



Foucault's Bentham: Fact or Fiction?

Dissecting a Perverse Fixation

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Abstract

One would be hard-pressed to name an edifice that has dominated the academic imagination as thoroughly and exhaustively as Jeremy Bentham's Panopticon. This somewhat monomaniacal fixation on one of Bentham's many penal contraptions is rooted, to no small degree, in Michel Foucault's now vogueish theory of power, as expounded upon in his seminal work *Discipline and Punish*. Foucault's understanding of Bentham's penal thought, particularly the Panopticon, forms one of the key linchpins which his broad historical claims hinge upon. But to what extent does Foucault's representation of Bentham's penal theories, in particular, his views on the prison and the Panopticon, converge with how Bentham himself gave expression to his own penal philosophy? This question is examined in this article by taking a closer look at *The Rationale of Punishment*, a compilation of a vast mass of Bentham's manuscripts, which were first published in English in 1830.

Keywords Michel Foucault · Jeremy Bentham · Utilitarian philosophy · Panopticon prison · Rationale of Punishment · Prison system · Discipline and Punish · Foucault's Bentham

When anyone shows himself overly confident in ability to understand and interpret the works of Chrysippus, say to yourself, "Unless Chrysippus had written obscurely, this person would have had no subject for his vanity. . . ." — Epictetus

The Roots of a Misplaced Fixation

'Some men are unfortunate', remarked Victor Hugo, 'Christopher Columbus is unable to attach his name to his discovery; Guillotin is unable to detach his [name]

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from his invention [the Guillotine]'.¹ The English philosopher Jeremy Bentham surely merits inclusion in this list of unfortunates: despite his decades of humbling and voluminous scholarly contributions to penal thought, it is the Panopticon—which coincidentally amounts to no more than eighteen pages of *The Rationale of Punishment*—that he is best known for.

To no small degree, one can trace the roots of this misplaced and somewhat monomaniacal fixation on the Panopticon to the suffocating grip of Michel Foucault's analysis of penal institutions on the intellectual imagination.

To appreciate the impact of Foucault's now vogueish theory of power, as expounded upon in his seminal work *Discipline and Punish*, we need not go back too far into the past.

Just a decade prior to the publication of *Discipline and Punish* in 1975, historian Gertrude Himmelfarb could lament that '[h]istorians and biographers' alike had plodded 'through [Bentham's] vast tomes and mass of manuscripts,' but had 'ignored the readily available and far more readable material on the Panopticon.' 'Not only historians and biographers' she regretted, 'but even legal and penal commentators seem to be unfamiliar with some of the most important features of Bentham's plan'.²

But it would not take long for this oversight to be corrected.

The publication of *Discipline and Punish* in 1975 would immortalise Foucault and his theory of power. But in the process, it would also chain Jeremy Bentham's name to one of his countless penal innovations, i.e., the Panopticon prison. Indeed, today, one is hard-pressed to mention Bentham without somehow being reminded of the Panopticon—arguably the most talked about piece of architecture ever to have been designed by an Oxford graduate—or ideas of 'power', 'surveillance' and 'control'.³

More than four decades have elapsed since Michel Foucault catapulted himself into academic superstardom by publishing *Discipline and Punish*.

Since then, there has been a veritable explosion of scholarly literature that engages, in one way or another, with Foucault's social theory, with the Panopticon occupying an eminent position. Entire careers have been built on Foucault's depiction of Bentham and his profusely cited penal device. The Panopticon and its offshoots have been established in a number of academic disciplines as legitimate genres in their own right. One can speak today of 'the superpanopticon, electronic panopticon and post-panopticon, there are references to the 'omnicon', 'ban-opticon'... 'global panopticon', 'panspectron', 'myoptic panopticon', 'fractal panopticon', 'industrial panopticon', 'urban panopticon', 'pedagopticon', 'polyopticon', 'synopticon', 'panoptic discourse', 'social panopticism', 'cybernetic panopticon', and the 'neo-panopticon'.⁴ And then we have the 'constitutional-Panopticon',

¹Hugo (1834), pp. 234–235 (translation my own).

²Himmelfarb (1995 [1968]), pp. 32–33. Himmelfarb's observation was originally brought to my attention in Philip Smith's *Punishment and Culture*. See Smith (2008), p. 99; Foucault (1995 [1977]).

³One of the consequences of Foucault's work, notes Bentham scholar Anthony Draper, is that 'ideas of surveillance, control and regimentation, are now immediately, and often erroneously, brought to mind with the mention of Bentham and punishment'. See Draper (2002), pp. 1–2.

⁴On this proliferation, see Haggerty (2006), p. 26.

the 'pauper-Panopticon'. And of course, there is the indispensable 'reversed' (or 'inverted') Panopticon.⁵

Rarely has an edifice so thoroughly dulled the imaginative faculties of so many. Thanks to Foucault, the Panopticon is now an ever-expanding universe of its own.

Carrying the Mantle of Utilitarianism

The relentless zest with which academics of all stripes and hues have invoked and reinvented Foucault's characterisation of the Panopticon and prison can leave one with the odd impression that even in his death, the Frenchman is the sole legitimate gateway through which Bentham is to be understood. The unfortunate upshot here is that scarce attention is afforded to how Bentham himself articulated his thoughts on the matter.

The great paradox here is that Bentham, not known for being taciturn, needed little assistance in being interpreted. On the contrary, his remarkably lucid style of communication was one of the characteristics that made him stand out amongst contemporaries. So much so that some have placed Bentham's cogent and coherent style above his undeniably pioneering influence in the intellectual field.⁶

Though Bentham's clarity of expression renders the deciphering of his words largely superfluous, it is still important to distil his penal ideas into their essence. In the present text, we shall rely on *The Rationale of Punishment* (1830) to produce a more nuanced portrait of Bentham's penal philosophy. The resulting portrayal is then contrasted with the image of Bentham popularised by Foucault's interpretive legacy.

Before delving deeper into Bentham's penal theories, it is important to remind ourselves of the utilitarian school of thought he felt deeply indebted to. More than anyone else, it was the Milanese jurist Cesare Beccaria whom he held in such high esteem. Beccaria was more than a teacher, but, in Bentham's words, a 'master', the 'first evangelist of Reason' who had singlehandedly 'raised your Italy so far above England, and I would add above France, were it not [for] that Helvetius'. Beccaria, Bentham believed, had 'made so many useful excursions into the path of utility, what is there left for us to do?—Never to turn aside from that path'.⁷

At the very core of Beccaria's utilitarian conception of punishment—as articulated in *On Crimes and Punishments*—is a prime concern with maximising the combined happiness and pleasure of society's individual members, and, by extension, minimising their combined unhappiness and pain. This, more than anything else, is the foundational premise of utilitarian thought, both for Beccaria and Bentham. '[T]he principle goal of all good legislation', he writes, 'is the art of guiding men to their

⁵Brunon-Ernst (2012b), pp. 24–25.

⁶A case in point is David Roberts, who has argued that Bentham's 'foresight, the clarity, and the logic with which he expressed' his ideas were more remarkable than his 'influence over numerous men'. Roberts (1959), p. 208.

⁷Quoted in Halévy (1928), p. 21.

greatest happiness, or the least unhappiness possible, taking into account all the blessings and evils of life'.⁸

The pioneering significance of Beccaria's contribution to utilitarianism is indubitable. The 'first evangelist of Reason' had indeed aspired to apply utilitarian reasoning 'with a mathematical rigour' to criminal law.⁹ This groundbreaking role notwithstanding, he had a tendency at times to dilute the utilitarian force of his work—either by incorporating the contractual principle into his reasoning¹⁰ or resorting to the passions rather than pure reason.¹¹

In Bentham's work, however, we find a far purer, more pungent and more developed expression of utilitarian philosophy.¹² He assigns absolute primacy to the utilitarian telos of maximising pleasure and minimising pain, vowing to steer clear of injecting one's instincts and emotions into the realm of reason. A brilliant logician, his systematic, and for some even coldhearted, application of the utilitarian calculus to the penal realm is performed with a remarkable consistency that Beccaria's work lacks at times.¹³ And while his reverence for Beccaria is unshakable, he is by no means afraid to express disagreement with his 'master'.¹⁴

To better appreciate the cardinal importance of utilitarianism to Bentham's *Weltanschauung*, consider how he positions the principle of 'utility' vis-à-vis 'Divine will'. 'But if we presume that God wills anything', he declared, 'we must suppose that he has a reason for so doing, a reason worthy of himself, which can only be the greatest happiness of his creatures. In this point of view, therefore, the Divine will cannot require anything inconsistent with general utility'.¹⁵ For Bentham, God Almighty is, much like the Englishman himself, a devout utilitarian.

Pain and Pleasure: 'the Great Springs of Human Action'

At the centre of Bentham's vision for the ideal penal system, which is described in great detail in *The Rationale of Punishment*, is an almost obsessive concern with pleasure and pain: 'Pain and pleasure' he declares, 'are the great springs of human action'.¹⁶ Like Beccaria, Bentham believed that any legislation, including penal law,

⁸Beccaria (1995[1764]), p. 103.

⁹Beccaria (1995[1764]), p. 30.

¹⁰Elie Halévy, for instance, points this out with regard to Beccaria's arguments against capital punishment. In making the case against capital punishment, Beccaria, in line with utilitarianism, argues against the utility of the punishment. But he also considers capital punishment to be in violation of the social contract. In Bentham's thinking, this contractual form of reasoning would have been deemed immaterial, since nothing but the utility of a penal sanction should determine its admissibility. On this, see Halévy (1928), p. 58.

¹¹Beccaria was 'much more effective', notes Marcello T. Maistro, 'when he appealed to human feelings rather than to human reason'. See Maistro (1942), p. 121.

¹²On this see, e.g., Roberts (1959).

¹³'[N]either in the rigorous definition of the principle [of utility], nor in the systematic development of its consequences', notes Elie Halévy, did Beccaria 'come near to Bentham'. See Halévy (1928), p. 58.

¹⁴See, e.g., Bentham (1830), p. 178.

¹⁵Bentham (1830), p. 72.

¹⁶Bentham (1830), p. 19.

should be judged solely by the extent to which it is conducive to maximising the accumulative pleasures experienced by members of society, while minimising their accumulative pains.

But to apply such a principle in the penal realm, Bentham must first ensure that punishment, and of course all the concepts relating to it, are broken down to the most rudimentary elements of utilitarianism, i.e., pain (evil) and pleasure (good). 'Punishment, whatever shape it may assume', he insists, 'is an evil', that is to say, 'a physical evil; either a pain, or a loss of pleasure, or else of that situation or condition of the party affected, which is the immediate cause of such pain or loss of pleasure'.¹⁷

But if, as Bentham argues, punishment is a pain (or evil), how are we then to differentiate it from a crime (or mischief), which is also a pain inflicted by the criminal (or mischievous) individual? In terms of their intrinsic nature, Bentham replies, crime and punishment are essentially one and the same thing: 'punishments and offences are both evils caused by the free agency of man. In as many points as we are liable to be injured by the hand of an offender, in so many points is the offender himself exposed to the sword of justice'. In other words, what separates crime from offence 'is not then in their nature'.¹⁸

One difference between the two is 'the legality of the one, and the illegality of the other, offences are prohibited, punishments are instituted by the laws'.¹⁹ But for a utilitarian like Bentham, more important than the question of legality is how mischief and offence figure in the broader calculus of pain (evil) and pleasure (good).

[In terms of pain and pleasure their] effects also are diametrically opposite. An offence produces an evil both of the *first* and *second order*; it causes suffering in an individual which he was unable to avoid, and it spreads an alarm more or less general. A punishment produces an *evil* of the *first order*, and a *good* of the *second order*. It inflicts suffering upon an individual who has incurred it voluntarily, and in its secondary effects it produces only good, it intimidates the ill-disposed, it re-assures the innocent, and becomes the safeguard of society.²⁰

While the 'first order' evil of an offence, that is to say the pain it causes a member of society, does enter his moral calculus, it is the offence's secondary order of evil—or the general 'alarm' it spreads in society—that Bentham is most concerned about. Punishment, too, produces an evil in society, for it is pain and is thus abhorrent to the utilitarian. But unlike an offence, which gives rise to nothing but evil, punishment, i.e., the infliction of pain on a delinquent, produces the salutary effect (a '*good* of the *second order*') which is to deter those prone to committing the mischief in a future time. Punishment is thus justified only when it intimidates 'the ill-disposed, it re-assures the innocent, and becomes the safeguard of society'. 'All punishment being in itself evil, upon the principle of utility', he reiterates elsewhere, 'if it ought at all

¹⁷Bentham (1830), pp. 1–2.

¹⁸Bentham (1830), p. 17.

¹⁹Bentham (1830), p. 17.

²⁰Bentham (1830), pp. 17–18 (emphases in original).

to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil'.²¹

If punishment is to exclude some 'greater evil', it ought then 'first, to obviate the danger of the like mischief in future: secondly, to compensate the mischief that has already been done.'²² As stated before, it is the first goal, i.e., prevention, that occupies the most basic position in the thinking of our penal reformer. But Bentham's preventive penology operates at two levels, namely '[p]articular prevention, which applies to the delinquent himself; and general prevention, which is applicable to all the members of the community without exception'.²³

The 'Chief End of Punishment, 'General Prevention' and 'Exemplarity'

While 'Particular prevention' is by no means unimportant for Bentham,²⁴ its significance for crime prevention is substantially outweighed by the sheer fruitfulness of 'general prevention', which 'is effected by the denunciation of punishment, and by its application, which... serves for an example. The punishment suffered by the offender presents to every one an example of what he himself will have to suffer if he is guilty of the same offence'.²⁵

In stressing the vital importance of punishment's exemplary quality, Bentham is clear and unequivocal. 'General prevention', he writes, 'ought to be the chief end of punishment, as it is its real justification'.²⁶ To illustrate the deep significance of general prevention, Bentham envisages a hypothetical situation wherein an offence can be considered a fact isolated from the rest of society:

If we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open not only to the same delinquent, but also to all those who may have the same motives and opportunities for entering upon it, we perceive that the punishment inflicted on the individual becomes a source of security to all. That punishment, which, considered in itself, appeared base and repugnant to all generous sentiments, is elevated to the first rank of benefits, when it is regarded not as an act of wrath or of vengeance against a guilty or

²¹Bentham (1830), p. 23.

²²Bentham (1830), p. 19.

²³Bentham (1830), p. 19 (emphasis in original).

²⁴Bentham enumerates three ways for preventing a delinquent from committing a mischief in the future: (1) incapacitation, (2) reform and (3) intimidation. 'In the first case', he explains, 'the individual can no more commit the offense; in the second, he no longer desires to commit it; in the third, he may still wish to commit it, but he no longer dares to do it. In the first case, there is a physical incapacity; in the second, a moral reformation; in the third, there is intimidation or terror of the law'. See Bentham (1830), p. 20.

²⁵Bentham (1830), p. 20 (emphasis in original).

²⁶Bentham (1830), p. 20.

unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety.²⁷

As evinced by the above passage, in Bentham's view, it is punishment's contribution to 'general prevention' that transforms it from something 'base and repugnant to all generous sentiments' to a virtue—i.e., a benefit for the community and its sense of safety.

For Bentham, it would be nothing short of *penny wise, pound foolish* to fret about individual prevention without giving adequate consideration to general prevention, which is the ultimate benefit that should accrue from punishment. The last adage may sound somewhat misplaced, since it ascribes pecuniary rationality to the realm of punishment. And yet this is precisely the course of action adopted in Bentham's political economy of punishment. '[T]o say that a punishment is economic', he argues, 'is to use the language of reason and calculation'.²⁸ In his economy of punishment, the 'pain produced by punishments' is 'a capital hazarded in expectation of profit', and '[t]his profit is the prevention of crimes. In this operation everything ought to be taken into the calculation of profit and loss; and when we estimate the profit, we must subtract the loss; from which it evidently results that the diminution of the expense, or the increase of the profit, equally tend to the production of a favourable balance'. If punishment is to be economic, prevention must be attained 'by the employment of the least possible suffering', but if 'it produces more evil than good; or when it is possible to obtain the same good by means of a less punishment', it is too expensive.²⁹

Real versus Apparent Suffering

Applying a cost-benefit approach, Bentham divides the value of punishment into two main classes, which he refers to as the '*real*' and '*apparent*' values of punishment. Its real value, he notes, is the degree to which a convicted delinquent, *after* having suffered the pain of punishment, will be deterred from committing the same offence in the future. The apparent value, on the other hand, is how a punishment presents itself to the minds of potential—or former—delinquents prior to their commission of a mischief.

Since the *real* value of punishment consists of pain suffered by the delinquent, Bentham sees this as an incurred cost or expense, and must therefore be kept at a minimum. As he cautions, it 'ought not to be forgotten... that the delinquent is a member of the community'. If the pain he suffers goes beyond what is required to achieve deterrence, his punishment is automatically rendered too expensive, and thus repugnant to the moral universe of utilitarianism. The *apparent* value, on the other hand, 'influences the conducts of individuals', and is this considered to be the 'profit'

²⁷Bentham (1830), pp. 20–21.

²⁸Bentham (1830), p. 27.

²⁹Bentham (1830), p. 27.

of punishment.³⁰ It is therefore of absolute necessity to maximise the apparent value of punishment, while minimising its real value.

In seeking to achieve this goal, Bentham, like Beccaria, is adamant that punishment must *appear* as frightening and painful as possible, while causing as little real pain as possible for the delinquent. In the following passage, Bentham makes this point abundantly clear:

Ought any real punishments to be inflicted? Most certainly. Why? For the sake of producing the *appearance* of it. Upon the principle of utility, except as to so much as is necessary for reformation and compensation, for this reason, and for no other whatever. Every particle of real punishment that is produced more than what is necessary for the production of the requisite quantity of apparent punishment, is just so much misery run to waste. Hence the real punishment ought to be as small and the apparent punishment as great as possible.³¹

As he attempts to accentuate the central importance of maximising the apparent, and minimising the real, value of punishment, Bentham invokes a hypothetical scenario in which it is possible to hang a dummy instead of a real criminal and all the while achieve the same level of deterrence that would have resulted from the hanging of a living, breathing human being:

If hanging a man in *effigy*, would produce the same salutary impression of terror upon the minds of the people, it would be folly or cruelty ever to hang a man *in person*.³²

Bentham's insistence that punishment is inflicted for 'the sake of producing the *appearance* of it' is strongly reminiscent of how Beccaria formulates punishment's ultimate purpose, which he considers to be the 'instilling of terror in other men'.³³ But the crucial point here does not lie in a mere similarity in the wording deployed by our utilitarians, but rather in the almost overriding importance Bentham attaches to punishment's harsh and spectacular quality. 'If delinquents were constantly punished for their offences, and nobody else knew of it', argues Bentham, 'it is evident that, excepting the inconsiderable benefit which might result in the way of disablement, or reformation, there would be a great deal of mischief done, and not the least particle of good. The *real* punishment would be as great as ever, and the *apparent* would be nothing. The punishment would befall every offender as an unforeseen evil. It would never have been present to his mind to deter him from the commission of crime. It would serve as an example to no one'.³⁴

The imperative to preserve punishment's exemplar quality and to minimise its suffering for the delinquent is condensed by Bentham into one of his three fundamental maxims of penal law,

³⁰Bentham (1830), p. 28.

³¹Bentham (1830), p. 29 (emphasis in original).

³²Bentham (1830), p. 29 (emphases in original).

³³Beccaria (1995[1764]), p. 40.

³⁴Bentham (1830), p. 30 (emphases in original).

a punishment that appears of greater magnitude in comparison of what it really is, is better than one that appears of less magnitude.³⁵

Since, as Bentham explains, the property of 'exemplarity' is tied to the punishment's '*apparent*, not to its *real* magnitude', it is this appearance 'that does all the service in the way of example. A real punishment which should produce no visible effects, might serve to intimidate or reform the offender subjected to it, but its use, as an example to the public, would be lost'. To the extent that 'it may be safely practicable', continues Bentham, the legislator must select a mode of punishment, that produces 'the least *real*', and 'the greatest *apparent* suffering; and to accompany each particular mode of punishment with such *solemnities* as may be best calculated to further [the] object' of maximising the apparent suffering.³⁶

Bentham's Ideal Punisher: 'The Manager of a Theatre'

At various points in *The Rationale of Punishment*, Bentham reiterates his vociferous call for maximising the terror of punishment and adding to the gravity of the delinquent's *apparent* suffering, while minimising his *real* suffering.

Whipping Machine to Excite 'Terror'

One such example is his proposal for a whipping machine, a contrivance he had designed for the purpose of punishing multiple offenders at the same time and with equal force. The machine, Bentham had hoped, would eliminate human caprice from the administering of the whip. Soon after explaining how the 'elastic rods of cane or whalebone' mounted on the machine should strike 'the body of the delinquent' with a 'force and rapidity' prescribed by a judge, he enumerates several benefits that may accrue from such a device, one of which is that it may heighten 'the terror of the scene'. In a case where 'there were many delinquents to be punished', Bentham predicts, 'the terror of the scene [might be] heightened, without increasing the actual suffering, by increasing the number of the machines, and subjecting all the offenders to punishment at the same time.'³⁷

Adding Terror to Burning and Drowning

Bentham reiterates the need to confer an outwardly terrorising character to the penal spectacle when discussing burning and drowning as possible punishments for the

³⁵Bentham deduces two other maxims from his discussion of the profit and expanse of punishment. Firstly, '[t]hat a punishment that is more easily learnt, is better than one that is less easily learnt' and secondly '[t]hat a punishment that is more easily remembered, is better than one that is less easily remembered'. See Bentham (1830), pp. 30–31.

³⁶Bentham (1830), p. 46 (emphases in original).

³⁷Bentham (1830), p. 82.

crimes of incendiarism and inundation respectively.³⁸ In the case of the former, he stipulates that, among other things, it ‘would be necessary carefully to determine... the paraphernalia to be employed to increase the terror of the punishment. In order to render the description more striking, a print might be annexed in which the operation should be represented’.³⁹ Similarly, when expanding on drowning as a punishment for the crime of inundation, he speaks of ‘the drowning of the criminal, with such accompanying circumstances as will add to the terror of the punishment’. For penal codes that do not permit capital punishment, Bentham issues the following recommendation: ‘the offender might be drowned and then restored to life. This might be made a part of the punishment.’⁴⁰ One can only imagine the sense of terror and dread felt by spectators exposed to such a scene.

In Praise of Auto-da-fés!

The momentous import of punishment’s exemplary nature to Bentham’s penal theory is revealed once again when we consider his high praise for the theatrical aspect of Inquisition-era punishments. While underscoring the desirability of exemplarity and the need to maximise the horrors of the penal spectacle, Bentham lauds the ghastly scenes produced during *auto-da-fés*, which he unapologetically characterises as ‘most useful models for acts of justice’⁴¹ in terms of their impact on the onlooking public:

What is a public execution? It is a solemn tragedy which the legislator presents before an assembled people,—a tragedy truly important, truly pathetic, by the sad reality of its catastrophe, and the grandeur of its object. The preparation for it—the place of exhibition—and the attendant circumstances, cannot be too carefully selected, as upon these the principal effect depends. The tribunal, the scaffold, the dresses of the officers of justice, the religious service, the procession, every kind of accompaniment, ought to bear a grave and melancholy character. The executioners might be veiled in black, that the terror of the scene might be heightened, and these useful servants of the state screened from the hatred of the people.⁴²

³⁸It is important to note the context in which Bentham discusses the two punishments. Here, his main goal is to highlight the desirability of analogy between crimes and their respective punishments and *not* to issue an unqualified recommendation or endorsement of immolation or drowning *per se*. As he clarifies, these examples ‘are only intended clearly to explain this idea of analogy...without absolutely recommending the employment of those punishments in all cases’, since it ‘is not a sufficient reason for the adoption of a punishment that it is analogous; other consideration ought to be always regarded’. See Bentham (1830), p. 56.

³⁹He also specifies ‘the part of the body which ought to be exposed to the action of the fire; the intensity of the fire; the time during which it is to be applied’. See Bentham (1830), pp. 57–58.

⁴⁰Bentham (1830), p. 58.

⁴¹Bentham (1830), p. 46.

⁴²While Bentham does indeed praise auto-da-fés, he does nonetheless feel compelled to issue the following note of caution about the sanction’s unpopularity: ‘Care must however be taken lest punishment become unpopular and odious through a false appearance of rigour’. Bentham (1830), p. 46.

Note here how Bentham calls for the ‘terror’ of the scenes to be heightened, and his insistence that the processions have a ‘grave and melancholy character’. One cannot help but sense a flicker of irony here: in spelling out his vision for the reformed penal system of the *future*, Bentham finds himself borrowing from what is arguably one of the darkest episodes in European history.

The Problem with Prisons: ‘Exemplarity Reduced to the Lowest Term’

The previous examples go a long way towards illustrating Bentham’s deep concern for ensuring punishment’s terrorising character. But it is fair to say that of all the punishments discussed in Bentham’s work, few exemplify this concern better than his examination of imprisonment and the notorious Panopticon.

While analysing the pros and cons of incarceration, Bentham points to a major flaw inextricably tied to it, namely that ‘the exemplarity of imprisonment is reduced to the lowest term’.⁴³ To counter this serious weakness of the prison system, Bentham proposes two solutions.

Solution I: Adding ‘Terror’ to Exterior and Name of Prisons

Bentham’s first proposal is to modify the exterior of the prison complex in order to give it a dreadful and uninviting appearance. True, he notes, ‘the prisoners [inside the compound] are not seen’. However, ‘the prison is visible’ to the outside world.⁴⁴ In order to utilise this fact in the interest of deterrence, Bentham calls for the external appearance of the prison to

strike the imagination and awaken a salutary terror. Buildings employed for this purpose ought therefore to have a character of seclusion and restraint, which should take away all hope of escape, and should say, ‘This is the dwelling place of crime’.⁴⁵

Later in the *The Rationale of Punishment*, Bentham provides more elaborate instructions on how to compensate for the conventional prison’s incapacity to ‘waken salutary terror’ in the hearts and minds of the onlooking general public. In doing so, he proposes three types of prisons.

The first [type of prison] for insolvents... The second, for malefactors whose imprisonment is to be temporary... The third, for malefactors whose imprisonment is perpetual.⁴⁶

Just as one would expect, Bentham is extremely reluctant to inflict any hardship on the malefactors. Not even infamy or stigma are prescribed for the first group, for

⁴³Bentham (1830), p. 113.

⁴⁴Bentham (1830), p. 113.

⁴⁵Bentham (1830), p. 113.

⁴⁶Bentham (1830), p. 129.

their apprehension is merely temporary and a judicial verdict awaits them.⁴⁷ With regards to the second group, however, he is less gentle since this group is destined for ‘correction as well as for example’. To correct them, he calls for labour, and even ‘for the last week, or fortnight, or month, solitude, darkness, and spare diet’. To set an example, Bentham calls for stigma to be attached to the punishment, ‘but let that stigma be a temporary one’.⁴⁸ The third class of prisoners, on the other hand, are those delinquents who have no hope of correction and are to never mix with society again. This group, he claims, are ‘destined for example only’. For these offenders, Bentham calls for ‘perpetual’ stigma, but no further harm: ‘let the apparent condition of the delinquent be as miserable, and the real as comfortable, as may be. Let the gentleman occupy himself as he pleases. Let the yeoman, who has an art, exercise his art, and let him be a sharer in the profits. Let the labour of the yeoman who knows no art be more moderate than in the temporary prison’.⁴⁹

Although Bentham has little interest in inflicting *actual* hardship on the delinquent, he is more than eager to strike to terror and dread in the hearts and minds of individual members of society. He seeks to achieve this partly through the names given to prisons, which will be touched upon. But to truly maximise the exemplary value of incarceration, Bentham recommends further changes to the exterior of the second and third kinds of prisons so as to make them appear as terrorising as possible. He is cognisant, one should add, that his proposal may one day become the subject of ridicule:

The walls of the first sort ought to be white—of the second, grey—of the third, black.

On the outside of the two last kinds of prisons may be represented various figures, emblematical of the supposed dispositions of the persons confined in them. A monkey, a fox, and a tiger, representing mischief, cunning, and rapacity, the sources of all crimes, would certainly form more appropriate decorations for a prison than the two statues of melancholy and raving madness, formerly standing before Bedlam. In the interior let two skeletons be placed, one on each side of an iron door: the occasional aspect of such objects is calculated to suggest to the imagination the most salutary terrors. A prison would thus represent the abode of death, and no youth that had once visited a place so decorated could fail of receiving a most salutary and indelible impression. I am fully aware, that to the man of wit, these emblematical figures may serve as matter for ridicule: in poetry they are admirable, in reality despicable. Fortunately, however, they are more assailable by ridicule than by reason.⁵⁰

As hinted earlier, in Bentham’s view even the naming of the prisons must contribute to inducing dread in the public. This name-induced dread, he explains,

⁴⁷ ‘Here let there be no mark of infamy’ he writes, ‘Nor let there be here any rigour, either real or apparent’. Bentham (1830), p. 129.

⁴⁸ Bentham is cognisant of the fact that in addition to its exemplarity, this punishment brings ‘security, by preventing escape’. Bentham (1830), pp. 129–130.

⁴⁹ Bentham (1830), p. 130.

⁵⁰ Bentham (1830), pp. 133–134.

must correspond with the severity of the crimes for which delinquents have been imprisoned:

A difference in the situation and name affords another means of aggravating one of the most important parts of the punishment—the apparent punishment.

The first sort of prison may be called the *House for Safe Custody*—the second, the *Penitentiary House*—the third, the *Black Prison*.

The first of these names does not convey any idea of misconduct; the second does, but at the same time presents the idea of reformation; the third is calculated to inspire terror and aversion.⁵¹

As the examples illustrate, there should, from Bentham's point of view, be no ambiguity as to what message the exterior—or even name—of a prison is to convey to the outside world. He would like a 'monkey, a fox, and a tiger', which symbolise crime, to be placed outside of the prisons. He would prefer to have not one, but two, 'skeletons' on each side of an iron door, so that 'the most salutary terrors' are instilled in the minds of visitors. This prison must 'represent the abode of death, and no youth that had once visited a place so decorated could fail of receiving a most salutary and indelible impression'. Even the name 'Black Prison', he notes, 'is calculated to inspire terror and aversion'.

An instructive contrast here is to pit Bentham's prison designs against the aesthetic norms that typically guide the exterior designs of prisons today. Unless one is explicitly reminded that there is a prison in the neighbourhood—e.g., signs, police cars—there is little about the appearance of today's prisons that might suggest they are, in the words of Bentham, a 'dwelling place of crime' and the 'abode of death'. Today's prisons are a far cry from what Bentham had envisioned them to look like, and at times even blend seamlessly with their surrounding environment.

Solution II: The Doleful Panopticon, 'A Perpetual and Perpetually Interesting Drama'

But the despicable looking—not to mention despicable sounding—prison exterior is just one solution proposed by Bentham to compensate for incarceration's very limited capacity to deter the public from carrying out mischief. His other solution is the Panopticon: a radial prison divided into cells, which would allow unseen guards stationed at a central watchtower to continually monitor prisoners in their inward facing cells along the radius. Bentham explains that the Panopticon structure would make up for the severely diminished deterrence of imprisonment by 'the facility' it would afford 'to the admission of the public', which 'adds much' to the desirable property of 'exemplarity'.⁵² Furthermore, Bentham reiterates that the structure's first end is to serve as an example.⁵³ According to Étienne Dumont, Bentham's friend, editor and translator, to achieve this aim, the structure must be given maximal public exposure, and should therefore,

⁵¹Bentham (1830), p. 134 (emphases in original).

⁵²Bentham (1830), p. 113.

⁵³This is according to Étienne Dumont, Bentham's friend and editor. Bentham (1830), p. 353.

be placed in the neighbourhood of the metropolis, where the greatest number of persons are collected together, and especially of those who require to be reminded, by penal exhibitions, of the consequences of crime. The appearance of the building, the singularity of its shape, the walls and ditches by which it is surrounded, the guards stationed at its gates, would all excite ideas of restraint and punishment, whilst the facility which would be given to admission, would scarcely fail to attract a multitude of visitors. . . .⁵⁴

Bentham, according to Dumont, envisioned that the spectators visiting the Panopticon would see,

a set of persons deprived of liberty which they have misused; compelled to engage in labour, which was formerly their aversion, and restrained from riot and intemperance, in which they formerly delighted; the whole of them clothed in a particular dress, indicating the infamy of their crimes. What scene could be more instructive to the great proportion of the spectators? What a source of conversation, of allusion, of domestic instruction. How naturally would the aspect of this prison lead to a comparison between the labour of the free man and the prisoner, between the enjoyments of the innocent and the deprivations of the criminal.⁵⁵

Here, too, we are reminded of the importance of maximising the severity of how punishment *looks* to the visitors while mitigating its severity for the prisoner. Visitors would come into contact with a doleful sight and would be shielded from any suggestion that those confined within the prison walls are in any shape or form content with their present fate. The prisoners, on the other hand, would remain in a state of comfort, cushioned even from ills such as boredom. In Dumont's wording, this is how Bentham pictured life in the Panopticon.

. . . the *real* punishment would be less than the apparent:— the spectators, who would have only a momentary view of this doleful spectacle, would not perceive all the circumstances which would effectively soften the rigours of this prison. The punishment would be visible, and the imagination would exaggerate its amount; its relaxations would be out of sight; no portion of the suffering inflicted would be lost. The greater number even of the prisoners, being taken from the class of unfortunate and suffering individuals, would be in a state of comfort—whilst *ennui*, the scourge of ordinary prisons, would be banished.⁵⁶

That the chief end of Bentham's Panopticon was to serve as an example for, and thus deter, would-be offenders is also observable when we consider the postscripts to the original Panopticon proposal.

It is in the first postscript that Bentham coins the expression *Multum ex scenâ* (or much from the *scenery*). 'To say, *Multum ex scenâ*', he expands, 'is to say, lose

⁵⁴Bentham (1830), p. 353.

⁵⁵Bentham (1830), pp. 353–354.

⁵⁶Bentham (1830), p. 354 (emphases in original).

no occasion of speaking to the eye', adding that in 'a well-composed Committee of Penal Law, I know not a more essential personage than the Manager of a Theatre'.⁵⁷

In the second postscript, too, Bentham highlights once more the Panopticon's deterrence function:

Example, or the preventing others by the terror of the example from the commission of similar offences. This is the main end of all punishment, and consequently of the particular mode [Panopticon] here in question.⁵⁸

The desirability of the Panopticon's exhibitionist quality reappears when Bentham compares the device to Britain's penal colony in New South Wales. In a letter to Lord Pelham, he stresses that unlike the penal colony, which was located continents away and thus failed to leave a lasting impression on Londoners, the Panopticon's plan of management included, 'the multiplying by every imaginable device the number of the visitors and spectators—a perpetual and perpetually interesting drama, in which the obnoxious characters shall in *specie*, at any rate, be exposed to instructive ignominy'.⁵⁹

As repeatedly pointed out in this piece, a thread of consistency runs through Bentham's discussion of punishment's exemplary value. This also applies to his analysis of imprisonment, which emphasises the importance of maintaining a harsh appearance. Similarly, Bentham's vision for the Panopticon does not shy away from imbuing it with the exemplary character it deserves. He goes out of his way to explain that the Panopticon should be given maximum exposure, that it should be located in the neighbourhood of the metropolis, where the greatest number of people would be exposed to what would appear from the outside to be a much doleful experience. Furthermore, it is in the context of elaborating on the Panopticon's spectacular quality that Bentham describes his ideal punisher as the 'Manager of Theatre'.

Foucault's Interpretive Somersaults

We've tried thus far to produce an overall sketch of Bentham's positions on punishment. The resulting image, particularly our discussion of his Panopticon and prison, may come as a surprise to anyone whose understanding of Bentham derives entirely from the work of Michel Foucault, whose much celebrated work *Discipline and Punish* is generally credited with popularising the Englishmen's Panopticon.⁶⁰

In Michel Foucault's *Discipline and Punish*, Bentham's innovations in the penal sphere are alluded to as the epitomisation of a broad and defining shift in the logic

⁵⁷Bentham (1791a), p. 58 (emphasis in original); this quote was originally brought to my attention by Philip Smith. See Smith (2008), p. 100.

⁵⁸Bentham (1791b), p. 4 (emphasis in original); this quote was originally brought to my attention while reading Philip Smith's *Punishment and Culture*. See Smith (2008), p. 100.

⁵⁹Bentham (1843), p. 174 (emphasis in original); quote brought to my attention by Philip Smith in Smith (2008), p. 100.

⁶⁰Foucault (1995 [1977]).

of punishment and its role in the way power is exercised. In order to frame this shift, Foucault contrasts the spectacular and torturous public punishments of the premodern era against the highly privatised punishments of the post-enlightenment period. The first is exemplified by Damien the Regicide's excruciating and lengthy public execution in 1757, and the latter by the prison system around the mid-19th century. In this grandiose narrative of power, discipline and punishment, Bentham is allusively portrayed as the acme of a Western movement towards making punishment more privatised and bringing it closer to 'the gentle way in punishment'.⁶¹ But this characterisation of Bentham is, to put it mildly, rendered questionable when our own analysis of Bentham's work is brought into the limelight. Many things might fairly be said about Bentham's vision for an ideal penal system. But a scintilla of familiarity with his vision should make one thing patently clear: there is nothing about this vision that suggests Bentham, who describes his ideal punisher as 'The Manager of a Theatre', even remotely favoured quiet and concealed punishments over dramaturgically open ones.

Nor is it conceivable that he would have lent his blessing—whether explicit or implicit—to any movement that sought the privatisation of punishment as a central goal. Far from being squeamish about the appearance of punishment, the real Bentham, as we have seen, vehemently advocated heightening punishment's apparent harshness as much as possible, to the point that he sees in the ideal punisher 'not a more essential personage than the Manager of a Theatre'.⁶² (For Bentham, the only permissible cap on the severity of apparent suffering is when punishment's overly harsh appearance compromises the greater utilitarian goal of general crime prevention. He reluctantly issues a number of mementos to legislators about the need to take into consideration the people's feelings towards the sight of punishment.⁶³)

The other gaping lacuna in Foucault's reading of Bentham is revealed in light of how the prison and Panopticon are examined in *Discipline and Punish*. Having taken Bentham as the epitome of a European drive to privatise penal sanctions, Foucault is then left with a relatively free rein to look for the missing piece of his grand puzzle wherever he may please. From Bentham's voluminous and wide-scoped writings—some of which we touched upon earlier—he singles out the Panopticon as a proxy for Bentham's penal philosophy as well as indicative of a marked shift in the logic of punishment in the West. This renders Foucault's interpretation of Bentham all the more paradoxical. Consider the following passage from *Discipline and Punish*,

The theme of the Panopticon... found in the prison its privileged locus of realization... it was really only in the penitentiary institutions that Bentham's [panoptic] utopia could be fully expressed in a material form. In the 1830s, the Panopticon became the architectural programme of most prison projects.⁶⁴

⁶¹Foucault (1995 [1977]), p. 104.

⁶²Bentham (1791a), p. 58.

⁶³Bentham (1830), pp. 50–51, 69–75.

⁶⁴Foucault (1995 [1977]), p. 249.

As the above passage suggests, Foucault understands the modern prison to be the material extension of Bentham's utopian ideal, i.e., the Panopticon. To examine this claim, let us briefly return to the original Panopticon envisaged by Jeremy Bentham himself. According to the English philosopher, the Panopticon's main goal was to set an 'example' for society and would thus have to excite 'terror'; one would have to ensure 'the multiplying by every imaginable device the number of the visitors and spectator'; and it should be perceived by those outside its walls as a doleful experience. Furthermore, Bentham proposed various ways to make the prison name and its exterior inspire as much terror and dread as possible (e.g., 'black' walls, 'skeletons' on each side of a door). He proposed prisons that would 'suggest to the imagination the most salutary terrors' and 'represent the abode of death'. Is it conceivable, then, that Bentham would have regarded today's prisons as institutions that 'fully expressed' the Panopticon, as Foucault put it, 'in a material form'?

It is important to bear in mind that Foucault's historical portrait of power is heavily grounded in the premise that punishment's theatrical quality steadily eroded in the late 1700s and early 1800s. It is a strange paradox that of all of Bentham's penal visions, Foucault would single out the Panopticon for his grand theory, since, as our earlier discussion showed, Bentham introduces the device as a *cure* for the prison's limited capacity to terrorise and deter,⁶⁵ and not, as some might suggest, yet another way to erode punishment's spectacular and deterring character.

Implications

This piece has cast serious doubts over the factual soundness of Michel Foucault's representation of English thinker Jeremy Bentham's views on punishment, in particular the Panopticon prison.

That a staple of contemporary academic discourse—i.e., Foucault's Bentham—wholly misrepresents the original conceptualisation should be a matter of profound concern. The factual inaccuracies of Foucault's work should indeed give rise to important (if uncomfortable) questions.

Firstly, how is it possible that Foucault's egregious misrepresentations of Bentham and the Panopticon have gone largely unchallenged by generations of scholars? This is not to suggest that Foucault's work has not been critiqued.⁶⁶ Quite the contrary, it has been endlessly critiqued. But the vast preponderance of interactions with *Discipline and Punish*, whether supportive or critical, have tended to focus largely on his ambitious theoretical claims,⁶⁷ or the absence of archival sources as a basis for these claims.⁶⁸ Contrariwise, the factual integrity of Foucault's depiction of Bentham and Panopticon—respectively the centrepiece and the centrepiece of the centrepiece of his work—appears to have gone by and large unchallenged. A plethora of scholarly

⁶⁵Bentham (1830), p. 113; Bentham (1843), p. 174.

⁶⁶For an extensive critique, see, e.g., Garland (2012), pp. 157–175.

⁶⁷On this point, see, e.g., Smith (2008), pp. 95–96.

⁶⁸This is noted by the historian Pieter Spierenburg in Spierenburg (2008), pp. viii, 108; Spierenburg is also critical of Foucault's depiction of penal transformation as a sudden shift. See Spierenburg (2004), p. 631.

literature seems to have overlooked the most rudimentary question: does Foucault accurately depict Bentham's penal logic and the reasoning behind his promotion of the Panopticon or not?⁶⁹ One possible explanation for this oversight could be found in the overpowering stature of Michel Foucault's name. Indeed, one might speculate whether his somewhat mystical stranglehold on academic discussions of Bentham may have dampened the resolve of perfectly able scholars to independently inspect Bentham's work instead of relying solely on Foucault's Bentham.

The other question triggered by our inquiry is more directly concerned with Foucault's scholarly credentials: what accounts for the stark deficit in the factual integrity of his depiction of Bentham and the Panopticon? Does it betray a trace of unintentional negligence? To what extent was Foucault truly familiar with Bentham and utilitarian thought in general? Or did his pursuit of an ambitious theoretical framework grossly (mis)guide his reading of Bentham? If so, it would serve as a cautionary tale about the risks of broader intellectual or political agendas clouding one's judgement of the factual record. It is difficult to meditate on these questions without a measure of conjecture. However, one fact should come across as blindingly obvious (though perhaps not to the Frenchman's die-hard followers): Foucault, his God-like status in contemporary intellectual life notwithstanding, was not *infallible*, but fully *capable* of erring, just like the rest of us mere mortals.

Lastly, and perhaps most importantly, given the prominence of Foucault's interpretation of Bentham and the Panopticon, what (if any) implications flow from this analysis to contemporary discussions of disciplinary power, subjectivity, and surveillance, where the Panopticon has been so central?

To address this question, we must first assess the nature of the relationship that binds Foucault's social theory to his (mis)interpretation of Bentham and the Panopticon.

One course of action is to ascribe mostly anecdotal, and thus marginal, value to his invocation of Bentham and the Panopticon rather than treating *Discipline and Punish* as a sustained, systematic and evidence-based body of empirical research. This would be a highly sympathetic construal of Foucault's work since it makes it possible to gloss over the intruding fact that Bentham and his contraption occupy extensive space in *Discipline and Punish*. This generous reading of Foucault's work is accorded further credence by the difficulties of engaging with *Discipline and Punish* owing to its highly suggestive—not to mention literary—style.⁷⁰ In the words of the French historian Jacques Lonard 'it would need a squadron of competent historians to sort out the mass of interpretations' inspired by Foucault's work.⁷¹ But to vindicate Foucault by relegating his egregious misrepresentation of Bentham to the status of an anecdote only marginally consequential to the claims made by an allusive—not to mention literary—text is to preclude, from the outset, serious consideration of

⁶⁹ A rare exception is Philip Smith, who foreshadows but does not fully develop the argument made in these pages. Smith (2008), pp. 95–111; Anne Brunon-Ernst is also critical of Foucault's representation of Bentham, but from an entirely different angle. She argues that during his lifetime, Bentham had conceptualised multiple panopticons in addition to the original Panopticon prison. See Brunon-Ernst (2012b).

⁷⁰ On the difficulties of engaging with this style of presentation, see, e.g., Garland (2012), p. 135.

⁷¹ Cited by Clare O'Farrell in Brunon-Ernst (2012a), p. xi.

Discipline and Punish. That is to say: Foucault is left off the hook, but only when *Discipline and Punish* is placed outside the ambit of scholarly consideration. This is a defence worse than none.

An alternative course of action is for us to take counsel from Foucault himself. Indeed, was it not Foucault who had insisted that ‘Bentham is more important for the understanding of our society than Kant and Hegel’?⁷² But if Bentham’s work is to be elevated to such supereminent levels, should not the consequences of this promotion for ‘understanding of our society’ be just as grave? In other words, in light of the importance that Foucault himself attached to Bentham, are we then to be blamed for reconsidering, somewhat cautiously, the merits of Foucault’s grand claims in *Discipline and Punish* for theorising about ‘our society’? Had Foucault accurately rendered the real Bentham, he would have had no choice but to either look elsewhere for evidence that confirmed this seemingly critical aspect of his flamboyant theory of power or altogether abandon his grand claims.

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⁷²Cited in Brunon-Ernst (2012a), p. 1.

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