ‘thirst’.² The phrase ‘love of

good cheer’ expresses this motive but seems to go beyond, •implying that the pleasure is to be enjoyed in company, and •involving a kind of sympathy. In a bad sense it is in some cases called ‘greediness’, ‘voraciousness’, ‘gluttony’; in some others. . . .it can be represented by ‘daintiness’. It has no name used in a good sense.

•A boy who has plenty to eat steals a cake out of a shop, and eats it. His motive will be universally deemed a bad one; and if we ask what the motive is, the answer may be ‘gluttony’. •A boy buys a cake out of a shop, and eats it. In this case his motive can scarcely be looked on as either good or bad. . . . But in both cases his motive is the same: it is neither more nor less than the motive corresponding to the pleasures of the palate.³

16. To the pleasures of the sexual sense corresponds the motive which in a neutral sense may be called ‘sexual desire’. In a bad sense it is spoken of as ‘lasciviousness’ and given a variety of other names of reproof. It has no name used in a good sense.⁴

•A man rapes a virgin. His motive is confidently labelled as ‘lust’, ‘lasciviousness’, or the like, and is universally regarded as a bad one. •The same man, at another time,

¹ I have put into my catalogue of motives, corresponding to the several sorts of pains and pleasures, such as have occurred to me. I don’t claim that it is complete. To make sure of its being so, I would have to go through the dictionary from beginning to end. . . .

² Hunger and thirst, considered as motives, imply not so much the desire for a particular kind of pleasure as the desire for removing a positive kind of pain. They don’t extend to the desire for the kind of pleasure that depends on the choice of food and drink.

³ It won’t be worthwhile in every case to give an example in which the action would be indifferent: if good as well as bad actions can come from the same motive, it is easy to conceive that indifferent ones can come from it also.

⁴ ‘Love’ sometimes includes this idea ‘in its meaning’; but it can’t serve the purpose of picking it out separately, because it can also include at least three other motives, namely the love of beauty corresponding to •the pleasures of the eye, and the motives corresponding to •the pleasure of friendship and •the pleasure of benevolence. We speak of the love of children, of the love of parents, of the love of God—these pious uses protect the word from the ignominy poured forth onto its profane associates. Even ‘sensual love’ wouldn’t serve the purpose, because that would include the love of beauty.

exercises the rights of marriage with his wife. In this case the motive may be regarded as a good one, or at least as indifferent [see Glossary], and people would hesitate to call it 'lust' etc. Yet it may be that in both cases the motive is precisely the same, namely sexual desire.

17. The other pleasures of sense are of too little consequence to have given separate names to the corresponding motives.

18. Corresponding to the pleasures of curiosity is the motive also called 'curiosity', and could instead be called 'the love of novelty', or 'the love of experiment'; and on particular occasions it may be called 'sport' or 'play'.

•A boy, wanting to do something interesting, reads an improving book; the motive may be regarded as a good one, and certainly not a bad one. •He sets his top spinning; the motive is regarded as at any rate not a bad one. •He sets loose a mad ox among a crowd; his motive may now be described as 'abominable'. Yet in all three cases the motive may be the very same—namely curiosity.

19. Corresponding to the pleasures of wealth is the sort of motive that can be labelled in a neutral sense as 'pecuniary interest'; in a bad sense it is in some cases called 'avarice', 'covetousness', 'rapacity', or 'lucre' [see Glossary]; in other cases 'niggardliness'; in a good sense—but only in particular cases—'economy' and 'frugality'; and in some cases the word 'industry' may be applied to it. In some particular cases it is called 'parsimony', this being a sense that is nearly indifferent but leaning towards the bad side.

•For money you gratify a man's hatred, by putting his adversary to death. •For money you plough his field for him. In the first case your motive is called 'lucre', and is regarded as corrupt and abominable; in the second case, for lack of a proper label it is called 'industry', and is regarded as innocent and perhaps downright meritorious. Yet the motive

is in both cases precisely the same—pecuniary interest.

20. The pleasures of skill are not sufficiently distinct or important to have given any name to the corresponding motive.

21. To the pleasures of friendship corresponds a motive which in a neutral sense may be called 'the desire to ingratiate oneself'. In a bad sense it is in some cases called 'servility'; it has no name of its own in a good sense; in the cases where it has been looked on favourably it has seldom been distinguished from a motive that commonly accompanies it in such cases, namely sympathy or benevolence.

•To acquire the affections of a woman before marriage and preserve them afterwards, you do everything that is consistent with other duties to make her happy; in this case your motive is regarded as praiseworthy, though there is no name for it. •For the same purpose you poison a woman with whom she is at enmity; in this case your motive is regarded as abominable, though again there is no name for it. •To acquire or preserve the favour of a man who is richer or more powerful than yourself, you make yourself subservient to his pleasures. Even if the pleasures are lawful, if people attribute your behaviour to this motive you won't get them to find any other name for it than 'servility'. Yet in all three cases the motive is the same—the desire to ingratiate yourself.

22. The pleasures of the moral sanction—i.e. the pleasures of a *good name*—have a corresponding motive for which we don't yet have an adequate neutral name. It may be called 'the love of reputation'. It is nearly related to the motive discussed in **21**, because it is neither more nor less than the desire to ingratiate oneself with—or recommend oneself to—the world at large. In a good sense it is called 'honour' or 'the sense of honour'. . . well, no, that isn't strictly correct. Strictly speaking, 'honour' is the name people give to an

imaginary object that a man is said to *possess* when he obtains a conspicuous share of the pleasures of a good name, that are in question. . . . In particular cases this motive is called ‘the love of glory’. In a bad sense it is in some cases called ‘false honour’; in others, ‘pride’; in others, ‘vanity’. In a sense that leans towards the bad side, ‘ambition’. In an indifferent sense it is in some cases called ‘the love of fame’; in others, ‘the sense of shame’. And because the pleasures belonging to the moral sanction merge indistinguishably with the pains derived from the same source (see footnote to 24 on page 27), it may also in some cases be called ‘the *fear* of dishonour’, ‘. . . of disgrace’, ‘. . . of infamy’, ‘. . . of ignominy’, ‘. . . of shame’.

•You have received an open insult from a man; according to the custom of the country, so as to save yourself from the shame of being thought to bear it patiently. . .

·START OF LONG FOOTNOTE·

A man’s bearing an insult patiently—i.e. without taking this method of ‘wiping it off’—is thought to show either •that he isn’t as sensitive to the pleasures and pains of the moral sanction as a respectable member of society has to be; or •that he does feel a resentment appropriate to a proper sense of the value of those pleasures and those pains, but isn’t brave enough to stake his life for the chance of gratifying it. There are various other motives by which the same conduct might be produced: the motives corresponding to the religious sanction, and the motives that come under the head of benevolence. •Piety towards God (because duelling is generally regarded as contrary to the dictates of the religious sanction); •sympathy for your antagonist, whose life would be at risk at the same time as yours; •sympathy for persons who depend on him for support or are connected with him in the way of sympathy; •sympathy for people you are connected

with; and even •sympathy for the public, if the man is such that it matters to the public that he should stay alive. But the religious sanction is known to be in general weaker than the love of life, especially among people of the kind who are apt to engage in duelling, a sure proof of which is the prevalence of this very practice. Where the religious sanction is so strong as to preponderate, that is so rare that it exalts the person to the rank of martyr. And it won’t often happen that private benevolence or public spirit predominate over the love of life; and because of the general propensity for detraction it will be even rarer for them to be thought to do so. Now, when someone acts in a manner that could be attributed to any one of several motives all of which he has, the one that appears to be the most powerful will routinely be regarded as having actually •done the most; and because most people are given to swift superficial judgments it will generally be regarded as having done the whole.

The result is that when a man of a certain rank forbears to take this chance of revenging an open insult, most people will attribute this to his love of life, which when it predominates over the love of reputation is. . . .stigmatized with the reproachful name ‘cowardice’.

·END OF FOOTNOTE·

. . . and to obtain the reputation of courage, you challenge him to fight with mortal weapons. In this case some people will count your motive as praiseworthy and will call it ‘honour’; others will count it as blameworthy, and if they bring ‘honour’ into the story it will be in a phrase like ‘false honour’. •In order to obtain a post of rank and dignity, and thereby to increase the respects paid to you by the public, you bribe the relevant electors or judge. In this case your motive is commonly accounted corrupt and abominable, and may be called ‘dishonest ambition’ or ‘corrupt ambition’, as

there is no one-word name for it. •In order to obtain the good will of the public, you give a large sum to works of private charity or public utility. In this case people will be apt to disagree about your motive. Your enemies will put a bad colour on it and call it 'ostentation'; your friends, to save you from this reproach, will choose to attribute your conduct to some other motive such as charity. . . .or public spirit. •A king engages his kingdom in a bloody war, wanting to get the admiration that goes with the name 'conqueror' (let's suppose that power and resentment don't come into it) . His motive will be deemed an admirable one by the multitude (whose sympathy for millions is easily outweighed by the pleasure their imagination gets from gaping at any novelty they see in the conduct of a single person). Men of feeling and reflection, who disapprove of the power of this motive on this occasion (without always seeing that it's a motive that they approve of in other instances) deem it an abominable motive; and because the multitude, who are the manufacturers of language [Bentham's phrase], haven't provided a simple name for it, they will call it 'love of false glory' or 'love of false ambition' or the like. Yet in all four cases the motive is the same—the love of reputation.

23. Corresponding to the pleasures of power is the motive that can neutrally be called 'the love of power'; those who disapprove of it sometimes call it 'the lust for power'. It has no name in a good sense. In some cases this motive is run together with the love of reputation under the single label 'ambition'. This is not surprising, given •how intimately the two motives are connected in many cases: it commonly happens that something giving one sort of pleasure gives the other sort at the same time (e.g. government positions which are at once posts of honour and places of trust); and given •that reputation is the road to power.

•If in order to gain a place in administration you poison

the man who occupies it, or •if for the same reason you propose a useful plan for the advancement of the public welfare, your motive is the same in both cases. Yet in the first case it is regarded as criminal and abominable; in the second case allowable and even praiseworthy.

24. Corresponding to the pleasures and pains of the religious sanction is a motive that has, strictly speaking, no perfectly neutral name that fits all cases unless the word 'religion' is allowed to serve. But 'religion', strictly speaking, seems to mean not so much the motive itself as a kind of fictitious personage by whom the motive is supposed to be created, or an assemblage of acts supposed to be dictated by that personage; and anyway it doesn't seem to be completely settled into a neutral sense. In the same sense it is also in some cases called 'religious zeal'; in other cases 'the fear of God'. The *love* of God, though commonly contrasted with the *fear* of God, doesn't strictly come under this heading. It coincides properly with a motive that has a different name, a kind of sympathy or good will that has the Deity for its object. In a good sense it is called 'devotion', 'piety', and 'pious zeal'. In a bad sense it is called 'superstition' or 'superstitious zeal' in some cases and 'fanaticism' or 'fanatic zeal' in others; and in a sense that isn't decidedly bad because it isn't exclusive to this motive, 'enthusiasm' or 'enthusiastic zeal'.

•In order to obtain the favour of the Supreme Being, a man assassinates his lawful sovereign. In this case the motive is *now* almost universally regarded as abominable, and is called 'fanaticism'; but *in earlier times* many people regarded it as praiseworthy and called it 'pious zeal'. •With the same purpose a man lashes himself with a whip. In this case, one man will regard the motive as praiseworthy and call it 'pious zeal', while the man next door thinks it contemptible and calls it 'superstition'. •Still with the same purpose, a man eats a piece of bread (or at least what seems to be a

piece of bread) with certain ceremonies. In this case too, one man regards his motive as praiseworthy and calls it 'piety' and 'devotion', while the man next door thinks it abominable and calls 'superstition' and perhaps even 'impiety' (though that is absurd). •With the same purpose a man holds a cow by the tail while he is dying. On the Thames his motive would be regarded as contemptible, and called 'superstition'; on the Ganges it is regarded as meritorious, and called 'piety'. •With the same purpose a man gives a large sum to works of charity or public utility. In this case his motive is called 'praiseworthy' at least by those who see the works in question as praiseworthy, and these people would call it 'piety'. Yet in all these cases the motive is precisely the same—it is just the motive belonging to the religious sanction.¹

25. To the pleasures of sympathy corresponds the motive which in a neutral sense is called 'good will'. (The word 'sympathy' can also be used here, though its meaning seems to be rather broader.) In a good sense it is called 'benevolence' and in certain cases 'philanthropy' and in a figurative way 'brotherly love'; in other cases 'humanity', in others 'charity', in others 'pity' and 'compassion', in others 'mercy', in others 'gratitude', in others 'tenderness', in others 'patriotism', in others 'public spirit'. 'Love' is also used in this sense as in so many others. This motive has no bad-sense name that fits it in all cases; in particular cases it is called 'partiality'. The word 'zeal', with certain adjectives, might also be used sometimes for this motive, though its sense is broader, applying sometimes to ill will as well as to good will. And so we speak of 'party zeal', 'national zeal', and 'public zeal'. . . .

•A man who has set a town on fire is arrested and

charged; out of regard or compassion for him, you help him to escape from prison. In this case the generality of people will probably scarcely know whether to condemn your motive or to applaud it; those who condemn your *conduct* will be disposed to attribute it to some other motive; and if they call it 'benevolence' or 'compassion' they will want to prefix an adjective—'false benevolence', 'false compassion'. . . . •Again, the man is arrested and put on trial; to save him you swear falsely in his favour. People who wouldn't call your motive a bad one in the previous case will perhaps call it so now. •A man has a lawsuit against you about an estate; he has no right to the estate; the judge knows this, but because of his esteem or affection for your adversary he awards it to him. In this case everyone regards the motive as abominable, calling it 'injustice' and 'partiality'. •You detect a statesman receiving bribes; out of regard for the public interest you inform against him and prosecute him. In this case, everyone who accepts that your conduct did originate from this motive will regard the motive as praiseworthy, and will call it 'public spirit'. But his friends and supporters won't choose to explain your conduct in any such manner; they will prefer to attribute it to party enmity. •You find a man on the point of starving; you relieve him, and save his life. In this case everyone will regard your motive as praiseworthy, will call it 'compassion', 'pity', 'charity', 'benevolence'. Yet in all these cases the motive is the same—it is just the motive of good will.

26. Corresponding to the pleasures of malevolence or antipathy there is a motive which in a neutral sense is called 'antipathy' or 'displeasure'; and in particular cases 'dislike',

¹ I hope that people in general, when they see the matter thus stated, will accept that in none of these cases is the motive itself a bad one, whatever be the tendency of the acts it produces; but this doesn't detract from the truth that until now it has been common for men in popular discourse to speak of such acts as coming from a bad motive. The same remark will apply to many of the other cases.

‘aversion’, ‘abhorrence’, and ‘indignation’; in a sense that is neutral or perhaps leaning a little to the bad side, ‘ill-will’; and in particular cases ‘anger’, ‘wrath’, and ‘enmity’. In a bad sense it is called, in different cases, ‘wrath’, ‘spleen’, ‘ill-humour’, ‘hatred’, ‘malice’, ‘rancour’, ‘rage’, ‘fury’, ‘cruelty’, ‘tyranny’, ‘envy’, ‘jealousy’, ‘revenge’, ‘misanthropy’, and by other names that it’s hardly worthwhile to try to collect.¹ Like ‘good will’, ‘ill will’ is used with adjectives that express the persons who are the objects of the affection [see Glossary]—‘party enmity’, ‘party rage’, and so forth. There seems to be no single good-sense name for this motive. In compound expressions it can be spoken of in a good sense, by prefixing adjectives such as ‘just’ and ‘praiseworthy’ to words that are used in a neutral or nearly neutral sense.

•You rob a man; he prosecutes you, and gets you punished; out of resentment you attack him and hang him with your own hands. In this case your motive will universally be regarded as detestable, and will be called ‘malice’, ‘cruelty’, ‘revenge’, and so forth. •A man has stolen a little money from you; out of resentment you prosecute him, and get him hanged by course of law. In this case people will probably be a little divided in their opinions about your motive; your friends will regard it as praiseworthy, and will call it ‘just resentment’ or ‘praiseworthy resentment’; your enemies may be disposed to regard it as blameworthy and to call it ‘cruelty’, ‘malice’, ‘revenge’, and so forth; and to counter this your friends may try to change the motive, calling it ‘public spirit’.

•A man has murdered your father; out of resentment you prosecute him and get him put to death in course of law. In this case everyone will regard your motive as praiseworthy,

and will (again) call it ‘just resentment’ or ‘praiseworthy resentment’; and your friends, wanting to display the more amiable principle [see Glossary] from which the malevolent one that was your immediate motive arose, will want to keep the latter out of sight, speaking only of the former, under some such name as ‘filial piety’. Yet in all these cases the motive is the same—it is the motive of ill-will.

27. The motive which in a neutral sense is called ‘self-preservation’—the desire to preserve oneself from some threatened pain or evil—corresponds to •the various sorts of pains (or at least to those that are thought of as very intense), and to •death, which seems to us to bring the end all the pleasures and to all the pains that we are acquainted with. In many instances the desire for pleasure merges indistinguishably with the sense of pain. So self-preservation, where the degree of the corresponding pain is slight, will be hard to distinguish sharply from the motives corresponding to various sorts of pleasures. Thus with the pains of hunger and thirst: physical need will often be scarcely distinguishable from physical desire. In some cases it is called, still in a neutral sense, ‘self-defence’. I have already noted this lack of boundaries between the pleasures and the pains of the moral and religious sanctions, and thus of the corresponding motives, and between the pleasures of friendship and the pains of enmity. The same thing holds for the pleasures of wealth and the corresponding pains of privation. So in many cases it will be hard to distinguish the motive of self-preservation from pecuniary interest, from the desire to ingratiate oneself, from the love of reputation, and from

¹ Here as elsewhere you may note that many of the names of motives are also names of passions, appetites, and affections—fictitious entities that are contrived only by considering pleasures or pains from some particular point of view. Some of them are also names of moral qualities. This branch of nomenclature is remarkably tangled: to unravel it completely would take a whole volume, not a syllable of which would belong properly to the present design.

religious hope; and in those cases those more specific and explicit names will naturally be preferred to the general and inexplicit 'self-preservation'. And we could devise a multitude of compound names (some of them are already in use) to distinguish the specific branches of the motive of self-preservation from various motives of a pleasurable origin such as the fear of poverty, the fear of losing such-and-such a man's regard, the fear of shame, and the fear of God. To the evil of death corresponds in a neutral sense 'the love of life'; in a bad sense 'cowardice'. . . . There seems to be no name for the love of life that has a good sense, unless it is the vague and general name 'prudence'.

•To save yourself from being hanged, pilloried, imprisoned, or fined, you poison the only person who can give evidence against you. In this case your motive will universally be regarded as abominable; but people won't call it 'self-preservation', because that has no bad sense; so they'll prefer to change the motive and call it 'malice'. •A woman, having just given birth to an illegitimate child, destroys or abandons it so as to save herself from shame. In this case, also, people will call the motive a bad one, and rather than giving it a neutral name they will be apt to change the motive and call it by some such name as 'cruelty'. •To save the expense of a halfpenny, you allow a man whom you could save at that expense to die of starvation before your eyes. In this case everyone will regard your motive as abominable; and to avoid calling it by such a permissive name as 'self-preservation' people will be apt to call it 'avarice' and 'niggardliness', with which indeed in this case it indistinguishably coincides; so as to have a more reproachful label they will be apt to change the motive and call it 'cruelty'. •To put an end to the pain of

hunger, you steal a loaf of bread. In this case your motive may not be deemed a very bad one; and in order to express more indulgence for it people will be apt to find a stronger name for it than 'self-preservation', calling it 'necessity'. •To save yourself from drowning, you beat off an innocent man who has got hold of the same plank. In this case your motive will in general be regarded neither as good nor as bad, and it will be called 'self-preservation' or 'necessity' or 'the love of life'. •To save your life from a gang of robbers, you kill them in the conflict. In this case the motive may be deemed praiseworthy rather than otherwise; and besides 'self-preservation' it is called also 'self-defence'. •A soldier is sent out with a squad against a weaker squad of the enemy; before he reaches them he runs away, to save his life. In this case everyone will find the motive to be contemptible, and it will be called 'cowardice'. Yet in all these various cases the motive is still the same—it is just self-preservation.

28. Corresponding to the pains of exertion is the motive that can in a neutral sense be called 'the love of ease' or 'the desire to avoid trouble'. In a bad sense it is called 'indolence'.¹ It seems to have no name that carries with it a good sense.

•To save the trouble of taking care of it, a parent leaves his child to perish. In this case the motive will be deemed an abominable one, and, because 'indolence' will seem too mild a name for it the motive may be changed and spoken of under some such term as 'cruelty'. •To save yourself from being illegally enslaved you make your escape. In this case the motive will be regarded as certainly not a bad one; and because 'indolence' or even 'the love of ease' will be thought too unfavourable a name for it, it may be called 'the love of

¹ It may seem odd at first sight to speak of the love of ease as giving rise to action: but exertion is as natural an effect of the love of ease as inaction is, when a smaller degree of exertion promises to exempt a man from a greater.

liberty'. •A mechanic, in order to save his labour, makes an improvement in his machinery. In this case, people will look on his motive as a good one; and finding no name for it that carries a good sense, they will prefer to keep the motive out of sight and speak instead of his ingenuity rather than of the motive that was the means of his manifesting that quality. Yet in all these cases the motive is the same—it is the love of ease.

29. It appears then that there's no such thing as a sort of motive that is bad in itself; nor therefore any such thing as a sort of motive that is in itself exclusively a good one. And it appears too that their effects are sometimes bad, at other times either indifferent or good; and this seems to be the case with every sort of motive. Thus, if any sort of motive is either good or bad because of its effects, this is the case only on individual occasions and with individual motives; and that holds for *every* sort of motive. So if any sort of motive can properly be called a bad one because of its effects, that must be with reference to the balance of all the effects—good and bad—that it has had within a given period, i.e. with reference to its most usual tendency.

30. You will want to say:

'What then? Aren't lust, cruelty, avarice, bad motives?
Is there even *one* individual occasion in which motives like these can be anything but bad?'

No, certainly; despite which the proposition that *any sort of motive will on many occasions be a good one* is true. The fact is that 'lust', 'cruelty' and 'avarice' are names which, if used properly, are applied only in cases where the motives they signify happen to be bad. The names of those motives, considered apart from their effects, are 'sexual desire', 'displeasure', and 'pecuniary interest'. . . . Why is lust always a bad motive? Because in any case where the effects of the

motive are not bad, it oughtn't to be called 'lust'. The proposition 'Lust is a bad motive' merely concerns the meaning of 'lust', and it would be false if we replaced 'lust' by 'sexual desire'. although that is a name for the same motive. Hence we see the emptiness of all those rhapsodies of commonplace morality that consist in taking such names as 'lust', 'cruelty', and 'avarice' and branding them with marks of disapproval; applied to •the thing, they are false; applied to •the name, they are true but empty. If you want to do mankind a real service, show them the cases in which sexual desire merits the name of 'lust', displeasure that of 'cruelty' and pecuniary interest that of 'avarice'.

31. If it were necessary to classify motives as good, bad, and indifferent, this might be done on the basis of the nature of their most usual effects. That would yield this:

•Good motives:

good will
love of reputation
desire for friendship
religion

•Bad motives:

displeasure

•Neutral or indifferent motives:

physical desire
pecuniary interest
love of power
self-preservation, understood as including •the
fear of the pains of the senses, •the love of ease,
and •the love of life.

32. [Bentham says that this classification must be imperfect, and may well be wrong. We can't possibly know that the four motives listed as 'good' have *always* led to more good than bad. As for those listed as 'neutral or indifferent', we

can't know that the good and bad in their consequences 'have exactly balanced each other'. He continues, more interestingly, with positive reasons for scepticism about this:] The interests of the person himself can no more be left out of the estimate than those of the rest of the community. For what would become of the species if it were not for the motives of hunger and thirst, sexual desire, the fear of pain, and the love of life? And the motive of displeasure may have a place in the •actual constitution of human nature that is as essential as any of the others; although a system in which the business of life is carried on without it may be conceived as •possible. . . .

33. It seems that the only way a motive can safely and properly be called 'good' or 'bad' is with reference to its effects in each •individual instance. The focus here will be principally on the intention the motive gives birth to, because (as I'll show later) the most material effects of the motive come through the intention. A motive is good (bad) when the intention it gives birth to is good (bad); and an intention is good or bad according to the material consequences that are the objects of it. . . . But we have seen that one motive can generate intentions of every sort; so this circumstance can afford no clue for the arrangement of the various •sorts of motives.

34. So it seems that a fuller classification would group motives

how Bentham went on: according to the influence which they appear to have on the interests of the other members of the community, laying those of the party himself out of the question: to wit. . .

what he seems to have meant: according to a comparison between •their influence on the interests of the other members of the community and •their influence on the interests of the

person himself; namely. . .

. . . according to the tendency which they appear to have to unite, or disunite, his interests and theirs. On this basis they can be distinguished into social, unsocial, and self-regarding. [Bentham now produces a list of these; it *exactly* matches the list in **31**, with 'good', 'bad' and 'neutral or indifferent' replaced by 'social', 'unsocial' and 'self-regarding' respectively.]

35. If it were useful to subdivide further the motives that I have called 'social', we could mark off •good will as the only one that is *purely social*, while the other three can be grouped together as *semi-social*, because the social tendency is much more constant and unequivocal in good will than in any of the other three, which are in fact self-regarding as well as social.

4. Order of pre-eminence among motives

36. Of all these sorts of motives, good will is the one whose dictates are in general the surest of coinciding with those of the principle of utility. For the dictates of utility are just the dictates of the most extensive and enlightened—i.e. well-advised—benevolence. The dictates of the other motives may conform to those of utility, or conflict with them, as it may happen.

37. In saying this I am supposing that in the case in question the dictates of benevolence are not contradicted by those of a more extensive—i.e. enlarged—benevolence. When **(a)** the dictates of benevolence with regard to the interests of a certain set of persons conflict with **(b)** the dictates of benevolence with regard to the more important or more valuable interests of another set of persons, it's clear that **(a)** are repealed, as it were, by **(b)**; and if a man were governed by **(a)** he couldn't be rightly said to be governed by the dictates of benevolence. If the motives on both sides were equally present to a man's mind, the case where they conflict would hardly be worth marking off, because **(a)** the partial benevolence could be considered as swallowed up in **(b)** the more extensive; if **(a)** prevailed and governed the action, the action must be considered as owing its birth not to benevolence but to some other motive; if **(b)** prevailed, **(a)** could be considered as having no effect. But the fact is

that that **(a)** a partial benevolence may govern the action without entering into any direct competition with **(b)** the more extensive benevolence that would forbid it; because the interests of the less numerous set of persons may be present to a man's mind at a time when those of the more numerous set are either not present or anyway make no impression. This is how the dictates of this motive can conflict with utility yet still be the dictates of benevolence. What makes the dictates of •private benevolence conform on the whole with the principle of utility is that in general they aren't opposed to the dictates of •public benevolence; when they do conflict with them it is only by accident. What makes them conform even better is the fact that, in a civilised society, in most of the cases where they would be apt to run counter to those of public benevolence they are opposed by stronger motives of the self-regarding class, which are played off against them by the laws; and that they are left free only where they aren't opposed by the other more salutary dictates. An act of injustice or cruelty that a man commits for the sake of his father or his son is rightly punished as much as if it were committed for his own sake.

38. The motive whose dictates seem to have the second-best chance (after good will) of coinciding with those of utility is *the love of reputation*. There's only one circumstance that prevents the dictates of this motive from always coinciding with those of utility, namely the fact that

men in their likings and dislikings, in their dispositions to approve or disapprove of any mode of conduct, and thus in their good will or ill will towards the person who appears to practice it, are not governed exclusively by the principle of utility. Sometimes they are guided by the principle of asceticism, sometimes by the principle of sympathy and antipathy (see chapter 2).

Another circumstance lessens. . . .the effectiveness of the dictates of the motive of love of reputation in comparison with the dictates of the motive of benevolence, namely the fact that

the dictates of benevolence will operate as strongly in secret as in public;whereas those of the love of reputation will coincide with those of benevolence only in proportion as the man's conduct seems likely to be known.

But this doesn't make as much difference as at first sight might appear. The more material an act is, the more likely it is to become known; and a slight suspicion can harm a man's reputation as much as a proof. Besides, when someone is considering performing a disreputable act, even if he is sure that *this* act will remain secret he has to reckon with the fact that if he performs it, that will go towards forming a habit that will lead to other acts that may not meet with the same good fortune. There is perhaps no adult human being on whom considerations of this sort don't have some weight; and they have the more weight on a man in proportion to the strength of his intellectual powers and the firmness of his mind (see **12-13** in chapter 6). . . .

39. After the dictates of the love of reputation come, apparently, those of the desire for friendship. The former tend to coincide with the dictates of utility because they tend to coincide with the dictates of benevolence. So do the dictates of the desire for friendship, but only with a •narrower benevolence than the kind that dictates of the love of reputation tend to coincide with. But it is still •broader than any benevolence flowing from the dictates of the self-regarding motives. A man's love of reputation will dispose him, at one time or another in his life, to contribute to the happiness of a considerable number of persons; his self-regarding motives throughout his life confine themselves

to the care of that single individual. Other things being equal, *how near* a man's desire for friendship will come to coinciding with the dictates of the love of reputation—and thus with the dictates of utility—will depend on *how many* people he wants to be friends with. On upshot of that is that a member of the English parliament, despite his own weaknesses and the follies of the people whose friendship he has to cultivate, is probably in general a better character than the secretary of a Vizier at Constantinople or of a Viceroy in Hindustan.

[Just a reminder: the topic of this section is the 'ranking' of motives in terms of how close their dictates are to those of benevolence and thus to those of utility.]

40. Given the infinite diversity of religions, it's hard to know what general account to give of them or how to rank the associated motive. The word 'religion' turns people's thoughts first to the religion they themselves profess. This is a great source of miscalculation, tending to rank this sort of motive higher than it deserves. The dictates of religion would always coincide with those of utility if it were the case that

- the Being who is the object of religion is supposed by everyone to be as benevolent as he is supposed to be wise and powerful; and
- people's notions of his benevolence are as correct as their notions of his wisdom and his power.

Unfortunately, though, neither of these is the case. He is universally supposed to be all-powerful; for what does anyone *mean* by 'the Deity' except 'the Being, whatever he is, who does everything'? And as for knowledge,

the rest of the sentence: by the same rule that he should know one thing he should know another.

perhaps meaning: the reasons for crediting God with some knowledge are reasons for thinking that he knows everything.

These notions seem to be as •correct (for all material purposes) as they are •universal. But among the devotees of religion (of whom the multifarious fraternity of Christians is only a fraction) there seem to be few (I won't say how few) who really believe in his benevolence. They call him 'benevolent' but they don't mean that he really is so. They don't mean that he is benevolent in the way a man is thought to be benevolent; they don't mean that he is benevolent in the only sense in which 'benevolent' has a meaning. If they did, they would recognise that the dictates of religion could be neither more nor less than the dictates of utility—not a tittle different from them. But the fact is that on a thousand occasions they turn their backs on the principle of utility. They go straying after those strange principles, its antagonists—sometimes the principle of asceticism, sometimes the principle of sympathy and antipathy. On such occasions the idea they have in their minds is often the idea of *malevolence*, which they strip of its own proper name and instead give it the more attractive name 'the social motive'.¹ The dictates of religion, in short, are simply the dictates of a principle that I introduced in **18** on page 18 as 'the theological principle'. These, as I said back there, are copies of the dictates of one or other of the three original principles—*which* of them depending on the biases of the person in question. Sometimes, indeed, it's the dictates of utility; but frequently the dictates of asceticism or those of sympathy and antipathy. In this respect they are on a par with the dictates of the love of reputation; in another respect they are below it. Everywhere in the world the dictates of religion are somewhat intermixed with ones

that don't conform to the dictates of utility—ones deduced from texts (well or badly interpreted) of the writings that the sect in question regards as sacred. They conflict with utility by imposing •some practices that are inconvenient to a man's self and •others that are pernicious to the rest of the community. The sufferings of uncalled martyrs, the calamities of holy wars and religious persecutions, the mischiefs of intolerant laws. . . .are additional mischiefs far outnumbering those that were ever brought into the world by the love of reputation. On the other hand, the dictates of religion share with those of benevolence a certain advantage over the dictates of the love of reputation and the desire for friendship, namely the power of operating in secret.

41. Fortunately, the dictates of religion seem to be steadily coming nearer to those of utility. But why? Because the dictates of the moral sanction do so, and they influence the dictates of religion. Men of the worst religions, influenced by how the surrounding world speaks and acts, keep borrowing new pages out of the book of utility and trying—sometimes with strenuous efforts!—to patch them into the repositories of their faith.

42. [This paragraph remarks that the self-regarding and unsocial motives come lower in the ranking than the dictates of religion; that there's no significant rank-difference among the self-regarding motives; and that two instances of 'the unsocial motive' (displeasure) have different rankings if one comes from self-regarding considerations (you are displeased with him because of how he has affected you) and the other

¹ Sometimes, so that this cheat will be better hidden (from their own eyes, doubtless, as well as from others), they set up a phantom of their own that they call 'Justice': whose dictates aim to •modify the dictates of benevolence; or so they say, but the real aim is to •oppose them. But *justice*, in the only sense in which the word has a meaning, is an imaginary personage, invented for the convenience of discourse, whose dictates are those of utility, applied to certain particular cases. Justice, then, is simply an imaginary instrument employed to advance the purposes of benevolence on certain occasions and by certain means. . . .

comes from social considerations (you are displeased with him because of how he has affected some other party whom you care about). The paragraph ends:] Obviously, a motive that is in itself unsocial can come from a social origin and have a social tendency; and *how social* it is will probably depend *how large* the class is of persons whose interests you support. Displeasure that is vented against a man on account of mischief he is supposed to have done to the public may be more social in its effects than any good will that is confined to an individual (see 37 above).

5. Conflict among motives

43. When a man is thinking about how to act, he is frequently acted on at the same time by different motives driving him in opposite directions—e.g. one disposing him to do x and another disposing him not to do x. A motive that tends to dispose him to do x may be called an ‘impelling’ motive; one that tends to dispose him not to do x may be called a ‘restraining’ motive. But these labels can of course be switched, depending on whether x is positive or negative. (See 8 on page 44.)

44. I have shown that any sort of motive can give birth to any sort of action, from which it follows that any two motives can come to be opposed to one another. In most cases where the tendency of the act is bad, it has been dictated by a motive that is either self-regarding or unsocial. In such a case the motive of benevolence has commonly been acting, though ineffectually, in the role of a restraining motive.

45. An example may help to show the variety of contending motives that can act on a man at the same time. At a time when it was generally thought meritorious among Catholics to kill Protestants, Charles IX of France ordered one of his

Catholic subjects, a man named Crillon, to waylay and assassinate a Protestant named Coligny. His answer was ‘Excuse me, Sire; but I’ll fight him with all my heart.’ Here were all the three forces above mentioned, including that of the political sanction, acting on him at once.

- By the political sanction—or at least as much of its force as such a command from such a sovereign on such an occasion might be supposed to carry with it—he was enjoined to put Coligny to death by assassination;
- by the religious sanction—i.e. by the dictates of religious zeal—he was enjoined to put him to death somehow;
- by the moral sanction, or in other words by the dictates of honour—i.e. the love of reputation—he was permitted to fight the adversary on equal terms (a permission which when coupled with his sovereign’s command he conceived as an injunction);
- by the dictates of enlarged benevolence (supposing the command to be unjustifiable) he was enjoined not to attempt Coligny’s life in any way, but to remain at peace with him;
- by the dictates of private benevolence (supposing the command to be unjustifiable), he was enjoined not to meddle with Coligny in any way.

Among this confusion of conflicting dictates, Crillon seems to have given the preference in the first place to the dictates of honour, and in the next place to the dictates of benevolence. He would have fought, if his offer had been accepted; it wasn’t, so he remained at peace.

Here a multitude of questions might arise. If the dictates of the political sanction told him to obey the sovereign’s command, what kind of motives for this did they provide him with? Well, the self-regarding kind anyway, because it was

in the power of the sovereign to punish him for disobedience or reward him for obedience. Did they provide him with the motive of religion? Yes, if he thought it was God's pleasure that he should obey; No, if he didn't. Did they provide him with the motive of the love of reputation? Yes, if he thought that the world [= 'society at large'] would expect and require him to obey; No, if he didn't. Did they provide him with the motive of benevolence? Yes, if he thought that the community would on the whole be the better for his obeying; No, if he didn't. Was the king's command legal? This is a mere question of local jurisprudence, and altogether irrelevant to the present topic.

46. This discussion of the goodness and badness of motives is not a mere matter of words. There will be uses for it later on for various important purposes. I'll need it in dissipating various prejudices that are harmful to the community—sometimes by fanning the flames of civil dissensions, at other times by obstructing the course of justice. I'll show that **with many offences** the consideration of the motive is a most material one, because

- it makes a very material difference to the magnitude of the mischief, and
- it is easy for the motive to be ascertained, so that it can have an effect on the demand for punishment;

whereas **in other cases**

- it can't possibly be ascertained, and even if it could it would have no effect on the demand for punishment;

and **in all cases**

a prosecutor's motive for bringing the prosecution is a totally immaterial fact; which shows the harmfulness of the prejudice people are apt to have against informers—a prejudice that judges in particular should guard themselves against.

Lastly, We have to tackle the subject of motives if we are to form a judgment on any means that may be proposed for combating offences at their source.

But before the theoretical foundation for these practical observations can be completely laid, I have to say something about *dispositions*; so that will be the topic of the next chapter.

Chapter 11: Human Dispositions in General

1. I showed at length in chapter 10 that goodness or badness can't properly be predicated of motives. Well, then, when on a particular occasion a man allows himself to be governed by such-and-such a motive, is there *nothing* about him that can properly be called 'good' or 'bad'? Yes, there is something—his disposition. Now a disposition is a kind of fictitious entity, invented for the convenience of discourse in order to express what is thought to be *permanent* in a man's

frame of mind when on a particular occasion he is influenced by such-and-such a motive to perform an act that appears to him to have such-and-such a tendency.

2. A disposition, like anything else, is good or bad according to the effects it has in increasing or lessening the happiness of the community. So a man's disposition can be considered from the point of view of its influence •on his own happiness

or •on the happiness of others. Looked at in both ways at once or in either one of them, the disposition may be called either 'good' or 'bad' or, in flagrant cases, 'depraved'.¹ There are no good/bad labels to apply to dispositions in reference to their effect on their owners' happiness: we could, though inexpressively, call a disposition 'sound' or 'firm' on the one hand and 'frail' or 'infirm' on the other. From the viewpoint of its effect on other people, a disposition might be called 'beneficent' or 'meritorious' on the one hand and 'pernicious' or 'harmful' on the other. Nothing much needs to be said here about the strand in a man's disposition the effects of which concern only himself in the first instance. When it is bad, it's for the moralist rather than the legislator to reform it; and it isn't susceptible of the various modifications that make so much difference to the effects of the other •strand in a man's disposition. . . .

3. A man, then, is said to have a harmful disposition when he is presumed to be more apt to perform or intend to perform acts that are apparently of a pernicious tendency than in ones that are apparently of a beneficial tendency; and to have a meritorious or beneficent disposition in the opposite case. It makes no difference to any of this what his motives are.

4. I say 'when he is *presumed* to be etc.', because we are looking at one single action with one set of circumstances. The degree of uniformity that experience has shown to be observable in a single person's different actions makes it natural and reasonable for us to infer from our observation of a single act the probable existence (past or future) of a

number of acts of a similar nature. Under such circumstances, what the motive proves to be in one instance is what the disposition is presumed to be in others.

5. I say '*apparently* harmful', meaning that the act appears *to him* to have that tendency. From the mere event [see Glossary], independently of what it seemed to him likely to be, nothing can be inferred about the goodness or badness of his disposition. If to him it appears likely to be harmful, then even if in the upshot it turns out to be innocent or even beneficial, that makes no difference to the case for presuming his disposition to be bad; and if to him it appears likely to be beneficial or innocent, then even if in the upshot it turns out to be pernicious, there's no less reason on that account for presuming his disposition to be a good one. [Bentham wrote 'no more reason'; obviously a slip.] And here we see the importance of the circumstances of intentionality (see chapter 8), consciousness, unconsciousness, and mis-supposal (for those three see chapter 9).

6. The truth of these positions depends on two others that are sufficiently verified by experience. One is that in the ordinary course of things the consequences of actions commonly turn out to conform to intentions. A man who sets up a butcher's shop and sells beef, when he intends to knock down an ox usually does knock down an ox, though by some unlucky accident he may miss his blow and knock down a man; he who sets up a grocer's shop and sells sugar, when he intends to sell sugar he usually does sell sugar, though by some unlucky accident he may chance to sell arsenic in place of it.

¹ It might also be called 'virtuous' or 'vicious', but those terms are unsuitable here because of *how much* good or bad repute they are associated with. The drawback of this is that 'vicious' is apt to come down too hard on a disposition that is ill-constituted only with respect to the person whose disposition it is—involving him in a degree of ignominy that should be reserved for dispositions that are mischievous with regard to others. . . . To exalt small evils to a level with great ones is the way to diminish the share of attention that ought to be paid to great ones.

7. The other is that a man who has intentions of doing mischief at one time is apt to have similar intentions at another.¹

8. If we are faced with an individual act and want to infer from it the nature of the person's disposition, there are two circumstances we have to take into account: •the apparent tendency of the act, and •the nature of the motive that gave birth to it. *How* these relate to the disposition is different for different motives; ·I'll have to take ten different kinds of case·. In presenting them I shall assume throughout that the apparent tendency of the act is the same as its real tendency—as indeed it usually is.

9. (i) Where the tendency of the act is good and the motive is of the self-regarding kind, the motive doesn't support any inference either way. It doesn't indicate a good disposition, but nor does it indicate a bad one.

A baker sells his bread to a hungry man who asks for it. This is one of those acts of which, in ordinary cases, the tendency is unquestionably good. The baker has the ordinary commercial motive of pecuniary interest. There's clearly nothing in this transaction, as described, that provides grounds for presuming that the baker is a better or a worse man than any of his neighbours.

10. (ii) Where the tendency of the act is bad, and the motive is of the self-regarding kind, this indicates a disposition that is harmful.

A man steals bread out of a baker's shop; this is an act whose tendency will readily be acknowledged to be bad. (In chapter 12 I'll explain why and in what ways it is bad.) His

motive is that of pecuniary interest—the desire to get the value of the bread for nothing. So his disposition appears to be a bad one, for everyone will agree that a thievish disposition is a bad one.

11. (iii) Where the tendency of the act is good, and the motive is the purely social one of good will, the disposition indicated is a beneficent one.

A baker gives a poor man a loaf of bread. His motive is compassion, a name given to benevolence in some particular cases. The disposition indicated by the baker's act in this case is one that every man will readily acknowledge to be a good one.

12. (iv) Where the tendency of the act is bad and the motive is the purely social one of good will, the disposition that the motive indicates is dubious: it may be harmful or meritorious, depending on whether the harmfulness of the act is more or less apparent ·to the agent·.

13. You may think this:

A case of this sort can't exist—it is a contradiction in terms. It is stipulated that the act is one that the agent knows to be harmful; so how could he have been led to it by the motive of good will, i.e. the desire to do good?

To answer this I must remind you of the distinction between enlarged benevolence and confined benevolence (see 37 on page 68). The motive that led him to his act was confined benevolence; if he had followed the dictates of enlarged benevolence he wouldn't have done what he did. Now, although he followed the dictates of the kind of benevolence

¹ 'This man is likely, in virtue of a *good* disposition that he has, to engage in an habitual series of mischievous actions'—that is a contradiction in terms. No-one could say such a thing if he gave to 'disposition' its proper meaning. Suppose that a man with a religious disposition engages, in virtue of that very disposition, in a habitual course of mischief-making, e.g. by persecuting his neighbours; then either •his disposition, though good in certain respects, is not good on the whole, or •a religious disposition is not in general a good one.

that is harmful in any single instance where it is opposed to the other kind, there are incomparably more cases where there is a call for the former (i.e. confined benevolence) than cases where there is a call for the latter (i.e. enlarged benevolence); so the disposition indicated by his act in following the impulse of the former will often be one that will in an average sort of person count as good on the whole.

14. A man with a large family of children on the point of starving goes into a baker's shop, steals a loaf, and divides it among the children reserving none for himself. It will be hard to infer that this man's disposition is a harmful on the whole. Now alter the case: the man has one child, who is hungry but in no imminent danger of starving; he sets fire to a house full of people so as to steal money out of it to buy bread with. The disposition here indicated will hardly be regarded as a good one.

15. Another case will appear more difficult to decide than either. [This case is historical as regards François Ravallac, who murdered Henry IV of France, but the stories about his son are fictions invented for purposes of discussion.] Ravallac assassinated one of the best and wisest of sovereigns, at a time when a good and wise sovereign. . . . was particularly precious to the inhabitants of a populous and extensive empire. He is taken and condemned to the most excruciating tortures. His son, who is convinced that he is a sincere penitent and that if he were free mankind would have nothing more to fear from him,

enables him to escape. Is this a sign of a good disposition in the son, or of a bad one? Some people may answer: 'Of a bad one, because •the nation has an interest in the sufferings of such a criminal as an example to others, and •the future good behaviour of such a criminal is more than anyone can be entitled to be sure of.'

16. Well then, change the case: Ravallac, the son, doesn't facilitate his father's escape but settles for conveying poison to him, so that through an easier death he may escape his torments. The decision may now be more difficult. Granted that the act is a wrong one, and certainly ought to be punished; but is the disposition it shows a bad one? Because the young man breaks the law in this one instance, is it probable that if left alone he would break the laws in ordinary instances, for the satisfaction of any inordinate desires of his own? Most men would probably answer No.

17. (v) Where the tendency of the act is good, and the motive is a semi-social one, namely the love of reputation, the disposition indicated is a good one.

In a time of scarcity, a baker aims to get the esteem of the neighbourhood by distributing bread gratis among the working poor. . . . Let's stipulate that it's uncertain whether he had any real feeling for the sufferings of those he has relieved. Even then, his disposition can't with any pretence of reason be called other than good and beneficent. Anyone who denies this must be in the grip of some very idle prejudice.¹

¹ The bulk of mankind, always ready to depreciate the character of their neighbours in order to exalt their own, will refer a 'good' motive to the class of bad ones if they can find a still better one to which the act might have owed its birth. Each man—

•conscious that his own motives are not of the best class, or convinced that if they are he won't get credit for this from others; and

•afraid of being taken for a dupe, and anxious to show how insightful he is

—takes care first •to attribute each other person's conduct to the least praiseworthy of the motives that can account for it; and then •when he has gone as far he can down that path and cannot drive down the individual motive to any lower class he changes his battery [military jargon = 'points his cannons in a different direction'] and attacks the very class itself. Every time the love of reputation comes up, he will give it a bad name such as 'ostentation', 'vanity', or 'vainglory'. . . .

18. (vi) Where the tendency of the act is bad and the motive (again) is the semi-social one of love of reputation, the disposition that it indicates is more or less good or bad depending on •how harmful the tendency of the act is, and on •how close the dictates of the moral sanction come—in the society in question—to coinciding with the dictates of utility. It does not seem probable that in any tolerably civilised—i.e. any nation in which rules like these can come to be consulted—the dictates of the moral sanction will be so far from coinciding with the dictates of utility (i.e. of enlightened benevolence) that the disposition indicated in this case can be other than a good one on the whole.

19. An American Indian receives an injury from an Indian of another tribe. He revenges it on the person of his antagonist with the most excruciating torments, because cruelties inflicted on such an occasion gain him reputation in his own tribe. The disposition manifested in such a case can never be deemed a good one among a people who are even a tiny bit more civilised than the Indians.

20. A nobleman (to come back to Europe) contracts a debt with a poor tradesman, and later contracts a debt for the same amount to another nobleman (it was from a loss at cards). He can't pay both; he pays the whole debt to the companion of his amusements and no part of it to the tradesman. The disposition manifested in this case can hardly count as anything but bad. But it isn't as bad as if he had not paid either creditor. The principle of •love of reputation or (as it is called in the case of this partial application of it) •honour is here opposed to the worthier principle of •benevolence, and overcomes it. But also overcomes the self-regarding principle of pecuniary interest. So the disposition that it indicates, although not as good as that in which the principle of benevolence predominates, is better than one in which

the principle of self-interest predominates. He would be the better for having more benevolence; but would he be the better for having no honour? This seems to admit of great dispute.

21. (vii) Where the tendency of the act is good and the motive is the semi-social one of religion, the indicated disposition (considered with respect to its influence on the man's conduct towards others) is plainly beneficent and meritorious.

A baker distributes bread gratis among the industrious poor, not because •he feels for their distresses, or because •he wants to gain reputation among his neighbours, but because •he wants to gain the favour of the Deity, to whom (he takes for granted) such conduct will be acceptable. The disposition manifested by this conduct is plainly what everyone would call a good one.

22. (viii) Where the tendency of the act is bad, and the motive is that of religion, the disposition is dubious. Whether it is good or bad, and *how* good or bad, depends on •how harmful the tendency of the act is, and on •how near the religious tenets of the person in question come to coinciding with the dictates of utility.

23. History seems to tell us that even in nations that are tolerably civilised in other respects the dictates of religion are far from coinciding with the dictates of utility (i.e. of enlightened benevolence)—so far that the disposition indicated in this present case may even be a bad one on the whole. But that doesn't apply to most of the countries of Europe at present, where religion's dictates respecting a man's conduct towards other men come very close to coinciding with the dictates of utility. Religion's dictates respecting a man's conduct towards himself seem in most European nations to savour a good deal of the ascetic principle; but obedience to such mistaken dictates doesn't point to any disposition that

is likely to break out into acts of pernicious tendency with respect to others. It very rarely happens that the dictates of religion lead a man to acts that are pernicious in respect to others; except for acts of persecution, or impolitic measures on the part of government, where the law itself is either the principal agent or an accomplice in the mischief. Ravailac was driven by no other motive than this when he gave his country one of the most fatal stabs that a country ever received from a single hand; but fortunately Ravailacs are rare! But there have been more of them in France than in any other country during the same period; and it's noteworthy that it is always this motive ·of religion· that has produced them. When they do appear, nobody but the likes of *them* will say that the disposition they manifest is a good one. It seems hardly deniable that they are the worse for their notions of religion; and that if they had been left to the sole guidance of benevolence and the love of reputation, without any religion at all, it would have been ever so much better for mankind. One may say nearly the same thing about the people who, without any particular obligation, have actively applied laws made for the punishment of those who have the misfortune to differ from the magistrate [see Glossary] in matters of religion, and even more about the legislator himself who has given them the power to do this. If Louis XIV had had no religion, France would not have lost 800,000 of its most valuable subjects. This applies also to the authors of the so-called 'holy wars', whether waged against persons called 'infidels' or persons branded with the still more odious name 'heretics'. . . . It should be noted. . . . that in almost all the countries of Europe, instances of this, though once abundantly frequent, have for some time ceased. In certain countries, the *disposition to persecute* at home when the opportunity presents itself is not yet at an end: if there's no actual persecution, it is only because there are no heretics;

and if there are no heretics, it is only because there are no thinkers. [Bentham builds into that sentence the remark that the disposition to persecute heresy tends to restrain heresy, 'which is one part of the mischiefs of persecution'.]

24. (ix) Where the tendency of the act is good and the motive is the unsocial one of ill-will, the motive seems not to point in either direction: there is no indication of a good disposition, nor any of a bad one.

You have detected a baker in selling short weight, and you prosecute him for cheating. You don't do this

- for the sake of gain, because there's nothing you can get by it; or
- out of public spirit; or
- for the sake of reputation, because there's no reputation you can get by it; or
- in order to please the Deity.

You prosecute the man merely because of a quarrel you have with him. On this account of the transaction there seems to be nothing to be said either in favour of your disposition or against it. . . . Your motive is of a sort that can properly enough be called a bad one; but the act is of a sort—·prosecuting a cheating tradesman·—that could never have any bad tendency, or indeed anything but a good one, however often it was performed. In the story as told it was dictated by the motive of ill-will; but the act itself could have been dictated by the most enlarged benevolence, if you had had enough discernment to see this. Now, from the fact that •a man allowed himself to be induced to gratify his resentment by means of an act whose tendency is good it doesn't at all follow that •on another occasion he would be led by the same sort of motive to perform an act whose tendency is bad. The motive that impelled you was an unsocial one; but what social motive could there have been to restrain you? . . . Because the unsocial motive prevailed when it

stood alone, it doesn't follow that it would prevail when it had a social one to combat it.

25. (x) Where the tendency of the act is bad, and the motive is the unsocial one of malevolence, the indicated disposition is of course a harmful one.

The man who stole the bread from the baker did it solely in order to impoverish and afflict him; when he had the bread he destroyed it. Everyone must perceive immediately that the disposition evidenced by such conduct is a bad one.

26. So much for the circumstances from which the *over-all* harmfulness or meritoriousness of a man's disposition is to be inferred; I now turn to the effect of those circumstances on *how* harmful or meritorious a given disposition is. In the present work we have no direct concern with meritorious acts and dispositions. The penal law's only concern is to measure the depravity of the disposition in cases where the act is harmful. So I shall confine myself to that topic.

27. Obviously the nature of a man's disposition depends on the nature of the motives he is apt to be influenced by, i.e. on how receptive he is to the force of such-and-such motives. His disposition is, as it were, the sum of his intentions; the disposition he has during a certain period is the sum or result of his intentions during that period. Of the acts he has been intending to perform during the supposed period, if those that are apparently of a harmful tendency greatly outnumber those that appear to him to be of the contrary tendency, his disposition will be of the harmful sort; if the balance goes the other way, it will be of the innocent or upright sort.

28. Intentions like everything else are produced by their causes; and the causes of intentions are motives. Whenever a man forms a good or a bad intention, it must be by the influence of some motive.

29. When the act that a motive prompts a man to perform is of a harmful nature, we could call it a 'seducing' or 'corrupting' motive; and any motive that acts as a restraint on a seducing motive can be called a 'tutelary', 'preservatory', or 'preserving' motive.

30. Tutelary motives can be further divided into •standing or constant motives and •occasional motives. By 'standing tutelary motives' I mean ones that always or nearly always act with some force tending to restrain a man from harmful acts that he may be prompted to perform, doing that with a force that depends on •the general nature of the act rather than on •any circumstance that an individual act *happens to be accompanied by*. By 'occasional tutelary motives' I mean ones that *may* chance to act in this ·restraining· role, depending on the nature of the ·contemplated· act and of the particular occasion that brings the performing of it into contemplation.

31. I have shown that there is no sort of motive by which a man can't be prompted to perform acts that are of a harmful nature, i.e. that can't come to act in the role of a seducing motive. I have shown on the other hand that some motives are notably less likely to operate in this way than others; and that the least likely of all is the motive of benevolence or good will—the most common tendency of which (I have shown) is to act in the role of a tutelary motive. I have also shown that even when by accident benevolence acts in one way in the role of a seducing motive, it still acts in another way in the opposite role of a tutelary one. The motive of good will directed to the interests of one set of persons may prompt a man to perform acts that do harm to another and larger set; but this is only because his good will is imperfect and confined, not bearing in mind the interests of all the persons whose interests are at stake. If that same motive

had arisen from a more enlarged affection, it would have operated effectively as a constraining motive against the very act that his confined benevolence led him to perform. So this sort of motive can truthfully be counted among the standing tutelary motives, despite the occasions in which it may act at the same time as a seducing motive.

32. It is nearly the same story for the semi-social motive of love of reputation. The force of this, like that of good will, is liable to be divided against itself: . . . the sentiments of some of the persons whose good opinion is desired can differ from the sentiments of others of those persons. Now, when a really harmful act is performed it can scarcely happen that no-one whatsoever looks on it with an eye of disapproval. So it can scarcely ever happen that a really harmful act isn't opposed by at least a part—if not the whole—of the force of this motive of love of reputation; which means that this motive nearly always acts with some force in the role of a tutelary motive. We can include it, therefore, in the list of standing tutelary motives.

33. This holds also for the desire for friendship, though not quite as thoroughly. Why not? Because even a harmful act might happen to be looked on favourably by everyone whom the agent hopes to be friends with. This is all too likely among fraternities such as those of thieves, smugglers, and many other kinds of offenders. Still, this usually isn't the case; so that the desire for friendship can still be regarded on the whole as a tutelary motive, if only because of its close connection with the love of reputation. And it may be listed among standing tutelary motives because the force with which it acts—when it does act—depends not on the occasional circumstances of the act that it opposes but on principles as general as those that put the other semi-social motives into action.

34. The motive of religion is not entirely in the same category as those last three. Its force is not liable (as theirs is) to be divided against itself. I'm talking here about the civilised nations of modern times, among whom the notion of the *unity* of the Godhead is universal. In times of classical antiquity it was otherwise. If a man got Venus on his side, Pallas was on the other; if Æolus was for him, Neptune was against him. Æneas, with all his piety, didn't have all the gods on his side in the court of heaven. It's different nowadays: in any given person the force of religion, whatever it may be, is all on one side. It may weigh up which side to take on a given practical issue, and it may opt for the wrong side, as we have seen already that it all too often does. . . . Still, where it acts (as it does in the great majority of cases) in opposition to the ordinary seducing motives, it acts as the motive of benevolence does in a uniform manner, not depending on the particular circumstances of the case but tending to oppose the act in question purely on account of its harmfulness; so that its force is the same, no matter what the circumstances of the case are. So religion can be added to the list of standing tutelary motives.

35. As for the motives that can operate occasionally in the role of tutelary motives, these (I repeat) are of various sorts, and various degrees of strength in various offences; depending not only on the nature of the offence but on the circumstances in which the question arose of whether to commit the offence. Absolutely any sort of motive can come to operate in this role: a thief, for example, may be prevented from engaging in a projected scheme of house-breaking by sitting too long over his bottle, by a visit from his mistress, by his having to go elsewhere to receive his share of the loot from a previous crime, and so on.

36. Some motives, however, seem more apt to act in this role than others; especially now that the law has set up everywhere artificial tutelary motives of its own creation, to oppose the force of the principal seducing motives. [Bentham means of course only that the law creates the situations in which the motives come into play.] They seem to be of two basic kinds:

- the love of ease—a motive put into action by the prospect of the trouble it may require to overcome physical difficulties that accompany the offence;
- self-preservation, as opposed to the dangers the agent may be exposed to in committing the offence.

37. These dangers may be either

- of a purely physical nature or
- results of moral agency, i.e. of the conduct of people who can be expected to object to the act if they come to know about it.

But moral agency requires knowledge regarding the circumstances that will have the effect of external motives in giving birth to the act in question. And when such knowledge regarding the commission of an objectionable act is acquired by persons who may be disposed to make the agent suffer for it, this is called *detection*, and the agent is said to be *detected*. So the dangers that can threaten an offender from this direction all depend on the event his being detected; and they can be grouped under the heading *danger of detection*.

38. The danger depending on detection can be divided into two branches:

- what may result from opposition to the enterprise by persons on the spot, i.e. at the very time the offence is being committed;
- what concerns legal punishment or other suffering that may be inflicted some time after the offence.

39. Among the tutelary motives that I have called ‘constant’ there are two whose force depends on the circumstance of detection; not as entirely as the force of the occasional ones I have just been discussing, but still in a great measure. These are •the love of reputation and •the desire for friendship. The greater the chance of being detected, the greater the force these motives will have. This is not the case with the two other standing tutelary motives, those of •benevolence and of •religion.

40. We are now in a position to determine fairly precisely what is to be understood by the *strength of a temptation*, and what indication it may give of the degree of harmfulness in a man’s disposition in the case of any offence. When a man is prompted to perform a harmful act, the strength of the temptation depends on the ratio between on the one hand

- the force of the seducing motives

and on the other

- the force of whatever occasional tutelary motives the circumstances of the case call into action.

The temptation can be said to be *strong* when the pleasure or advantage to be gained from the crime strikes the offender as great in comparison with the trouble and danger that appear to him to accompany the enterprise; and *slight* or *weak* when that pleasure or advantage strikes him as small in comparison with that trouble and danger. Obviously the strength of the temptation doesn’t depend entirely on the force of the impelling (i.e. seducing) motives: with the motive held steady, the temptation will be stronger or weaker depending on the probabilities regarding trouble and danger.

After taking account of the tutelary motives that have been called *occasional*, the only tutelary motives remaining are the ones that have been called *standing* ones. But the ones I have called ‘standing tutelary motives’ are exactly the ones I have been calling ‘social’. It follows, therefore,

that the strength of the temptation in any given case, after subtracting the force of the social motives, is the ratio between •the sum of the forces of the seducing motives and •the sum of the forces of the occasional tutelary motives.

41. The final question to be investigated ·in this chapter· is:

When an offence has been committed, what can we learn about the harmfulness or depravity of the offender's disposition from the strength of the temptation he was under?

It seems that the weaker the temptation by which he was overcome, the more depraved and harmful his disposition is shown to have been. Here is why. The goodness of his disposition is measured by how receptive he is to the action of the social motives (see 17–18 above), i.e. by the strength of the influence that those motives have over him; and the weaker force is by which their influence on him has been overcome, the weaker their influence on him must have been.

Again, given the degree of a man's receptiveness to the force of the social motives, their force in tending to restrain him from engaging in a harmful enterprise is proportional to the apparent harmfulness of the enterprise, i.e. to the amount of mischief that he thinks will arise from it. In other words:

- the less harmful the offence appears to him to be, the less averse he will be—as far as he is guided by social considerations—to perform it;
- the more harmful, the more averse.

So if the nature of the offence is such that it must appear to him highly harmful, yet he still engages in it, this shows that he can't be very receptive to the force of the social motives, and consequently that his disposition is correspondingly depraved. And the weaker the temptation, the more pernicious and depraved his disposition must have been. . . .

42. From all this it seems that the following rules can be laid down judging •the depravity of a man's disposition on the basis of •the strength of the temptation and •the harmfulness of the enterprise.

Rule 1. The strength of the temptation being given, the harmfulness of the disposition shown by the enterprise is proportional to the apparent harmfulness of the act.

It would show a more depraved disposition to murder a man for a reward of a guinea, or falsely to charge him with a robbery for the same reward, than to obtain a guinea from him by simple theft; given that the offender's trouble and danger would be about the same either way.

Rule 2. The apparent harmfulness of the act being given, a man's disposition is the more depraved the slighter the temptation is by which he has been overcome.

It shows a more depraved and dangerous disposition if one man kills another •for mere sport (as Muley Mahomet, Emperor of Morocco, is said to have killed many) than if he killed him •for revenge (as Sylla and Marius killed thousands), or •for self-preservation (as Augustus killed many), or even •for money (as that same Emperor is said to have killed some). And the effects of each depravity on that part of the public that knows about it is also proportional: from Augustus some persons had to fear under some circumstances; from Muley Mahomet every man had to fear at all times.

Rule 3. The apparent harmfulness of the act being given, the evidence it provides of the depravity of the offender's disposition is less conclusive, the stronger the temptation that has overcome him.

If a poor man who is near to death from starvation steals a loaf of bread, this is a less explicit [Bentham's word] sign of depravity than if a rich man committed a theft for the same amount. Notice that this rule speaks only of the *strength of the evidence of depravity* in the two cases; it doesn't say

that the poor man is less depraved than the rich one. Given what we have been told about the poor man's theft, he might have gone ahead with it even if the temptation not been so strong. In this case, the alleviating circumstance of strong temptation is only a matter of presumption; in the rule-three case, the aggravating circumstance of weak temptation is a matter of certainty.

Rule 4. Where the motive is of the unsocial kind—the apparent harmfulness of the act and the strength of the temptation being given—the depravity is proportional to the degree of deliberation with which it is accompanied [= 'to how much thought the offender gave to the question of whether to act in that way'].

In every man, however depraved his disposition is, it's the social motives that regulate and determine the general tenor of his life whenever the self-regarding motives aren't engaged. If the unsocial motives are put into action, it is only in particular circumstances, and on particular occasions, when the gentle but constant force of the social motives has been subdued for a while. So the general and standing bias of every man's nature is towards the side favoured by the social motives; so that the force of the social motives tends continually to extinguish the force of the unsocial ones (compare: in natural bodies the force of friction tending to extinguish the force generated by impulse). Thus, time, which wears away the force of the unsocial motives, adds to that of the social ones; so the longer a man continues on a given occasion under the dominion of the unsocial motives, the more convincing is the evidence this gives of his unreceptiveness to the force of the social ones.

Thus, if a man beats his antagonist on the spot, in consequence of a sudden quarrel, this doesn't show as bad a disposition as a man who lays a deliberate plan for beating his antagonist, and beats him accordingly, and not nearly as bad as the disposition of a man who has his antagonist in his power for a long times and beats him at intervals, and at his leisure.

43. The depravity of disposition indicated by an act is a material [see Glossary] consideration in several respects. Any mark of extraordinary depravity, by adding to the terror already inspired by the crime and by holding up the offender as a person from whom there may be more mischief to be feared in future, adds in one way to the demand for punishment. By indicating a general lack of receptiveness on the part of the offender it may also add in another way to the demand for punishment. The offender's disposition is important in this context because when the severity of punishment is being decided the principle of sympathy and antipathy is apt to look at nothing else. A man who punishes because he hates, and for no other reason, when he doesn't find anything odious in the disposition he doesn't want to punish at all; and when he does want to, he doesn't favour carrying the punishment further than his hatred carries him. [The next sentence is exactly as Bentham wrote it.] Hence the aversion we find so frequently expressed against the maxim that the punishment must rise with the strength of the temptation; a maxim the contrary of which, as we shall see, would be as cruel to offenders themselves as it would be subversive of the purposes of punishment.

Chapter 12: A harmful Act's Consequences

1. Forms in which the mischief of an act may show itself

1. Up to here I have been speaking of the items on which the consequences or tendency of an act can depend:

- the bare act itself,
- the circumstances in which it was, or was supposed to have been, performed,
- what the agent knew or believed about such circumstances,
- what he intended in performing the act,
- what motives gave birth to those intentions, and
- what disposition is indicated by the connection between his intentions and his motives.

I now come to speak of the consequences or tendency themselves, an item that forms the concluding link in all this chain of causes and effects, and is the sole source of the materiality of the whole [= 'the sole reason why all this *matters*']. My only immediate concern here is with the part of this tendency that is harmful, so I shall confine myself to that.

2. The tendency of an act is harmful when its actual or probable consequences are harmful; and the harmful consequences of an act whose tendency is harmful can be thought of as constituting one aggregate item that we could call the *mischief* of the act.

3. This mischief can often be divided into two shares or parcels—the **primary** mischief and the **secondary** mischief, as we might call them. We can label as 'primary' the share of the mischief that is suffered by an identifiable individual, or a number of identifiable individuals. We can label as 'secondary' the share which, taking its origin from the

former, extends itself over some multitude of unidentifiable individuals (it could be the whole community).

4. The primary mischief of an act can be divided into

- the **original** mischief: what comes to any person P_1 who is a sufferer in the first instance and on his own account; the person, for instance, who is beaten, robbed, or murdered; and
- the **derivative** mischief: what comes to any person P_2 because—and only because—of primary mischief suffered by P_1 .

Of course P_2 must be in some way connected with P_1 ; and we have already seen the ways in which one person can be connected with another—namely, in the way of interest (meaning self-regarding interest) or merely in the way of sympathy. And when x is connected with y in the way of interest, x either provides support to y or gets support from him. (See chapter 6.)

5. The secondary mischief often involves two strands, **pain** and **danger**. The pain it produces is a pain of anxiety, a pain based on the •fear of suffering mischiefs or inconveniences that it is the nature of the primary mischief to produce. We can give it the one-word label *alarm*. The danger is the •chance of suffering those mischiefs or inconveniences. Danger is nothing but the chance of pain, which is the same as the chance of loss of pleasure.

6. An example may serve to make this clear. A man attacks you on the road, and robs you. You suffer a pain on the occasion of losing so much money, and also suffer pain from your anxiety over how he might treat you physically if you don't satisfy his demands. These together constitute the **original** strand in the primary mischief resulting from the robbery.

A creditor of yours who expected you to pay him with part of that money, and a son of yours who expected you to give him another part, are in consequence disappointed; and you have to fall back on the bounty of your father to make up for some part of the deficiency. These mischiefs together make up the **derivative** strand in the primary mischief. The news of this robbery spreads through the neighbourhood, then finds its way into the newspapers and is propagated over the whole country. This causes various people to call to mind the danger that they and their friends—judging from this example—are exposed to in travelling, especially when travelling the same road. They naturally feel a certain degree of pain. How intense it is for any given person will depend on

- how badly he thinks you were treated,
- how often he thinks he may have occasion to travel on that same road, or its neighbourhood,
- how near he is to the place where your robbery occurred,
- his level of personal courage,
- how much money he may have occasion to carry about with him,

and a variety of other circumstances. This constitutes the first part of the secondary mischief resulting from the act of robbery, namely the **alarm**. But the robbery committed on you affects people of various kinds not merely by *getting them to think they have* a chance of being robbed but also (as I'll show in a moment) by *giving them* such a chance. This chance constitutes the remaining part of the secondary mischief of the robbery, namely the **danger**.

7. Let us see what this chance amounts to, and where it

comes from. How can one robbery R_1 contribute to producing another robbery R_2 ? Certainly not by creating any direct motive. A motive must be the prospect of some pleasure, or other advantage, to be enjoyed in future; but R_1 is past, and even if it weren't it wouldn't provide any such prospect for the person who may be about to commit robbery R_2 . A man's motive or inducement to commit a robbery must be the idea of the pleasure he expects to derive from the fruits of *that* robbery, a pleasure that exists independently of any other robbery.

8. It seems that the means by which one robbery tends to produce another robbery are these two, both operating on a person who is open to temptation in this direction:

- By suggesting to him the idea of committing another such robbery (and perhaps getting him to believe that it will be easy). This is an influence on his *understanding*.
- By weakening the force of the tutelary motives that tend to restrain him from such an action, thereby strengthening the temptation. In this case the influence works on the *will*.

The tutelary motives exert four forces:

- (i) The motive of benevolence, which acts as a branch of the physical sanction.¹
- (ii) The motive of self-preservation, as against the punishment that may be provided by the political sanction.
- (iii) The fear of shame—a motive belonging to the moral sanction.
- (iv) The fear of the divine displeasure—a motive belonging to the religious sanction.

The earlier robbery may have no significant influence on (i)

¹ To wit, in virtue of the pain it may give a man to witness or otherwise be conscious of the sufferings of a fellow-creature, especially when he himself caused them—in short, the pain of sympathy. See 26 on page 28.

and **(iv)**, but it has on the other two.

9. How can a past robbery weaken the force with which **(ii)** the political sanction tends to prevent a future robbery? Well, this sanction tends to prevent a robbery by proclaiming some particular kind of punishment against anyone who commits it; the real value of such punishment will of course be lessened by real uncertainty as to whether it will be inflicted.

[Bentham adds: 'and also, if there's any difference, the apparent value will be lessened by the apparent uncertainty.' This is surely wrong. The real value is the *deterrent* effect, and that is lessened by the *apparent* uncertainty, i.e. by the potential offender's being unsure whether he will be punished if he commits the crime.]

Now this uncertainty is proportionally increased by every case where someone is known to commit the offence without undergoing the punishment. This will of course be the case with every offence for a certain time; if and when the punishment allotted to it takes place, this strand in the mischief of the robbery is finally put a stop to, but not until then.

10. How can a past robbery weaken the force with which **(iii)** the moral sanction tends to prevent a future robbery? The way the moral sanction tends to prevent a robbery is by displaying the indignation of mankind as ready to fall on anyone who is guilty of it. Now this indignation will be the more formidable, the more people who join in it; and a man's strongest way of showing that does *not* join in any indignation against a practice is by engaging in it himself. This conduct shows not only that •he feels no indignation against it, but also that •it seems to him that there's no sufficient reason for being anxious about whatever indignation may

be felt against it by others. Accordingly, where robberies are frequent and unpunished they are committed without shame. It was thus among the Greeks in ancient times. It is thus among the Arabs still.

11. Thus, in whichever way one offence tends to pave the way for the commission of a later one—whether by suggesting the idea of committing it, or by adding to the strength of the temptation—either way it can be said to operate by the force or influence of example.

12. The two branches of the secondary mischief of an act—the alarm and the danger—are intimately connected but perfectly distinct; either can exist without the other. The neighbourhood may be alarmed by the report of a robbery, when in fact no robbery has been committed and none is being planned; a neighbourhood may be on the point of being disturbed by robberies without knowing anything of the matter. As we'll soon see, some acts produce alarm without danger, others produce danger without alarm.

13. The danger and the alarm can *each* be divided into two strands: •one consisting of as much of the alarm or danger as is apt to result from the future behaviour of the same agent; •the other consisting of as much as is apt to result from the behaviour of other persons, namely those who may come to perform acts of the same sort and tendency.¹

14. The distinction between the primary and the secondary consequences of an act must be carefully attended to. They really *are* distinct: an act's secondary consequences are often of a directly opposite nature to its primary consequences. In some cases where an act's primary consequences bring mischief, its secondary consequences are beneficial—so beneficial, indeed, as to greatly outweigh the

¹ To the former of these strands is opposed as much of the force of any punishment as is said to operate by way of *reformation*; to the latter, as much as is said to operate by way of *example*. See the footnote to **2** on page 92.

mischief of the primary consequences. This is the case with all acts of punishment, when properly applied. The primary mischief of these is always intended to fall only on persons who have committed some act that it is expedient to prevent; and the secondary mischief, i.e. the alarm and the danger, extends only to persons who are tempted to commit it. To the extent that it tends to restrain them from performing such acts it is of a beneficial nature.

15. So much for acts that produce positive pain, and do so immediately. The simplicity of this case seemed to make it the best one to start with. But acts can produce mischief in various other ways, which are contained, along with the ones already specified, in the following abridged analysis.

Mischief can be classified according to •its own nature or •its cause or •the person or other party who is the object of it.¹

With regard to its nature: mischief can be either •simple or •complex. When it is simple it can be either

- positive, consisting of actual pain or
- negative, consisting of the loss of pleasure;

and whether simple or complex, positive or negative, it can be either •certain or •contingent. When it is negative, it consists of the loss of some benefit or advantage, which may be material [see Glossary] either

- by providing actual pleasure or
- averting pain or danger (which is the chance of pain), i.e. by providing security, or
- both.

To the extent that a benefit tends to produce security, the tendency of a mischief that averts it is to produce insecurity.

With regard to its cause: mischief can be produced by

an action A either •acting alone or •with help from several other actions; and in the latter case the agent of these other actions may be •the agent of A or •other persons; and they may be •of the same kind as A or •of other kinds.

With regard to its object, i.e. the party that is in a way to be affected by it: that party may be either of these two:

- (i) an identifiable individual, who is either
 - the author of the mischief or
 - some other person
 or an assemblage of identifiable individuals;
- (ii) a multitude of unidentifiable individuals, who may be
 - the whole political community or state, or
 - some sub-group of that.

When the object of the mischief is the author himself, it can be called 'self-regarding'; when any other party is the object, 'extra-regarding'; when such other party is an individual it can be called 'private'; when a subordinate branch of the community, 'semi-public'; when the whole community, 'public'.

That is enough for just now. Chapter 16 will present the classification of offences, pursuing the subject through the finer divisions.

In the cases that I have presented by way of illustration, the primary mischief could always be •simple and •positive; •present and therefore certain; •producible by a single action with no need for input from any other action by the same agent or by anyone else; having for its object an identifiable individual or . . . assemblage of identifiable individuals; so •extra-regarding and •private. This primary mischief is accompanied by a secondary mischief the first strand of which (alarm) is sometimes contingent and sometimes

¹ There may be other bases for classification, but that doesn't prevent the three-part division that I am presenting from being exhaustive. A line can be divided in any one of an infinity of ways, none of which leaves any remainder. See the note at the start of chapter 16.

certain, while the other strand (danger) is always contingent; both strands are extra-regarding and semi-public; in other respects they are pretty much on a par with the primary mischief except that the alarm,

how the sentence ends: though inferior in magnitude to the primary, is, in point of extent, and therefore, on the whole, in point of magnitude, much superior.

what Bentham is getting at: Being robbed (say) is worse than acquiring a new fear of being robbed; but when the fear level is raised for a whole population this is a worse over-all trauma than a single robbery.

16. Two more cases will be sufficient to illustrate the most material of the kinds of mischief presented in my classification.

A man drinks a certain quantity of liquor, and intoxicates himself. The intoxication in this particular instance does him no harm or—it comes to the same thing—no perceptible harm. But it is nearly certain that a given number of acts of this kind would do him a great deal of harm—*how* much will depend on his constitution and other circumstances—because we know this from our everyday experience. It is also certain that one act of this sort will *somehow* tend to increase considerably the man's disposition to perform other acts of the same sort; for this also is verified by experience. So this is a case where the mischief producible by the act is contingent, i.e. in which the act's tendency is harmful only in because it creates a *chance* of mischief. This chance depends on the concurrence of other acts of the same kind, and those must be performed by the same person. The •object of the mischief is the very person who is the •author of it, . . . so the mischief is private and self-regarding.

It doesn't produce any secondary mischief in the form of alarm. It does produce indeed a certain amount of danger

through the influence of example; but in most cases this danger will be small enough to be negligible.

17. A man omits paying his share to a public tax. This we see is a negative act, but that doesn't mean that it can't be harmful. It *is* harmful, and here is why. Defending the community against its external and internal adversaries are tasks—along with others of a less indispensable nature—that can't be done except at considerable expense. Where is the money for meeting this expense to come from? It has to be from contributions collected from individuals, i.e. from taxes. The product of these taxes is a kind of benefit that has to go to the governing part of the community for the use of the whole. There have to be certain persons commissioned to receive and to apply this product. Now, if it's that case that if these persons had they received the tax-money they would have sent it to its proper destination,

that would have been a benefit, and thus *not* enabling them to receive it would have been a mischief. But it is possible that the money might have been received but not sent to its proper destination, or that the services it was intended to pay for might not have been performed. It could happen that

- the under-officer who collected the tax-money didn't pay it over to his principal;
- the principal didn't send it on to its further destination, e.g. to the judge who is to protect the community against its secret internal enemies, or the soldier who is to protect it against its open external enemies.
- the judge or the soldier received the money but weren't induced by it to perform their respective duties—the judge didn't sit for the punishment of criminals and the deciding of controversies, and the soldier didn't draw his sword in defence of the community.

These, together with countless other intermediate acts that I omit for the sake of brevity, form a connected chain of duties

the performance of which is necessary for the preservation of the community. They must *all* be performed if the benefit they are contributing to is to be produced. If they are all performed, the benefit comes into existence, and any act tending to intercept that benefit may produce a mischief. But if any of them are not performed, the benefit fails; and that failure has nothing to do with our man's failure to pay his share of the taxes. So the benefit coming from the tax-money is contingent; and *on a certain supposition* the act of not paying it is not harmful. But in any reasonably well-ordered government that supposition will rarely be true. In the worst-ordered government that exists, most of the taxes that are levied are paid over in the proper way, so that any individual person's failure to pay his share is almost certainly a harmful act.

[Bentham now deals with the line of thought:

'My share of the taxes is such a tiny proportion of the whole that it doesn't significantly increase any benefit; so in not paying it I'm not doing any significant harm; and anyway, point to the persons I am harming!'

He responds:] It is certain that if all of a sudden the payment of *all* taxes were to cease, there would no longer be anything effective done for the maintenance of justice or the defence of the community against its foreign adversaries—the weak would be oppressed and injured in all sorts of ways by the strong at home, and both would be overwhelmed by oppressors abroad. So the situation regarding the individual non-payment of taxes that we are considering is this:

The mischief is remote and contingent; in its first appearance it consists merely in the interception of a benefit; and the individuals who would have received that benefit—who would have actually had more pleasure or security—are altogether unidentifiable. But none of that counts against the harmful tendency

of the act. The mischief, in point of intensity and duration, is indeed unknown; it is uncertain; it is remote. But in point of extent it is immense; and in point of fecundity, pregnant to a degree that baffles calculation.

[The last two sentences of that are as Bentham wrote them.]

18. I should point out that the strand in secondary mischief that consists in *alarm* can occur only if the mischief is extra-regarding and has an identifiable person or persons for its object. When the individuals it affects are altogether out of sight because there's no way to determine which individuals they are, no alarm can be produced because there's nobody whose sufferings you can see, nobody whose sufferings you can be alarmed at. No alarm, for instance, is produced by nonpayment of a tax. If such an offence did happen to produce some kind of alarm at some distant time, the immediate cause of the alarm would be something quite different: the act of a legislator who thought a new tax was needed to make up for the short-fall in the product of the old one; or an enemy, encouraged by the weakness of the country's defence budget because of tax-avoidance, invades the country and extracts from it much heavier contributions than the tax-avoiders had withheld.

·START OF FOOTNOTE·

This line of thought can be developed analogously for the consequences of an act of a beneficial nature. Here again a third order of consequences can take place when the influence of the act on the (passive) beneficiary come to affect his active faculties. This could take any one of four forms.

(1) Evil out of evil: e.g. •a continued chain of acts of robbery or extortion makes it •not worthwhile to work at anything, which leads to •a loss of productivity on

everyone's part.

- (2) Good out of evil: e.g. •a steady course of punishment
•puts a stop to habits of depredation, •which leads to
•all sorts of good results.
- (3) Evil out of good: e.g. •unduly large handouts to the
poor lead to their •losing the habit of working hard,
•which leads to •all sorts of bad results.
- (4) Good out of good: e.g. •providing a regular and increas-
ing market for the products of people's labour leads to
•increasing rewards for such labour, which leads to •a
steady increase in how much of such labour there is.

·END OF FOOTNOTE·

As for any alarm that such an offence ·as illegal tax-avoidance· might raise among the few who regard it with the eyes of statesmen, it is too slight and uncertain to be worth taking into the account.

2. How intentionality etc. can influence the mischief of an act

19. We have seen the nature of the secondary mischief that is apt to be reflected, as it were, from the primary, in the cases where the individuals who are the objects of the mischief are identifiable. Now we must look into the circumstances on which the production of such secondary mischief depends. These circumstances are just the four items that were the topics of chapters 8–10, ·four states of mind·:

- the intentionality,
- the consciousness,
- the motive,
- the disposition.

The **danger** created by an offence can be immediately affected by the **reality** of those states of mind; the immediate cause

of any **alarm** that it creates has to be the **appearance** of those states of mind. In most cases reality and appearance coincide, and then the whole package can cause both danger and alarm. The different influences of intentionality and consciousness can be represented in the following six cases.

20. Case 1. The act is so completely unintentional as to be altogether involuntary. In this case it brings no secondary mischief at all.

A bricklayer is at work on a house; a pedestrian is walking below; a fellow-workman gives the bricklayer a violent push, so that he falls on the pedestrian and hurts him. It's clear that nothing in this event can give onlookers the least reason to fear anything in future from the man who fell, whatever reason there may be regarding the man who pushed him.

21–25. [Bentham now goes through four cases where the act in question is not downright unintentional but the agent was 'misadvised' in some respect, and in some of them he is also 'rash'. He illustrates only one of the four; and this whole thing seems to be skippable without much loss. After it, Bentham comes to the other extreme:]

25. Case 6. The consequences are completely intentional, and there is no mis-supposal in the case. In this case the secondary mischief is at the highest.

26. Having dealt with •intentionality and •consciousness, I now consider how the secondary mischief is affected by the nature of the •motive.

Where an act is pernicious in its primary consequences, the secondary mischief is not obliterated by the goodness of the motive, however good it is. Despite the goodness of the motive, it has led to an act whose primary consequences are pernicious; and it may do the same in other instances, though ·admittedly· this is not so likely to happen from a

good motive as from a bad one.¹

27. If an act is pernicious in its primary consequences but over-all beneficial because of its secondary consequences, it isn't switched back to over-all pernicious by the badness of the motive, even if it's a motive of the worst kind.²

28. When not only the primary consequences of an act are pernicious but in other ways the secondary consequences are so too, the secondary mischief may be made worse by the nature of the motive—I mean the part of the mischief that concerns the future behaviour of the same person.

29. But it's not from the worst kind of motive that the secondary mischief of an act is most worsened.

30. How much the secondary mischief of an act is worsened by the motive behind it is proportional to how likely the motive is to produce equally bad acts by the same person.

31. The likelihood of a motive's leading that same person to perform acts of the same kind is proportional to how strongly and constantly that motive influences the person to perform such acts.

32. The tendency of a *kind* of motive to give birth to acts of a given kind among persons in general is proportional to how strongly, constantly, *and extensively* that motive influences the person to perform such acts.

33. Now, the motives whose influence is strongest, most constant, *and* most extensive are the motives of

- physical desire,
- the love of wealth,
- the love of ease,
- the love of life, and
- the fear of pain;

all of which are self-regarding motives. The motive of displeasure, however strong and extensive, is nowhere near as constant in its influence (the case of mere antipathy excepted) as any of the other five. A pernicious act motivated by a

¹ An act of homicide, for example, is not made innocent—much less beneficial—merely by coming from a principle of religion, of honour (i.e. of love of reputation) or even of benevolence. Ravallac assassinated Henry IV from a principle of religion, but this didn't even *lessen* the mischief of the act. Indeed, for a reason that I'll present in a moment, it made the act even more mischievous than if it had been driven by a desire for revenge. The conspirators who tried to assassinate the late king of Portugal are said to have acted from a principle of honour. But this certainly won't be thought to have outweighed the mischief of the act, though it may have lessened it. If a son of Ravallac's, as in the fictional case in **16** on page 75, puts his father to death in order to rescue him from the severer hands of justice, merely out of filial affection and not because of any participation in his crime, that motive—while not providing evidence of a mischievous disposition, and while making the son an object of pity for any punishment he is sentenced to—will hardly make the act of rescue a beneficial one!

² The prosecution of offences, for instance, is usually driven by one or both of two motives—the self-regarding motive of •pecuniary interest (e.g. when one aim of the prosecution is to collect damages) and the unsocial motive of •ill-will. It is common enough indeed to hear men speak of prosecutions undertaken from public spirit, which we have seen to be a branch of the principle of benevolence. Far be it from me to deny that such a principle may often be an ingredient in the sum of motives by which men undertake prosecutions; but when such a proceeding is engaged in solely out of public spirit without the least trace of self-interest or ill-will, it must be acknowledged to be a proceeding of the heroic kind. Now acts of heroism are, in the very essence of them, rare—if they were common they wouldn't qualify as heroism. But prosecutions for crimes are very frequent, and are almost always beneficial.

desire for vengeance or by some other form of displeasure is nowhere near as harmful as the same pernicious act when driven by any one of those other motives.¹ [In this paragraph and the next, 'five' replaces Bentham's 'three', which seems to have been a slip.]

34. As for the motive of religion, whatever it may have sometimes in strength and constancy it isn't equal to any of the five preceding motives in extent, especially in the production of acts of a harmful nature. Still, it may be as universal as they are in a particular country or a particular district. It is liable indeed to be very irregular in its operations. But it is often as powerful as—and sometimes even more powerful than—the motive of vengeance or indeed any other motive. It is, at any rate, much more constant.² So a pernicious act when committed through the motive of religion is more

harmful than when committed through the motive of ill-will.

35. Lastly, the secondary mischief—meaning the part of it that involves the future behaviour of the same person—is made greater or less by, and in proportion to, the apparent depravity or beneficence of his disposition.

36. The consequences I have spoken of up to here are the *natural* consequences of which the act and the other items I have been considering are the causes—consequences that result from the offender's behaviour without the interference of political authority. I now come to speak of punishment, which is an *artificial* consequence that political authority connects to an individual offensive act with the aim of putting a stop to future acts with similar objectionable natural consequences.

¹ That is why a threat or other personal outrage when inflicted on a stranger as part of a scheme of robbery produces more mischief in society (and accordingly is perhaps everywhere more severely punished) than a similar outrage inflicted on an acquaintance as part of a scheme of vengeance. No man is always in a rage, but every man always has some love for money. Thus, a man whose quarrelsomeness leads him once to perform a bad action may go through the rest of his life without doing anything like that again, because he may never again engage in such a violent quarrel. . . . But if a man's love of money once leads him to perform a bad action such as a scheme of robbery, that same motive may at any time lead him to acts that are equally bad. If a man loves money to a certain degree today, he will probably love it at least as much tomorrow. And if a man is disposed to acquire it in that way, he will find inducement to rob wherever and whenever there are people to be robbed.

² If a man takes it into his head to assassinate—with his own hands or with the sword of justice—those whom he calls heretics, i.e. people who think (or perhaps only *speak*) differently from him on a subject that neither he nor they understand, he will be as much inclined to do this at one time as at another. Fanaticism never sleeps: it is never gluttoned: it is never stopped by philanthropy, for it makes a merit of trampling on philanthropy: it is never stopped by conscience, for it has conscripted conscience into its service. Avarice, lust, and vengeance have piety, benevolence, honour to oppose them; fanaticism has nothing to oppose it. [In this note, 'philanthropy' carries the very general meaning of 'love of mankind', not the now more common meaning of 'practical benevolence'.]

Chapter 13: Cases not right for Punishment

1. General view of cases not right for punishment

1. The general object that all laws have or ought to have in common is to increase the total happiness of the community; and therefore in the first place to exclude as far as possible everything that tends to reduce that happiness, i.e. to exclude mischief.

2. But all punishment *is* mischief; all punishment in itself is bad. On the principle of utility it ought to be allowed only insofar as it promises to exclude some greater evil.

·START OF A FOOTNOTE·

This chapter on punishment ought, as a matter of good order, to be preceded by a separate chapter on the aims of punishment. But I have little to say on that branch of the subject that hasn't been said before, so it seems better to •exclude this topic from a work that will be too long even without it, and •reserve it to a separate work, to be published later, entitled *Rationale of Punishment* [which eventually appeared posthumously as Part 2 of *Penal Law*]. In that work I shall present the analysis of the various possible modes of punishment, a closely detailed examination of the nature of each and of its advantages and disadvantages, and various other topics that don't seem absolutely necessary to be included here. But I have to say a little concerning the aims of punishment.

The immediate principal end of punishment is to control action—the offender's action or that of others. It controls the offender's action by affecting either

- his will, in which case it is said to aim at 'reforming' him, or

- his physical power, in which case it is said to aim at 'disabling' him.

The only way it can influence the conduct of others is by affecting

- their wills, in which case it is said to make an 'example' of the offender.

A kind of collateral goal that punishment has a natural tendency to achieve is that of providing pleasure or satisfaction to •the injured party where there is one, and to •any parties whose ill-will has been aroused by the offence, whether on a self-regarding account or on the account of sympathy or antipathy. This goal, as far as it can be achieved *gratis*, is beneficial; but no punishment ought to be allotted merely for this purpose, because. . . such pleasure is always outweighed by the pain of the punishment. However, punishment that is inflicted for the other purpose ought, as far as it can be done without expense, to be made to serve this purpose as well. Satisfaction thus given to an injured party in the form of a dissocial pleasure can be called a 'vindictive' satisfaction. . . . Setting an example is the most important aim of all, because of how greatly the offender is *outnumbered* by the persons who might be tempted to offend in a similar way.

·END OF FOOTNOTE·

[When Bentham writes of what can be achieved *gratis* and 'without expense', he isn't referring to money. We will now see him using that language for a different purpose: a good that could be secured through the use of punishment may be achievable 'at a cheaper rate', meaning with less 'expense' in the way of creating evil. This use of the language of accountancy is prominent in the Rules in chapter 14.]

3. Clearly, then, punishment ought not to be inflicted
- where it is groundless, i.e. where there is no mischief for it to prevent because the act was not over-all harmful;
 - where it must be ineffective, i.e. where it can't act so as to prevent the mischief;
 - where it is unprofitable, or too expensive, i.e. where the mischief it would produce would be greater than what it prevented; and
 - where it is needless, i.e. where the mischief may be prevented or cease of itself without it, i.e. at a cheaper rate.

I shall give these a subsection each

2. Cases where punishment is groundless

4. (a) Where there was no mischief in the first place—no harm has been done to anybody by the act in question. Included among these are some cases where the act was harmful or disagreeable but the person whose interest it concerns gave his consent to the performance of it. This consent, provided that it's free and fairly obtained, is the best proof that can be produced that the person who gives it suffers no over-all mischief, or at least no immediate mischief; because he is a better judge than anyone else can be as to what gives him pleasure or displeasure.

5. (b) Where the mischief was outweighed—a mischief was produced by that act, but that act was needed for the production of a benefit that was of greater value than the

mischief. This may be the case when something is done as a precaution against instant calamity, and when something is done in the exercise of the various sorts of powers—domestic, judicial, military, and supreme—that every community needs to have established in it.

6. (c) Where there is a certainty of adequate compensation in the given case and in all cases where the offence can be committed. For this to be the case, the offence has to be of a kind that *could* be adequately compensated. But even then we can never know for sure that such a compensation will *always* be forthcoming. So this can't ever, in practice, serve as a basis for absolute impunity; but it may be serve as a ground for a lessening of the punishment that would otherwise seem appropriate.¹

3. Cases where punishment must be ineffective

7. (a) Where the penal provision for the given kind of act is not established until after the individual act is done. This can happen when the legislator doesn't assign a punishment till after the act is done, or when the judge on his own authority assigns a punishment that the legislator had not assigned.

8. (b) Where the established penal provision is not brought to the notice of the person it is intended to operate on; where the law has omitted to use any of the procedures that are needed to ensure that *everyone* who is within the reach of the law is informed of *all* the cases in which he—given his station of life—can be subjected to the penalties of the law.

¹ This seems to have been one reason for the favour shown by perhaps all systems of laws to offenders who stand upon a footing of responsibility [apparently meaning 'who *could* provide compensation']. It is a favour shown not to the offenders themselves but to offences that only responsible persons are likely to have the opportunity of engaging in. It seems to be the reason why embezzlement in certain cases hasn't commonly been punished in the same way as theft, or mercantile frauds in the same way as 'sidewalk' swindling.

9. (c) Where the penal provision. . . *couldn't* affect the man in a way that might prevent him from performing any act of the sort in question. That is the situation

- in extreme infancy, where a man hasn't yet attained the disposition of mind in which his conduct will be influenced by the prospect of evils as distant as those the law threatens him with;
- in insanity, where the person has attained that disposition but then been deprived of it through the influence of some permanent though unseen cause;
- in intoxication, where he has been deprived of it by the transient influence on the nervous system of a visible cause such as the use of wine, or opium or other drugs.

Intoxication is indeed neither more nor less than a temporary insanity produced by an identifiable cause.¹

10. (d) Where the penal provision. . . could not deter the party from performing the individual act he is about to perform, because he doesn't know that it is of the kind that the penal provision relates to. This may happen

- in the case of unintentionality, where he doesn't intend to perform—and thus doesn't know that he is about to perform—the act that he is in fact about to perform;
- in the case of unconsciousness, where he knows that he is about to perform the act itself but—because he doesn't know all the material circumstances relating to it—doesn't know of its tendency to produce the

mischief that is the reason why it has been made penal [here = 'punishable'] in most instances; and

- in the case of false belief, where he may know that the act tends to produce that degree of mischief, but falsely believes that it is attended by some circumstance which, if it had been real, would have
 - prevented the act from producing that much mischief or
 - led to its also producing a degree of good that would have outweighed the mischief.

11. (e) Where the penal clause •would do its intended work if it acted alone but •can't be effective because of the predominant influence of some opposite cause on the will—i.e. because the evil that he expects to undergo if he doesn't perform the act is so great that the evil promised by the penal clause if he does perform it can't appear greater. This can happen •in the case of physical danger, where the evil in question appears likely to be brought about by the unassisted powers of nature; and •in the case of a threatened mischief, where it is appears likely to be brought about through the intentional and conscious agency of man.

12. (f) Where although the penal clause may exert a full influence over the person's will, his physical faculties. . . are not in a condition to follow the determination of the will; so that the act is absolutely involuntary. For instance, the man's hand is pushed against some object that his will disposes him not to touch, or is tied down so that it can't touch some object that his will disposes him to touch.

¹ [In a footnote Bentham says that with infancy and intoxication there can in *practice* be some doubt as to whether the person really was in the mental state in question. But that doesn't affect the *theory*. If we could know for sure that he was in that state, 'the impropriety of punishment would be as indubitable in these cases as in any other'. The note continues:] The reason that is commonly given for not punishing infants, insane persons, and intoxicated persons is either false in fact or confusedly expressed. It is said that the will of these persons doesn't concur with the act, that they have no vicious will, or, that they don't have the free use of their will. But suppose all this is true—what is it to the purpose? Nothing, except insofar as it implies the reason given in the text.

4. Cases where punishment is unprofitable

13. (a) Where the nature of the offence and the nature of the punishment are normally such that the evil of the punishment will turn out to be greater than that of the offence.

14. The evil of the punishment divides into four branches, affecting four different sets of persons.

- The evil of coercion or restraint: the pain that it gives a man not to be able to perform the act that he is deterred from by the threat of punishment. This is felt by those who obey the law.
- The evil of fear: the pain that a man who has exposed himself to punishment feels at the thought of undergoing it. This is felt by those who break the law and feel themselves in danger of its being applied to them.
- The evil of sufferance: the pain a man feels in virtue of the punishment itself, from the time when he begins to undergo it. This is felt by those who break the law and on whom it comes actually to be applied.
- The pain of sympathy, and the other derivative evils that come to persons who are connected with the three classes of non-derivative sufferers listed just above.

Of these four lots [see Glossary] of evil, the first will be greater or less depending on the nature the act that the party is deterred from performing; the second and third depending on the nature of the punishment that has been assigned to that offence.

15. The evil of the offence will also of course be greater or less according to the nature of each offence. The proportion between the one evil and the other will therefore be different for different particular offences; so the cases where punishment is unprofitable for this ·balance-of-evils· reason can be found only by examining each particular offence; which is

what will be the business of the body of the work [see Glossary]. [Despite Bentham's uses of 'particular', what he is talking about are not •different particular = individual offences but rather •different specific kinds of offence.]

16. (b) Where there are *particular* circumstances that make the evil resulting from the punishment greater than the benefit it is likely to produce (in cases where **(a)** doesn't apply, i.e. where *in general* this punishment is justified by its effectiveness as a deterrent to this kind of offence). These circumstances may include:

- The sheer number of delinquents at a particular time, which would greatly increase the contribution of the second and third lots of evil, and also a part of the fourth lot, to the evil of the punishment. [why not also to the first lot?]
- The extraordinary value of the services of some one delinquent, in a case where his punishment would deprive the community of the benefit of those services.
- The displeasure of the people—i.e. of an indefinite number of the members of the community—in a case where some passing event has led them to think that the offence or the offender ought not to be punished at all, or at least ought not in the way the law proposes.
- The displeasure of foreign powers, i.e. of the governing body or many members of some foreign community with which the community in question is connected.

5. Cases where punishment is needless

17. Where the purpose of putting an end to the offence can be attained just as effectively at a cheaper rate—by instruction, for instance, instead of by terror, i.e. by informing the understanding rather than by exercising an immediate influence on the will. This seems to be the case with regard to all the

offences that consist in spreading pernicious principles in matters of political or moral or religious duty. And I affirm this even for cases where the person spreading the pernicious principles doesn't sincerely think they will do anyone any good. In such a case instruction can't prevent the writer from trying to inculcate his principles, but it may prevent the readers from adopting them, thus preventing his efforts from

doing any harm. In such a case, the sovereign will commonly have little need to take an active part; if it's in the interests of one individual to inculcate pernicious principles, it will surely be in the interests of other individuals to expose them. And if the sovereign *must* take a part in the controversy, the pen is the proper weapon to combat error with, not the sword.

Chapter 14: The Proportion between Punishment and Offences

1. We have seen that •the general objective of all laws is to prevent mischief, when it is worthwhile, but that •where punishment is not the only means of doing this there are four cases where it is not worthwhile.
2. When it is worthwhile, there are four subordinate designs or objectives that a legislator whose views are governed by the principle of utility comes naturally to propose to himself in the course of planning to do his best to achieve that one general objective •of preventing mischief.
3. **(i)** His first, most extensive, and most desirable objective is to prevent as far as it is possible and worthwhile, all sorts of offences whatsoever—i.e. to arrange things so that no offence whatsoever is committed.
4. **(ii)** If a man can't be stopped from committing an offence of some kind or other, the next objective is to induce him to choose always the less harmful of two offences either of which will suit his purpose.
5. **(iii)** When a man has resolved on a particular offence, the

next objective is to dispose him to do no more mischief than is needed for his purpose—i.e. to do as little mischief as is consistent with the benefit he has in view.

6. **(iv)** The last objective is, with any mischief that it is proposed to prevent, to prevent it at as cheap a rate as possible.

7. Subservient to these four objectives must be the rules governing the proportion of punishments to offences.¹

8. **Rule 1.** The first objective is to prevent all sorts of offences as far as this is worthwhile; therefore *The value of the punishment must always be sufficient to outweigh the value of the profit of the offence.*

•START OF FOOTNOTE•

I take the 'profit' of an offence to be not merely •the pecuniary profit but •the pleasure or advantage of any kind that a man gets or expects to get from. . . engaging in the offence. The expectation of the profit of the offence constitutes the impelling motive(s) by which a man is prompted to engage

¹ The same rules can be applied with little variation to rewards as well as punishments. . . .

in the offence. The expectation of the punishment constitutes the restraining motive which—either by itself or in conjunction with others—is to act on him in a contrary direction so as to induce him to abstain from engaging in the offence. Accidental circumstances apart, the strength of the temptation is proportional to the force of the seducing—i.e. impelling—motive or motives. Some authors of great merit and great name have said that the punishment ought not to increase with the strength of the temptation, which is like saying in mechanics, that the moving force or momentum of the power need not increase in proportion to the momentum of the burden!

·END OF FOOTNOTE·

If it isn't sufficient for that, then the offence will be committed; the whole lot of punishment will be thrown away, will be altogether ineffective; unless some other considerations intervene and operate effectively as tutelary motives (see **29** on page 78).¹ This is the case whenever the punishment is fixed while the profit of delinquency is indefinite; or, more precisely, when the punishment is limited to something that can be surpassed by the profit of delinquency.

9. The above rule has been often objected to because of its seeming harshness; but this must come from its not being properly understood. The strength of the temptation is,

cæteris paribus [see Glossary], proportional to the profit of the offence; the quantum of the punishment must rise with the profit of the offence and therefore *cæteris paribus* it must rise with the strength of the temptation. There's no disputing this. It's true that the stronger the temptation the less conclusive is the delinquent act's evidence of the depravity of the offender's disposition (see **43** on page 82); and in that way the strength of the temptation may weaken the demand for punishment; but it can't imply that the punishment ought to be ineffective, which it is sure to be if it is brought below the level of the apparent profit of the offence. [Bring it below this level might seem benevolent, but really it wouldn't be. It would involve 'cruelty to the public' in not protecting them adequately, and, Bentham adds strikingly:] cruelty to the offender himself, by punishing him to no purpose. . . .

[Regarding Bentham's use of terms like 'purchase' and 'expenditure' see the editorial note on page 92.]

10. Rule 2. But whether a given offence will be prevented in a given degree by a given quantity of punishment is never anything better than a chance; and when we purchase that chance by employing punishment we are making an expenditure in advance. However, for the sake of giving it a better chance of outweighing the profit of the offence, *The greater the mischief of the offence, the greater is the expense that it may be worthwhile to incur by way of punishment.*²

¹ . . . Some of the Anglo-Saxon laws set a fixed price on a man's life, including that of the sovereign. For 200 shillings you could kill a peasant; for six times as much, a nobleman; for thirty-six times as much you could kill the king. A king in those days was worth exactly 7,200 shillings. If the heir to the throne, for example, grew weary of waiting for it, he had a secure and legal way of gratifying his impatience: all he needed to do was to kill the king with one hand and pay himself with the other, and all was right! . . . This being the product of a remote and barbarous age, its absurdity is now recognised; but we now find that the freshest laws of the most civilised nations are continually falling into the same error. ([Added in 1822:] See in particular: the English Statute laws throughout, Bonaparte's Penal Code, and the recently enacted or not enacted Spanish Penal Code.

² For example, if it can ever be worthwhile to be at the expense of such a horrible punishment as burning someone alive, it will be so as to prevent such crimes as murder or incendiarism, rather than to prevent the passing of counterfeit coins. [In Daniel Defoe's novel *Moll Flanders*, the heroine declines to switch from a gang of thieves to a gang of coin-forgers because, she says, that would replace a risk of being hanged by a risk of being burned at the stake.]

11. Rule 3. The next objective is to induce a man always to choose the less harmful of two offences; therefore, *Where two offences come in competition, the punishment for the greater offence must be sufficient to induce a man to prefer the less.*

12. Rule 4. When a man has resolved on a particular offence, the next objective is to induce him to do no more mischief than is needed for his purpose; therefore *The punishment should be adjusted to each particular offence in such a way that for each part of the mischief there is a motive to restrain the offender from giving birth to it.*¹

13. Rule 5. The last objective is, whatever mischief is guarded against, to guard against it at as cheap a rate as possible; therefore *The punishment ought never to be more than what is needed to bring it into conformity with the rules here given.*

14. Rule 6. A single cause may affect different people in different ways and by different amounts; so that a punishment that is the same in name won't always produce—or even appear to others to produce—the same degree of pain in two different persons; therefore *So that the quantity of pain actually inflicted on each individual offender may correspond to the quantity intended for similar offenders in general, the various circumstances influencing sensibility ought always to be taken into account.*

15. Of the above rules of proportion, the first four mark out limits on the side of diminution, the limits to how mild a punishment should be; the fifth the limits on the side of increase, the limits to how severe it should be. Those five are

meant to serve as guides to the legislator; the sixth is also meant for that purpose in some measure, but principally for guiding the judge in his attempts to conform, on both sides, to the intentions of the legislator.

16. Let us look back a little. To make the first rule more conveniently applicable in practice, it may need to be explained in a little more detail. For the sake of accuracy I had to use, instead of the word 'quantity', the less perspicuous term 'value'. The trouble with 'quantity' is that it doesn't include the circumstances either of certainty or temporal-proximity; and these must always be taken into the account in estimating the value of a lot [see Glossary] of pain or pleasure. (See 2 on page 22.) Now, a lot of punishment is a lot of pain, and the profit of an offence is a lot of pleasure or of some equivalent to it. But the profit of the offence is commonly more certain than the punishment, or anyway appears so to the offender; and it commonly comes much more quickly. If it is to outweigh the profit of the offence, therefore, the punishment must have its value increased in some other way to make up for its short-fall in certainty and proximity. The only way to do this is by increasing the severity of the punishment.²

17. Also, to make sure that the value of the punishment outweighs the value of the offence, it may be necessary in some cases to take into account the profit not only of the individual offence for which the person is being punished but also of any other offences of the same sort that he is

¹ If you aren't sure about this, think of the offence as divided into as many separate offences as there are distinguishable parcels of mischief resulting from it. Let it consist, for example, in a man's giving you ten blows; if he is punished no more for this than for giving you five blows, five of the ten blows he gives you constitute an offence for which there is no punishment; and when he understands this you can be sure that after giving you five blows he will give you five more, since he can have the pleasure of giving you these five for nothing. [Bentham repeats all this for stealing five/ten shillings. and then concludes:] This rule is violated on almost every page of every body of laws I have ever seen. . . .

² It is for this reason, for example, that simple compensation is never regarded as sufficient punishment for theft or robbery.

likely to have already committed without being detected. This random [here = 'guess-work'] mode of calculation, severe as it is, is unavoidable in cases where •the profit is pecuniary, •the chance of detection very small, and •the offensive act of a kind that indicates a habit; for example in the case of frauds against the coinage. If probable earlier offences aren't taken into account in setting the level of punishment, the practice of committing the offence will be sure to be gainful; so that the legislator will have no chance of suppressing it, and the whole punishment bestowed on it will be thrown away. . . .

18. Rule 7. In the light of these considerations the following three rules may be laid down to supplement and explain Rule 1. *To enable the value of the punishment to outweigh that of the profit of the offence, it must be increased in point of severity in proportion as it falls short in certainty.*

19. Rule 8. *Punishment must be further increased in severity in proportion as it falls short in proximity.*

20. Rule 9. *Where the act conclusively indicates a habit, the punishment of it must be increased enough for it to outweigh the profit not only of the individual offence but of other similar offences that the offender is likely to have committed and not been punished for.*

21. A few other circumstances or considerations may slightly influence the demand for punishment; but their propriety is either not so demonstrable, or not so constant, or the application of them not so determinate, as that of the foregoing, so that they are probably not worth putting on a level with the others.

22. Rule 10. *When a punishment that is qualitatively just right for its intended purpose cannot exist in less than a certain quantity, it may sometimes be useful. . . .to stretch it a little beyond the quantity that would otherwise be strictly necessary.*

23. Rule 11. *This may sometimes be the case where the proposed punishment is particularly well suited to serve as a moral lesson.¹*

24. Rule 12. The above considerations tend to dictate an increase in the punishment; the following rule operates to lessen it. There are certain cases (see page 95 above) in which accidental circumstances make punishment unprofitable in the whole; in the same cases it may be made unprofitable in a part only. Accordingly, *In adjusting the quantum of punishment, the circumstances by which any punishment may be rendered unprofitable ought to be attended to.*

25. Rule 13. The more various and minute any set of provisions are, the greater the chance that any given article in them won't be borne in mind and so won't bring any benefit. Distinctions that are too complex for a potential offender to take in will be *worse* than useless. The whole system will present a confused appearance, and thus the effect [of the whole thing] will be destroyed. It seems impossible to draw a precise line marking off what is too complex, but it may be of some use to offer the following rule. *Among provisions designed to perfect the proportion between punishments and offences, any whose good effects wouldn't make up for the harm they would do by adding to the intricacy of the legal*

¹ A punishment may be said to be suited to serve as a moral lesson when by reason of the disgrace it stamps upon the offence it is likely to •give the public feelings of aversion towards the pernicious habits and dispositions that the offence appears to involve, and thereby to •encourage the opposite beneficial habits and dispositions.—It is this if anything that must justify inflicting such a severe punishment as the infamy of a public exhibition (I'll propose this later) for any man who lifts up his hand against a woman or against his father. And it is partly on this principle, I suppose, that military legislators think they are justified in inflicting death on a soldier who lifts up his hand against his superior officer.

*code should be omitted.*¹

26. Punishment that is the topic of this chapter belongs to the political sanction, but there are three other sanctions that can also contribute their share towards producing the same effects (see **2** on page 20). You might think, then, that in setting levels of political punishment we should allow for the assistance it can get from those other controlling powers; and it's true that from each of them a very powerful assistance can sometimes be derived. But the fact is that the force of those other powers is never determinate enough to be depended on (except for the moral sanction when its force is explicitly adopted into and modified by the political). It can't be parcelled into exact lots, or meted out in number, quantity, and value, as political punishment can. So the legislator is obliged to provide the full complement of punishment, as if he were sure of not getting help from any of those quarters. If he does get it, so much the better; but in case he doesn't he should make the provision that depends on himself.

27. It may be useful to list here the various circumstances that should be attended to in establishing the proportion between punishments and offences. seem to be as follows;

Regarding the offence:

- the profit of the offence,
- the mischief of the offence,
- The profit and mischief of other offences of different sorts that the offender may have to choose out of,
- the profit and mischief of other offences of the same sort that the same offender has probably been guilty of already.

Regarding the punishment:

- the severity of the punishment, composed of its intensity and duration,
- how certain the punishment is,
- how far in the future the punishment is,
- the quality of the punishment,
- the accidental advantage of some quality of a punishment that isn't strictly needed for its quantity,
- the use of a punishment that has a particular quality, as a moral lesson.

Regarding the offender:

- the level of responsibility of the class of persons who are apt to offend in this way,
- the sensibility of each particular offender,
- the particular merits or useful qualities of any particular offender, if the punishment risks depriving the community of the benefit of them,
- how many offenders there are on any particular occasion.

Regarding the public, at any particular time:

- the inclinations of the people for or against any quantity or mode of punishment
- the inclinations of foreign powers.

Regarding the law. . . .:

- the need to forgo a certain amount of proportionality for the sake of simplicity.

28. There may be some who will think:

'The nicety [see Glossary] needed for applying such rules is just so much labour lost, because gross ignorance

¹ Despite this rule, I'm afraid that in what is to come I may be thought to have carried my endeavours at proportionality too far, .i.e. allowed too much complexity. My excuse is that until now hardly any attention has been paid to proportionality between offences and punishment; Montesquieu seems to have been almost the first to have the least idea of any such thing. So it seems better to have too much than too little. The difficulty is to invent; when that is done, if anything seems superfluous it can easily be removed.

never troubles itself about laws, and passion doesn't calculate.'

But the evil of ignorance admits of cure; and 'Passion doesn't calculate', like most very general and oracular propositions, is not true. When things as highly important as pain and pleasure are at stake (and they are in fact the *only* things of importance), who is there that doesn't calculate? Some men calculate with less exactness, some with more; but all men calculate. I wouldn't say even that a madman doesn't calculate. (There are few madmen who aren't visibly

afraid of the strait-jacket.) Passion calculates differently in different men according to •the warmth or coolness of their dispositions, •the firmness or irritability [see Glossary] of their minds, •the nature of the motives by which they are acted on. Fortunately, the passion that corresponds to the motive of pecuniary interest is both •the passion that is the most given to calculation and •the one whose strength, constancy, and universality make it the greatest threat to society. So this nicety, if that's what we are to call it, has the best chance of being effective where effectiveness matters most.

Chapter 15: The Properties to be given to a Lot of Punishment

1. I have presented the rules that ought to be observed in adjusting the proportion between punishment and offence. The properties to be given to a lot [see Glossary] of punishment in each case will of course be what it needs to have to be capable of being applied in conformity to those rules, **the quality will be regulated by the quantity.**

2. The first rule, you may remember, was that the quantity of punishment must never be insufficient to outweigh the profit of the offence. . . . The fifth rule was that the punishment ought never to be more than what is required by the various other rules. . . . The fourth rule was that the punishment should be matched to the individual offence in such a way that every part of the mischief of that offence has a penalty (i.e. a tutelary motive) to encounter it. . . . Now a lot of punishment can't conform to those rules unless

the lot of punishment can vary in quantity in a way that matches the variation of quantity in the mischief of the species of offence to which it is assigned.

. . . . So the first property that ought to be given to a lot of punishment is that of being quantitatively variable in conformity to every variation there can be in either the profit or mischief of the offence. We could call this property *variability*.

3. Intimately connected with that is a second property that we could call *equability*. Take a mode of punishment (proper in all other respects) that has been established by the legislator and that can be screwed up or let down [Bentham's phrase] to any required degree; it won't be much use if any one of these degrees can produce a very heavy degree of pain, or a very slight one, or even none at all, according to circumstances. If that is the case, then if circumstances happen one way a great deal of needless pain will be produced; if they happen the other way, no pain at all will be applied, or none that will be effective. A punishment that is open to this ·sort of· irregularity can be called an

‘unequable’ one; when free from it, an ‘equable’ one.¹ . . .

4. A mode of punishment that is apt to be unequable is banishment, when the place the party is banished from is some determinate place, appointed by the law, that may be of no interest or value to the offender. Another such is pecuniary or quasi-pecuniary punishment having to do with some particular kind of property which the offender may have some of but may not. All these punishments can be split down into parcels and measured out with the utmost nicety, being divisible at least by *time* if by nothing else. So none of them lacks variability; but in many cases their lack of equability may make them as unfit for use as if they did.

5. The third rule of proportion said that where two offences come into competition the punishment for the greater offences must be sufficient to induce a man to prefer the less. To be sufficient for this purpose it must be evidently greater in the eyes of all men who are liable to face a choice between the two offences, i.e. in effect in the eyes of all mankind. In other words, the two punishments must be perfectly commensurable—i.e. both measurable by some one standard. From this arises a third property that may be called *commensurability*; a punishment has this property if it is commensurable with other punishments.

6. But it seldom happens that a punishment is uniformly greater one another of a different kind; especially when the lowest degrees of what is ordinarily the greater are compared with the highest degrees of the one that is ordinarily the less; which is to say that punishments of different kinds are in few instances uniformly commensurable. The only certain and universal means of making two lots of punishment

perfectly commensurable is by making one an ingredient in the other. This can be done by adding to the lesser punishment •another quantity of punishment of the same kind or •another quantity of a different kind. . . . We can’t always be sure what a given person will think about which of two punishments is greater, but we can be absolutely sure that he’ll think that any given punishment is greater than none at all!

7. The threat of punishment can’t act on a potential offender unless the idea of the punishment and of its connection with the offence is present in his mind. . . . For the idea of it to be present, it must be remembered, and to be remembered it must have been learnt. Now, the punishments whose connection with the offence is most easily learnt and so effectively remembered are those the idea of which is already in part associated with some part of the idea of the offence; and that’s the case when the offence and the punishment have some circumstance in common—in which case the punishment is said to bear an analogy to, or to be characteristic of, the offence. So fourth property that ought to be given (whenever it can conveniently be given) to a lot of punishment is *characteristicalness*.

8. It is obvious, that the effect of this contrivance will be greater the closer analogy is; and the analogy will be closer the more material the shared circumstance is (see 3 on page 43). Now, the most material circumstance that an offence and a punishment can have in common is the hurt or damage that they produce. So the closest analogy—though not the only analogy—there can be between an offence and the punishment assigned to it is their being alike in the

¹ By the English law, several offences—including suicide, and certain kinds of theft and homicide—are punished by a total forfeiture of moveables, not extending to immoveables. In some cases, this is the principal punishment; in others, the only one. The upshot is that if a man’s fortune consists in moveables he is ruined; if in immoveables he suffers nothing.

kind of hurt or damage they produce; and punishment of which that is true is called 'retaliation', in the proper and exact sense of the word. Retaliation, therefore, in the few cases where it is practicable and not too expensive [see Glossary], will have one great advantage over every other mode of punishment.

9. What really acts on the mind is only the *idea* of the punishment, or in other words the *apparent* punishment; all that the real punishment does is to give rise to that idea. So it's the apparent punishment that does all the •work in setting an example, which is the principal objective of punishment, and the real punishment that does all the •mischief. The ordinary and obvious way of stepping up the apparent punishment is by stepping up the real; but it can be done to some extent by other less expensive means. . . . These consist in the choice of •a punishment with a particular quality independent of its quantity, or in •a particular set of ceremonies distinct from the punishment itself and accompanying the infliction of it.

10. . . .The best way for a given quantity of punishment to be made more exemplary is by its having an analogy to the offence. So that is another reason for making the punishment analogous to, or in other words characteristic of, the offence.

11. Punishment, remember, is in itself an expense, an evil, which is why Rule 5 says not to produce more of it than is demanded by the other rules. And that is what happens when any particle of pain is produced that contributes nothing to the intended effect. If a mode of punishment is •more apt than another to produce any such superfluous and needless pain it may be called 'unfrugal'; if •less it may be called frugal. *Frugality*, therefore, is a sixth property to be wished for in a mode of punishment.

12. A perfectly frugal mode of punishment would be one where •no superfluous pain is produced for the person punished and •the operation that gives him pain also gives pleasure to someone else. I mean pleasure of •the self-regarding kind. It goes without saying that pleasure of •the unsocial kind will be given to everyone who is hostile to the offence that the punished person has committed. Now this is the case with pecuniary punishment, as also with confiscation of goods that can then be given to others. The pleasure produced by such an operation is not in general equal to the pain; but it can be so in particular circumstances, e.g. where the person from whom the thing is taken is very rich, and the one to whom it is given is very poor; and in any case the pleasure is always more than can be produced by any other mode of punishment.

13. The properties of exemplarity and frugality seem to have the same immediate goal, though their routes to it are different: both aim at lessening the ratio of the real suffering to the apparent; but exemplarity tends to increase the apparent, whereas frugality tends to reduce the real.

14. So much for the properties to be given to punishments in general, whatever offences they are punishments *for*. Those that follow are less important, either because they only concern certain offences in particular or because they depend on the influence of transitory and local circumstances.

In the first place, the four distinct goals into which the main and general goal of punishment is divisible (see the note on page 92) can give rise to four properties, each of which makes the punishment that has it effective in achieving one of those goals. The principal goal, namely *setting an example*, has already had a particular property assigned to it. There remain the three lesser goals: reformation, disablement, and compensation.

15. A seventh property to be wished for in a mode of punishment is *subserviency to reformation*, i.e. reforming tendency. Any punishment is subservient to reformation in proportion to its **quantity**, because the greater a man's punishment the stronger is its tendency to make him averse to committing any offence, especially one of the kind he has been punished for. But some punishments have a particular reforming effect with regard to certain offences, because of their **quality**; and that gives them an advantage over all other punishments for those offences. This influence will depend on the motive that causes the offence; the punishment most subservient to reformation will be the sort that is most likely to invalidate the force of that motive.

16. Thus, in offences originating from the motive of ill-will the punishment with the strongest reforming tendency is the one that is most likely to weaken the force of the irascible affections [= 'angry feelings']. And in any offence that consists in an obstinate refusal to do something that is lawfully required of the offender, with his obstinacy being maintained by his resentment against those who have an interest in forcing him to compliance, the most effective punishment seems to be confinement to spare diet.

17. With offences that arise from the joint influence of •indolence and •pecuniary interest, the punishment seems to have the strongest reforming tendency is the one that is most likely to weaken the force of the offender's indolence. And in cases of theft, embezzlement, and every sort of fraud the best mode of punishment seems in most cases to be penal labour.

18. An eighth property to be given to a lot of punishment in certain cases is efficacy with respect to disablement—'disabling efficacy', for short. A lot of punishment can have this property to perfection, and with much greater

certainty than the property of subserviency to reformation. Its drawback is that it is apt in general to run counter to *frugality*, because in most cases the only sure way to disable a man from doing mischief also disables him to a large extent from doing good to himself or to anyone else. So the infliction of a punishment that serves the purpose of disablement won't be warranted unless the mischief of the offence is so great as to demand a very considerable lot of punishment for the purpose of setting an example.

19. The punishment with the greatest efficacy of this kind is obviously *death*; the efficacy of that is certain. So it is the punishment specially fitted to cases where the name of the offender, as long as he lives, can keep a whole nation in flame. This will sometimes be the case with competitors for the sovereignty and leaders of factions in civil wars; though the death penalty may seem to savour of hostility more than of punishment when it is applied to offences of such a questionable nature, where criminality depends more on success than on anything else. Also, this punishment is utterly unfrugal, which is one among many objections to the use of it in any but very extraordinary cases.

20. In ordinary cases the purpose of disablement can be met well enough by one or other of the various kinds of confinement and banishment, of which imprisonment is the most strict and effective. When an offence is so circumstanced that it can't be committed except in a certain place—as is the case with most offences against the person—the law can disable the offender from committing it by simply prevent him from being in that place. In any of the offences that consist in the breach or abuse of any kind of *trust*, the goal can be achieved at a still cheaper rate, merely by forfeiture of the trust; and in general *any* offence that trades on some relation the offender has to someone else is subject to disablement

merely by forfeiture of that relation, i.e. of the right to reap the advantages of it. Examples: any offences that consist in an abuse of •the privileges of marriage or of •the liberty of engaging in any lucrative or other occupation.

21. The ninth property is that of subserviency to compensation. If what is wanted is vindictive compensation, this property of punishment will be in proportion to its quantity, i.e. to how severe it is; if lucrative compensation is the aim, this is the special and characteristic property of pecuniary punishment.

22. Next in line is the property of popularity—a very fleeting and indeterminate kind of property that can belong to a lot of punishment one moment and be lost by it the next. By ‘popularity’ I mean the property of being not unacceptable to the bulk of the people among whom it is proposed to be established. Strictly it should be called *absence of unpopularity*; for it can’t be expected that any species or lot of something like punishment it should be warmly acceptable to the people; it is sufficient for the most part if they don’t hate the thought of it. Now, the property of characteristicalness (see 7 above) seems to go as far as any towards reconciling the people’s approval to a mode of punishment¹. . . . The main point of adding this property to the list is to warn the legislator not to introduce any mode or lot of punishment that most of the people are violently opposed to—unless he has a powerful need to do so.

23. The effects of unpopularity in a mode of punishment are analogous to those of unfrugality. The unnecessary pain that makes a punishment unfrugal is most apt to be suffered by the offender. An unpopular punishment also

produces superfluous pain, but mostly suffered by persons who are altogether innocent, the people at large. That is one mischief; and another is the weakness that unpopular punishment is apt to introduce into the law. When the people are. . .dissatisfied with the law, they won’t help in its enforcement. . .and this contributes greatly to the uncertainty of the punishment; which leads to an increase in the frequency of the offence; which is likely in due course to lead to an increase in the severity of the punishment—an addition to the world’s pain that otherwise would be needless.

24. This property must involve some prejudice on the part of the people, which it is the legislator’s business to correct. If the people’s aversion to the punishment in question were based on the principle of utility, the punishment would be wrong on other grounds, and the question of its popularity or unpopularity needn’t arise. So really it is a property not of the punishment but of the people—a disposition to dislike something that merits their approval. . . .

25. The eleventh and last of all the properties that seem to be required in a lot of punishment is *remissibility*. The general presumption is that when punishment is inflicted there is a need for it, that it ought to be inflicted, and that therefore it cannot need to be remitted. But in very special and deplorable cases, it happens that punishment is inflicted where. . .the sufferer is innocent of the offence. At the time of sentencing he appeared guilty; but events since then have brought his innocence to light. When this happens, there’s no help for the part of the punishment that he has suffered already; what is needed is to free him from the part that is yet to come. But is there any yet to come? If

¹ So characteristicalness is useful in a mode of punishment in three ways: •It makes a mode of punishment P easier to bear in mind before it is inflicted; •it enables P to make a stronger impression especially after it has been inflicted, i.e. it makes it more exemplary; and •it tends to render it more acceptable to the people.

there is, it's because the punishment consists in a certain duration of imprisonment, banishment, penal labour, or the like. . . . There is no remission if the punishment consisted in whipping, branding, mutilation, or capital punishment. The most perfectly irremissible of all is capital punishment. Other punishments that can't be remitted can be compensated for; and although the unfortunate victim cannot be put into the same condition, means may be found of putting him into as good a condition as he would have been in if he had never suffered. This may in general be done very effectually where the punishment has been purely pecuniary.

The property of remissibility may appear to be of use when although the offender has been justly punished his good behaviour during the time of his punishment suggests that a part of it should be remitted. But this it can scarcely be, if the punishment is in other respects what it ought to be. The setting of an example is a more important objective than reformation. . . . No reformation on the part of the offender can warrant the remitting of any part of the punishment; if it could, a man could reform immediately and so free himself from most of the punishment that had been regarded as necessary. . . . It's different if the punishment at first assigned was more than was necessary for setting an example, so that a part of it was needless on the whole. This is likely enough to be the case under the imperfect systems that are in operation today; and therefore during the continuance of those systems it may be thought useful to have remissibility on the ground of good behaviour; but this wouldn't be the case in any newly constructed system that conforms to the rules of proportion that I have presented above. . . .

26. Looking over the various possible modes of punishment you'll see that not one of them has all the above properties in perfection. The best that can be done on most occasions is

to compound them, making them into complex lots each of which consists of a number of different modes of punishment put together; the nature and proportions of the parts of each lot depending on the nature of the offence that it is designed to combat.

27. It may be useful to bring together and exhibit in one view the eleven properties listed above. They are as follows.

Two of them are meant to establish a proper proportion between a single offence and its punishment:

(1) Variability.

(2) Equability.

One aims to establish a proportion between several offences and several punishments, namely

(3) Commensurability.

A fourth helps to place the punishment in the only situation in which alone it can be effective, and at the same time to give it the two further properties of exemplarity and popularity, namely

(4) Characteristicalness.

Two others are concerned with excluding all useless punishment, one indirectly, by heightening the efficacy of what is useful, and the other in a direct way:

(5) Exemplarity.

(6) Frugality.

Three others contribute respectively to the three lesser goals of punishment, namely

(7) Subserviency to reformation.

(8) Effectiveness in disabling.

(9) Subserviency to compensation.

Another property tends to exclude an unintended mischief that a particular mode of punishment is liable accidentally to produce, namely

(10) Popularity.

The remaining property is

(11) Remissibility, which tends to palliate a mischief that all punishment is liable to produce accidentally.

Of these properties, **(3, 4, 5, 7, 8)** are more particularly calculated to increase the profit that is to be made by

punishment; **(6, 9, 10, 11)** aim to lessen the expense; and **(1, 2)** equally serve both those purposes.

28. I now come to take a general survey of the system of offences....

Chapter 16: Classifying Offences

[This chapter reflects Bentham's concern with punishment, but is also driven by an interest in classification ('method') as such. It makes for wearisome reading—in full it would occupy 65 pages of the present text—and this version reduces it to about half that length, not using ellipses to indicate all the cuts. In a footnote that was attached to 16, Bentham charmingly admits that it ought to have been even more burdensome:

In this part of the analysis I have deviated somewhat from the rigid rules of the exhaustive method I set out with. . . . The benefit of sticking by them seemed so precarious that I couldn't help doubting whether it would pay for the delay and trouble. Such a method is indeed eminently instructive, but the fatigue of following it out is so great—to the author and probably also to the reader—that it might do more disservice in the way of disgust than service in the way of information. However good for us knowledge (like medicine) is, it's useless if it is made too unpalatable to be swallowed. . . .

The present version takes up the spirit of these remarks, using them as an excuse for severely reducing Bentham's prolixity. This won't be done at the expense of his prized 'method', though the preparer of this version doesn't agree with Bentham's statement, in that same footnote, that 'if there's anything new and original in this work, I owe it to the exhaustive method that I have so often aimed at'.]

1. Five Classes of Offences

·START OF FOOTNOTE·

This chapter tries to put our ideas of offences into an exact method. There are various •particular uses of method, but just one •general one, namely to enable men to understand—i.e. to be acquainted with the properties of—the things that are the subjects of it. Some of these properties are shared with other things; the rest are peculiar [see Glossary]. But the qualities that are peculiar to any one sort of thing are few in comparison with those it shares with other ·sorts of· things. Being told what its difference [see Glossary] is would not tell one much; it needs to be explained also by its genus. . . . When a number of objects. . . are to be considered together as all having a certain agreement denoted by a certain name, the only way to give a perfect knowledge of their nature is by sorting them into a system of parcels, each of which is a part of the whole and perhaps a part of a part of the whole. And the only way to do this is by dividing groups into precisely *two* sub-groups, which are then divided into sub-sub-groups. and so on downwards. . . . To divide the whole group into (for example) *three* sub-groups would not serve the purpose, because all the mind can compare together exactly at the same time are *two* objects. So I shall try to deal in this way with

offences;

or rather, strictly speaking, with

acts having properties that seem to show that they ought to be counted as offences.

The task is difficult; we aren't yet able to do it properly, and perhaps we never will be. [Bentham stresses the language

problem: general terms in common use don't accurately map kinds of objects, so they aren't good devices for reporting one's findings. But rectifying their meanings brings a •risk of not being understood, and inventing new general terms brings a •certainty of not being understood. He continues:] Complete success then is not yet attainable. But even an imperfect attempt may have its use, if only to accelerate the arrival of the perfect system that some maturer age will have the happiness to possess. Gross ignorance sees no difficulties; imperfect knowledge finds them and struggles with them: it must be perfect knowledge that overcomes them.

•END OF FOOTNOTE•

1. Let us first distinguish •acts that are or may be offences from •acts that ought to be offences. Any act may be an offence if those whom the community are in the habit of obeying are pleased to prohibit or to punish it. On the principle of utility, an act *ought to* be made an offence only if the good of the community requires this.
2. The good of the community can't require that an act be made an offence unless it is likely to be in some way detrimental to the community. . . . [The word 'detrimental' occurs on this page and the next, and nowhere else in the work.]
3. If any group of individuals is considered as constituting an imaginary compound body, a community or political state, then any act that is detrimental to any one or more of those members is to that extent detrimental to the state.
4. An act can't be detrimental to a state except by being detri-

mental to one or more of the individuals composing it. These individuals may either be identifiable¹ or unidentifiable.

5. When an offence is detrimental to an identifiable individual, the latter may be either •someone other than the offender or •the offender himself.

6. Offences that are detrimental in the first instance to identifiable persons other than the offender may be called **offences against individuals**—they constitute the first class of offences. . . . [Classified in **11** below.]

7. When it appears that there are persons to whom an act may be detrimental but they can't be individually identified, the circle within which it appears that they may be found is either •smaller than the whole community or •not smaller than the whole community. If it is smaller, then the persons within it may be regarded as composing a body of themselves, a part of the greater body of the whole community. What the members of this lesser body have in common may be either •their residence within a particular place or •some other less openly straightforward principle of union marking them off from the rest; so the offence that harms them may be called an offence against •a neighbourhood or against •a particular class of persons in the community. These **offences against a class or neighbourhood** or **semi-public offences** jointly constitute the second class of offences.² [Classified in **12–14** below.]

8. **Offences that are detrimental to the offender** himself and not directly to anyone else compose a third class, the offences in which might be called 'intransitive' (see **13** on page 45) or (better) 'self-regarding'. [Further discussed in **15** below.]

¹ That is, either by name or at least by an individuating description, e.g. 'the oldest occupant of 12 Brattle Road' or 'the captain of the HMS Victory'.

² [In a footnote Bentham remarks that his class can shade into offences against identifiable persons (when the class or neighbourhood is very small) or into offences against the community (when the class or neighbourhood is very big). Such shadings, he says, are common features of just about all classifications.]

9. The fourth class is composed of acts that ought to be made offences because of the distant mischief they threaten to bring on an unidentifiable indefinite multitude within the community, with no particular individual appearing more likely than any other to be a victim. These may be called **public offences** or **offences against the state**. [Classified in 16–19 below.]

10. A fifth class is composed of acts which can—depending on their circumstances or on the agent’s purposes—be detrimental in any of the ways in which one man’s act can be detrimental to another. These may to be called heterogeneous or **multiform offences**. These can be divided into two great sub-groups: •offences by falsehood and •offences against trust.¹ [Classified in 20–30 below.]

2. Divisions and sub-divisions of them

11. Let us see how these classes may be further subdivided, starting with **offences against individuals**.

A man’s pleasures and his immunity from pains all depend on his own person and on the exterior objects—things or persons—that surround him. So if an offence harms a man it must be either •absolutely, i.e. immediately in his own person or else •relatively, because of some material relation he has to something or someone else. . . .² Now, insofar as a man can derive either happiness or security from any *thing*,

that thing is said to be his property (or at least he is said to have an interest in it); so that an offence that tends to lessen his chances of getting happiness or security from it may be called an offence against his •property. As for other persons: suppose you are well placed to get services from some other person x because of some special connection that you have with him (.e.g. you are paying his wages-), that situation can be regarded as a kind of fictitious or incorporeal item of property that is called your •condition. So an offence that tends to lessen your chance of getting happiness from x’s services may be called an offence against your condition in life. Obviously conditions in life are as various as the relations that constitute them—e.g. those of husband, wife, parent, child, master, servant, citizen of Rome, natural-born subject of England.

Where your chance of services from x depends not on any special connection between you but just on his being well-disposed towards you, we express this fact by crediting you with having a fictitious object of property called your •reputation. So an offence that lessens your chance of getting happiness or security from the services of persons who are related to you only as x is may be called an offence against your reputation. It appears, therefore, that if an offence harms an individual, it must be in respect of his •person, his •property, his •condition in life, or his •reputation. [Bentham goes on to point out that a single act could be an

¹ [Bentham has here an enormous footnote in which he declares that ‘maturer views’ have shown him how he might get rid of ‘this anomalous excrescence’, the fifth class, which ‘appears all too plainly as a kind of botch’ in comparison with the other four classes. He sketches how this might be done, and seems to imply that he will stick with the fifth class because ordinary language demands it. ‘Such is the fate of science and more particularly of the moral branch’; classification ‘must be ruled by nomenclature, the work of popular caprice’. He consoles himself with the thought that all the material gathered into the fifth class can be variously slotted onto places in the other four.]

² [In another footnote, Bentham addresses those who are in difficulties here because of some kind of scruple about the word ‘relation’. He explains at length how it ‘may be got rid of—essentially be replacing the likes of ‘Person x has a material relation to object O’ by something like ‘Object O can cause pleasure (or pain) in x’.]

offence against someone's person *and* property, or against his person *and* reputation; he doesn't mention any other combinations. He adds a footnote, dated 1822, presenting two after-thoughts about this present classification. **(a)** It ought to have included offences against *power*, on a par with offences against *property*. **(b)** It would have been better to put 'condition in life' further down in the classification, treating it as 'a compound of property, reputation, power and right to services'.]

12. We come next to **semi-public offences**. These are ones whose victims are (at the time of speaking) not identifiable, which means that the offence's mischief still lies in the future. Our name for it is *danger*. When an act brings danger to a whole neighbourhood or other class of persons, either

- he didn't intend to do this, in which case the danger, when converted into actual mischief, is called a 'calamity'; or
- he did intend to create the danger, meaning this as harm that didn't require the occurrence of any calamity, his act may be said to come from mere 'delinquency';

so that's what offences of mere delinquency are: offences tending to produce danger that disturbs the security of some class of persons smaller than the whole community.

13. Offences through calamity can be classified according to the nature of the calamities that can befall a man, and the various things that are of use to him. These will be considered in another place [the long footnote to **33** below]. (Pestilence may serve as an example. Without intending to create such a calamity, a man may expose a neighbourhood to the danger of it by breaking quarantine. . . .)

14. Semi-public offences of mere delinquency can be further classified in a way that runs parallel to the classification of offences against individuals. . . .

15. We come next to **self-regarding offences**. . . . This class will not for the present give us much trouble, because it's obvious that a man can harm •himself in any way that he can be harmed by •someone else; so any basis for subdividing the latter class will also serve for subdividing the former. Two questions arise:

- (1)** What acts produce mischief of this sort?
- (2)** Among acts that *do*, which would it be worthwhile to treat as offences?

The answers to these—and especially to **(2)**—are too unsettled and too open to controversy for any classification to be based on them.

16. Public offences can be sorted into eleven sub-classes. There are offences against. . .

- . . . external security,
- . . . justice,
- . . . the preventive branch of the police,
- . . . the public force,
- . . . the positive increase of national happiness,
- . . . the public wealth,
- . . . population,
- . . . national wealth,
- . . . sovereignty,
- . . . religion,
- . . . the national interest in general.

How these sorts of offences connect with one another and with the interests of the public. . . . may be conceived as follows.

17. Mischief that affects the interests of the whole public must be produced either •by influence on the operations of government or •by other means.¹ [Bentham says that any harm that an individual can do, alone or with the help of people or things that are internal to his community—and without influencing the operations of government—is almost certain to be harm to identifiable individuals or sub-groups within the community, and thus won't count as harm to 'the public' in Bentham's present sense of that phrase. Any exceptions to this will be minor and fairly negligible. He continues:] The only non-negligible mischief that can be made to impend indiscriminately over all the members of the community is the complex kind that results from war, and is produced by external adversaries. Because they may have been provoked or invited or encouraged to invade a country by one of its own citizens, a man may bring down very heavy mischief on his whole community in general, without taking a part in any of the injuries that war brings to particular individuals.

Now for the mischief that an offence can bring on the public by its influence on the operations of the government. This may be done **(i)** by its immediate influence on those operations themselves, **(ii)** less immediately by influencing the instruments through which ·or through whom· those operations are performed, or **(iii)** in a still more remote way by influencing the sources from which such instruments

are derived. Let us start with **(i)** the operations of government. To the extent that they square with the principle of utility, their tendency ought always to be •to save the community from mischief or •to add to the sum of positive good.² Mischief must come either from external adversaries or internal adversaries or calamities. There's no need for further classification of mischief from external adversaries. As for mischief from internal adversaries: the procedures for averting this divide into

- those that can be followed before any particular harmful design has been discovered, this being the work of the police, and
- those that can be followed only in the light of the discovery of some such design, this being the province of justice.

·START OF FOOTNOTE·

The functions of justice and of the police often run into one another; and it would be a badly managed business if officers of the police didn't occasionally act as officers of justice. But the ideas of the two functions can be kept distinct, and I don't see where the line can be drawn other than where I have drawn it. [Bentham goes on to reflect on the word 'police' as being 'of Greek extraction but apparently of French growth'. He speaks of being forced by the lack of suitable words 'to reduce the two branches here specified into one';

¹ Note that I have introduced the idea of *government* without any preparation. That there are and have to be governments is obvious and incontestable. If you want to see reasons for the need for governments, read **17** on page 87 where they were presented for purposes of illustration.

² For examples, see the long note starting on page 133. This branch of the business of government. . . is of comparatively recent date in the calendar of political duty. It wasn't for *this* that the uneducated many could originally have submitted to the dominion of the few. What first cemented societies together was the dread of evil, not the hope of good; necessities always come before luxuries. The state of language marks the progress of ideas. •The military department has had a name time out of mind, and so has •the department of justice. The power whose role is to prevent mischief has only recently acquired a name, and a loose one at that—'the police'. No special name, however inadequate, seems yet to have been devised for the power whose role is to introduce positive good.

and it turns out that his topic is the dichotomy—which he seems to think (wrongly) he has already mentioned—between the crime-preventing and calamity-preventing branches of the police.]

·END OF FOOTNOTE·

The **(ii)** instruments that government has to work with, whether in averting evil or in producing positive good, must be either persons or things. Those whose special role is to guard against mischief from adversaries in general but especially from external adversaries can be marked off from the rest under the collective label ‘the public military force’ or ‘the military force’ for short.¹ The rest may be brought under the general label ‘the public wealth’. The **(iii)** sources or funds from which these instruments. . . .are derived divide into

persons, who are taken out the total population of the state,

so that the greater the population, the greater *cæteris paribus* may be this branch of the public wealth, and the less, the less; and

things, most of which are commonly taken out of the sum total of things that are the separate properties of the individual members of the community, the sum of

which properties may be called the **national wealth**, so that the greater the national wealth, the greater *cæteris paribus* may be this remaining branch of the public wealth, and the less, the less.² A further point: when an individual has a pernicious influence on the operations of the government, it must be by •impeding the operations of government or by misdirecting them; i.e. by •causing operations not to be performed that ought to be performed or by •causing operations to be performed that ought not to be performed. Final point: we use the word ‘government’ as a label for to the total assemblage of the persons who perform the various political operations I have mentioned. Usually some one of these or some sub-group of them have the role of assigning tasks to the others, determining how each should conduct himself in performing his duties, and sometimes even taking over from him.³ Where there is any such person, or body of persons, he or it may be called ‘the sovereign’ or, where grammar demands it, ‘the sovereignty’.

·DEFINITIONS OF THE OFFENCES LISTED IN 16 ABOVE·

By offences against **external security** we may understand offences that tend to harm public through the hostilities of foreign adversaries. By offences against **justice** offences that tend to impede or misdirect the operations of the power

¹ Pernicious enterprises that come backed with more physical force than the officers of justice are likely to have at their command are most apt to originate from abroad. Mischief that is perpetrated by that much force may therefore be regarded in general as the work of external adversaries •even if in fact it is home-grown•. When the perpetrators are in such force as to defy the ordinary efforts of justice, they loosen themselves from their original nationality in proportion as they increase in force, till eventually they are regarded as being no longer members of the state but as tantamount to foreign enemies. Give enough force to robbery and it swells into rebellion; give enough permanence to rebellion and it settles into hostility [here = ‘war’].

² In common speech this distinction between •public wealth and •national wealth is not well settled; and that is not surprising because the two ideas are so often (but not always) interchangeable. But the language seems not to provide any two words that would express the distinction better. . . .

³ I say ‘Usually’ this is the case; not ‘Always’. In the Netherlands, among the Swiss or even the Germans, where is that one assembly that has absolute power over the whole? Where was there in the commonwealth of ancient Rome? . . .

whose role is guard the public against the mischiefs resulting from the delinquency of internal adversaries, doing this in ways that don't come into play until after the discovery of some design of the sort they are supposed to prevent. By offences against **the preventive branch of the police**, offences that tend to impede or misdirect the operations of the power whose role is to guard against •mischiefs resulting from the delinquency of internal adversaries, by means that come into play beforehand; or against •mischiefs that might be caused by physical calamities. By offences against **the public force**, offences that tend to impede or misdirect the operations of the power whose role is to guard the public from mischiefs resulting from •the hostility of foreign adversaries and. . . .from •the delinquency of internal adversaries.

By offences against **the increase of national happiness** we may understand offences that tend to impede or misapply the operations of the powers that are employed in conducting various services that are meant to add to the stock of public happiness. By offences against **the public wealth**, offences that tend to lessen the amount—or misdirect the application—of the money and other articles of wealth that the government reserves for the purpose of supporting those services. By offences against **population**, offences that tend to lessen the sum total of the members of the community or numbers or impair their political value. By offences against **the national wealth**, offences that tend to lessen the quantity—or impair the value—of the things that compose the separate properties or estates of individual members of the community. Offences against **sovereignty** are offences that impede or misdirect the operations of the different departments of government.

18. I'll come to offences against religion shortly, ·but I need to give an explanation first·. For combating offences of the other kinds I have listed, the state has two great

engines—punishment and (much more rarely used) reward. But those to whom the management of these engines is entrusted can't always be sure •who should be punished or rewarded or •whether a man who deserves punishment will actually get it. This makes it seem useful. . . .to get the people to believe in the existence of a power applicable to the same purposes, and not liable to the same deficiencies; the power of a supreme invisible being who can be relied on to promote the ends of the government; and to keep up and strengthen this expectation among men, this power is spoken of as being the work of a kind of allegorical personage called 'religion'. So offences against **religion** are offences that tend to diminish or misapply the influence of religion, i.e. to diminish or misapply the state's effective power to combat any of the above-listed kinds of offences. [Bentham has a footnote here, saying •that he is talking about religion's influence on happiness in the present life, our beliefs about an after-life being no concern of the legislator; •that the topic is offences against (fictitious) religion, not offences against (real) God, because there's no way we can affect God; and •that he doesn't put offences against religion first (as is often done in a feeble attempt to show reverence) because the only way to understand the mischief that they tend to produce is *through* the mischiefs that result from the various other sorts of offences.]

19. Any act of which this is true:

It appears to be liable to affect the state in one or more of the above-listed ways, . . .but it's not clear in which of these ways it will affect the state or, if several, in which of them it will affect the state most,

can be called an offence against **the national interest in general**, that being the eleventh and last division of the class of offences against the state.

·END OF DEFINITIONS OF THE OFFENCES LISTED IN 16 ABOVE·

20. We now come to **multiform offences**, the fifth class. These, I repeat, are offences either •by falsehood or •concerning trust. Offences by falsehood include:

- simple falsehoods
- forgery
- impersonation
- perjury.¹

Let us see what these four kinds of falsehood have in common and what differentiates them.

21. Offences by falsehood all consist in some abuse of the faculty of discourse (or rather—as we’ll see later—of the faculty of influencing the beliefs of other men, whether or not by discourse). The use of discourse is to influence belief, in such a way as to give other men to understand that things are as they are really. Falsehoods all give men to understand that things are otherwise than as in reality they are.

22. Impersonation, forgery, and perjury are each distinguished from other ways of uttering falsehood by certain special circumstances; and when a falsehood doesn’t have any of those circumstances it can be called ‘simple falsehood’. These circumstances are •the form in which the falsehood is uttered, •the circumstance of its relating or not to the identity of the person who utters it, and •the solemnity of the occasion on which it is uttered. . . .

23. We come now to the sub-divisions of offences by falsehood. These will bring me back into the regular track of analysis that I pursued without deviation through the four preceding classes. [That is the track that he admitted to leaving in the footnote to **20**.]

[If an offence by falsehood. Bentham says, harms identi-

fiable individuals or unidentifiable members of a sub-group of members of the state, the harm will be one or more of the four listed near the end of **11** above; if on the other hand it tends to the detriment of the whole state, it must belong in one of the pigeon-holes listed in **16** above, and he lists the first ten of them.]

24. [Bentham now devotes half a page to remarks about names that are commonly given to various sorts of offence by falsehood, emphasising that there are no firm rules at work in this nomenclature. Unadorned falsehood isn’t an offence at all. As for falsehood-in-circumstances, he concludes:] there is hardly any sort of pernicious effect that it can’t be instrumental in producing. So listing falsehoods under separate names as distinct offences is something we do in compliance with the laws of language rather than in consideration of the nature of the things themselves. . . .

25. We come now to offences against trust. A trust is •a state of affairs• where

one party is bound to perform some particular act for the benefit of another, in the exercise of some power or some right that is conferred on him.

•START OF FOOTNOTE•

[A vast footnote tackles powers and rights. They often go together, Bentham says, but not always:] You may have a right to the services of the magistrate: but as a private person you have no power over him; all the power is on his side. [It would take too long to deal thoroughly with ‘power’ and ‘right’, he says, but he presents ‘a general idea’ of how he understands those two words and ‘possession’ and ‘title’ and ‘the •names of• the whole tribe of fictitious entities

¹ [Bentham has a longish footnote admitting that this four-part list is opportunistic and ‘not regularly drawn out’, i.e. not based on basic principles about how classification should be done. He explains that there are ‘infinitely’ many kinds of falsehood, and it just happens that some of them have ‘engaged a peculiar share of attention on the part of the institutors of language’.]

of this sort'. He says that each of these fictitious entities is an upshot of 'the legislator's will regarding a given act', and •goes into the different ways in which a 'will' can be expressed—positive and negative commands, and so on. Out of all this he gets a conclusion about rights (powers drop out):] For every right that the law confers on one party it thereby imposes a duty or obligation on some other party; but the law can impose duties that have no corresponding rights, namely an agent's duties towards himself.

[The footnote mentions *property*, a concept that appears in 'the system of rights and powers'. A complete classification of forms of *property* would be needed, Bentham says, in a treatise on 'the civil branch of the art of legislation', but not in the present work regarding 'the penal branch'. He'll discuss the line between the two in chapter 17. Then:]

I might have cut this short by following the beaten track of definition, saying in the usual way that 'a power is a faculty which. . . ' and 'a right is a privilege which. . . ', and so on. But this kind of classification is inane, as I have already pointed out in another work. Powers and rights are not *things* that belong to some higher genus: they are •fictitious entities whose import can be brought out only showing how they relate to •real ones. The same holds for duty, obligation, and many others of the same sort.

•END OF FOOTNOTE•

Or more fully:

A party x is said to be invested with a trust when, being invested with a power or a right, there is a certain behaviour which, in the exercise of that power or that right, he is bound to maintain for the benefit

of some other party y.

In such a case, x is called a 'trustee'; no name has yet been found for y, but I shall fill the gap by giving a new and more extensive sense to the word 'beneficiary'.

The trustee is also said to have a trust 'conferred' or 'imposed' on him, to be 'invested' with a trust, to have had a trust given him to 'execute', to 'perform', to 'discharge', or to 'fulfil'. The beneficiary is said to have a trust 'established or created in his favour', and so on through a variety of other phrases.

26. Here are three things that are sometimes said:

- (a) A trust is a species of condition;¹
- (b) A trust is a species of property;
- (c) A condition is a species of property.

[Bentham now devotes *four pages*—all within **26**—to explaining why he doesn't allow any of (a)–(c) to make a difference to his classification of offences. We can safely excuse ourselves from nearly all of this; but two things he says about *property* should be reported. This is one:]

•To speak of one human creature as being the property of another would shock the ear everywhere but where slavery is established. . . . Among the first Romans, the wife was the property of her husband, the child of his father, the servant of his master. In the civilised nations of modern times, the two first kinds of property are altogether at an end; and we must hope that the third is also moving towards extinction. The husband's property is now the company of his wife, the father's the guardianship and service of his child, the master's the service of his servant.

¹ Strictly speaking that is not worded correctly. The fictitious entities labelled by the two abstract terms 'trust' and 'condition' can't be related as genus and species. To speak with perfect precision, we should say that *he who is invested with a trust is on that account spoken of as being invested with a condition*, namely the condition of a trustee, this being analogous to the condition of a husband or a father.

[The other point about *property* implicitly criticises the last sentence of the passage just quoted. Bentham objects to counting among someone's 'property' such items as his *condition of being a trustee*, his *reputation*, his *liberty*; these are 'ideal beings', 'fictitious entities', sometimes called (by their friends) 'incorporeal beings'. Strictly speaking, he says, only physical things should count as property. He winds up:] These difficulties being cleared up, I now proceed to exhibit an analytical view of the various possible offences against trust.

27. [In the original, 27 is also more than four pages long. One sentence into it, Bentham has a footnote confessing that he will sometimes speak of a trust as something that a person might possess, as though the trust were one thing and the person another. He pleads necessity: 'Striving to cut a new road through the wilds of jurisprudence, I find myself continually distressed for lack of tools that are fit to work with. . . . All I can do is to make new ones in cases of absolute necessity, and for the rest to patch up the imperfections of the old.'] Offences against trust can first be divided into two:

- (i) offences regarding who has the trust; and (ii) offences regarding how the trust is exercised.

I shall discuss these in order.

(i) [Bentham says that any *offence* of this kind must bring harm to someone, and it must be the trustee or the beneficiary. He starts with the trustee, taking first the case where •being 'invested with' the trust (as Bentham puts it) is a benefit to the trustee because of the powers or rights that go with the trust, and •the trust ought by law to subsist, i.e. legislator meant that it should be established'. We are then presented with a number of scenarios reached by successive yes/no carving up of states of affairs; but all Bentham does with each of these is to say what the best label is for the offence in that case. Start from the present moment, and

let T be the trustee in question and O the offender. If T hasn't yet been invested with the trust, then O's offence will consist either in •blocking T's getting it or •not doing his job in enabling T to get it. If T has already been invested with the trust, O's offence will consist in wrongly divesting T of it. Each of these cases splits into three sub-cases, depending on whether O •leaves the trust empty or •gives it to someone other than T or •takes it himself. Bentham provides a label for the offence for each of these sub-cases.

He then turns to the case where the trust 'is not one that ought to exist'. In that case, he says, putting someone *into* it must be an offence, its label depending on whether O puts himself or someone else into it. Whether it is an offence to deprive a man of a trust that ought not to exist—that, Bentham says, depends on how you go about it.

[Bentham now turns to the case where the trust is a burden for the trustee because of the duties it involves. If it's a burden to the trustee and does no good for anyone else, then it ought not to exist, and there's no offence in depriving someone of it. If it is entitled to exist because its burden to the trustee is outweighed by its good to the beneficiary, then the various offences regarding who is invested with the trust are exactly parallel to those treated two paragraphs back. Finally:]

Lastly, with regard to harm that may come to the beneficiary, we find on examination that every sort of offence that wrongs the trustee can also wrong the beneficiary. The wrongs are very different in the two cases, but the same general labels will be applicable in both. If the beneficiary is liable sustain a harm resulting from the quality of the trustee, this must result either from the trust's •being held by someone who ought not to have it or •not being held by someone who ought to have it; and it makes no difference whether for the trustee the trust is a benefit or a burden. . . .

(ii) So much for offences that concern who has a trust; I now come to offences regarding how a trust is exercised. If you are in possession of a trust, the time for your acting in it must be either past or future (set the present moment aside, for simplicity's sake). If it is **past** and your exercise of it squared with the purposes for which the trust was instituted; in that case there has been no offence ·and thus nothing for me to talk about here·; so let's consider the case where your past execution of the trust has not been in accordance with its purposes. [Bentham now rattles through some species of this state of affairs: the failure was yours alone or partly due to someone else; it consisted in wrongly doing something or in wrongly not doing something; the harm was suffered •by the trust's intended beneficiary or •by someone else. Bentham provides a label for each of these, and a longish footnote defending •the last of those distinctions. He continues:] If the time for your acting in the trust lies in the **future**, any act that tends to put your conduct at odds with the purposes of the trust must either •cause it to infringe the trust actually and in its outcome or •produce a chance of its doing so. In the former of these cases, the offence must fall into one of the categories I have listed with past offences. In the latter case, the blame must lie either with yourself alone or with some other person or with both together, as before. If another person is involved, the acts by which he tends to make you act contrary to the trust must act either on yourself or on other objects at large. If they exercised on yourself, they must operate immediately either •on your body or •on your mind. In the latter case, they must tend to deprive you the knowledge or the power or the inclination (see the long note starting on page 133) needed for you to act in accordance with the trust's purposes. If their target is your inclination to fulfill the trust, it must be by applying to your will the force of some seducing motive

(See chapter 11 § 29). Lastly, this motive must be either

- coercive, a threat of mischief, or
- alluring, an offer of advantage.

An offence in this last category is called *bribery*. None of those cases gets a label of its own except for the last, *bribery*. [And that, Bentham explains, doesn't really need a name of its own. For *any* offence O there is also a possible 'accessory offence' (see footnote to 31 below) that consists in inducing-x-to-commit-O; there are too many to be separately named; but inducing-x-to-abuse-a-trust has attracted enough attention to get a name of its own. [Bentham doesn't comment on how greatly this narrows the ordinary-language range of 'bribe(ry)'.] He concludes:] So we have thirteen sub-divisions of offences against trust:

- (1) Wrongful non-investment of trust.
- (2) Wrongful interception of trust.
- (3) Wrongful divestment of trust.
- (4) Usurpation of trust.
- (5) Wrongful investment or attribution of trust.
- (6) Wrongful abdication of trust.
- (7) Wrongful detraction of trust.
- (8) Wrongful imposition of trust.
- (9) Negative breach of trust.
- (10) Positive breach of trust.
- (11) Abuse of trust.
- (12) Disturbance of trust.
- (13) Bribery.

[The list is given here in case you are interested. It didn't seem worthwhile to add to the clutter of 27 by giving each of them when it first shows up. Item (7) is taken by Bentham from Latin; he means by it 'wrongful failure to take on the role of trustee'.]

28. That list covers all the ways in which a beneficiary can receive identifiable specific harm through the conduct of the trustee; but there's a kind of act by which a trustee can

be put in some danger of receiving harm, even if we can't identify the nature of the harm or the occasion where he is in danger of receiving it. I'm talking about acts—of any kind—that increase the trustee's disposition to accept and act upon a bribe. It seems that the only acts of this sort that can be described in a way that fits them in all places and at all times are *acts through which the trustee lives beyond his means*. . . . Considered as offences, then, they should be put into the class of self-regarding offences (see **32** on page 28).

[That ellipsis replaces the following sentence, here quoted verbatim: 'But in acts of this nature the prejudice to the beneficiary is contingent only and unliquidated; while the prejudice to the trustee himself is certain and liquidated.']

29. The subdivisions of offences against trust are perfectly analogous to those of offences by falsehood: the trust may be private, semi-public, or public; it may concern property, person, reputation, or condition; or any two or more of those at once. . . . And, as before, some of these special cases have their own names and some don't.

30. You may want to ask 'What is the relation between •falsehoods and •offences concerning trust?' The answer is that they are altogether disparate: neither is a special case of the other. But they do have a certain formal similarity. Falsehood can enter as a circumstance into the composition of any sort of offence, including ones concerning trust; and breach and abuse of trust are circumstances that can enter as accidental concomitants into the composition of any other offences, those involving falsehood included.

3. Further subdivision of Class 1: Offences Against Individuals

31. Returning now to the first class [last discussed in **11** above], let us take various subclasses of it that I have exhibited and split them into their respective genera, i.e. into even smaller classes that can be given labels most of which are already current among the people.¹ In this place the classificatory process must stop. To apply it in the same regular form to any of the other classes seems scarcely practicable:

- to semi-public and public offences [classes 2 and 4] because of the interference of local circumstances;
- to self-regarding offences [class 3] because that would require premature decisions on points that may appear open to controversy;
- to offences by falsehood and offences against trust [class 5] because this class depends so much on the three former.

What remains to be done in this way regarding these four classes will require discussion, so it will be better dealt with in the body of the work [see Glossary] than in a preliminary part that is only engaged in drawing outlines.

32. An act that disturbs the happiness of some individual has effects that are either

- simple, i.e. affecting him in only one of the respects: person, reputation, property, condition; or
- complex, i.e. affecting him in two or more of those respects at once.

I shall of course start with those that are simple in their effects.

33. . . . A man's **person** is composed of two different parts,

¹ Through all this I shall omit offences of an accessory nature, except for the occasional one that has obtained a current name and seems too much in vogue to be omitted. An accessory offence is an act which •isn't the immediate cause of the mischief but •is causally connected to it.

or reputed parts, his body and his mind. Acts that exert a pernicious influence on his person, whether on the corporeal or on the mental part of it, will operate on it either •immediately and without affecting his will, or •mediately through the intervention of his will, i.e. by means of the influence that they cause his will to exercise over his body. If with the intervention of his will, it must be by mental coercion, i.e. causing him •to will to act—and thus •to act—in a way that it is disagreeable or otherwise pernicious to him to act. The enforced way of acting may be positive or negative. [Bentham subdivides further, in terms of whether what is caused is •pain of body ‘or only •pain of mind’; and whether the coercive act causes the disagreeable conduct D •directly or •by putting the victim in a place where he can’t get out of performing D. The positive/negative distinction runs through all this, and Bentham says something interesting about it:] If he is prevented from being in one place, he is thereby confined to another. The earth’s surface can be conceived to be divided into two parts; if the part he is confined to is smaller than the part he is excluded from, his condition may be called ‘confinement’; if larger, ‘banishment’. [He then bustles on through some more dichotomies: The harm done to a man by an act—whether or not through his will—will be either •mortal or •not mortal. If not mortal, it will be either •reparable (temporary) or irreparable (permanent). And any pain the victim suffers will be either •actual suffering or •a pain of apprehension. If a pain of apprehension, either the offender himself is represented as intending to bear a part in the production of it, or he is not. In all this, Bentham sprinkles the labels as he goes, but we can settle for his final list of them:] And thus we have nine genera or kinds of

personal injuries:

- (1) Simple corporal injuries.
- (2) Irreparable corporal injuries.
- (3) Simple injurious restraintment.
- (4) Simple injurious compulsion.¹
- (5) Wrongful confinement.
- (6) Wrongful banishment.
- (7) Wrongful homicide.
- (8) Wrongful menacement.
- (9) Simple mental injuries.

·START OF LONG FOOTNOTE·

I explained in 31 why I am not going through •semi-public or •self-regarding offences here; but you might like to see some sort of list of them. . . . Such lists are seen to best advantage under the headings of the various genera of •private •extra-regarding offences to which the •semi-public and •self-regarding offences respectively correspond. In all this my topic is the kinds of harm that acts can cause; I’m not considering which of these *should* be punished. . . .

A. Semi-public offences through calamity. Calamities by which men’s persons or properties can be affected are these: •Pestilence or contagion. •Famine and other kinds of scarcity. •Mischiefs caused by infants, idiots, or maniacs who haven’t been properly taken care of. •Harm done by noxious animals, such as beasts of prey, locusts, etc. •The fall of large masses of solid matter, such as decayed buildings, or rocks, or masses of snow. •Inundation or submersion. •Tempest. •Blight. •Fire. •Explosion. A man may be guilty of an offence if any imprudent act of his causes any of those calamities, or if he could and should but doesn’t act so as to prevent them.

¹ Injurious restraintment at large, and injurious compulsion at large, are here styled simple, in order to distinguish them from confinement, banishment, robbery, and extortion, which are often merely special cases of (1) or (2). . . .

B. Semi-public offences of mere delinquency. A whole neighbourhood may be made to suffer. . .

- . . . simple corporal injuries,

i.e. to suffer in health by offensive or dangerous trades or manufactures, by selling or falsely praising unwholesome medicines or provisions, by poisoning or drying up springs, destroying aqueducts, destroying woods, walls, or other defences against wind and rain, by any kind of artificial scarcity, or by any other calamities intentionally produced.

- . . . simple injurious restraint and simple injurious compulsion,

e.g. using threatening hand-bills or threatening discourses, publicly delivered, to oblige a whole neighbourhood to join (or not to join) in illuminations, acclamations, outcries, invectives, subscriptions, undertakings, processions, or any other mode of expressing joy or grief, displeasure or approbation. . . .

- . . . confinement and banishment,

by spoiling roads, bridges, ferry-boats, by destroying or unwarrantably pre-occupying public carriages or houses of accommodation.

- . . . menacement,

e.g. by incendiary letters and tumultuous assemblies, by newspapers or hand-bills threatening vengeance against particular groups of persons, such as Jews, Catholics, Protestants, Scotchmen, Gascons, Catalonians, etc.

- . . . simple mental injuries,

such as distressful, terrifying, obscene, or irreligious exhibitions, exposure of sores by beggars, exposure of dead bodies, exhibitions or reports of counterfeit witchcrafts or apparitions, exhibition of obscene or blasphemous prints, obscene or blasphemous discourses held in public, spreading false news of public defeats in battle, or of other misfortunes.

C. Self-regarding offences against person. •Fasting. •Abstinence

from sexual activity, self-flagellation, self-mutilation, and other self-denying and self-tormenting practices. •Gluttony, drunkenness, excessive sexual activity, and other species of intemperance. •Suicide.

·END OF LONG FOOTNOTE·

34. We come now to offences against **reputation** merely. •If someone gets others to think that you have been guilty of acts of the sort that cause a man to lose the good will of the community, this is *defamation*. •If someone shows his own lack of good will towards you, even if he does this unjustly and in an unlawful way that may in a manner force others to withdraw from you a part of their good will; that's just the constitution of human nature, and the force of prejudice. When he does this by words, or by actions whose only effect is one that words could have produced, the offence may be called *vilification*. . . . So we have two genera or kinds of offences against reputation, namely defamation and vilification. (Offences of vilification that go beyond the uttering of words or their equivalent are *compound* offences against person and reputation together.)

35. Of all the ways in which one man's **property** can suffer through the delinquency of someone else, we can set aside the special case in which this involves a breach of trust on the offender's part; and turn to all the others. Offences against property can be divided into those that concern •the legal possession of it, or right to it, and those that concern only •the enjoyment of it, i.e. the exercise of that right. The former of these includes wrongful non-investment, wrongful interception, wrongful divestment, usurpation, and wrongful attribution; and in each case if falsehood was at work the offence also counts as fraudulent. . . . [A short but complex and difficult passage about 'wrongful interception' can safely be by-passed, except for an interesting footnote that it leads

to, and that Bentham has already mentioned on page 3.]¹

Now for offences against property that concern only the enjoyment of the object in question. This object must be either •a *service*. . . .that some person should have rendered, or •a *thing* of some kind. In the former case the offence may be called ‘wrongful withholding of services’, of which breach of contract is just one species. . . . The latter case, where

an act by someone else O leads to your losing most or all of your enjoyment or occupation of some physical thing x, *not* by affecting your own intrinsic physical condition,

divides into

- (i) the case where O does this by changing x’s intrinsic condition and
- (ii) the case where he does it by changing x’s exterior situation with respect to you, i.e. by putting x out of your reach.

In (i) he either destroys x or damages it. Moreover, if an act of O’s is seen as lessening x’s value to you, even if there has been no perceptible damage, his act is commonly regarded as an offence that may be called ‘wrongful using’ or ‘wrongful occupation’. In (ii) the offence can be called ‘wrongful detainment’, and special cases of it have other names, depending

on •whether the detainment is permanent or temporary and on •whether, if it is permanent, it is maintained in defiance of the law. If it is, it seems to fit the idea commonly annexed to the word ‘embezzlement’.² [Bentham now devotes more than a page to ‘wrongful occupation’. It has to do with whether the offender had help, and if he did how he got it, e.g. whether by threats, fraud, etc. Also, if by threats, whether they were positive or negative. And whether a breach of trust was involved, and if so how. In all this, he has been assigning labels along the way, and then he winds up with a list of them:] After these exceptions—[namely of offences that are better housed elsewhere in Bentham’s classification]—we have thirteen genera or principal kinds of offences against property:

- (1) Wrongful non-investment of property.
- (2) Wrongful interception of property.
- (3) Wrongful divestment of property.
- (4) Usurpation of property.
- (5) Wrongful investment of property.
- (6) Wrongful withholding of services.
- (7) Wrongful destruction or damaging.
- (8) Wrongful occupation.
- (9) Wrongful detainment.
- (10) Embezzlement.

¹You might think that when a man owes you a sum of money, the right to the money is yours already, and that what he is withholding from you is not •the legal title to it, possession of it, or power over it, but only •the physical possession of it or power over it. But a more accurate examination shows that this is not so. What is meant by ‘payment’ is always. . . .an expression of an act of the will, and not a physical act. . . . A man who owes you ten pounds takes up a handful of silver to that amount and puts it on the table in front of you. If then by words or in some other way he conveys that he wants you to take up the money and do what you like with it, he is said to have *paid* you; but if he lays the money down intending to count and examine it and then take it up again, he has not *paid* you; yet what is physically done with the money is the same in both cases. Until he expresses a will to that effect, what you have is not the legal possession of the money or a right to the money, but only a right to have him. . . .compelled to do something that will count as his paying you. . . . [Then a paragraph on possible legal complications, followed by:] This matter would have appeared in a clearer light if it had been practicable for me to go into a full examination of the nature of property;. . . .but everything cannot be done at once.

² In trying to show the meaning of this and other common names of offences I am speaking with the utmost diffidence. In fact the meaning given to them is commonly neither determinate nor uniform, so that no definition by a private person can be perfectly exact. Fixing their sense is the role of the legislator.

- (11) Theft.
- (12) Fraud.
- (13) Extortion.¹

I now turn to offences that are complex in their effects. Regularly, indeed, I should come here to offences against a man's **condition**; but I can do that better if I first deal with offences by which a man's interest is affected in two of the preceding ways at once. [The discussion of offences against a man's condition will occupy **38-55**.]

36. First, then, with regard to offences that affect *person and reputation* together. When a man affects someone else's person in a way that injures the victim's reputation, he is aiming at either •his own immediate pleasure or •the sort of reflected pleasure that can be gained from the suffering of another. The only significant immediate pleasure that can play this role is the pleasure of the sexual appetite. If this pleasure is gained, it must be gained

- against the consent of the victim (rape), or
- with the victim's consent, obtained freely and fairly (·no offence·), or
- . . . obtained freely but not fairly (seduction), or
- . . . obtained not even freely (forcible seduction).

If the offence has gone the length of consummation, it takes one or other of the names just given; if it hasn't gone that far, then in any of the above cases it can be labelled as 'simple lascivious injury' [approximately = 'sexual harassment']. Lastly, if a man injures you in your reputation by actions that affect

your person, doing this to get pleasure from contemplating your pain, either

- he actually harms your body ('corporal insult') or
- he doesn't get further than threats ('insulting menacement').

So we have six kinds of offences against person and reputation together:

- (1) Corporal insults.
- (2) Insulting menacement.
- (3) Seduction.
- (4) Rape.
- (5) Forcible seduction.
- (6) Simple lascivious injuries.²

37. Secondly, with respect to offences that affect *person and property* together. I have already said that a man's title to property may be unlawfully taken away or acquired through force against his person; so we have 'through-force' special cases of items in the 13-item list in **35**. [Bentham mentions some of these, and reports on the lack of special names for most of them, except for the original names with 'Forcible' put in front. He also notes some differences in nomenclature depending on whether the property in question is 'moveable' or 'immoveable'. He ends up with this:] And thus we can distinguish ten kinds of offences against person and property together [each ellipsis. . . replaces 'Forcible']:

¹ **Semi-public offences** ·that are analogous to these·: (1) Wrongful divestment, interception, usurpation, etc. of valuables that are the property of a corporate body or are available for common use throughout •a neighbourhood (parish churches, altars, relics, and other articles appropriated to the purposes of religion) or throughout •the nation (mile-stones, market-houses, exchanges, public gardens, and cathedrals). (2) Starting up so-called 'bubbles' or fraudulent partnership or gaming adventures; spreading false news to raise or sink the value of stocks or any other kind of property. **Self-regarding offences** ·analogous to these·: Idleness, gaming, other kinds of wanton extravagance.

² There are no semi-public analogues of these. Self-regarding offences ·analogous to these·: •Sacrifice of virginity. •Indecencies not public.

- (1) . . . interception of property.
- (2) . . . divestment of property.
- (3) . . . usurpation.
- (4) . . . investment.
- (5) . . . destruction or endamagement.
- (6) . . . occupation of moveables.
- (7) . . . entry.
- (8) . . . detainment of moveables.
- (9) . . . detainment of immoveables.
- (10) Robbery.¹

38. We come now to offences against a man's **condition**. [This runs to **55**; 25 pages in the original.] A man's condition or station in life is constituted by his legal relation to certain other persons, i.e. by duties which, by being imposed on one side, give birth to rights or powers on the other (see the note to **25** above). These relations can be almost infinitely diversified, but we can find ways to bring them under control. First, we can divide them into

- those that can display themselves within the circle of a private family, and
- those that require a larger space.

We can call these 'domestic' and 'civil' respectively. I shall start with domestic relations, and will stay with them until the end of **54**.

39. The legal relations by which domestic conditions are constituted can be divided into

- those that are superadded to purely natural relations and

- those that exist purely by institution [= 'purely by being invented'], without any such natural basis.

I count a relation as 'purely natural' if it holds between two persons because of their concern—or that of certain other persons—in the process needed for the continuance of our species. These relations can be divided into •contiguous and •uncontiguous, with the latter existing through the intervention of the former. Contiguous relations may be divided into •connubial and •post-connubial; I'm using these terms with reference to the mere physical union between the two parties, apart from the associated ceremonies and legal engagements. There are just two connubial relations: the one the male has to the female, and the one the female has to the male.² The post-connubial relations divide into •productive and •derivative, the productive ones being those that the male and female have towards their children. [Bentham gives names to these, in each direction; and then goes on to sketch the great array of uncontiguous natural relations, e.g. between a woman and her paternal grandmother's brother. He then brushes these aside:] The only natural relations we need to attend to here are those which, when sanctioned by law, create the conditions of •husband and wife, the two relations of •parenthood, and the corresponding relations of •filiality [= 'offspringhood'].

What then are the relations of a legal kind that can be superinduced on the above-mentioned natural relations? [Bentham's discussion of this is a bit puzzling in its details, but its upshot is clear: in what follows, he will take up legal relations in the order that makes for the clearest exposition,

¹ Semi-public analogues of these: •Arson. •Criminal inundation. There are no self-regarding analogues.

² People commonly talk as though there were just one relation between x and y; but in the present context we have to speak of x's relation to y and y's different relation to x. That is because the relations in many instances have separate names—e.g. 'guardianship' and 'wardship', 'paternity and filiality', and have very different effects on a person's condition.

and won't give primacy to the difference between those that are and those that aren't superinduced on purely natural relations.]

40. I turn now to the domestic relations that are purely products of legislation. The two kinds of domestic conditions, considered as the work of law, arise from these. When the law starts to operate in a matter in which it hasn't operated before, it can only be by imposing obligations. Now, a legal obligation can be enforced

- by giving the power of enforcing it to the party in whose favour it is imposed, or
- by reserving that power to certain third persons who are called 'ministers of justice'.

In the first case, the party favoured has not only a right against the obliged party but also a power over him; in the second case he has a right only. In the first case, the party favoured may be called a domestic superior of the obliged party, who may be called his domestic inferior. Now domestic conditions *could* have been looked on as constituted by rights alone, without powers on either side. But that doesn't seem expedient from the point of view of utility, and it's probably because men always saw this that no domestic conditions seem ever to have been constituted by such feeble bands ·as rights without powers·. . . .

·START OF FOOTNOTE·

Two persons can never live together for long without one of them choosing that some act be done which the other chooses should not be done. How is such a competition to be decided? Setting aside generosity and good-breeding, which are the tardy and uncertain fruits of long-established laws, the only certain means of deciding it is, obviously, physical power; and that is the means by which family (and other) competitions must have been decided long before there were

any legislators. This, then, being the order of things that the legislator finds established by nature, how can he do better than to acquiesce in it?. . . . As between parent and child, the need for the parent to have power over the child—a need for the child's preservation—supersedes all further reasoning. As between man and wife there is no such need. The only reason that applies to this case is the need to put an end to competition. The man wants the meat roasted, the woman wants it boiled: shall they both fast till the judge comes in to cook it for them?. . . . This provides a reason for giving a power to one or other of the parties, but it provides no reason for giving the power to the one rather than to the other. How then shall the legislator decide?. . . . Looking around him he finds that in almost every couple the male •is the stronger of the two and therefore •already has by purely physical means the power the legislator is thinking of bestowing on one of them by means of law. How then can he do so well as by placing the legal power in the hands that are vastly more likely to hold the physical power already? In this way, few transgressions and few calls for punishment: in the other way, perpetual transgressions and perpetual calls for punishment. . . . And in addition to these reasons there have also been motives: legislators seem all to have been of the male sex, down to the days of Catherine. (I'm speaking of those who make laws, not those who ·merely· touch them with a sceptre.)

·END OF FOOTNOTE·

. . . Thus, of the legal relationships that can be made to hold within a family, there remain only those in which the obligation is enforced by power. When any such power is conferred, the aim must be to produce a benefit for somebody; and the person for whose sake it is conferred must be •one of the two parties just mentioned or •a third party; and if it's one of these two, it must be either the superior or the inferior. If

it's the superior, he is commonly called a 'master' and the inferior is called his 'servant'; and the power may be called a beneficial one. If the power is established for the sake of the inferior, the superior is called a 'guardian' and the inferior his 'ward'; and the power, being thereby coupled with a trust, may be called a fiduciary [see Glossary] one. [Bentham next takes the case where the power is conferred not for the sake of either of 'the two parties just mentioned' but for the sake of a third party. This produces a machine-gun rattle of special cases and technical terms, with the upshot that the only offences that could come in here are ones we are about to meet in relation to master/servant.]

41. Offences to which the condition of a **master** is exposed divide into •those that concern the existence of the condition itself and •those that concern the performance of its functions. First then, with regard to offences that affect its existence. The condition of a master may be beneficial to the man who has it; so it is exposed to the offences of wrongful non-investment, interception, usurpation, investment, and divestment. What about wrongful abdication, detraction, and imposition? Those would require the condition of master to be a burden, which it can't be. The law may attach to it some obligation, e.g. to pay the servant, and that might become a burden; but then we are talking about a kind of complex object made up of •the beneficial condition of a master and •the burdensome obligation that is annexed to it.¹ [Bentham then allows that in certain marginal cases it could be said that the mastership was itself burdened, and that in those cases it is open to the offences **(6)–(8)** in the numbered list below.] As for the behaviour of those who do have the condition of mastership: because it is a

benefit, it is exposed to disturbance. This could be the offence of a stranger who takes the person of the servant in circumstances where if the servant were a *thing* we would call it 'theft'; as things are we can call it 'servant-stealing'. Where it is the offence of the servant himself, it is called 'breach of duty'; the most flagrant form of this is called 'elopement', meaning that the servant simply goes away. Also, because of the power that goes with it, mastership is open to abuse on the part of the master. . . . So there are thirteen sorts of offences to which the condition of a master is exposed:

- (1) Wrongful non-investment of mastership.
- (2) Wrongful interception of mastership.
- (3) Wrongful divestment of mastership.
- (4) Usurpation of mastership.
- (5) Wrongful investment of mastership.
- (6) Wrongful abdication of mastership.
- (7) Wrongful detraction of mastership.
- (8) Wrongful imposition of mastership.
- (9) Abuse of mastership.
- (10) Disturbance of mastership.
- (11) Breach of duty in servants.
- (12) Elopement of servants.
- (13) Servant-stealing.

42. The power by which the condition of a master is constituted may be either limited or unlimited. When it is altogether unlimited, the condition of the servant is called 'pure slavery'. But. . . 'slavery' is often used when the limits prescribed for the master's power are regarded as inconsiderable. Whenever any such limit is prescribed, the servant is said to 'possess' a kind of fictitious entity—an incorporeal object of possession—that is called a 'right' or

¹ In most civilised nations there is a sort of domestic condition, in which the superior is always called a 'master' while the inferior is best described as an 'apprentice'. Despite the label 'master', the relationship is in fact a mixed one, compounded of that of master and that of guardian.

'liberty' or 'privilege' or 'immunity' or 'exemption'. These limits and the corresponding 'liberties' create countless possible special cases of mastership (i.e. of servitude), and different ones of these are found in different countries which have correspondingly different views about what constitutes an abuse of mastership. If any place on the earth is so wretched as to contain pure and absolutely unlimited slavery, there will be no abuse of mastership *there*—by which I mean that no abuse of mastership will be treated there as an offence. Ought *any* forms of servitude to be established or maintained? and if so, what? The answer to this belongs to the civil branch of the art of legislation.

43. Next, with regard to the offences that may concern the condition of a **servant**. It might be thought that this condition couldn't have a spark of benefit—that it must be pure burden. But a burden can be a benefit in comparison to a greater burden. For someone who can't escape from pure slavery it may matter to him greatly who is to be his master, so that slavery under one master may be for him a beneficial state compared to slavery under another. So the condition of a servant is exposed to all the offences to which any beneficial condition is exposed just because it is a beneficial one.¹ [Bentham goes on to say that with enough limits on one side and liberties on the other, someone's servitude may be positively desirable—so much so that he may have chosen to enter into this condition. (Remember that limits/liberties can involve such things as wages and food and accommodation.) He continues:] It may help to clarify natures of the two conditions to show how the offences that affect the existence of one correspond to those that affect the existence of the other. Obviously, this correspondence must be very intimate; but it's *not* the case that each offence on one side coincides

with the offence with the same name on the other side; rather, an offence with name N_1 on one side coincides with an offence with name N_2 on the other; and we'll see that even this match-up is not constant, but varies according to circumstances. [Bentham's case-by-case demonstration of this is heavy going, and you can work it out for yourself. Here is just one example:] Wrongful •interception of the condition of a servant, if it's the offence of him who should have been master, coincides with wrongful •detractation of mastership; if it's the offence of a third person, and the mastership is beneficial, it involves wrongful •interception of mastership. [And so it goes, with the result that systematically replacing 'mastership' by 'servantship' turns the items **(1)–(8)** in the list in **41** into names of offences against the condition of servitude. Items **(9)–(13)** name offences against servantship just as they stand, as Bentham says:] As to •abuse of mastership, •disturbance of mastership, •breach of duty in servants, •elopement of servants, and •servant-stealing, these are offences that relate equally to both conditions without any change of name. . . .

44. Now I turn to the offences to which the condition of a **guardian** is exposed. A guardian is invested with power over someone else who lives in the same family and is called a 'ward', the power being meant to be exercised for the ward's benefit. Now, what are the cases in which it benefits one person to have power exercised over him by someone else living in the same family? If the parties are on a par in respect of understanding, it seems evident enough that no such cases can ever exist. For a person to produce happiness (or indeed to produce *anything*) he needs three things working together: knowledge, inclination, and physical power. Now, no-one else is as certain as you are to be always inclined to

¹ [A footnote here says a little about ways in which a slave might change from master x to master y, perhaps with illicit help from y.]

promote your happiness; and no-one else can have had as good opportunities as you have had to know what is most conducive to that purpose—who could know as well as you do what gives you pain or pleasure? As for power: clearly no superiority in this respect, on the part of a stranger, could make up for his relevant lack of knowledge and inclination. So if it is ever for one man's advantage to be under the power of another, it must be because the former has some palpable and very considerable intellectual deficiency, i.e. a deficiency in respect of knowledge or understanding. There are two cases where this is found: •infancy, where a man's intellect hasn't yet reached the state in which it can direct his own inclination in the pursuit of happiness; and •insanity, where for some reason his intellect has never arrived at that state or else has arrived at it and then fallen from it.

Then how is it to be ascertained whether a man's intellect is in that state? We don't have any intellect-measuring instrument like a thermometer; so obviously the line between •intelligence that *is* sufficient for self-government from •intelligence that *isn't* must be quite arbitrary. Where the insufficiency comes from lack of age, the desired quantity of intelligence doesn't come to everyone at the same age. So legislators have to cut the Gordian knot and fix on a particular age as the point—the first point—at which each person is to be regarded as having, as far as it depends on age, this sufficient quantity of intellect.¹ This draws a line that is the same for everyone, and we can be perfectly precise about *where* it is. With intellectual insufficiency due to insanity we don't have even this resource; so that here the

legislator's only resource is to appoint individuals to settle the question in every instance where it comes up, according to his or their particular choice. This choice must be pretty arbitrary, because it has to be based on the decider's own loose and indeterminate idea about what share of intelligence is sufficient for self-government.

45. Once the line has been drawn, it is expedient for someone who can't with safety to himself be left in his own power should be placed in the power of someone else. For how long should he remain so? For an infant: a considerable length of time. For an insane person: possibly for ever.

46. The next question is: what can the extent be of the guardian's power over the ward? Well, there are no limits to what it *can* be. . . . Start with the thought that it goes the whole way: the condition of the ward is exactly that of pure slavery. Now vary that by giving the guardian the obligation that turns his power into a trust; it is the obligation to act in the way that is most likely to bring to the ward the greatest quantity of happiness that his faculties and circumstances will allow (subject only to the guardian's being •permitted to care about his own happiness and •obliged to care about the happiness of other men). . . . In short, the business of the guardian is to govern the ward precisely as the ward ought to govern himself. . . . The details of how this is to be done don't belong here, because they couldn't be embodied in rules that it would be useful for the legislator to provide. Some general outlines might be drawn by his authority, and some in fact *are* in every civilised state. But such

¹ In certain nations, all women have been placed in a state of perpetual wardship, obviously based on the notion of a decided intellectual inferiority in the female sex, analogous to that which comes from infancy or insanity in the male. This is not the only instance in which tyranny has taken advantage of its own wrong, justifying the domination it exercises on the grounds of an incompetence which, as far as it has been real, has been produced by the abuse of the very power it is supposed to justify. Aristotle, enslaved by the prejudice of the times, divides mankind into two distinct species—freemen and slaves. Certain men were born to be slaves, and ought to be slaves. Why? Because they are so.

regulations are liable to vary greatly, •because of the infinite diversity of civil conditions that a man may be invested with in any given state, and •because of the diversity of local circumstances that can affect the nature of the conditions that are established in different states. . . . So there is no place here for a systematic classification of the possible offences against them.

47. We are now better prepared to look into the offences to which guardianship is exposed. Because guardianship is a private trust, it is exposed to all and only the offences by which a private trust is liable to be affected; but the special nature of this kind of trust allows some further detail of description. [In what follows, items will be numbered to match the list at the end of this paragraph.] **(9)** Breach of this species of trust may be called ‘mismanagement of guardianship’. **(10)** It must often happen the guardian’s duties require him to be at a certain particular place; when he isn’t there on the occasion in question, this is mismanagement that may be called ‘desertion of guardianship’. **(11)** The guardian’s duty with respect to the ward’s happiness require him to have a certain power over objects—things or persons—on the use of which that happiness depends. . . . If he fails in this, that offence can be called ‘dissipation in breach of trust’; and **(12)** if the failure brings profit to the trustee, it may be called ‘peculation’. **(13)** For x to exercise power over y, it is necessary that y should act in certain ways or allow x to act in certain ways towards him. Someone who interferes with this is guilty of disturbance of the guardianship, and if the offender is the ward himself this is **(14)** a breach of duty in his part, which he may bring about by **(15)** elopement.

There does not seem to be any offence concerning guardianship that corresponds to abuse of trust. . . . The reason is that guardianship, being a trust of a private nature, doesn’t confer on the trustee any

power over the persons or property of anyone but the beneficiary himself. If by accident it confers on the trustee a power over any persons whose services constitute a part of the property of the beneficiary, the trustee thereby becomes in certain respects the master of such servants.

(17) Bribery also is a sort of offence to which there is not commonly much temptation in guardianship situations. Still, it is a possible offence in such contexts, so it should be added to the list of offences to which the condition of a guardian is exposed. So we have seventeen of these offences. [The first eight are the same as the first eight in the list on page 118, with ‘trust’ replaced by ‘guardianship’. Here are the others]:

(9) Mismanagement of guardianship.

(10) Desertion of guardianship.

(11) Dissipation in prejudice of wardship.

(12) Peculation in prejudice of wardship.

(13) Disturbance of guardianship.

(14) Breach of duty to guardians.

(15) Elopement from guardians.

(16) Ward-stealing.

(17) Bribery in prejudice of wardship.

[The indented passage above occurs at the place where Bentham should be laying the ground for item **(16)**, but it seems not to do so. The term ‘ward-stealing’ occurs only twice in the whole work—in the above list and in the list at the end of the next paragraph (suppressed in the present version).]

48. Next, with regard to offences to which the condition of **wardship** is exposed. Those that affect the existence of the condition itself are as follows. . . . [The first eight are the same as the first eight in the list on page 118, with ‘trust’ replaced by ‘wardship’. Bentham’s brief accounts of them are not *very* interesting. They are followed by nine that are exactly the same as **(9)–(17)** in the list just above. All

Bentham says about them is that they are ‘offences relative to the consequences of the condition of wardship’, as distinct from offences that affect the existence of the condition itself.]

49. We come now to the offences to which the condition of a **parent** is exposed, starting with those that affect the very existence of the condition. The parent-child relation is twofold: there is the •natural relationship and the •legal one that is (as it were) superinduced on it. The natural one is constituted by a particular past event that is out of the law’s reach and can’t be the subject of an offence. . . . No offence of mine could possibly make you not be the father of your actual son or the son of your actual father. But an offence of mine might be able to manage matters so that your son doesn’t legally count as your son: as a witness I could cause the judges to •believe that he isn’t your son and to •decree accordingly; or as a judge I could make that decree myself. And the *legal* parent condition is obviously exposed to exactly the same offences as any other condition that can be either beneficial or burdensome. Next, with regard to the exercise of the functions of this condition: insofar as it is the work of law, the condition of a parent is a complex one, compounded of the conditions of a guardian and of a master. (I shall take it both the father and the mother are in this condition; it doesn’t matter here how they share out between them its benefits and obligations.) So the parent as guardian has a set of duties that involve also having certain powers; the child as a ward has rights corresponding to the parent’s duties, and duties corresponding to the parent’s powers. And the parent as master has a set of beneficiary powers that don’t have to be limited except by the parent’s duties as guardian; and the child as servant has, corresponding to

the parent’s beneficiary powers, a set of duties that don’t have to be limited except by the child’s rights as a ward. Thus the condition of a parent will be exposed to all the offences to which either that of a guardian or that of a master is exposed. . . . Taking them then all together, the •eighteen• offences to which the condition of a parent is exposed are these. [Then follows a list whose first eight items are the same as the first eight in the list on page 118, with ‘trust’ replaced by ‘parenthood’. Nine of the remaining ten are the same as those listed at the end of **47** above, with •‘guardianship’ expanded to ‘parental guardianship’, •‘wardship’ expanded to ‘filial wardship’, •some other tiny adjustments, and •the insertion of ‘**(13)** Abuse of parental powers.’ The first item in the list—‘Wrongful non-investment of parenthood’—has this footnote attached:] Can the condition of parenthood be one that a man needs to be invested with? Well, it is at least perfectly conceivable that some ceremony should be required for a given man to be regarded by the law as the father of a given child. And it actually happens: in Roman law, adopted by many modern nations, an illegitimate child is made legitimate by the subsequent marriage of his parents. So if a priest or other relevant official refuses to join a man and woman in matrimony, this may be a wrongful non-investment of parenthood and filiation, to the prejudice of any children who would have been legitimated.

50. Next, with regard to the offences to which the filial condition, **condition of a son or daughter**, is exposed.¹ The principles to be followed in investigating offences of this sort have already been sufficiently developed, so I need only to enumerate them without further discussion. [Bentham does offer some discussion, but it all follows smoothly from what

¹ No English word properly stands for the person who bears the relation opposed to that of parent. The word ‘child’ is ambiguous, and is used more often in the child/adult than in the child/parent contrast. . . .

he said earlier about the conditions of guardian and ward. And his resultant list of offences is a routine counterpart of the 18-member list of offences against parenthood. All this is prefaced by two comments:] •Differences between these offences and the previously listed ones all come from the fact that everyone must have had a father and a mother, whereas not everyone must have had a master, a servant, a guardian, or a ward. •If a person

from whom, if he were alive, the offence would take a benefit or impose a burden

dies, some of the mischief dies with him. But there still remains whatever mischief depends on the advantage or disadvantage that might accrue to persons related to the person who has died.

51. We are now well placed to examine the various offences to which the condition of a **husband** is exposed. Between a husband and a certain woman, his wife, there is a legal obligation for •the purpose of their living together and in particular •for the purpose of sexual intercourse to be carried on between them. This obligation will be considered in respect of

- what starts it,
- who has it,
- its nature, and
- how long it lasts.

There's no limit to the kinds of event that *could* serve to mark the start of the obligation; but the usual way—and utility says it should be the only way—is through a contract between the parties, a legally endorsed a set of signs expressing their mutual consent to take on them this condition. As for who is to have the obligations, if they are all on one side the condition indistinguishable from pure slavery: the wife the slave of the husband, or the husband the slave of the wife. The latter of these suppositions has perhaps never been

exemplified;. . . the former seems to have been exemplified all too often. . . . As for the nature of the obligations: any obligation on one side is matched by a right on the other; so if there are obligations on both sides then there must be rights on both sides also. But these rights can't all have powers associated with them, because these are two persons who live together, and I have shown in the long note on page 125) that •there have to be powers there and that •they must be all on one side. Which side? I have shown that on the principle of utility they ought to be lodged in the husband. And it is obvious that, according to the principle of utility, he ought in his exercise of the powers to consult the interests of both of them. . . . So the legal relation the husband bears to the wife will clearly be a complex one, compounded of that of master and that of guardian.

52. The offences to which the condition of a husband of will be exposed, therefore, will be the sum of the offences to which the conditions of master and of guardian are exposed; putting it in its general outlines on a par with the condition of a parent. But certain reciprocal services are the main subject of the matrimonial contract and constitute the essence of the two matrimonial relations; they are services that neither a master nor a guardian has usually been permitted—in the role of master or guardian—to receive, and that a parent has not been permitted to receive in any role. . . . The offences relative to the two matrimonial conditions—I mean the ones that concern these peculiar [see Glossary] services—have been given their own names. **Firstly:** [A marriage contract *could*, Bentham writes, include allowance for polygamy on the part of the husband or the wife, with or without specifications about how many spouses either could have. He continues:] Which of all these arrangements would be best from the point of view of utility? Answering that would take me too far afield, and anyway it belongs to the •civil rather than the •penal

branch of legislation. In Christian countries, a marriage contract is made to exclude any subsequent contract during the continuance of the former one; and the solemnisation of any such subsequent contract is accordingly treated as an offence, called ‘polygamy’. [Bentham distinguishes and labels various versions of this, depending on whether the husband’s second wife was already married, on whether she knew that he was already married, etc. He adds:] And the converse of all this holds with regard to polygamy on the part of the woman. **Secondly**: Another condition on which the law lends its sanction to the marriage contract is its including an undertaking not to render to, or accept from, any other person the services that form the characteristic object of marriage; giving or accepting any such services is treated as an offence, under the name of ‘adultery’, which also covers the offence of the stranger who is the necessary accomplice in the commission of that offence. **Thirdly**: Disturbing either of the parties to this engagement in the possession of these characteristic services may—as distinct from disturbing them in the enjoyment of the miscellaneous advantages of the marital condition—may be called ‘wrongful withholding of connubial services’. [In a puzzling clause, Bentham says that this may be the offence of ‘a third person’. He continues:] And thus we have 21 sorts of offences to which, as the law stands at present in Christian countries, the condition of a husband is exposed:

- (1) Wrongful non-investment of the condition of a husband.
- (2) Wrongful interception of the condition of a husband.
- (3) Wrongful divestment of the condition of a husband.

- (4) Usurpation of the condition of a husband.
- (5) Polygamy
- (6) Wrongful investment or attribution of the condition of a husband.
- (7) Wrongful abdication of the condition of a husband.
- (8) Wrongful detraction of the condition of a husband.
- (9) Wrongful imposition of the condition of a husband.
- (10) Mismanagement of marital guardianship.
- (11) Desertion of marital guardianship.
- (12) Dissipation in prejudice of marital wardship.
- (13) Peculation in prejudice of marital wardship.
- (14) Abuse of marital power.
- (15) Disturbance of marital guardianship.
- (16) Wrongful withholding of connubial services.
- (17) Adultery.
- (18) Breach of duty to husbands.
- (19) Elopement from husbands.
- (20) Wife-stealing.
- (21) Bribery in prejudice of marital guardianship.¹

[The discussion leading up to that list has been abbreviated somewhat in this version, but not much. The jump from discussion to list is larger here than with any of the previous offence-against-condition items.]

53. With regard to the offences to which the condition of a **wife** is exposed: they are the same, *mutatis mutandis*, as the offences against the condition of a husband.

54. In my discussion of offences relative to the various sorts of domestic conditions, the natural relations I have attended to are the contiguous ones; so you’ll expect me to say something about the unctiguous ones. These, however, don’t have what it takes to constitute a *condition*; indeed, no

¹ Semi-public offences ‘against the marital condition’: •Falsehoods contesting, or offences against justice destroying, the validity of the marriages of people of certain descriptions—e.g. Jews, Quakers, Catholics, etc. Huguenots, etc. etc. •Self-regarding offence: Improvident marriage on the part of minors.

power seems ever to be annexed to any of them. If the law requires a grandfather to take on the guardianship of his orphan grandson, this gives him a power not as grandfather but as guardian. Power *could* be annexed to these relations, but no new sort of domestic condition would result from that. . . . However, non-contiguous relations, like contiguous ones, can bring either benefit or burden; so they are exposed to the same offences as the contiguous relations are—I mean offences having to do with whether x has relation R to y. These offences are not a new set; they are already included in the lists I have given, because the only way to affect an unctiguous relation is by affecting some contiguous relation. Furthermore, any offence affecting the existence of a contiguous relation will also affect the existence of countless unctiguous ones. If a false witness causes it to be believed that you are the son of a woman who isn't in fact your mother. What follows? An endless tribe of other false beliefs about sons and brothers-in-law etc., about who cohabited with whom, and so on. . . .

Any advantages and disadvantages that happen to be annexed to any of those unctiguous relationships. . . .are merely the result of •local and accidental institutions or of •some spontaneous bias that has been taken by the moral sanction. So there would be no point in trying to trace them out *a priori* by any exhaustive process; all I can do is to select some of the principal articles in each category by way of specimen. The advantages that a given relationship is apt to impart seem chiefly to fall into the following groups:

- Chance of succession to all or some of the property of the correlative person.
- Chance of pecuniary support from the correlative person, either by appointment of law or by spontaneous donation.

- Acquisition of legal rank and any privileges that are annexed to it by law—capacity of holding such-and-such beneficial offices, exemption from burdensome obligations such as paying taxes, from serving burdensome offices, etc.
- Acquisition of rank by courtesy, including the sort of reputation that usually goes with distinguished birth and family alliance.

The last of these—e.g. being the untitled brother of an Earl—can bring advantages in the chance of making an advantageous marriage and in a thousand other less obvious ways. The disadvantages that a given relation is liable to impart seem mainly to be these:

- Chance of being obliged by law or the moral sanction to give pecuniary support to the correlative party.
- Loss of legal rank, including the legal disabilities and burdensome obligations that the law is apt to annex, sometimes unjustly, to the lower ranks.
- Loss of rank by courtesy, including the loss of the advantages annexed by custom to such rank.
- Inability to marry the correlative person, where the supposed natural relation lies within the prohibited degrees.

•START OF VERY LONG FOOTNOTE• [ending on page 136]

Following the plan for •semi-public and •self-regarding offences [see the footnote starting on page 120], I now offer some account of the various genera of •public offences.

A. Against the external security of the state. •Treason in favour of foreign enemies. It may be positive or negative (e.g. not opposing the commission of positive). •Espionage in favour of foreign rivals who aren't yet enemies. •Injuries to foreigners at large (including piracy). •Injuries to privileged foreigners such as ambassadors.

B. Against justice. [This begins with a 12-item list like the various lists we have already met. Then:] Breach and abuse of judicial trust, if intentional, are always culpable. If they are unintentional, they are still culpable if the mistake came from heedlessness or rashness; otherwise blameless. . . .

If a man fails in fulfilling the duties of this trust, and thereby comes to break or to abuse it, he must be lacking in at least one of: knowledge, inclination, and power. If this lack is his fault, he is guilty of breach or abuse of trust; if it's the fault of other persons who should act with or under him, they are guilty of disturbance of trust.

The bad effects of any breach, abuse, or disturbance of judicial trust are mischiefs that it ought to be the purpose of judicial procedure •to remedy or avert or •to avoid producing. Of these, the **primary** ones are those that bring actual pain to identifiable persons and are therefore mischievous in themselves: •continuance of the individual offence itself, thus continuing and increasing the mischief of it; •continuance of all or part of the mischief of the individual offence; •total or partial lack of compensation for persons injured by the offence; •superfluous punishment of delinquents; •unjust punishment of accused persons; •unnecessary labour, expense, or other suffering or danger [Bentham's phrase] on the part of superior or subordinate judicial officers or others who are professionally involved in the judicial system or yet others who are employees of any of the above.

Then there are the **secondary** bad effects, which are mischievous because they tend to produce primary ones. In the purely civil branch of procedure, there are •errors of interpretation or adjudication. In the executive (including the penal) branch: •total or partial impunity of delinquents (favouring the occurrence of other similar offences); •application of punishment improper in kind though perhaps not in degree (lessening the beneficial efficacy of the quantity employed);

•uneconomical application of punishment. . . .; •unnecessary expense on the part of the state. Inconveniences of the **tertiary** order, i.e. ones that tend to produce ones of the secondary order, are •unnecessary delay; •unnecessary intricacy. [Then Bentham distinguishes the fourth and fifth orders of inconveniences, purely in terms of the number of inconvenience-links in the chain connecting them to the primary ones.]

C. Against the preventive branch of the police. [Bentham divides this into two, involving the prevention of offences and the prevention of calamities.]

D. Against the public force. •Offences against military trust, corresponding to those against judicial trust; military desertion is a breach of military trust, and favouring desertion is a disturbance of it. •Offences against the branch of the public trust that concerns the management of arsenals, fortifications, dockyards, ships of war, artillery, ammunition, military magazines, and so forth. [Bentham offers the label 'polemo-tamieutic' for this part of the public trust, and adds in a footnote:] I have brought into view a number of branches of public trust that don't yet have names. What would be best—to coin new names for them out of the Greek, or instead of a word to use a whole sentence? Those are the only alternatives for English, French, or any of the other southern languages. You decide.

E. Against the positive increase of national happiness. [Bentham lists seven public trusts to which he gives bizarre Greek-derived names. Their roles are: •promotion of knowledge, •education, •treatment of diseases, •care of the insane, •care for the poor, •reparation of losses, •presiding over pleasures. He continues:] Those are examples of the principal systems that might be established for the purpose of increasing the stock of national happiness. There could be many others, but this is not the place to try to list them all.

The offences to which they are exposed will all be offences against trust, and that settles the names they will have. All these trusts might be comprised under some such general name as that of 'agatho-poieutic' trust, from Greek meaning 'to do good to anyone'.

F. Against the public wealth. [Bentham lists various kinds of offences relating to taxes, fines, and other means the state has for getting money. And also;] Offences against the trust whose purpose is manage articles of the public wealth that are meant for the convenience of anyone and everyone, such as public roads and waters, public harbours, post-offices, and packet boats; market-places, and other public buildings; race-grounds, public walks, and so forth. These offences will be apt to coincide with offences in **E** or the last ones in **H**, depending on whether the benefit in question is considered •in itself or as •resulting from the application of some portion of the public wealth.

G. Against population. •Emigration. •Suicide.
•Procurement of impotence or barrenness. •Abortion.
•Unprolific sexual intercourse. •Celibacy.

H. Against the national wealth. •Idleness. •Breach of the regulations that are meant to steer industry in more profitable directions. •Offences against the trust whose role is to enrich the nation at large.

I. Against the sovereignty. [The preparer of this version was defeated by this item, and now offers it with almost no alterations.] Offences against sovereign trust: corresponding to those against judicial, preventive, military, and fiscal trusts. Offensive rebellion includes wrongful interception, wrongful divestment, usurpation, and wrongful investment, of sovereign trust, with the offences accessory thereto. Where the trust is in a single person, wrongful interception, wrongful divestment, usurpation, and wrongful investment cannot, any of them, be committed without rebellion: abdication

and detraction can never be deemed wrongful: breach and abuse of sovereign trust can scarce be punished: no more can bribe-taking: wrongful imposition of it is scarcely practicable. When the sovereignty is shared among a number, wrongful interception, wrongful divestment, usurpation, and wrongful investment, may be committed without rebellion: none of the offences against this trust are impracticable: nor is there any of them but might be punished. Defensive rebellion is disturbance of this trust. Political tumults, political defamation, and political vilification, are offences accessory to such disturbance.

Sovereign power (which, upon the principle of utility, can never be other than fiduciary) is exercised either by rule or without rule: in the latter case it may be called autocratic: in the former case it is divided into two branches, the legislative and the executive. In either case, where the designation of the person by whom the power is to be possessed, depends not solely upon mere physical events, such as that of natural succession but in any sort upon the will of another person, the latter possesses an investitive power, or right of investiture, with regard to the power in question: in like manner may any person also possess a divestitive power. The powers above enumerated, such as judicial power, military power, and so forth, may therefore be exercised by a man either •directly or •through the agency of someone else. . . . Of sovereign power, whether autocratic, legislative, or executive, the several public trusts above mentioned form so many subordinate branches. Any of these powers may be placed, either, 1. in an individual; or, 2. in a body politic: who may be either supreme or subordinate. Subordination on the part of a magistrate may be established, 1. By the person's being punishable: 2. By his being removable: 3. By the orders being reversible.

J. Against religion. •Offences tending to weaken the

force of the religious sanction, including blasphemy and profaneness. •Offences tending to misapply the force of the religious sanction, including false prophecies etc., also heresy, when this is pernicious to the worldly interests of the community. •Offences against any religious trust that has been established.

K. Against the national interest in general. •Immoral publications. •Offences against the trust of an ambassador. •Offences against the trust of a privy-counsellor. •In pure or mixed monarchies, extravagance by courtiers who don't have any specific jobs. •Excessive gambling by those the same persons. •Taking presents from rival powers without permission.

•END OF LONG FOOTNOTE• [started on page 133]

55. •I began my discussion of offences against domestic conditions in 39, and that has been my topic ever since, except for the long footnote just completed. I now turn to civil conditions. [Bentham devotes a page to talking about items that could come in here but that are already covered by what he has said about offences against trusts or against domestic conditions. All that are left to be considered separately, he writes, are:] conditions constituted by

- beneficial powers over things;
- beneficial rights to things (i.e. rights to powers over things) or by rights to those rights, etc.,
- rights to services, and
- duties corresponding to those respective rights.

I set aside the ones whose materials are the ingredients of the various forms of property, the various conditions of ownership. Most of the latter don't have specific names of their own, and aren't usually thought of as *conditions*; so that acts that could be considered as offences against them are usually seen as offences against *property*.

[There is no clear line, Bentham says, between the facts that would lead to someone's being said to have a certain *civil condition* and those that would be described in terms of his *property*; and he adds:] This is probably true for all languages. . . . It is one reason why it is not practicable to try for a systematic and comprehensive list of civil conditions, leaving us with no option but to search the language for them and take them as they come. I shall illustrate this by analysing two or three of the principal sorts of civil conditions, comparing them with two or three articles of property that seem to be of nearly the same kind. My aim is to make clearer •the nature of these two kinds of ideal objects—conditions and property—and •how they come into existence.

Most of the civil conditions that aren't connected with trusts come under the headings of *rank* or *profession*. Among ranks (as well as professions) I'll choose examples that are most clearly free of any mixture of either fiduciary [see Glossary] or beneficial power. How is the rank of knight-hood constituted? By prohibiting all other persons from performing certain acts that are symbols of the order, while the knight and his companions are permitted to perform them—e.g. wearing a ribbon of a certain colour, calling himself by a certain title, using an armorial seal with a certain mark on it. By prohibiting everyone else from doing these things, the law gives them a set of negative duties; their fulfilling these duties brings the knight a benefit, namely an enhancement of his reputation; and in this way they are rendering him a service—because of its negative nature it may be called a 'service of forbearance'. To create this condition •of rank•, we see, two sorts of service are needed: the negative service rendered by the community at large, and the positive service rendered by the law.

The condition of a professional man stands on a nar-

rower footing. (I'm using 'profession' in its broadest sense, including not only what are called the liberal professions but also those that are exercised by the various sorts of traders, artists, manufacturers, and other persons who make a profit by their labour. For a man to have this condition all that is needed is for the legislator to permit him to perform the acts that are the exercise of his profession: giving or selling legal or medical advice or help, giving or selling his services in executing or overseeing some kind of manufacture; selling a commodity of a certain sort. All that is needed here is a single kind of service—a negative one rendered by the law—namely allowing him to exercise his profession, which ordinarily means simply not prohibiting him.

When a rank or profession is conferred on a man, what he gets is not an article of property but a condition. And if the law deprives him of it, what he loses is not his property but his •rank or dignity or •his trade or profession—in both cases, his condition.

Other cases that are formally like those two are ordinarily counted as involving property. If the law permits a man to sell books of a certain kind and prohibits all other persons from doing so, that confers on him a sort of exclusive privilege or monopoly known as a copyright. This is described not as his acquiring any new sort of condition but as his acquiring an article of property, so-called 'incorporeal property' (probably because its chief value comes from its ability to generate *property* in the more ordinary meanings of that word, e.g. money). This isn't confined to books; a man could have a copyright relating to an engraving, a mechanical engine, a medicine, or any sort of saleable article.

[Bentham now has •a paragraph on the privileges/services/etc. involved in the condition of *natural-born subject* as distinct from *alien*; and •another making the point that our language for the relations that go into the making of

civil conditions is unlike our language for the relations that go into the making of domestic conditions. Specifically, we bracket 'master' with 'servant', 'husband' with wife', and so on; but we have nothing to bracket in the corresponding way with 'knight' or 'trader' or 'farmer' and so on.]

It is not hard now to see what offences the various sorts of civil conditions are exposed to, Each of these conditions is of a beneficial nature, and therefore exposed to all the offences to which the possession of a benefit is exposed. But it may happen also to be a burden—because •the man is obliged to persevere in it, or •other obligations are annexed to it, or •the moral sanction puts it into comparative disrepute—and in that case it is exposed to the offences to which everything burdensome is exposed. . . .

4. Advantages of this method

56. It may be useful for me to say a little about the method of classification I have followed, and about its advantages. The whole system of offences starts with five classes. In the first three the subdivisions are based on differences in *how* the interests of an individual suffer from them. This uniformity seems to throw much light on the whole system, especially on the offences in the third class, which have never before been brought into any sort of order. With regard to subdivisions of the fourth class, it seemed best to start with offences whose connection •with the welfare of individuals seemed most obvious and immediate, then—one link further off in the chain of causes and effects—•with offences that tend to weaken the force that is provided to combat offences at the first level, and then •with offences that lessen the particular fund from which that force is to be extracted. The bad effects of those third-level offences, though indisputable, are still more distant and out of sight; and that holds also for offences

that harmfully affect the universal fund. Offences against the sovereignty in general are harmful only because offences of the sorts I have just mentioned are harmful. And offences against religion are harmful only because they remove or weaken or misapply one of the three great incentives to virtue and checks to vice, thereby opening the door to the various mischiefs that those other offences produce. (In saying this, I am thinking only about the effects of offences against religion in *this* world.) As for the fifth class, I have remarked that this has a *prima facie* irregularity that seems to be unavoidable; but this is corrected when the analysis returns, after a step or two, into the path from which it had been forced deviate by the tyranny of language.

The classification had two purposes:

- driven by nature: to present a fairly detailed list of the various possible kinds of delinquency, and
- driven by custom: to find places in that list for currently used names of offences.

If the nature of the offences had been the only guide, it would have been necessary to invent a new language that would have been uncouth and unintelligible; and there would have been no explanation for the currently used names of offences. Staying exclusively with the current language would have been as bad on the other side: the list of offences it would generate, when compared to the list of mischiefs that *can* be produced, would have been broken and incomplete .

To reconcile these two aims as far as possible I proceeded as follows. I bisected the sum total of possible offences in as many directions as were necessary, carrying the process (in each direction) down to level where the particular classes that I arrived at had names in current use. At that point I stopped, leaving any still smaller subgroups to be listed in the body of the work [see Glossary] as 'species of the genus [name]', ·without being given names of their own·. [When he

seriously needed to, Bentham says, he invented a name for a kind of offence, usually a *phrase*, because English, unlike German and Greek, doesn't allow 'two or three words. . . .to be melted into one'.]

In selecting names in current use I avoided ones that are based on local distinctions. . . .and aren't applicable to the circumstances of other countries.

The analysis is as applicable to the legal concerns of one country as of another; I have always been careful to stop before getting down to a level where that would no longer be the case. That is why offences against individuals have been classified in a more fine-grained way than offences in any of the other classes. So one use that this classification might have if it is properly done is to indicate •what the legal interests of all countries agree in and •what they are liable to differ in; how far a rule that is proper for one country will or won't serve for another. . . .

57. A natural method [see Glossary] such as I have tried to exhibit seems to have four main advantages (along with other lesser ones). **In the first place**, it gives to the understanding and the memory help that they couldn't get from any technical arrangement [Bentham's phrase]. A classification in any science counts as *natural* if it is based on properties that men in general are accustomed to attend to because •of the common constitution of man's nature and not •of any impressions they happen to have picked up from local or other particular causes. . . . Now, how can an object engage a man's attention other than by interesting [see Glossary] him? and how can the object interest him more than by the influence it promises to have on his happiness and that of his immediate circle? . . .

58. In the next place, along with a general idea of each class of offences that is marked off by one characteristic property, it provides for true general propositions to be formed concerning the particular offences within that class.¹

59. In the third place, the classification is devised in such a way that the reason for putting offence O in place x in it is indicated by x itself; it not only says which acts *are* offences but also says why they *ought to be*. By this means. . . it •explains and in some measure •vindicates the punishment it is thought proper to assign for each obnoxious act. To people in general it is a kind of perpetual defence of the legal system, showing the need for every restriction of each individual's liberty for the security and prosperity of everyone else. To the legislator it is a kind of perpetual lesson, correcting his prejudices and checking his passions. If some mischief has escaped him, he cannot fail to find it in a classification that is natural and exhaustive. If he is ever tempted to force innocence into the domain of guilt, the difficulty of finding a place for it warns him of his error. Such are the uses of a map of universal delinquency based on the principle of utility. . . .

60. In the fourth place, a natural arrangement governed by a principle that is recognised by all men will serve for the jurisprudence of all nations. In a system of proposed law constructed along these lines the •language will serve as a glossary by which all systems of positive law could be explained, while the •matter serves as a standard by which they might be tested. So the practice of every nation could

be a lesson to every other; and mankind could carry on a mutual interchange of experiences and improvements as easily in this as in every other branch of science. . . .

5. Characters of the five classes

61. . . . For each class of offences, it may be worthwhile to exhibit the characteristics shared by all its members. The more of these we can find, the more clearly and fully we will understand the nature of the classes and of the offences they are composed of.

62. Class 1, **private offences**, or offences against identifiable individuals.

(1) When they reach the stage of consummation (see chapter 7 **14**) they all produce a primary mischief as well as a secondary (see chapter 12 **3**).

(2) The individuals whom they affect by their primary mischief are identifiable throughout—during preparations and attempts as well as in the consummation. (See footnote to **31** above.)

(3) So they admit of compensation (see chapter 13 **2** note) unlike the offences in all the other classes, as such.

(4) They also admit of retaliation (see chapter 15 **8**), in which also they differ from the offences in all the other classes. (I don't mean retaliation is possible in every case, or that it ought always to be employed.)

(5) There is always someone who has a natural and peculiar [see Glossary] interest in prosecuting them. In this

¹ Imagine the condition of a science that can't provide any true general propositions! What state would botany be in there were no common characteristics for any of its classes? Yet that is the state of every system of penal law that has ever yet appeared. . . . This lack of method is not surprising. A science [see Glossary] as new as that of penal legislation could hardly have been in any better state: objects can't be classified until they have been distinguished; so truth and order go hand in hand. . . . The discovery of truth leads to the establishment of order, and the establishment of order fixes and propagates the discovery of truth.

they differ from self-regarding offences; and also from semi-public and public ones except when they happen to involve a private mischief.

(6) The mischief they produce is more obvious than the mischief from semi-public or self-regarding or even public offences.

(7) They always do and always must fall under the censure of the world; more so than semi-public offences as such, and even more so than public ones.

(8) They are more constantly censured by the world than self-regarding offences; and they would be so universally if it weren't for the influence of the two false principles—of asceticism and of antipathy (chapter 2).

(9) They are less apt than semi-public and public offences to require different descriptions in different states and countries; in which respect they are much on a par with self-regarding offences.

(10) When circumstances make them worse in certain ways, they are liable to be transformed into semi-public offences, or in other ways into public offences.

(11) There can be no ground for punishing them until they are proved to have caused—or to be about to cause—some particular mischief to some particular individual. In this they differ from semi-public and public offences.

(12) In slight cases, compensation given to the affected individual may be a sufficient ground for remitting punishment; for if the primary mischief doesn't rise to the level of producing any alarm, the whole mischief may be cured by compensation. In this also they differ from semi-public and public offences.

63. Class 2, semi-public offences, or offences affecting a whole subordinate class of persons.

(1) As such, they produce no primary mischief. The mischief they produce consists of one or both branches

of the *secondary* mischief produced by offences against individuals.

(2) The persons affected in the first instance by these offences are not individually identifiable; if they were, the offences wouldn't belong to this class.

(3) But they are apt to involve or terminate in some primary mischief of the first order; and when they do, that puts them into the first class as private offences.

(4) They don't admit, as such, of compensation.

(5) Or of retaliation.

(6) There's never any one individual whose exclusive interest it is to prosecute them; but it's always possible to mark out a circle of persons some of whom have a greater interest in prosecuting than does anyone outside the circle.

(7) The mischief they produce is, though less obvious than that of private offences, usually more obvious than the mischief of self-regarding and public offences.

(8) They are not censured by the world as strongly as private offences; but more strongly than public offences are. They would also be more strongly censured than self-regarding offences if it weren't for the influence of the two false principles—•sympathy and antipathy, and •asceticism.

(9) They are more apt than private and self-regarding offences to require different descriptions in different countries; but less so than public ones.

(10) There may be ground for punishing them before they have been proved to have caused—or to be about to cause—mischief to any particular individual; which is not the case with private offences.

(11) Satisfaction given to any particular individual affected by such an offence cures only a part of the mischief and is therefore never a sufficient ground for remitting punishment. In this they differ from private offences; but are like public ones.

64. Class 3, **self-regarding offences**, offences against oneself.

(1) In many instances it will be questionable whether they produce any primary mischief at all (because the person who is most likely to suffer the mischief if there is any shows by his conduct that he is not aware of it); and they produce no secondary mischief.

(2) They don't affect any other individuals, identifiable or not, except by affecting the offender himself; unless in particular cases they affect—in a very slight and distant manner—the whole state.

(3) So they don't admit of compensation.

(4) Or of retaliation.

(5) No person naturally has any peculiar interest in prosecuting them, except for someone who suffers a mischief of the derivative kind (see chapter 12 4) because of some connection—either of sympathy or of interest (see chapter 6 25–26)—that he has with the offender. (Some self-regarding offences, in certain countries, are often prosecuted without any artificial inducement, merely because of the antipathy that such acts are apt to arouse.)

(6) The mischief they produce is apt to be unobvious and in general more questionable than that of any of the other classes.

(7) Yet many of them are apt to be censured by the world more strongly than public offences because of the influence of the false principles of asceticism and the antipathy. Some of them are censured more strongly even than semi-public or private offences.

(8) They are less apt than offences of any other class to require different descriptions in different states and countries. (Accordingly, most of them are apt to be counted as offences against the law of nature.)

(9) Among the considerations that induce the legislator to treat them as offences and to punish them, antipathy against

the offender is apt to have a greater share than sympathy for the public.

(10) The best case for punishing them is based on a faint probability of their producing a mischief that will qualify them as public offences, mainly against population or against the national wealth.

65. Class 4, **public offences**, offences against the state in general.

(1) They can't produce any primary mischief; and the secondary mischief they produce, which often consists of danger without alarm, is very great but indeterminate as to its kind.

(2) The individuals whom they initially affect are unidentifiable throughout, except when they happen to involve or terminate in some specific offence against individuals.

(3) Consequently they don't admit of compensation.

(4) Or of retaliation.

(5) No-one naturally has a particular interest in prosecuting them except where they appear to affect the private interest—e.g. the power—of some person in authority.

(6) The mischief they produce is comparatively unobvious; much more so than that of private or of semi-public offences.

(7) They are much less heavily censured by the world than are private, semi-public or self-regarding offences, except in particular cases through sympathy for persons in authority whose private interests they appear to affect.

(8) They are more apt than any of the other classes to admit of different descriptions in different states and countries.

(9) In many cases they are constituted by some circumstances that worsen a private offence, and thus involve the mischief and exhibit the other characteristics of both classes. But even then it is right to put them in class 4, because the mischief they produce in virtue of their class-4 properties

eclipses and swallows up the mischief they produce in virtue of their class-1 properties.

(10) There may be sufficient ground for punishing them without proof that they have caused, or are about to cause, any particular mischief to any particular individual. In this they are unlike private offences, but like semi-public ones. Here, as with semi-public offences, the •extent of the mischief makes up for the •uncertainty of it.

(11) In no case can satisfaction given to any individual victim be a sufficient ground for remitting punishment. In this they are unlike private offences but like semi-public ones.

66. Class 5, multiform or anomalous offences, containing offences by **falsehood** and offences concerning **trust** .

(1) Taken collectively, in the groups marked out by their

popular labels, they can't be subjected to any systematic classification based on the mischief of the offence.

(2) But they can be put into sub-groups that *can* be further classified in that way.

(3) These sub-groups will naturally and easily rank under the groups of the various preceding classes of this system.

(4) Each of the two great divisions of this class spreads itself in that way over all the preceding classes.

(5) In some kinds of class-5 offence the defining characteristic of the kind is a circumstance of the act, so that if the act occurred without this circumstance it would not have been an offence (e.g. offences by falsehood in the case of defraudment [Bentham's phrase].) In others that same circumstance comes in only as something making the offence worse; the offence would still be an offence without it (e.g. offences by falsehood in the case of simple corporeal injuries).

Chapter 17: The Boundary around Penal Jurisprudence

1. Borderline between private ethics and the art of legislation

1. So much for the classification of offences in general. Now an offence is an act that is prohibited (or an act whose contrary is commanded) by the law; and what role can the law have except prohibiting and commanding? That

might seem to imply that if we settled what it's proper to do regarding offences, we would thereby have settled everything that it's proper to do in the law. But everyone knows that the art of legislation has two branches: •the criminal or penal branch that concerns the method of dealing with offences, and •the civil branch.¹ Between these two branches there has to be a very intimate connection—so intimate that the

¹ What about the constitutional branch? you'll want to ask. I might reply that its content could without much violence be distributed under the two other headings. But my memory tells me that when I wrote this work the constitutional branch—despite its importance and its capacity to stand alone—had scarcely presented itself to my view as a distinct branch; the thread of my inquiries had not yet reached it. This omission is to some extent made good in the supplementary material starting on page 152.

line between them is not easy to draw. The same thing holds, in some degree, for the line marking off the whole business of •legislation (civil and penal branches together) and that of •private ethics. I have to give some idea of these two borderlines, so as to avoid •neglecting topics that I should treat and •treating topics that don't belong in my area.

In the course of enquiring into the boundary between the civil and penal branches of law, I'll have to settle a number of points that might at first sight seem not be connected with the main question:

- What sort of thing is a law?
- What parts does it have?
- What has to be in it for it to be complete?
- How do the laws of procedure connect with the rest of the law?

All these must be answered before any satisfactory answer can be given to the main question of this section.

Nor is this the questions' only use. Obviously, the notion of a complete law must be fixed before the legislator can know what he has to do and when his work is done.

2. Ethics at large may be defined as *the art of directing men's actions to the production of the greatest possible quantity of happiness for those whose interests are in view.*

3. What actions can a man have the power to direct? They must be either his own actions or those of other agents. Ethics, considered as the art of directing a man's own actions, may be called *the art of self-government* or *private ethics.*

4. What other agents are there that •can be affected by man's actions and •are capable of happiness? They are of two sorts:

- Other human beings, 'persons'.
- Other animals, which—because their interests were neglected by the insensibility of the ancient jurists—are downgraded into the class of *things.*

·START OF FOOTNOTE·

The interests of the non-human part of the animal creation seem to have met with some attention in the Hindu and Mahometan religions. Why **haven't** they been attended to as fully as the interests of human creatures (allowance made for differences of sensibility)? Because existing laws have been the work of mutual fear, a feeling which the less rational animals haven't had the same means as man has for turning to account. Why **oughtn't** they? No reason can be given. There is very good reason why we should be allowed to **eat** such non-human animals as we like to eat: we are the better for it, and they are never the worse. They have none of those long-protracted anticipations of future misery that we have; and the death they suffer at our hands usually is and always could be speedier and thus less painful than what would await them in the inevitable course of nature. There is also very good reason why we should be allowed to **kill** ones that attack us: we would be the worse for their living, and they are not the worse of being dead.

But is there any reason why we should be allowed to **torment** them? None that I can see. Are there any reasons why we should *not* be allowed to torment them? Yes, several. Calling people 'slaves' and giving them the legal status that the lower animals are given in England, for example—there was a time when that was the situation of a majority of the human species, and I grieve to say in many places that time is still with us. The day may come when the non-human part of the animal creation will acquire the rights that never could have been withheld from them except by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the whims of a tormentor. Perhaps it will some day be recognised that the number of legs, the hairiness of the skin, or the possession of a tail,

are equally insufficient reasons for abandoning to the same fate a creature that can *feel*? What else could be used to draw the line? Is it the faculty of reason or the possession of language? But a full-grown horse or dog is incomparably more rational and conversable than an infant of a day, or a week, or even a month old. Even if that were not so, what difference would that make? The question is not *Can they reason?* or *Can they talk?* but *Can they suffer?*

·END OF FOOTNOTE·

As for other human beings, the art of directing their actions to the above end is what we mean by ‘the art of government’, or by the principle of utility that’s what we *ought to* mean. The measures taken by government divide into

- legislation—permanent measures, and
- administration—temporary measures determined by the occurrences of the day.

5. . . . The art of government in directing the actions of persons who aren’t yet adult may be called the art of *education*. When this is entrusted to those who are the most willing and best able to take it on, because of some private relationship, it can be called the art of *private education*; when done by those whose role it is to superintend the conduct of the whole community, it can be called the art of *public education*.

6. As for ethics in general, a man’s happiness will depend •first on the parts of his behaviour that affect the interests of himself alone, and •next on the parts of it that may affect the happiness of people around him. Insofar as his happiness depends on that first part, it is said to depend on ‘his duty to himself’; the relevant part of ethics may be called ‘the art of discharging one’s duty to oneself’; and the quality that shows up in the discharge of this branch of duty (if ‘duty’ is the right word) is *prudence*. Insofar as his happiness (and that of anyone else whose interests are considered) depends

on the parts of his behaviour that can affect the happiness of people around him, it can be said to depend on ‘his duty to others’ or—in a now somewhat antiquated phrase—‘his duty to his neighbour’; and the relevant part of ethics may be called ‘the art of discharging one’s duty to one’s neighbour’. This duty is

- partly negative: to avoid lessening one’s neighbour’s happiness, and
- partly positive: to increase one’s neighbour’s happiness.

Discharging the negative duty is *probity*; discharging the positive duty is *beneficence*.

7. You may want to ask:

‘. . . What motives (other than those provided by legislation and religion) can one man have to care about the happiness of another? By what motives—i.e. by what obligations—can he be bound to obey the dictates of probity and beneficence?’

It has to be admitted that the only interests that a man always has •adequate motives for caring about are his own. But he always has •some motives for caring about the happiness of other men. •He has on all occasions the purely social motive of sympathy or benevolence, which will act on him with more or less effect depending on the bias of his sensibility (see chapter 6 3). •He also has on most occasions the semi-social motives of desire for friendship and love of reputation, whose power over him depends on a variety of circumstances—mainly •the strength of his intellectual powers, •the firmness and steadiness of his mind, •the strength of his moral sensibility, and •the characters of the people he has to deal with (see chapter 10 39).

8. Private ethics has happiness for its goal, and legislation can have no other. Private ethics concerns the happiness

and the actions of every member of any community that can be proposed, and legislation can concern no more. Thus far, then, private ethics and the art of legislation go hand in hand: they do or should aim at the same goal, the happiness of the very same persons, doing this by directing the conduct of those same persons; and even the acts they ought to be attending to are **to a large extent** the same. Then where is the difference? It lies in the fact that the acts that they ought to be attending to are not **perfectly and throughout** the same. There is no case in which a private man ought not to aim to produce his own happiness and of that of his fellow-creatures; but there are cases in which the legislator ought not to try (at least in a direct way, by punishing particular individual acts) to direct the conduct of the other members of the community. Every act that promises to be beneficial on the whole to the community (himself included) each individual ought to perform of himself; but it is not every such act that the legislator ought to compel him to perform. Every act that promises to be pernicious on the whole to the community (himself included) each individual ought to abstain from; but it is not every such act that the legislator ought to compel him to abstain from.

9. Then where is the line to be drawn? We shan't have far to seek for it. We are looking for cases where ethics ought to interfere and legislation ought not (at least directly). If legislation interferes in a direct manner it must be by punishment.¹ Now, I have already said in chapter 15 what the cases are where punishment—meaning the punishment of the political sanction—ought not to be inflicted. If in any of *these* cases private ethics ought to interfere, these cases will help to point out the borderline between the two arts or

branches of science. These cases, you may remember, are of four sorts:

- (1) Where punishment would be groundless.
- (2) Where it would be ineffective.
- (3) Where it would be unprofitable.
- (4) Where it would be needless.

Let us look over these and see whether in any of them there's room for the interference of private ethics yet none for the direct interference of legislation. [You'll see that Bentham discusses the first three, but not the fourth, which one might have thought was prime territory for ethics to be appropriate and legislation not (see page 95).]

10. (1) First then, the cases where punishment would be groundless. In these cases, obviously, the restrictive interference of ethics would be groundless too. It is because there is over-all no evil in the act that legislation ought not to try to prevent it; and private ethics oughtn't to either, for the same reason.

11. (2) The cases where punishment would be ineffective fall into two classes. (a) The first depend not on the nature of the act but only on a defect in the timing of the punishment. The punishment in question is appropriate for the act in question, except that it ought not to have been inflicted until after it had been properly announced. These are the cases of •retroactive law, •a judicial sentence beyond the law, and •a law that wasn't adequately promulgated. So these acts can appropriately be brought under the scope of coercive legislation, so of course they fall within the scope of private ethics. (b) The other set of cases where punishment would be ineffective also don't depend on the nature of the act; they depend on extraneous circumstances that might happen to

¹ I say nothing here about reward. It's only in a few extraordinary cases that it can be applied, and even there it's not clear that this is an act of legislation.

accompany an act of any sort. But these are of such a nature that they leave little room for the influence of private ethics either: they are cases where the will couldn't be deterred from any act even by the extraordinary force of legal punishment, as in extreme infancy, insanity, and total intoxication; so of course it couldn't be deterred by such slender and precarious force as private ethics could apply. The same thing holds when the person didn't intend the act to have the result that it did, didn't know all the relevant circumstances, or was prey to mis-supposal with regard to the existence of circumstances that actually didn't exist; as also when the threat even of extraordinary punishment is overcome by the superior force of physical danger or threatened mischief. In these cases, clearly, if the thunders of the law prove impotent the whispers of simple morality can't have much influence.

12. (3) The cases where punishment would be unprofitable provide the great field for the exclusive interference of private ethics. When a punishment is unprofitable, or in other words too expensive [see Glossary], it is because the evil of the punishment exceeds that of the offence. Now the evil of the punishment, you may remember from chapter 13 **14**, can be divided into four branches: •the evil of coercion, including constraint or restraint, depending on whether the commanded act is positive or negative; •the evil of fear; •the evil of sufferance; and •the derivative evils that come to persons who are connected with sufferers of non-derivative evils in the other three classes. Now, those ·three· non-derivative evils are a threat to two sets of persons: those who have committed or been prompted to commit acts that really are prohibited, and those persons who have performed or been prompted to perform acts that they wrongly think are punishable. Because acts in the latter group are not harmful, it is no more the business of ethics than it is of legislation to try to prevent them. The acts in the former group are the

only ones that are pernicious, and thus the only ones that private ethics should try to prevent. It remains to show how it can happen that there are really pernicious acts that can properly come under the censure of private ethics but aren't fit objects for the legislator to control.

13. Punishment then, as applied to delinquency, may be unprofitable in either of two ways:

- (i) By the expense it would amount to, even if it applied only to delinquency; and
- (ii) by the danger of its involving the innocent in the fate intended only for the guilty.

(i) These cases clearly depend on a certain proportion between the evil of the punishment and the evil of the offence. . . . There are many cases where a punishment has no chance of being effective unless its severity is raised far above the level where it merely outweighs the profit (to the offender) of the offence. That's the situation when the danger of detection is—i.e. is likely to appear to be—so small that the punishment appears to be highly uncertain. In this case if punishment is to be used its severity must be increased as its certainty falls (see chapter 14 **18**). But obviously all this can only be guess-work. The effect of such a proportion—i.e. such a raising of severity to compensate for lack of certainty—will be made precarious by a variety of circumstances:

- the law's not being sufficiently promulgated;
- the particular circumstances of the temptation;
- the circumstances influencing the sensibility of the various individuals who are exposed to it.

If the seducing motives are strong, the offence *will* be frequently committed. Now and then indeed, through some coincidence of circumstances, it will be detected and thus punished. But the principal purpose of punishment is to set an example, and a single act of punishment is of no use

for that; its usefulness depends entirely on the expectation it raises of similar punishment in future cases of similar delinquency. But this future punishment must always depend on detection. If the chance of detection appears (especially to eyes fascinated by the force of the seducing motives) too low to be reckoned on, the punishment won't be of any use even if it is inflicted. Here then will be two opposite evils running on at the same time, neither reducing the amount of the other—the evil of the disease and the evil of the painful and ineffective remedy. It seems to be partly owing to some such considerations that fornication—illicit commerce between the sexes—has commonly gone altogether unpunished or been punished much less severely than legislators might have been disposed to punish it.

14. (ii) What is the source of the danger of punishment's involving the innocent in the fate intended only for the guilty? It is the difficulty there may be of fixing the idea of the guilty action, i.e. defining it clearly and precisely enough to guard effectively against misapplication. This difficulty may arise from •the nature of the actions themselves or from •the qualities of the men who draft the laws. [The latter source of difficulty, Bentham writes, may come partly from •the legislators' worries about whether and how judges will understand the laws they are writing, and partly from •the language's shortage of appropriate words or the legislators' incompetence with the words the language does contain. These difficulties, he suggests, may explain the fact that most legislators have not passed laws condemning actions involving rudeness, treachery, or ingratitude. He continues:] Any attempt to bring acts of such a vague and questionable

nature under the control of law would be evidence for either •a very immature age, in which men haven't yet noticed the difficulties that create the danger of punishing the innocent, or •a very enlightened age in which the difficulties are overcome.¹

15. So as to get a clearer idea of the boundary between the art of legislation and private ethics, I invite you to recall the distinctions I drew regarding ethics in general. How badly private ethics needs the help of legislation is different in the three branches of duty that I distinguished in **6** above. The rules of **prudence** seem to have least need for help from legislation. If a man ever fails in his duty to himself, that can only be because of some inadvertence or some mis-supposal (see chapter 9 **6**) regarding the circumstances on which his happiness depends. It is a standing topic of complaint that a man knows too little of himself. Be it so; but is it so certain that the legislator must know more? Clearly, the legislator can't know anything about the particular circumstances of each individual, so he can't do anything useful about the points of conduct that depend on them. If he has any claim to interfere, it is only with respect to broad lines of conduct that everyone—or a large and permanent subset of everyone—is at risk of engaging in; and even here the propriety of his interference will in most cases be disputable. At any rate, he mustn't expect to produce a perfect compliance by the mere force of the sanction that he has instituted. All he can hope to do is to increase the efficacy of private ethics by giving strength and direction to the influence of the moral sanction. What chance would a legislator have of wiping out drunkenness and fornication by means of legal punishment?

¹ In certain countries where the voice of the people has a special control over the hand of the legislator, there is intense fear of laws that would punish *defamation*, especially *political defamation*. This fear seems to come partly from doubts about the ability or integrity of the legislator and partly from doubts about the integrity of the judge.

Not all the tortures that ingenuity could invent would be enough to do it; and before he had made any significant progress, the punishment would involve evil a thousand times worse than the utmost possible mischief of the offence. The great difficulty would be in getting evidence: an attempt at this that had any chance of success would spread dismay through every family, ripping up the bonds of sympathy and rooting out the influence of all the social motives. All he can do by direct legislation against offences of this nature is to subject them in cases of notoriety to a slight censure, thus covering them with a slight shade of artificial disrepute.

16. With regard to the duty of prudence, legislators have generally been disposed to interfere at least as much as is expedient. The great difficulty is to get them to confine themselves within bounds. A thousand little passions and prejudices have led them to narrow the liberty of the subject in this line, in cases where the punishment either does no good at all or at least none that will make up for the expense [see Glossary].

17. The mischief of this sort of interference is especially conspicuous in matters of religion. The reasoning about this goes along the following lines:

There are certain errors in matters of belief to which all mankind are prone; and a Being of infinite benevolence has decided to punish these errors in judgment with an infinity of torments. The legislator himself is necessarily free from these errors, because the men who happen to be available for him to consult with—being perfectly enlightened, unfettered, and unbiased—have such advantages over all the rest of the world that when they sit down to look for the truth

regarding matters as plain and familiar as those in question, they can't fail to find it. This being the case, when the sovereign sees his people ready to plunge headlong into an abyss of fire won't he stretch out a hand to save them?

That seems to have been the train of reasoning and the motives that led Louis XIV into the coercive measures that he took for the conversion of heretics and the confirmation of true believers.

- The ground-work: pure sympathy and loving kindness.
- The superstructure: all the miseries that the most determined malevolence could have devised. . . .

18. The rules of **probity** are the ones that most need help from the legislator, and the ones in which his interference has in fact been most extensive. It would hardly ever be expedient to punish a man for hurting himself, but it is nearly always expedient to punish a man for injuring his neighbour. With regard to the part of probity that opposes offences against property: before the general rules of ethics about this can apply to anything in particular, legislation must first settle what things are to be regarded as each man's property. Similarly with offences against the state: without legislation there wouldn't *be* any state, any particular persons invested with powers to be exercised for the benefit of the rest. In this branch, therefore, it's clear that legislator's interference can't be dispensed with: we can't know what private ethics dictates until we know what legislation dictates.¹

19. As for the rules of **beneficence**: the details of these must be left in great measure to the jurisdiction of private ethics. In many cases the beneficial quality of the act depends on the

¹ There's an interesting question about what the dictates of private ethics ought to be if the dictates of legislation are not what they ought to be; but it doesn't concern the present subject.

disposition of the agent, i.e. on the motives that prompted him to perform it—on their belonging in the category of

- sympathy, desire for friendship, or love of reputation and not in the category of

- self-regarding motives, brought into play by the force of political constraint;

in short, on their qualifying his conduct as *free* and *voluntary* in one of the many senses given to those ambiguous expressions. The limits of the law about beneficence seem, however, to be extendable further than they seem ever to have been extended hitherto. In particular, when a person is in danger, why shouldn't it be made the duty of everyone to save him if he can do this without prejudicing himself?¹

20. To conclude this section, let me repeat and sharpen the difference between •private ethics considered as an art or science and •the branch of jurisprudence that contains the art or science of legislation. Private ethics teaches how each man may behave to pursue the course most conducive to his own happiness, by means of such motives as offer of themselves; the art of legislation (which can be seen as one branch of the science of jurisprudence) teaches how a multitude of men who compose a community may behave to pursue the course most conducive to the happiness of the whole community, by means of motives to be supplied by the legislator.

Before discussing the boundary between penal and civil jurisprudence, I shall give a distinct though summary

view of the principal branches into which jurisprudence is customarily divided.

2. Branches of jurisprudence

21. Jurisprudence is a •fictitious entity: the only way to find any meaning for 'jurisprudence' is to place it in company with some word that signifies a a •real entity. To know what 'jurisprudence' means we must know what is meant by (for example) 'book of jurisprudence'. The aim of a book of jurisprudence must be either •to ascertain what the law is, in which case it may be called a book of expository jurisprudence, or •to ascertain what it ought to be, in which case it is a book of censorial jurisprudence, i.e. a book on the art of legislation.

22. A book of expository jurisprudence is •authoritative if it is composed by someone who by saying that the law is thus-and-so causes it to be thus-and-so; it is unauthoritative when it is the work of anyone else.

23. Now, 'law'—or 'the law' understood indefinitely—is an **abstract** and collective term which, when it means anything, can only mean the sum total of a number of individual •**concrete**• laws taken together.² It follows that the basis for any divisions in the subject of a book of jurisprudence must be circumstances of which individual laws—or the groups of laws into which they can be sorted—are susceptible.

¹ A woman's head-dress catches fire; water is at hand; a man stands by and laughs. A drunken man, falling with his face in a puddle, is in danger of drowning though lifting his head a little on one side would save him; another man sees this and leaves him there. There is gunpowder scattered around a room, and a man is going into it with a lighted candle; another man, knowing this, lets him go in without warning. Would *anyone* think that punishment is inappropriate in these cases?

² Most European languages have different words for the **abstract** and the **concrete** senses of 'law'—words that are so far apart that they don't even have any etymological affinity. Latin has *lex* for the concrete sense and *jus* for the abstract; Italian has *legge* and *diritto*; French *loi* and *droit*; Spanish *ley* and *derecho*; German *Gesetz* and *Recht*. English today lacks this advantage. It did exist in Anglo-Saxon, but has since been lost.

The circumstances that have generated the branches of jurisprudence that are commonly spoken of seem to be these:

- (1) The territory across which the laws in question are valid.
- (2) The political quality of the persons whose conduct they undertake to regulate.
- (3) When they are in force.
- (4) How they are expressed.
- (5) Whether they are concerned with punishment.

24. (1) What the book says about the laws in question may refer either to •the laws of such-and-such a nation (local jurisprudence) or to •the laws of all nations whatsoever (universal jurisprudence).

Of the infinite variety of nations there are on the earth, no two agree exactly in their laws; certainly not over-all and perhaps not even in any single article; and if they did agree today they would disagree tomorrow. This is evident enough with regard to the laws' content; it would be even more extraordinary if they agreed in their form, i.e. if they were expressed in precisely the same strings of words. Strictly speaking, of course, the languages of two nations are likely not to have a single word in common; but for some legal terms there are pretty exact synonyms in all languages, e.g. the words meaning the same as 'power', 'right', 'obligation', 'liberty'; and my remark about 'the same string of words' is to be understood in terms of those.

It follows that if there are any books that can properly speaking be called books of 'universal jurisprudence', they must be looked for within very narrow limits. There can't be

any that are **expository** and authoritative; and as far as the content of the laws is concerned there can't even be any that are unauthoritative. For a book of the expository kind to be capable of universal application it must restrict itself to the meanings of words; so the definitions that I have scattered through the present work, and especially the definition of 'law' that I am going to give, can be regarded as belonging in the category of universal jurisprudence. . . .

It is in the **ensorial** line that there's most room for disquisitions that apply to the circumstances of all nations alike; and in this line what is said about the •content of the laws in question is as capable of universal application as what is said about the •form•, the words. It's impossible that the laws of all nations, or even of any two nations, should coincide in all points, and anyway it's not desirable that they should. But there seem to be some leading points in respect of which the laws of all civilised nations might satisfactorily be the same. To mark out some of these points will, as far as it goes, be the business of the body of this work.

25. (2) With regard to the political quality of the persons whose conduct is the object of the law. These may, on any given occasion, be considered either as members of the same state, or as members of different states; in the first case, the law may be referred to the head of internal, in the second case, to that of international jurisprudence.¹

Transactions between individuals who are subjects of different states are regulated by the internal laws, and decided on by the internal tribunals, of one or other of those states. The same holds when the sovereign of one state

¹ The word 'international' is admittedly a new one, but I hope it will be understood well enough. It is meant as a better name for the so-called 'law of nations'. If the latter name weren't held in place by custom, it would seem to refer to the internal jurisprudence •of the different nations•. A French lawyer recently said the same thing: what is commonly called *droit des gens* ought rather to be called *droit entre les gens*—law *between* peoples rather than *of* peoples.

has any immediate transactions with a private member of another state; whenever the sovereign submits his cause to either tribunal, whether claiming a benefit or defending himself against a burden, he reduces himself *pro re nata* [= 'on this occasion for this purpose'] to the condition of a private person. Then there are transactions between sovereigns; those are the subject of the branch—the only branch—of jurisprudence that can be properly called 'international'. . . .

It is evident enough that international jurisprudence, as well as internal, can be censorial as well as expository, unauthoritative as well as authoritative.

26. Internal jurisprudence can concern either •all the members of a state indiscriminately or •only the ones that are connected—as residents or otherwise—with a particular district. So jurisprudence is sometimes divided into national and provincial. But 'provincial' is hardly applicable to districts as small as many of those that have laws of their own, such as towns, parishes, and manors; so 'local' or 'particular' might be better adjectives for this purpose.¹

27. (3) With respect to time: If a work of the expository kind deals with laws that are still in force at the time when the book is written, we could call it 'present jurisprudence' or 'living jurisprudence'; if it deals with laws that have ceased to be in force, we could call it 'ancient jurisprudence'—if we *must* use that noun and some adjective! But a book of the latter kind is really a book of history, not jurisprudence. . . .

If a book deals with laws that were in force when it was written but are so no longer, it is no longer a book of living jurisprudence and it isn't—and never was—a book on the history of jurisprudence. Obviously any expository book of jurisprudence must after a few years come to be in this situation.²

The most common and most useful thing for a history of jurisprudence to do is to exhibit the circumstances that have attended the establishment of laws actually in force. But the exposition of the dead laws that have been superseded is inseparably interwoven with that of the living ones that have superseded them. The great use of both these branches of science is to furnish examples for the art of legislation.

28. (4) As regards how they are expressed: the laws in question may exist in the form either of statutes or of customary law.

As for how mode-of-expression relates to the penal and civil branches of law, that can't be properly shown until some progress has been made in the definition of *law*.

29. (5) The most intricate distinction of all, and the one that is most often under discussion, is that between the civil branch of jurisprudence and the penal (sometimes called the 'criminal'). . . .

What is a penal code of laws? What is a civil code? What do they contain? Is it that there are two sorts of laws, penal and civil, so that the laws in a penal code are all penal while

¹ The term 'municipal' seemed to answer the purpose very well until an eminent English author used it to cover •internal law in general, as against •international law and the imaginary •law of nature.

² What sort of thing are the works of Grotius, Pufendorf, and Burlamaqui? Are they political or ethical, historical or juridical, expository or censorial? Sometimes one thing, sometimes another: they seem hardly to have settled the matter with themselves. A book is almost certain to have this defect if it takes for its subject the supposed 'law of nature'—an obscure phantom which, in the imaginations of those who chase after it, points sometimes to manners, sometimes to laws; sometimes to what law is, sometimes to what it ought to be. Montesquieu sets out on the censorial plan; but long before the conclusion he seems to forget his first design and shift from censor to antiquarian. . . .

the laws in a civil code are all civil? Or is it that every law has some content of a penal nature, thus belonging to the penal code; and other content of a civil nature, belonging to the civil code? Or is it that some laws belong to one code or the other exclusively, while others are divided between the two? To answer these questions in a reasonably satisfactory

way we would have to ascertain what a *law* is—meaning one single complete law—and what are the parts that a law can be divided into. . . . This will be the business of the **third** and **fourth** sections; the meaning of ‘criminal’ in the phrase ‘criminal law’ will be discussed separately in the **fifth**.

Material added nine years later

Here ends the original work, in the state into which it was brought in November 1780. What follows is now added in January 1789. The **third**, **fourth** and **fifth** sections that were to have been added to this chapter will not be given here, because to give them in a reasonably complete and satisfactory way might require a considerable volume. This volume will form a work of itself, closing the series of works mentioned in the preface [see page 1].

What follows may give a slight indication of the nature of the task that such a work will have to achieve. It won’t give anything like satisfactory answers to the questions raised in the text, but it will provide a slight and general indication of the course to be taken for answering them properly.

What is a law? What are the parts of a law? The subject of these questions is the logical, the ideal, the intellectual whole and not the physical one; it is *the law*, not *the statute*. The questions when asked about statutes are easy to answer but not interesting. In this sense of ‘law’, whatever is given as law by someone recognised as having the power to make laws is law. The *Metamorphoses* of Ovid, if thus given, would be law. As much as was embraced by a single act of authentication, as much as received the touch of the sceptre at one stroke,

is one law, a whole law. . . . A statute of George II made to replace an ‘and’ by an ‘or’ in a former statute is a complete law—a statute containing an entire body of laws, perfect in all its parts, would not be more so. By the word ‘law’, then, when it occurs in the succeeding pages, is meant •the ideal object of which the part, the whole, or the multiple, or an assemblage of parts, wholes, and multiples mixed together is exhibited by a statute, and not •the statute that exhibits them.

Every law, when complete, is either coercive or uncoercive. A coercive law is a command.

An uncoercive—or rather a *discoercive*—law is the revocation of a part or the whole of a coercive law.

A so-called ‘declaratory law’, not being either coercive or discoercive, is not properly speaking a law at all. It is not the expression of an act of the will exercised at that time; it is a mere notification of the existence some coercive or discoercive law that already exists. . . . If it does anything more than give information of this fact, . . . that makes it either coercive or discoercive and thus stops it from being what is meant by a ‘declaratory law’.

Every coercive law creates an offence, i.e. converts an act of some kind into an offence. It is only by doing this that it can impose obligation, produce coercion.

•A law that merely creates an offence and •a law commanding punishment for the commission of such an offence are two distinct laws, and not—as they seem to have been generally regarded until now—parts of a single law. The acts they command are altogether different; the persons they are addressed to are altogether different. For example:

- To everyone: do not steal.
- To judges: When someone is convicted of stealing, have him hanged.

They might be called ‘simply imperative’ and ‘punitive’ respectively; but the punitive law is as truly imperative as the other, and differs from it only in *also* being punitive.

A discoercive law can’t in itself have a punitive law belonging to it; to get the support of a punitive law it must have the support of a simply imperative or coercive law; and the punitive law will attach itself to the latter. For example:

- discoercive law: The sheriff has power to hang everyone whom the judge, proceeding in due course of law, orders him to hang.
- coercive law in support of that: No man is to hinder the sheriff from hanging everyone whom the judge [etc.] orders him to hang.
- punitive law in support of that: The judge is to cause to be imprisoned ever man who tries to hinder the sheriff from hanging everyone whom the judge [etc.] orders him to hang.

But though the simply imperative law is totally distinct from the punitive law attached to it—the former contains nothing of the latter, and the latter doesn’t explicitly contain anything of the former—the punitive law does implicitly involve and include the content of the associated simply

imperative law. To say to the judge ‘Cause to be hanged whoever in due form of law is convicted of stealing’ is •as intelligible a way (though an implicit one) of telling men in general that they must not steal as saying to them explicitly ‘Do not steal’, and •much more likely to be effective!

You might think that when a simply imperative law is to have a punitive one appended to it, the former could be dropped, so that the whole body of the law would have no need for any laws except punitive—i.e. penal—ones. (Unless some laws could do their work without any punitive appendage, and there aren’t likely to be many of those.) This might indeed be the case if it weren’t for the need for a large quantity of *expository* content, which I shall now discuss.

It happens with many, probably most, possibly *all* commands with the force of a public law that they need to be expressed with the use of terms whose meanings are too complex to exhibit the requisite ideas without help from a quantity of expository material. Such terms, like the symbols used in algebraical notation, are not •the real and immediate representatives of those ideas but •substitutes for—pointers to—terms that do of themselves exhibit the ideas in question.

Take for instance the law *Thou shalt not steal*. That command, just as it stands, could never do the work of a law. The only way something so vague and inexplicit could do that work is by giving a general indication of a variety of propositions each of which would make itself intelligible by using many more words, and more specific ones at that. According to a definition that is accurate enough for my present purpose. *stealing* is taking something that belongs to someone else when you don’t have any *title* to it and know that you don’t. Even after this explanation, and supposing it to be correct, can the law be regarded as completely expressed? Certainly not! What does it mean to say that a man has a *title* to take a thing? To be complete, the law

must present—among much else—two lists: of •events to which the law has given the quality of conferring title in such a case, and of •events to which it has given the quality of taking title away. What follows is that for a man to have stolen—for a man to have no title to what he took—it must be the case that either •no event in the first list has happened in his favour or •an event in the second has happened in his disfavour.

Such is the nature of a general law: the imperative part of it—the living core of this artificial body—needn't take up more than two or three words, but the expository appendage without which that imperative part couldn't rightly do its work may occupy a considerable volume.

This can equally be the case with a private order given in a family or small business. A bookseller says to his foreman: 'Remove from this shop to my new one my whole stock according to this printed catalogue.' The imperative content of this order is 'Remove from this shop to my new one my whole stock', and the catalogue referred to contains the expository appendage.

The same expository content may serve for many commands, many masses of imperative content. For example, the two lists of events mentioned above will belong to all or most of the laws constitutive of the various offences against property; as in mathematical diagrams, where a single base can serve for a whole cluster of triangles.

Because such expository material is so different from the imperative, it wouldn't be surprising if the connection between the two were not noticed; and perhaps it pretty generally *isn't* noticed. And as long as any mass of legislative material presents itself that isn't itself imperative or the contrary, and isn't understood to be connected with material that *is* imperative or the contrary, two things will be the case: •the truth of the proposition *That every law is a command or*

its opposite will remain unsuspected or appear questionable; and •the incompleteness of most of the masses of legislative material that look superficially like complete laws will remain undiscovered, as will the method to be taken for making them really complete.

The difficulty of making this discovery is increased by the great variety of ways in which the operation of a law can be conveyed—the great variety of forms that the imperative part of a law can have—differing in how directly they express the imperative quality. 'Thou shalt not steal.' 'Let no man steal.' 'Whoever steals shall be punished thus and so.' 'If any man steals, he shall be punished thus and so.' 'Stealing is where a man does thus and so.' 'The punishment for stealing is so and so'. . . . These are only a few of the multitude of forms of words that can express the command by which stealing is prohibited; and it's easy to see how greatly, in some of them, the imperative quality is clouded and concealed from ordinary understanding.

After this explanation, a few general propositions may help to provide insight into the structure and contents of a complete body of laws:

- So many different sorts of offences created—so many different laws of the coercive kind;
- so many exceptions to the descriptions of those offences—so many laws of the discoercive kind.

Thus, to classify offences, as I tried to do in chapter 16, is to classify laws; and to exhibit a complete list of all the offences created by law, including all the expository material needed to fix and exhibit the meanings of the terms used in the various laws by which those offences are created, would be to exhibit a complete collection of the laws in force—i.e. a complete body of law.

[The difficulties of line-drawing that he has discussed, Bentham now says, create an obscurity concerning the line

between 'a civil and a penal code'. He insists that no state has ever had a complete civil code and a complete penal one, so he approaches the line-drawing question thus:] If two masses of legislative material are drawn up by a state today, one called a 'civil' code and the other a 'penal' code and each meant to be complete in its kind, how should we expect the different sorts of material to be distributed between them?

The civil code would not consist of a collection of civil laws, each complete in itself, and no penal ones; and the penal code would not (because we have seen that it *could* not) consist of a collection of punitive laws, each complete in itself, and no civil ones. Rather

The civil code would consist chiefly of mere masses of expository material. The imperative material to which that expository material pertained would be found in the penal code woven into the corresponding punitive laws in the way I have explained.

The penal code then would consist principally of punitive laws, involving the imperative content of all the civil laws; along with which there would probably be various masses of expository material pertaining to the punitive laws. The body of penal law enacted by the Empress-Queen Maria Theresa fits this account pretty well.

The mass of legislative material published in French as well as in German under the auspices of Frederic II of Prussia, . . . but never established with force of law, appears to be almost wholly composed of masses of expository material whose relation to anything imperative appears to have been very imperfectly grasped.

In the ancient Roman law—that enormous mass of confusion and inconsistency—the imperative material and even all traces of the imperative character seem eventually to have been smothered in the expository. [In what follows, *esto* is Latin for the imperative 'make it the case' or 'let it be the case'; and *videtur*

seems here to mean something like 'it is decided'.] *Esto* had been the language of primeval simplicity; *esto* had been the language of the twelve tables [of Moses]. By the time of Justinian (so thick was the darkness raised by clouds of commentators) the penal law had been crammed into an odd corner of the civil law; the whole list of offences and even of crimes lay buried under a heap of obligations; will was hidden in opinion; and the original *esto* had transformed itself into *videtur* in the mouths of even the most despotic sovereigns.

Among the barbarous nations that grew up out of the ruins of the Roman empire, •Law emerged from under the mountain of expository rubbish and reassumed for a while the language of command; and then •she at least had simplicity to recommend her, if nothing else.

Besides the civil and the penal, every complete body of law must contain a third branch, the constitutional.

The main role of the constitutional branch is •to confer powers on particular classes of persons—powers to be exercised for the good of the whole society or of large parts of it—and •to prescribe duties to the persons who have been given those powers.

The powers are principally constituted, in the first instance, by discoercive or permissive laws operating as exceptions to certain laws of the coercive or imperative kind. For example, a tax-gatherer as such may on such-and-such an occasion take such-and-such things without any other title.

The duties are created by imperative laws addressed to the persons to whom the powers are given. For example, on such-and-such an occasion, such-and-such a tax-gatherer shall take such-and-such things. Such-and-such a judge shall in such-and-such a case cause persons offending thus-and-so to be hanged.

The parts that say who the individuals are who shall be considered as belonging to those classes are neither permis-

sive nor imperative. They are so many masses of expository material that relate equally to all the laws that mention those classes of persons. For example, there are imperative laws telling judges what to do in certain situations; and expository material saying who is to count as a judge. . . .

Thus it is that a single law—one and the same command—will have its material divided among *three* main branches of the whole body of the laws, the civil, the penal and the constitutional.

In countries where much of the law exists only in the form of what in England is called ‘common law’ but might be more accurately called ‘judiciary law’, there must be many laws whose meaning can’t be sufficiently pinned down without referring to this ‘common law’ for some of the expository material belonging to them. Thus in England the exposition of the word ‘title’—that basis of the of whole fabric of the laws of property—can’t be found anywhere else. [The rest of this paragraph is verbatim from Bentham.] And, as uncertainty is of the very essence of every particle of law so denominated (for the instant it is clothed in a certain authoritative form of words it changes its nature, and passes over to the other denomination) hence it is that a great part of the laws in being in such countries remain uncertain and incomplete. What are those countries? To this hour, every one on the surface of the globe.

If the science of architecture had no fixed terminology—no settled names for marking off distinguishing different sorts of buildings or parts of buildings, what would it be? It would be what the science of legislation, considered with respect to its form, remains at present.

If no architect could distinguish a dwelling-house from a barn, or a side-wall from a ceiling, what would architects be? They would be what all legislators are at present.

From this slight and imperfect sketch you may get not

•an answer to the questions I have raised but •an imperfect indication of how to go about finding such an answer; and also •some idea of how hard this task is as well as of how greatly it is needed.

If you want empirical evidence of the difficulty and the need, consider all the well-meant attempts by popular bodies, and well-meant recommendations in ingenious books, to restrain supreme representative assemblies from making laws in such-and-such cases or to such-and-such an effect. For such attempts to succeed they would require •perfect mastery of the formal aspects of the science of law (spoken of in the preface to this work); but even a •moderate insight into that science would prevent the use of the loose and inadequate terms that are so often used here; and a perfect acquaintance with the dictates of utility would in many—if not in most—cases say ‘Don’t even try’. If you keep to the letter, your attempt to prevent the making of bad laws will end up prohibiting the making of the most necessary laws, perhaps even of all laws. If you don’t keep to the letter, what you come up with will be tantamount to saying ‘When any of your laws contain anything that I don’t agree with, it *ipso facto* becomes void’.

Examples of such unhappy attempts can be met with in the legislation of many nations; but in none more frequently than in that newly-created nation, one of the most enlightened—if not *the* most enlightened—on the planet today.

Take for instance the Declaration of Rights enacted by the state of North Carolina in a convention in September 1788, and said to be copied (with a small exception) from one similarly enacted by the state of Virginia. Here is the first and fundamental article:

'There are certain natural rights of which men cannot, in forming a social compact, deprive or divest their posterity. Among these are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.'

Not to dwell on the oversight of confining to posterity the benefit of the rights thus declared, what follows? That every coercive law is void!

For example, every order to pay money as taxation, or as payment of individual debt, is void; because if someone obeys it it will 'deprive and divest him' to that extent of the enjoyment of liberty, namely the liberty of paying or

not paying as he thinks proper; and will take some of his property, which is itself a 'means of acquiring, possessing and protecting property, and of pursuing and obtaining happiness and safety'. Similarly with any law requiring imprisonment for a certain offence.

Every order to attack an armed enemy in time of war is also void, because the inevitable effect of such an order is to 'deprive [some people] of the enjoyment of life'.

Those consequences may suffice for examples, among an endless train of similar ones.¹

THE END

¹ [Bentham has a footnote discussing the attribution to Virginia, and then continues:] Who can help lamenting that such a rational cause should be based on reasons that are more fit to create objections than to remove them? With men who are unanimous and heart-felt about measures, nothing is so weak that it can't be accepted as a reason. This isn't the first time that a conclusion has supported its premises instead of vice versa.