



Killing the White Bull: Essays on Bentham on Sex and Religion

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**Killing the White Bull:
Essays on Bentham on Sex and Religion**

A dissertation presented
by
Tsin Yen Koh
to
The Department of Government

in partial fulfilment of the requirements
for the degree of
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Abstract

In his long writing career, Jeremy Bentham wrote on many things, including sex and religion. This dissertation examines the writings on sex and religion, which have not received much critical attention so far, and argues that they should be read as part of Bentham's political thought in two aspects. First, they provide an example of the principle of utility as a critical principle – when applied to the punishment of sodomy and other sexual irregularities, for example, and to the grounds of such punishment, which Bentham identified as asceticism and antipathy. Second, they should be read, alongside Bentham's mature political writings (from the 1800s), as part of and the result of his political radicalization. They provide a study of the means and mechanisms by which political power may be established, perpetuated and expanded.

The first essay considers the political implications of the principle of asceticism. It argues that Bentham objected to the principle of asceticism because it could be used to provide practical and ideological support for tyranny: through the elevation of ascetic rulers above the common run of humanity, the generation of conditions of fear and isolation, and, most importantly perhaps, the justification of tyrannical laws.

The second essay is on antipathy and cruelty. It argues that Bentham thought that the deprivation of pleasure for no good reason – just for the sake of antipathy, for example – was in itself an act of cruelty, separate from the infliction of pain. On the one hand, the pleasures of cruelty were real pleasures, and to be accounted for as such. On

the other hand, there was something troubling about taking pleasure in cruelty. The pleasures of cruelty are the pleasures of power, when freed from responsibility: the pleasures of indulging one's antipathy without restraint, or, which comes to the same thing, the pleasures of tyranny.

The third essay is about religion and judgment. It argues that Bentham thought that religion in general, and the Church of England in particular, had a corruptive effect on judgment. He accused the Church of aiming at the intellectual and moral depravation of its followers, in order to establish greater influence over them, and to that end of discouraging them from exercising their own judgment and encouraging them instead to submit uncritically to ecclesiastical authority. But even without the weight of establishment behind it, natural religion also had a corrosive effect on judgment: the reward offered for faith (future happiness instead of future misery) could turn our attention away from the facts, and skew our consideration of the evidence and thereby our judgments. This had deleterious implications for representative democracy and utilitarian government, the success of which depended on the judgment of voters.

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I

Introduction: Killing the White Bull

1.1 The White Bull

In July 1774, Jeremy Bentham received a letter from John Lind, writing as Voltaire (complete with apologies for his trembling octogenarian handwriting) to congratulate Bentham on the publication of his translation of *Le taureau blanc*, and praising him for adding a preface which eclipsed the original text.¹

The *White Bull*, Bentham's first published work, prefigures his interest in sex, religion and law.² It operates on several levels: the main text is a translation of Voltaire's tale, which satirizes religious belief in supernatural events; it has an invented critical apparatus, which satirizes biblical scholarship; as well as the above-mentioned preface, which extends the satire to the English legal system.

The tale opens with Amasida, a fictitious Egyptian princess, mourning her lost love. While in the company of her tutor, the famous magician Mambrés, she comes across a white bull grazing in a field – in the charge of an old woman, who is accompanied by a serpent, a dog, an ass, a fish and a goat – and falls in love with it. The white bull turns out to be Nebuchadnezzar, the missing Babylonian king, Amasida's

¹ John Lind to Jeremy Bentham, 20 July 1774, in *The Correspondence of Jeremy Bentham*, ed. Timothy L. S. Sprigge, vol. 1, 1752–76 (London: Athlone Press, 1968), 189–90.

² [Jeremy Bentham,] *The White Bull*, 2 vols. (London: J. Bew, 1774). For comment on Voltaire's tale, see Roger Pearson, *The Fables of Reason: A Study of Voltaire's 'Contes Philosophiques'* (Oxford: Clarendon Press, 1993), ch. 12. For the history of and comment on Bentham's translation, see Emmanuelle de Champs, *Enlightenment and Utility: Bentham in French, Bentham in France* (Cambridge: Cambridge University Press, 2015), 25–35. I thank Richard Tuck for pointing me to his 'Master Class on Jeremy Bentham' at the Mahindra Humanities Centre, Harvard University, on 13 October 2010.

erstwhile lover, and the enemy of her father the king, who has sworn to execute him or anyone who utters his name; the old woman turns out to be the witch of Endor (and swaps reminiscences with Mambrés); and her companions turn out to be the serpent from the Garden of Eden (an old friend of Mambrés), the dog who accompanied Tobit and the angel Raphael on their journey, Balaam's ass, the whale who swallowed Jonah, and a scapegoat named Taffy. It is the serpent who prompts Amasida into guessing the identity of the bull and then into speaking his name aloud, bringing the king's wrath down both on her head and that of the white bull. Mambrés is the hero of the story: he bends his mind to the task of saving the princess and her lover, and achieves it literally at the last minute. At the appointed hour of execution, the high priest of Memphis turns up with his entourage, at the request of his old friend Mambrés, and proclaims the white bull to be the new bull-god Apis, the old one having recently died. As the celebration goes on around them, Mambrés observes to the serpent, 'Daniel turned this man into an ox, but I have turned this ox into a god.'³

Bentham's translation was praised by contemporary reviewers for its liveliness and humour. The *Monthly Review*, for example, complimented him on having captured 'much of the manner of Voltaire himself', and suggested that he would be praised for his wit by some, and censured for his wickedness by others.⁴ The wit and wickedness were not all borrowed from Voltaire: Bentham added a number of original footnotes to

³ *White Bull*, vol. 2, 159.

⁴ 'The White Bull; an Oriental History; from an ancient Syrian Manuscript, communicated by Mr. Voltaire', *Monthly Review* 51 (1774): 73. On Voltairean *légèreté*, see Bentham to John Lind, 5 October 1774, in *Correspondence*, vol. 1, 204–05. For other contemporary opinions, see 'The White Bull, an Oriental History, from an ancient Syrian MS. communicated by M. Voltaire etc.', *Town and Country Magazine* 6 (November 1774): 604 and 'The White Bull, an Oriental History, communicated by M. Voltaire', *Westminster Magazine* (November 1774): 592. Both reviews agreed that Bentham's was the superior translation of a disgraceful book.

the translation (some of which he attributed to fictitious experts), in order to extend the satire to biblical exegesis, as well as to attempts to find historical evidence for biblical events. One representative footnote, for example, identified the old woman's goat as a descendant of the original Taffy, the chief of the billy-goats on Noah's ark, 'as appears from an original commentary on Genesis, written in the ancient Hebraico-Celtic'. The goat's name was derived from [*Tafab*], which signified 'to caper' or 'to be of a sweet favor' in Hebraico-Celtic.⁵ Another footnote extended a joke which had originated with Voltaire: Voltaire had Mambrés observe that Lot's wife, though transformed into a pillar of salt, still 'preserved all the marks of her sex', and cited as evidence a verse by Tertullian and a quotation by St Ireneus. Roger Pearson has pointed out that Voltaire's sources were not unreliable: the verse in question was not by Tertullian but an unknown fourth-century writer, and the Greek text of St Ireneus was known only in a suspect Latin translation. Voltaire, Pearson suggests, 'particularly enjoyed this example of exegetical lunacy'.⁶ Bentham appears to have been unable to resist adding to the lunacy – he translated the verse, with care to preserve 'the spirit and elegance of the original', as:

Her pickle carcass, so the story goes,
The monthly frailty of her sex still shows.⁷

Bentham also had his eye on writers like Thomas Stackhouse, who was 'so laudably industrious' in looking for historical confirmation of biblical events, but had

⁵ *White Bull*, vol. 1, 13–15n.

⁶ Voltaire, *Candide and Other Stories*, trans. Roger Pearson (Oxford: Oxford University Press, 2006), 269n.

⁷ *White Bull*, vol. 2, 76n.

‘unaccountably’ failed to take note of certain data – such as the whale-related adventures related by the ancient Roman satirist Lucian (‘the grave and accurate Lucian’), as corroboration for the veracity of the story of Jonah and the whale.⁸

Bentham’s preface broadened the scope of satire, bringing the press, the English legal system and Blackstone into his sights. The preface begins with a discussion of the characteristics of ‘inspired’ writing (such as allegory, contradiction, interpolation and so on), the effect of which was to indemnify such writing against rational critique; this provided the setting for his exegetical footnotes.⁹ Midway through the preface, the authorial persona changes: the author relates a dream, which begins with him sitting in his study with his white bull by his side when he hears a commotion outside his window. It is the bellowing of a monster (named ‘Sentimental Magazine’, which had published a rival translation of *Le taureau blanc*), which is eating garbage and execrating sausages. Upon investigation, the author finds the sausages as foul as they promised to be. The owner of the monster retaliates by attacking the white bull with an old pen, castrating him in the process. The author, after some belated and inventive cursing, brings a ‘good bag of guineas’ to consult a lawyer, and discovers that the law can be turned into an instrument of personal vengeance with surprising ease.¹⁰ The processes and formulations of the law, however, are intentionally convoluted and obscure; the indictment of Nincompoop (the owner of the monster) is as much a piece of inspired writing as any religious writing.¹¹ At this point in the story, there is a sudden

⁸ *White Bull*, vol. 2, 23–25nn.

⁹ *White Bull*, vol. 1, xiv–xv.

¹⁰ *White Bull*, vol. 1, lxxxiii.

¹¹ *White Bull*, vol. 1, xcvi–xcvii.

slew of transformations: the white bull is miraculously restored to wholeness, the lawyer reading the indictment turns into the angel Raphael, and the author wakes up from his dream.

Bentham's satirical depiction of the legal system was complemented by references to William Blackstone as the author of the magisterial *Commentaries on the Law of England*. In the *White Bull*, he took issue with Blackstone on two principal matters, the first of which was (what he saw as) the latter's uncritical defence of the English legal and political system. 'An inspired writer,' Bentham remarked, 'has as many prerogatives as a King of England; and more than as many Blackstones to adore them.'¹² To this end, Blackstone deprecated the exercise of private judgment in criticizing the law or constitution. It was, Bentham suggested, the business of writers, *pace* Montesquieu, to make their readers think – though only 'upon proper subjects: for *Dr. Blackstone* seems to think, as far as he allows himself to *think*, it's the worst trick a man can get when he reads *law*: For which reason he has done all he can to break us of it'.¹³

The second issue was that Blackstone's defence of the English legal and political system was based on religious belief, despite his stated view to the contrary.¹⁴ This explained, for example, Blackstone's equivocal attitude towards witches: on one hand, he acknowledged that many stories of witches were the result of 'imposture or delusion', and that laws against witches were peculiarly susceptible to abuse; on the

¹² *White Bull*, vol. 1, xiii; see also xliii on Blackstone's opinion on titles of nobility.

¹³ *White Bull*, vol. 1, xxxiv, xxxivn). The reference is to William Blackstone, *Commentaries on the Laws of England*, vol. 4 (Oxford: Clarendon Press, 1769).

¹⁴ See for example Blackstone, *Commentaries*, vol. 4, 41–42.

other hand, the ‘contrary evidence’ from scripture was ‘very strong’. He followed Joseph Addison in the *Spectator* in concluding that ‘*in general* there has been such a thing as Witchcraft: though one cannot give credit to any particular *modern* instance’. That is, he was certain that witchcraft existed, even though there was no trustworthy evidence (or ‘modern’ evidence, perhaps) of its existence. This was, in Bentham’s view, a piece of inspired writing: ‘modern’ was an interpolation to the original comment in the *Spectator*. ‘The commentator,’ he suggested, ‘was dreaming: he took *himself* for *Ezra*, and the *Spectator* for the Bible.’¹⁵

Blackstone’s religious commitments also explained his unequivocal condemnation of sodomy – with perhaps graver implications, since the law against sodomy was still in force, unlike the law against witches. In the dream sequence in the preface to the *White Bull*, the author calls Nincompoop a ‘miscreant’, but apologizes for his forceful language in a footnote. This gives Bentham the opportunity to comment on Blackstone’s use of ‘miscreant’, meaning ‘unbeliever’, to describe both religious dissenters and sexual deviants in the *Commentaries*:

But the reader knows my provocation [for using ‘miscreant’], and will excuse it. He’ll consider too that *I* was dreaming – I don’t know what the *Commentator* was doing, when *he* used it. One should be apt to suppose he was in a violent passion, and at the same time in a violent fright. He applies it to persons who ‘deny the holy scriptures to be of divine authority,’ (which according to him, is ‘to destroy all moral obligation.’) ’Tis the only word he could think of in the language; because, in a language that nobody knows any thing of but half a dozen Lawyers [that is, ‘law French’]...it means the same as ‘unbelievers’ – For which reason he applies it a few pages afterwards to [Sodomites]. ’Twas a pretty

¹⁵ *White Bull*, vol. 1, lxii–lxiv, lxii–lxiiiinn; cf. Blackstone, *Commentaries*, vol. 4, 60.

contrivance of his, for killing *two birds* equally odious to him with *one stone*.¹⁶

Blackstone's objection to religious apostates and sodomites, in Bentham's view, was that they were unbelievers – people who denied the authority of the scriptures (or at least of specific parts of the scriptures) in word or deed. Neither religious belief, however, nor the violent sentiments it seemed to provoke, were good reasons for law: the commentator must have been dreaming again.

Bentham's irreverence and irreligion were on display in the *White Bull*: the story was Voltaire's, but his choice and style of translation, and his evident enjoyment of the tale, were his own.¹⁷ The preface went beyond Voltaire's satire to draw parallels between religion and law: both were based on fictions, which were accepted uncritically by believers. Once we leave the realm of fact, then anything can be true: if men can be turned into animals, then animals can be turned into gods; if cattle can be deemed hogs or sows in law, then lawyers can be turned into angels.¹⁸ Women could be executed for witchcraft on the basis of unreliable evidence; men could still be executed for sodomy on the basis of law.¹⁹

¹⁶ *White Bull*, vol. 1, lxxviii–lxxix; cf. Blackstone, *Commentaries*, vol. 4, 44, 216.

¹⁷ *The Works of Jeremy Bentham*, ed. John Bowring, vol. 10, *Memoirs Part I and Correspondence* (Edinburgh: William Tait, 1843), 82. For an amusing take on Bentham's irreligion, see John F. Colls, *Utilitarianism Unmasked* (London: George Bell, 1844). Colls was formerly one of Bentham's amanuenses.

¹⁸ *White Bull*, vol. 1, xciv–xcv, cix–xi.

¹⁹ Blackstone, *Commentaries*, vol. 4, 216.

1.2 The Principle of Utility as a Critical Principle

The *White Bull* is a tale of transformations. Bentham's political thought, in contrast, can be thought of as a work of demystification – an effort to strip away the fictions of law, language and politics.²⁰ As he famously declared in the *Fragment on Government*, 'the season of Fiction is now over': the legal and political fictions which might have been of use in less enlightened times (such as the fiction of the original contract) could now be set aside in favour of utility as the foundation of law and government.²¹

There are two points I would like to make on demystification in relation to Bentham's writings on sex and religion, which are the principal texts discussed in this dissertation. The first point has to do with the principle of utility as a critical principle. John Stuart Mill, in a critical tribute to Bentham after his death, called him 'the great *subversive*, or...the great *critical* thinker, of his age and country.'²² He had, Mill argued, made two major contributions to philosophy: the negative one of critique, by which he had carried 'the warfare against absurdity' into the 'field of practical abuses' (including such fields as those of law, politics and religion), and the positive one of 'method', his method being that of separating the subject under investigation into its

²⁰ On demystification, see H. L. A. Hart, 'The Demystification of the Law' in *Essays on Bentham: Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), 21–39; see also Gerald J. Postema, 'Facts, Fictions, and Law: Bentham on the Foundations of Evidence' in *Bentham: Moral, Political and Legal Philosophy*, ed. Gerald J. Postema, vol. 2 (Burlington, Vt.: Ashgate, 2002), 401–28 on fictions and the law. On fictions and language (with reference to real and fictitious entities), see C. K. Ogden, *Bentham's Theory of Fictions* (New York: Harcourt, Brace and Co., 1932), Ross Harrison, *Bentham* (London: Routledge, 1983), ch. 3 and Philip Schofield, *Utility and Democracy: The Political Thought of Jeremy Bentham* (Oxford: Oxford University Press, 2006), ch. 1.

²¹ Jeremy Bentham, 'A Fragment on Government', in *A Comment on the Commentaries and A Fragment on Government*, ed. J. H. Burns and H. L. A. Hart (London: Athlone Press, 1977), 439–41.

²² John Stuart Mill, 'Bentham' in *The Collected Works of John Stuart Mill*, ed. John M. Robson, vol. 10, *Essays on Ethics, Religion, and Society* (London: Routledge and Kegan Paul, 1985), 76.

parts, and to examine each part in detail.²³ This method had led to the discovery that many moral and political theories were reducible to such ‘phrases’ as liberty, social order, the law of nature and so on – that is, to ‘sacramental expressions’ which were not in themselves reasons for anything but ‘allusions to reasons’, or appeals to common but unexamined opinions and sentiments.²⁴ Bentham’s discussion of rival moral and political theories in the *Introduction to the Principles of Morals and Legislation (IPML)* was a case in point: he had summarily, and uncharitably, reduced a number of different theories (to do, for example, with moral sense, common sense, the fitness of things, the rule of right, the law of nature and so on) to the ‘principle of sympathy and antipathy’ – which is to say, to ‘phrases’ which contained no argument at all except for the sentiments or opinions they were supposed to justify.²⁵

We might extend Mill’s argument, and bring Bentham’s negative and positive contributions together, as it were, by thinking of the principle of utility as a critical principle.²⁶ The principle of utility was formulated in different ways throughout Bentham’s career, with one common alternative formulation being the principle of the ‘greatest happiness of the greatest number’. In the *Fragment on Government*, for example, he put forward this principle as the ‘fundamental axiom’ of morality and

²³ Mill, ‘Bentham’, 81–83.

²⁴ Mill, ‘Bentham’, 84

²⁵ Mill, ‘Bentham’, 85–86; cf. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart (Oxford: Clarendon Press, 1996), 26–28*nn*; henceforth ‘*IPML*’.

²⁶ Cf. Bentham’s remarks on a projected work, the ‘Critical Elements of Jurisprudence’, in his letters to Jeremiah Bentham, 1 October 1776, in *Correspondence*, vol. 1, 358–59 and to John Forster, April/May 1778 in *Correspondence*, ed. Timothy L. S. Sprigge, vol. 2, 1777–80 (London: Athlone Press, 1968), 99–100. The work was not published as such, though Etienne Dumont used parts of it in his recensions (*Correspondence*, vol. 1, 358*n*).

politics.²⁷ Looking back on this work some forty years later, in the (unpublished) preface he wrote for its second edition in 1823, he noted that the work had set up ‘the greatest happiness of the greatest number in the character of the proper, and only proper and defensible, end of government; as the only standard, by which any apt judgment could be formed, on the propriety of any measure, or of the conduct of any person, occupied in making opposition, or giving support to it.’²⁸ The principle of utility did not only prescribe the outcome at which government should aim, but also provided a standard of judgment against which established laws and institutions should be measured.²⁹

Take the case of ‘sexual irregularities’, for example, which was Bentham’s term for any sexual practice or desire outside of heterosexual intercourse within the context of marriage, including and especially sodomy. In the essay on ‘paederasty’, written in the mid-1780s, Bentham argued that sodomy and other irregular sexual practices, if undertaken consensually, produced only pleasure for its participants, and no harm to them or any other persons.³⁰ He considered and refuted several arguments for the

²⁷ ‘A Fragment on Government’, 393.

²⁸ ‘A Fragment on Government’, 508. On the history of the phrase, ‘the greatest happiness of the greatest number’, see Robert Shackleton, ‘The Greatest Happiness of the Greatest Number: The History of Bentham’s Phrase’, *Studies on Voltaire and the Eighteenth Century* 90 (1972): 1461–87 and J. H. Burns, ‘Happiness and Utility: Jeremy Bentham’s Equation’, *Utilitas* 17, no. 1 (March 2005): 46–61.

²⁹ On the principle of utility as an evaluative standard, see Harrison, *Bentham*, ch. 7. One way in which the principle of utility worked as a critical standard in politics was in prescribing the *kinds* of reasons which would count as reasons for the purpose of public debate and policy-making – that is, reasons to do with pleasures and pains. On this view, the principle of utility might be thought of as a kind of public reason, or a way of setting out the parameters of public reason. This could lead to greater tolerance of different opinions and acts, as in the case of irregular sexual practices (such as sodomy, for example). On tolerance, see Shirley Robin Letwin, *The Pursuit of Certainty* (Indianapolis: Liberty Fund, 2012), ch. 12.

³⁰ The essay on paederasty was written in the mid-1780s, but published for the first time in ‘Offences Against One’s Self: Paederasty, Part 1’, ed. Louis Crompton, *Journal of Homosexuality* 3, no. 4 (1978): 389–405 and ‘Jeremy Bentham’s Essay on “Paederasty”, Part 2’, *Journal of Homosexuality* 4, no. 1, ed. Louis Crompton (1978): 91–107; henceforth ‘Essay on Paederasty’, pt. 1 and pt. 2 respectively. In this

punishment of sodomy, and concluded that there was no utilitarian justification for it; ‘the disposition to punish’ seemed to be based on ‘no other ground than the antipathy with which persons who had punishment at their disposal regarded the offender’.³¹ This was especially the case when antipathy was related to and exacerbated by the ascetic dislike of pleasure, whether that stemmed from ‘philosophical pride’ or religious belief.³² As Bentham put it, ‘It may be asked, indeed, if pleasure is not a good, what is life good for, and what is the purpose of preserving it? But the most obvious and immediate consequences of a proposition may become invisible when a screen has been set before [it] by the prejudices of false philosophy or the terrors of a false religion’.³³

Blackstone’s discussion of sodomy illustrates Bentham’s point. He justified the capital nature of the punishment of sodomy by pointing to the ‘voice of nature and reason’ and the ‘express law of God’. In relation to the first, we are told that the very mention of sodomy is a ‘disgrace to human nature’, and for that reason it is not actually named in the *Commentaries*. As for the second, we have as evidence the destruction of Sodom and Gomorrah by fire from heaven. As Bentham implied in the *White Bull*, Blackstone’s objections to sodomy appear to have been primarily religious, even though

essay, Bentham canvassed different kinds of sexual irregularities (the phrase in this work is ‘irregularities of the venereal appetite’), and decided to focus on ‘paederasty’ as emblematic of the others (‘Essay on Paederasty’, pt. 1, 389). From his discussion in this essay and from his later writings on sex and religion, however, it is evident that he was principally interested in the legal offence of sodomy – in sex between adult men, which was at the time of writing a capital offence in England. Consent is an argument for the harmlessness of sodomy and other sexual acts between adults, but not for paederasty – and, as he said in this essay, sexual acts which were not undertaken consensually were rape (‘Essay on Paederasty’, pt. 1, 390).

³¹ ‘Essay on Paederasty’, pt. 2, 94.

³² ‘Essay on Paederasty’, pt. 2, 94–96.

³³ ‘Essay on Paederasty’, pt. 96. The interpolation in square brackets is mine.

he placed sodomy in the category of ‘offences against the persons of individuals’ rather than ‘offences against religion’.³⁴

In the *IPML*, Bentham identified two rival principles to the principle of utility: the principle of sympathy and antipathy, and the principle of asceticism.³⁵ The principle of utility also provided a critical standard by which to assess the other two principles as *political* principles: they were bad political principles because they demonstrably detracted from the greatest happiness of the greatest number. More specifically, we could say that the two rival principles were ‘cloaks’ for bad political outcomes, namely tyranny and cruelty.³⁶

The first essay in this dissertation considers the political implications of the principle of asceticism, primarily as set out in the first and third *Not Paul, But Jesus* volumes.³⁷ This essay argues that Bentham objected to that principle because it could be used to provide ideological and practical support for tyranny, though the elevation of ascetic rulers above the common run of humanity, the generation of conditions of fear and isolation, and, perhaps most importantly, the justification of tyrannical laws. The principle of asceticism, in other words, could serve as a ‘cloak’ for tyranny: it gave *reasons* for the establishment of tyrannical laws and for obedience to such laws. The law against sodomy is an example of a tyrannical law justified by the principle of

³⁴ Blackstone, *Commentaries*, vol. 4, 215–16.

³⁵ *IPML*, ch. 2.

³⁶ The term ‘cloak’ is from *IPML*, 28*n*, and Jeremy Bentham, *The Book of Fallacies*, ed. Philip Schofield (Oxford: Oxford University Press, 2015), 233.

³⁷ Gamaliel Smith [Jeremy Bentham], *Not Paul, But Jesus* (London: John Hunt, 1823) and Jeremy Bentham, *Not Paul, But Jesus*, vol. 3, *Doctrine* (London: The Bentham Project, UCL, 2013). The second volume has not yet been published.

asceticism: it extended the scope of the law to private acts which would otherwise be protected from legal interference by the principle of utility.

The second essay is about antipathy and cruelty. As Mill implied, and as is evident from Bentham's discussion of it, the principle of sympathy and antipathy was not a single principle (unlike the principles of utility and asceticism) so much as an umbrella term for moral and political theories which did not have pleasure at their centre.³⁸ It could, Bentham remarked, as easily be styled the 'principle of caprice', since the only standard of action and judgment offered was the author's own sentiment or opinion.³⁹ To put forward one's own sentiment or opinion as a sufficient standard of action and judgment, without regard to the consequences of the action, was nothing short of 'despotic'.⁴⁰ The problem endemic to theories of sympathy and antipathy, therefore, was their tendency to despotism; or, as Bentham put it, 'their serving as a cloak, and pretence, and aliment, to despotism: if not a despotism in practice, a despotism however in disposition: which is but too apt, when pretence and power offer, to show itself in practice'.⁴¹

In the second essay, I argue that the case of sexual irregularities was a case in which despotism or tyranny did show itself in practice.⁴² Bentham's writings on sex show us that the deprivation of pleasure in itself, separate from the infliction of pain,

³⁸ The principle of utility being that principle which promoted pleasure, and the principle of asceticism, conversely, as the principle which repudiated pleasure. See *IPML*, 12, 18.

³⁹ *IPML*, 21*n*.

⁴⁰ *IPML*, 16.

⁴¹ *IPML*, 28*n*.

⁴² I use 'tyranny' instead of 'despotism' because the former seems more appropriate when applied to a particular law rather than a system of government.

was cruel if done without good reason – that is, if it could not be justified on utilitarian grounds. Since there was no good reason for the punishment of sexual irregularities, the law against sodomy was an example of cruelty. Cruelty was also a reason for the continuing existence of the law against sodomy: it offered pretence and power for the exercise of the disposition to despotism (to borrow words from the *IPML*), or for indulgence of the pleasures of power (or from the unpublished essays on sex written in the 1810s).⁴³ In the latter, Bentham made clear that the pleasures of cruelty were the pleasures of power without responsibility; to the extent that we were complicit in the perpetuation and enforcement of the law against sodomy (even if only in wilfully persisting in ignorance of its cruel effects), we were persecutors and tyrants.

The third essay considers tyranny from a different angle: it looks not at the effects of different political principles but on psychological conditions for tyranny. What is it about religion which prepares people for tyranny? If the first essay considered the effect of religion on the will (conditioning people for obedience through fear and isolation, but also enabling them to take pride in their separateness), the third essay considers the effect of religion on the understanding. Bentham accused the Church of England of aiming at the ‘prostration of understanding and will’ – that is, at the intellectual, and consequently the moral, deprivation of its clerical and lay followers – as a means of establishing an absolute tyranny over them.⁴⁴ This essay argues that Bentham thought religion in general, and the Church of England in particular, had a

⁴³ The ‘unpublished essays on sex’ refer to the writings collected in Jeremy Bentham, *Of Sexual Irregularities, and Other Writings on Sexual Morality*, ed. Philip Schofield, Catherine Pease-Watkin and Michael Quinn (Oxford: Clarendon Press, 2013).

⁴⁴ Jeremy Bentham, *Church-of-Englandism and its Catechism Examined*, ed. James E. Crimmins and Catherine Fuller (Oxford: Oxford University Press, 2011), 47.

corruptive effect on judgment. On this view, he was anxious to demonstrate that neither the established church nor natural religion were trustworthy authorities on political matters, including that of laws on religion, and that the contrary view had significant implications for the success of representative democracy and utilitarian government.

1.3 Political Radicalization

Demystification, with respect to Bentham's writings on sex and religion, was not only about drawing back the cloak from rival political principles and exposing their tendency to lead to tyrannical outcomes, but also about exposing the means and mechanisms by which political power was established, perpetuated and expanded. On the latter account, the writings on sex and religion should be situated in the context of Bentham's political radicalization in the early 1800s, and read as part of his political thought.

There is a question in the Bentham literature about the reasons for his transition from political conservatism to radicalism – from 'Rottenness no Corruption' to 'Radicalism not Dangerous', in effect, or from a defence of rotten parliamentary boroughs in the 1790s to the championship of radical parliamentary reform and representative democracy some twenty years later.⁴⁵ Philip Schofield has argued that

⁴⁵ See J. H. Burns, 'Bentham and the French Revolution', *Transactions of the Royal Historical Society* 16 (1966), 110 for the planned composition of a work to be called 'Rottenness no corruption, or a Defence of Rotten boroughs by the author of the Defence of Usury'. *Radicalism Not Dangerous* was written in 1819–20, and extracted from Bentham's manuscript material and published for the first time by John Bowring in *The Works of Jeremy Bentham*, ed. John Bowring, vol. 3 (Edinburgh: William Tait, 1843), 599–622.

On Bentham's political radicalization, see Burns, 'Bentham and the French Revolution'; John Dinwiddy, 'Bentham's Transition to Political Radicalism 1809–10' in *Bentham: Selected Writings of John Dinwiddy*, ed. William Twining (California: Stanford University Press, 2004), 110–33; J. H. Burns, 'Jeremy Bentham: From Radical Enlightenment to Philosophic Radicalism', *Bentham Newsletter* 8 (1984), 4–14; James E. Crimmins, 'Bentham's Political Radicalism Reexamined', *Journal of the History of Ideas* 55, no. 2 (April 1994): 259–81; Philip Schofield, 'Jeremy Bentham, the French Revolution and

rather than debating the continuity or discontinuity of Bentham's political thought across the period of the French Revolution (or James Mill's role in 'converting' Bentham to radicalism), it would be more productive to consider his development of the concept of sinister interest and its impact on his political thought.⁴⁶

Bentham first applied the concept of sinister interest to his study of the law and judiciary, but later extended its application to political and religious institutions as well. In his opening remarks in *Scotch Reform*, for example, Bentham noted that he had found, in in the course of his work on the use of evidence in judicial procedures, that the exclusions put on evidence by English law were 'almost without exception, adverse to the ends of justice'. He had originally attributed this inconsistency to 'primeval blindness and imbecility', but had later found that it was 'probably in a much higher degree [attributable] to sharp-sighted artifice'.⁴⁷ Judges and lawyers, in order to extract as much profit as possible from the judicial system, had established fees and procedures (including exclusions on evidence) which were of benefit to them, but not to the people they were meant to serve. The corruption of the judicial system was not the accidental product of imbecility, but the deliberate product of sinister interest: 'the reason why the system was and is so bad as men feel it rather than see it to be, is that the *power* found itself in company with the *interest*, and consequently the *will*, to produce as bad a

Political Radicalism', *History of European Ideas* 30 (2004), no. 4: 381–401; Philip Schofield, *Utility and Democracy: The Political Thought of Jeremy Bentham* (Oxford: Oxford University Press, 2006), chs. 4–5; and Frederick Rosen, 'Jeremy Bentham's Radicalism' in *English Radicalism 1550–1850*, ed. Glenn Burgess and Matthew Festenstein (Cambridge: Cambridge University Press, 2007), 217–40.

⁴⁶ Schofield, 'Jeremy Bentham, the French Revolution and Political Radicalism'; Schofield, *Utility and Democracy*.

⁴⁷ Bentham, 'Scotch Reform' in *The Works of Jeremy Bentham*, ed. John Bowring, vol. 5 (Edinburgh: William Tait, 1843), 4. *Scotch Reform* was originally published in 1808.

system as the people, with the legislature at their head, could in their primeval...state of relative ignorance and helplessness, be brought, by the utmost stretch of artifice, to endure'.⁴⁸ The systematic corruption of the judicial system made the 'members of the law partnership' into the 'natural and irresistible enemies of the rest of the community', because of the 'mass of suffering' they inflicted on the people through 'delay, vexation, expense and consequent misdecision'.⁴⁹

Bentham made the same move in politics: in his preface to the 1823 edition of the *Fragment*, for example, he observed that his younger self had attributed 'imperfections' in government to nothing worse than 'inattention and prejudice'. Fifty years of observation and experience, however, had opened his eyes to 'the elaborately organized, and anxiously cherished and guarded products of sinister interest and artifice'.⁵⁰ The partnership in this case was that of the monarch with aristocrats and lawyers: they governed only with an eye to their own interest, which was 'sinister' because it detracted from, rather than contributed to, the interest of the people, or the greatest happiness of the greatest number.⁵¹ In similar fashion, a footnote added to the second edition of the *IPML* in 1814 noted that at the time of original publication, the author had believed that the source of bad government policies and practices (as such as the enactment of ascetic laws) was 'negligence and imbecility' rather than 'any settled

⁴⁸ 'Scotch Reform', 4.

⁴⁹ 'Scotch Reform', 6.

⁵⁰ 'A Fragment on Government', 508.

⁵¹ See for example 'A Fragment on Government', 513–15 and Jeremy Bentham, *Plan of Parliamentary Reform* (London: R. Hunter, 1817), xii–xxi.

plan for the oppressing and plundering of the people'; by the time of the publication of the second edition, however, he no longer held this view.⁵²

In this dissertation, I understand Bentham's political radicalization as the process and result of his growing interest in the means by which political power was perpetuated and expanded. This included, but was not limited to, the use of the concept of sinister interest to uncover and analyse the systematic corruption of political institutions.⁵³ The first essay, for example, considers the specific mechanisms by which ascetic laws could be used as instruments of tyranny – including the use of the principle of asceticism to elevate the ascetic ruler over the common run of humanity, and so enhance his fitness for rule; the establishment of ascetic laws prohibiting common pleasures, as a means of expanding the scope of law to cover the quotidian activities of common people; and the engendering of feelings of fear and isolation in the people, to enhance their obedience to the law.

The second essay discusses the motivations for cruelty, or the free exercise of one's antipathy. Sinister interest is perhaps not the best concept by which to analyse the punishment of sodomy or other sexual irregularities; it is not in any person's interest, exactly, to punish a small minority of people for indulging in innocuous pleasures (once

⁵² *IPML*, 20, 20*n*.

⁵³ It might appear, from the quotations above and in remarks in his later works, that Bentham had merely added 'improbability' to 'imbecility' as a cause of systematic corruption in political and judicial institutions. In the *Book of Fallacies*, for example, he ascribed the fabrication, utterance or acceptance of political fallacies in parliamentary discourse to '[w]ant of probity, or want of intelligence – improbity or imbecility – in shorter and harsher, but less correct, language'. Sinister interest might play a part in either case (*Book of Fallacies*, 42–3). I have tried to show in this dissertation, however, that this was not actually the case – that Bentham had a more expansive account of psychological motivations and political mechanisms, and that the writings on sex and religion are exactly the right vehicle for an exploration of this account.

these pleasures have been demonstrated to be innocuous), unless the person takes pleasure in cruelty.

The third essay considers the detrimental effects of religious belief on judgment. Bentham accused the Church of England (as he did Blackstone) of disparaging private judgment, and encouraging instead an uncritical submission to ecclesiastical authority. But even without the weight of establishment behind it, the belief in a future state of rewards and punishments (as one of the core tenets of natural religion) was corrosive to judgment. This essay puts forward a juridical model of judgment, where judgment is the product of the collection and examination of evidence, and the consideration of different arguments, rather than something arrived at independently (through faith, for instance). Religious belief corrupted this model of judgment by giving people an interest in the outcome – not that a person could *will* belief or disbelief in a claim, exactly, but that she might unconsciously pay more attention to evidence which supported the claim, and less attention to evidence to the contrary.

The third essay also argues that the corruption of judgment has damaging implications for the success of representative democracy and utilitarian government. The background assumption here is that Bentham developed a utilitarian theory of democracy – that is, as part of his political radicalization, he came to think of representative democracy as the system of government most likely to contribute to the greatest happiness of the greatest number. The success of representative democracy as an instrument of utilitarian government depended on people voting for representatives who would actually further the general interest, and the likelihood of that happening depended on the judgment of the voters – if not on what Bentham called their ‘self-formed’ judgment, then on their ‘derivative’ judgment, which was derived from

authoritative sources.⁵⁴ (In this case, the authoritative source was probably public opinion; in other cases, it might, for example, be the opinion of Church authorities.) The corruption of judgment, then, was a blow to representative democracy and so to utilitarian government.

1.4 Liberty of pleasure and judgment

It might, perhaps, be a little exaggerated to title the dissertation ‘*Killing the White Bull*’ (though it has the advantage of not mixing metaphors).⁵⁵ Daniel turned a man into an ox, and Mambrés turned the ox into a god; I have tried to show, in the following essays, that Bentham would have turned the god back into a man. To put it another way, I have tried to show that Bentham’s writings on sex and religion should be read as an important part of his political thought. The white bull stands (if somewhat tenuously) for the fictions of law, religion and politics, which are seen most clearly in the writings on sex and religion: fictions which hide the tendency of rival political principles to lead to cruel and tyrannical outcomes, and which obscure the means and mechanisms by which the ruling classes established, perpetuate and expand political power.

In his essay on Bentham, Mill went on to argue that Bentham possessed too narrow an understanding of human nature to be a philosopher of the first water.⁵⁶ Or as William Hazlitt put it, Bentham had ‘not allowed for the *wind*’ – for the varieties of

⁵⁴ See, for example, the *Plan of Parliamentary Reform*.

⁵⁵ Not to mention that Bentham was against cruelty to animals (this is discussed briefly in the second essay).

⁵⁶ Mill, ‘Bentham’, 89–90.

human nature and irregularities of the human will. Instead, he had ‘struck the whole mass of fancy, prejudice, passion, sense, whim, with his petrific, leaden mace,... had “bound volatile Hermes,” and reduced the theory and practice of human life to a *caput mortuum* of reason, and dull, plodding, technical calculation.’⁵⁷

This dissertation makes the opposite case. The argument here is that what emerges from the writings on sex and religion – the positive argument made by these the writings, as it were, in contrast to the negative one of critique – is a commitment to what Bentham was accused of denying: to the varieties of human opinion and the irregularities of human taste. In his memorandum book of 1821, Bentham wrote,

Liberty of conscience, liberty of the press, liberty of opinion at large—all these are in one place or another established. The last that remains to be established, and which yet, in its whole extent, is scarcely so much as advocated, is liberty of taste.⁵⁸

In the language of this dissertation, we might say that the writings on sex and religion constitute a defence of the liberty of pleasure and judgment.

The first and second essays in this dissertation make the case for a utilitarian defence of the liberty of taste and pleasure. There was no justification for irregular sexual pleasure beyond the pleasure itself; it could not, for example, further the reproduction of the human race. Bentham’s defence of sexual liberty can therefore be understood as a defence of all tastes and all pleasures, including tastes and pleasures which were repugnant to most people. The third essay addresses the liberty of opinion or judgment, not so much in the liberty to express particular opinions (which was not

⁵⁷ William Hazlitt, ‘Jeremy Bentham’ in *The Spirit of the Age: or Contemporary Portraits*, 2nd edition (London: Henry Colburn, 1825), 9–10.

⁵⁸ *Works*, vol. 10, 530.

under as great a threat as the analogous liberty to enjoy particular pleasures), but in the liberty and ability to *form* judgments at all. On this view, both the established religion and natural religion posed a threat to the liberty of judgment.

We might leave Bentham with the last word, to draw an analogy between the oppression of religious and sexual non-conformity, and explicitly appeal for the liberty of pleasure:

We have a Society of the Friends of Religious Liberty: a Society of persons of the highest character in very sense, men not themselves Catholics, whose object is to rescue from oppression those whose misfortune it has been to be born without the pale of the dominating sect. When will a correspondent Society of the friends of liberty in matters of taste – be seen – a society composed of men who having no such misfortune as that of having received from the hand of nature – peculiarity of taste, will be generous enough to employ their endeavours to rescue from equally oppressive [...] those who are sharers in such misfortune?⁵⁹

⁵⁹ Catherine Fuller, 'Utility of Religion a Subject yet Little Examined: A Survey of Bentham's Writings on the Utility of Religion', *Revue d'études benthamiennes* 6 (2010), 11. There is an interesting discussion of the parallels in eighteenth-century attitudes to religious and sexual freedom in Faramerz Dabhoiwala, 'Lust and Liberty', *Past and Present* 207 (May 2010): 89–179.

II

Asceticism and Tyranny

2.1 Introduction

For four years in his late middle age, Bentham rented a medieval abbey in the Devon countryside, and there ‘circumgirated’ in the gardens with his friends, played shuttlecock in the great hall, and wrote on sex and religion.⁶⁰ Among his writings from the Ford Abbey period were several unpublished (and in some cases unfinished) essays on unconventional sexual practices, or ‘sexual irregularities’, which formed the basis of one of the *Not Paul, But Jesus* texts. The *Not Paul* texts make curious reading: they were a three-volume effort to undermine the authority of St Paul and repudiate the principle of asceticism, for which insertion into Christian doctrine Bentham blamed Paul.⁶¹ The first *Not Paul* volume, and the only one to be published (pseudonymously) in Bentham’s lifetime, argued that a close reading of the Bible exposed Paul as an

⁶⁰ See Bentham to Etienne Dumont, 22 July 1817, in *The Correspondence of Jeremy Bentham*, ed. Stephen Conway, vol. 9, *January 1817 to June 1820* (Oxford: Clarendon Press, 1989), 22 and Bentham to an unknown correspondent, 9 November 1814, in *The Correspondence of Jeremy Bentham*, ed. Stephen Conway, vol. 8, *January 1809 to December 1816* (Oxford: Clarendon Press, 1988), 482. The irony of writing on sex and religion in a former abbey was not lost on Bentham; see Catherine Fuller, “‘It is the Theatre of Great Felicity to a Number of People’: Bentham at Ford Abbey”, *Journal of Bentham Studies* 7 (2004): 1–42, for an account of Bentham’s time at Ford Abbey.

⁶¹ The unpublished essays from the Ford Abbey period refer to those collected in *Of Sexual Irregularities*. For commentary on Bentham’s writings on sex, see Louis Crompton, ‘Not Paul But Jesus’ in *Jeremy Bentham*, ed. Frederick Rosen (Aldershot: Ashgate, 2007), 437–69; Lea Campos Boralevi, *Bentham and the Oppressed* (Berlin: Walter de Gruyter, 1984), ch. 5; Philip Schofield, *Jeremy Bentham: Prophet of Secularism* (London: South Place Ethical Society, 2012); Philip Schofield, ‘Jeremy Bentham on Taste, Sex and Religion’ in *Bentham’s Theory of Law and Public Opinion*, ed. Xiaobo Zhai and Michael Quinn (Cambridge: Cambridge University Press, 2014), 90–118; and Faramerz Dabhoiwala, *The Origins of Sex: A History of the First Sexual Revolution* (Oxford: Oxford University Press, 2012), 134–38.

imposter motivated by ambition and greed.⁶² The second volume was to offer an account of Paul's worldly 'inducements' and a history of the early Christian church.⁶³ The third volume made the case against asceticism, arguing that it was a 'vicious' and 'pernicious' principle on its own demerits, and an illegitimate addition to Christian doctrine. A close reading of the Gospels, Bentham argued, showed that Jesus himself had never advocated a principle of asceticism by word or deed, and had in fact partaken quite willingly of worldly pleasures. It was Paul who had promulgated this principle, in order to gain wealth and power for himself. To follow, as the title advocated, not Paul, but Jesus, was to forsake asceticism and accept worldly pleasures.⁶⁴

Bentham positioned the *Not Paul* texts as a defence of Christianity against the corruptions of Paul, not as an outright criticism of Christianity.⁶⁵ However, the first *Not Paul* volume was read by both supporters and critics as an attack on Christianity altogether. Jean-Baptiste Say, for example, made the friendly suggestion that the title

⁶² *Not Paul, But Jesus*.

⁶³ See the editorial introduction to *Of Sexual Irregularities*, xi–xii, for a brief history of the composition of the *Not Paul* texts. See the appendix to *Not Paul, But Jesus*, 376–80 for a proposed chapter outline of the texts, as well as the 'General Idea of a Work' in *Of Sexual Irregularities*, 117–44.

⁶⁴ *Not Paul, But Jesus*, vol. 3.

⁶⁵ In a letter to Dumont, Bentham wrote of a 'comical book' by Gamaliel Smith, who 'says that all that is good and really belongs to what is called Christianity came from Jesus alone, and is in the four Gospels; and that all that has made so much discension, belongs to St Paul and to him alone.' (Bentham to Etienne Dumont, 29 November 1823, *The Correspondence of Jeremy Bentham*, ed. Catherine Fuller, vol. 11, *January 1822 to June 1824* (Oxford: Oxford University Press, 2000), 325.) In *Not Paul, But Jesus*, Bentham argued, for example, that not all of Acts was false, and that in any case Luke was not the author of Acts; this allowed him to preserve the authority of the true parts of Acts and Luke (*Not Paul, But Jesus*, 338–40). The third *Not Paul, But Jesus* volume begins with the claim that Paul and not Jesus taught the doctrine of asceticism, and there is an extensive discussion in Part II of the extent to which Jesus did or did not approve of the pleasures of the bed (*Not Paul, But Jesus*, vol. 3, 10, chs. 7–13). See James E. Crimmins, *Secular Utilitarianism: Social Science and the Critique of Religion in the Thought of Jeremy Bentham* (Oxford: Oxford University Press, 1990), 228–70 for a discussion of Bentham's religious views in the *Not Paul* texts.

could be improved by substituting ‘nor’ for ‘but’.⁶⁶ Thomas Wright Hill, master of the progressive Hazlewood School and an acquaintance of Bentham, confessed himself ‘much amused, interested, and...instructed’, and a little concerned for the implications of Bentham’s criticism of Paul.⁶⁷ An admirer from Liverpool called to offer information ‘likely to be useful in the warfare commenced against Paul’.⁶⁸

Bentham’s critics, on the other hand, deplored his attack on Christianity, and accused him of disingenuousness in not openly acknowledging his ‘deism’ or atheism, and his hostility towards the established church.⁶⁹ For example, Edward Grinfield, a biblical scholar, accused him of bad faith as a ‘deist’, and of attempting to ‘destroy the authority of St Paul’ and ‘venting [his] spleen against the civil and ecclesiastical establishments of Great Britain.’⁷⁰ The historian and clergyman Thomas Hughes complained of Bentham’s ‘bitter animosity, not only against all civil and ecclesiastical establishments, but against the Monarch, the Laws and the Constitution of his Country.’⁷¹ The Unitarian minister and classical scholar John Jones, who knew or

⁶⁶ Jean-Baptiste Say to Bentham, 20 August 1823 in *Correspondence*, vol. 11, 283.

⁶⁷ Thomas Wright Hill to Bentham, 8 March 1824 in *Correspondence*, vol. 11, 360–61.

⁶⁸ Sarah Austin to Bentham, 11 January 1825, *The Correspondence of Jeremy Bentham*, ed. Luke O’Sullivan and Catherine Fuller, vol. 12, *July 1824 to June 1828* (Oxford: Oxford University Press, 2006), 92.

⁶⁹ Bentham had published a scathing critique of the Church of England several years earlier, under his own name, in *Church-of-Englandism*.

⁷⁰ Edward William Grinfield, *The Doctrinal Harmony of the New Testament Exemplified* (London: T. Cadell, 1824), 118.

⁷¹ T. S. Hughes, *A Defence of the Apostle St Paul* (Cambridge: J. Smith, 1823), 8.

guessed the identity of the pseudonymous author, accused him of being an ‘unbeliever in the Gospel’.⁷²

The charge of attacking Christianity was not, on the face of it, unreasonable; there was a history of ‘freethinking’ and deist writings attacking Paul as an oblique way of attacking Christianity.⁷³ The deist Peter Annet’s book on the history and character of Paul, published in the 1740s, was one such example, and it might have been this tradition which Hughes had in mind, when he accused Bentham of plagiarising from Annet’s book as well as ‘old stores of Morgan, Chubb, Bolingbroke and Paine’.⁷⁴ There are superficial similarities between Bentham’s and Annet’s book, though there is no suggestion from Bentham’s correspondence that he knew of or had read Annet’s book.⁷⁵ The two authors also made different criticisms of Paul, for different polemical purposes;

⁷² Ben David [John Jones], *A Reply to Two Deistical Works* (London: R. Hunter, 1824), 172.

⁷³ Philip Schofield has suggested that the *Not Paul, But Jesus* writings have a place in the development of biblical criticism (Schofield, *Prophet of Secularism*, 8–9). On the ‘Jesus-Paul debate’ in the nineteenth and early twentieth centuries, see Victor Paul Furnish, ‘The Jesus-Paul Debate: From Baur to Bultmann’, *Bulletin of the John Rylands Library* 47, no. 2 (1965): 342–81. The debate outlined by Furnish, however, postdates Bentham’s time, and there is no suggestion in the article that any of the participants in the debate sought to discredit Paul as an apostle and a Christian, or attacked him for propagating the principle of asceticism. More recently, James Tabor has argued that Paul should be considered the ‘founder’ of the Christianity we know today, rather than Jesus or his original apostles. Paul himself had a bitter and decisive break with the original apostles in Jerusalem, and the dominance of Pauline theology, established after Paul’s death, has obscured the ‘Jewish Christianity’ of the apostles (James D. Tabor, *Paul and Jesus: How the Apostle Transformed Christianity* (New York: Simon & Schuster, 2012)).

⁷⁴ [Peter Annet,] *The History and Character of St Paul, Examined* (London: F. Page); see also James A. Herrick, *The Radical Rhetoric of the English Deists* (Columbia, South Carolina: University of South Carolina, 1997), ch. 4 on Annet’s writings. Hughes, *Defence*, 17; T. S. Hughes, *On the Miracles of St Paul* (Cambridge: J. Smith, 1824), ii–iii.

⁷⁵ Bentham did read other contemporary commentaries on Paul in preparation for his work, such as William Paley’s *Horae Paulinae* (Bentham to John Herbert Koe, 10 September 1817, in *Correspondence*, vol. 9, 62). It was not inconceivable that Bentham knew of Annet’s book, and there are some suggestive circumstances to that effect. In 1823, for example, Richard Carlile published the *Critical Examination of the Life of St Paul* (London: R. Carlile, 1823), a translation of the baron d’Holbach’s *Examen critique de la vie et des ouvrages de Saint Paul* (London [Amsterdam], 1770), which was itself a freewheeling translation of Annet’s text. But there is no evidence from Bentham’s correspondence that he consulted or knew of any of these publications.

Annet, for example, criticized Paul's 'enthusiasm'.⁷⁶ More generally, it would not be inaccurate to say that Bentham drew on the rhetoric and themes of past generations of freethinkers and dissenters in his writings on religion, and that whether or not he was consciously placing himself in a critical tradition, he was clearly hostile to the Church of England, if not to Christianity altogether.⁷⁷

Bentham's writings on religion were, however, by and large in service to his moral and political thought, in line with his general effort to separate religion from morality and legislation.⁷⁸ In his critique of the Church of England, for example, he catalogued the doctrinal and practical faults of the Church, and concluded with a call for its 'euthanasia' or disestablishment.⁷⁹ He made no provision for an established church in his monumental *Constitutional Code*, and explicitly argued in *Constitutional Code Rationale* (an unfinished essay setting out first principles for his constitutional code) that 'no power of government ought to be employed in the endeavour to establish any system of article of belief on a subject of religion.'⁸⁰ The separation of religion from

⁷⁶ See for example Annet, *History and Character*, 30.

⁷⁷ Rhetorical examples include Bentham's defence of a 'right of private judgment'; the use of terms such as 'priestcraft' and its derivatives, 'lawycraft', 'king-craft' and 'Orator-craft'; and his criticism of the 'Rome-begotten and Rome-resembling' Church of England ('A Fragment on Government', 406; *The Book of Fallacies*, 233; *Church-of-Englandism*, 285). On freethinking, deist and nonconformist writings in the late seventeenth and early eighteenth century, see Isabel Rivers, *Reason, Grace and Sentiment*, vol. 2 (Cambridge: Cambridge University Press, 2000), ch. 1.

⁷⁸ For Bentham's views on Christianity and atheism and their relation to his political thought, see Colls, *Utilitarianism Unmasked*; Crimmins, *Secular Utilitarianism*; the exchange between Philip Schofield, 'Political and Religious Radicalism in the Thought of Jeremy Bentham', *History of Political Thought* 20, no. 2 (1999): 272–91 and J. E. Crimmins, 'Bentham's Religious Radicalism Revisited: A Response to Schofield', *History of Political Thought* 22, no. 3 (2001): 494–500; James E. Crimmins, 'Introduction: Utility, Truth, and Atheism', *Revue d'études benthamiennes* 6 (2010), accessed 17 Aug 2018, <http://journals.openedition.org/etudes-benthamiennes/70>.

⁷⁹ *Church-of-Englandism*, 343, 346–51; see also 115*n* on the freedom of religion.

⁸⁰ Jeremy Bentham, 'Constitutional Code Rationale', in Bentham, *First Principles Preparatory to Constitutional Code*, ed. Philip Schofield (Oxford: Clarendon Press, 1989), 325, 325–29. The manuscript

politics extended beyond the disestablishment of the national church and the freedom of religion; Bentham denied that the ‘bare opinion’ of a churchman could be authoritative on any legislative matter, even on laws relating to religion.⁸¹

On this view, the *Not Paul* texts can be read not only as religious texts, but as political texts as well. This paper argues that Bentham’s objections to the principle of asceticism were political in nature: the problem with the principle of asceticism, as a political principle, was that it provided ideological and practical support for tyranny. His critique of Paul can be understood as a critique of the principle of asceticism, and an effort to weaken the appeal of the principle by weakening Paul’s authority. The heart of his critique can be found in the following passage:

Whoever the people were, whom [Paul] had to address himself to, – they had contracted, he found, a bad habit: it was that of *eating and drinking*. Reason is but too apt to be seduced by, and enlisted in the service of her most dangerous enemy – *Appetite*. Not only did they eat and drink; but they had found, as it seemed to them, *reason* for so doing. They ate and drank – why? because they were to die after it... ‘Let us eat and drink, for to-morrow we die.’

The case is – that, in pleasure, in whatever shape they see her, – all men, to whose ambition supernatural terrors supply an instrument of dominion, behold their most formidable rival.⁸²

The passage establishes two claims: that pleasure can be a ‘formidable rival’ to men with ambitions to dominion, and, conversely, that the principle of asceticism, in its

material for ‘Constitutional Code Rationale’ was used by Richard Doane for book 1, chapter 14 of his edition of the *Constitutional Code* in *The Works of Jeremy Bentham*, vol. 9, ed. John Bowring (Edinburgh: William Tait, 1843). The authoritative version of the Constitutional Code is in Jeremy Bentham, *Constitutional Code*, ed. F. Rosen and J. H. Burns (Oxford: Clarendon Press, 1983).

⁸¹ *Book of Fallacies*, 158–59.

⁸² *Not Paul, But Jesus*, 393.

denial of pleasure, can be an aid to such ambitions. Bentham had religious tyranny in mind in the *Not Paul* texts, but his concerns can be applied to tyranny more generally: the control of common pleasures, such as the pleasures of eating and drinking, or the pleasures of having sex, are one way by which tyrants can extend their power over their subjects.

The next section defines the key terms of ‘asceticism’ and ‘tyranny’. Subsequent sections discuss the ways in which the principle of asceticism provided ideological and practical support for tyranny, namely through the justification of ascetic rulers and ascetic laws, and the creation of conditions which enhanced the obedience of subjects to their rulers.

2.2 Definitions of Key Terms

In the *IPML*, Bentham identified two rivals to the principle of utility: the principle of sympathy and antipathy, and the principle of asceticism. The former, he acknowledged, might occasionally coincide with the principle of utility, but the latter he defined in opposition to it: the principle of asceticism was that principle which approved of actions to the extent that they tended to diminish the happiness of the relevant parties, and disapproved of actions to the extent that they tended to augment the happiness of the relevant parties. Any person, in his view, who disapproved of ‘the least particle of pleasure...from whatever source’ was to that extent ‘a partisan of the principle of asceticism’.⁸³

⁸³ *IPML*, 17–18.

Bentham distinguished two kinds of ascetics: ‘philosophical’ ascetics, as exemplified by the Stoics, and religious ascetics, as exemplified by Moses and Paul, and their followers. Both kinds of ascetics differed in their motivations and specific beliefs about pleasure and pain; philosophical ascetics, for example, were motivated by ‘philosophical pride’, or ‘the hope of honour and reputation’ in this world, while religious ascetics were motivated by the fear of punishment in the next world. Philosophical ascetics did not disapprove of all pleasures, but only of ‘organical’ pleasures; they celebrated more ‘refined’ pleasures, though by other names, such as the glorious, the honourable and so on.⁸⁴ Religious ascetics, on the other hand, believed that pleasure was an evil in itself, and pain a good. What both kinds of ascetics had in common was the disapproval of *sensual* pleasures – the pleasures of eating and drinking, for example, or the pleasures of having sex.⁸⁵ The latter pleasure was a better target for ascetic condemnation than the former, because it was not necessary to the survival of the individual (even without pleasure, Bentham remarked, ‘life remains notwithstanding’), and irregular sexual pleasures were an even better target, because they did not require any concession to the survival of the species, either.⁸⁶

It was the political, not the personal, uses of the principle of asceticism, to which Bentham objected. The pleasures of irregular sex were a case in point: it was one thing to refrain from sexual practices which one found distasteful, or to forsake sexual

⁸⁴ *IPML*, 18–19. Bentham may have drawn this characterization of the Stoics, and the distinction between pride and fear, from Augustine and Augustinian critiques of philosophic pride. See for example Christopher Brooke, *Philosophic Pride: Stoicism and Political Thought from Lipsius to Rousseau* (Princeton: Princeton University Press, 2012), 1–11.

⁸⁵ *Not Paul, But Jesus*, vol. 3, 25.

⁸⁶ *Not Paul, But Jesus*, vol. 3, 25–26.

pleasure altogether; it was another thing to prevent other people from willingly and consensually engaging in practices which gave them pleasure, and caused no harm to any others.⁸⁷ The punishment of sexual irregularities could not be justified on utilitarian grounds, and had to be grounded on some other (mistaken) beliefs, such as the principle of asceticism.⁸⁸

At the time of the *IPML*, Bentham argued that the principle of asceticism had not had a major influence on government policy, despite the fervour of its adherents in adopting it as ‘a rule of private conduct’. It was a fact that the British government had enacted laws which seemed to follow the principle of asceticism, such as the declaration of national fasting days, but they had not made these laws in principled pursuit of pain for pain’s sake, but ‘for the sake of manifesting their own power, and exercising the obedience of the people’.⁸⁹ By the time he came to write the *Not Paul* texts some thirty years later, however, his attention had shifted to less principled uses of the principle of asceticism to enhance political power – to uses of the principle of asceticism to manifest power and exercise the obedience of the people, as it were. It was no longer merely a question of whether the principle of utility or the principle of asceticism would lead to better outcomes, or of preventing ‘a rule of private conduct’ from turning into a law of public conduct. It was also a question of the mechanics of power – of how public conduct could be controlled in ways which enhanced the power of rulers over the

⁸⁷ This leaves to one side the question of whether willing consent is always possible, as in the case of paederasty, for example. Bentham drew on the example of the ancient Greek practice of paederasty as justification for the tolerance of irregular sexual desires, but his principal concern was with sodomy – sex between adult men – which was a capital offence in law.

⁸⁸ ‘Essay on Paederasty’, pts. 1 and 2.

⁸⁹ *IPML*, 20–21.

people, how such laws could be justified, and how people could be persuaded or compelled to obey them.

This shift in emphasis can be thought of as part of the radicalization of Bentham's political thought, in his move from a critique of the abuses of laws and institutions, to the development of a critique of the 'sinister interest' (of lawyers, politicians, aristocrats and the monarch) underlying the creation and perpetuation of the abuses.⁹⁰ As he put it in his (unpublished) preface to the second edition of the *Fragment on Government*, he had come to realize that abuses in government were produced not only through 'inattention and prejudice', but also, and perhaps more importantly, through 'the elaborately organized, and anxiously cherished and guarded products of sinister interest and artifice.'⁹¹ The two editions of the *Fragment* offer an illustrative contrast: in the original edition of 1776, Bentham criticized the 'fiction' of the original contract as the basis of government; in the preface he wrote for the 1823 edition, however, he attributed its invention to the desire for power by 'whig lawyers', and accused lawyers and the monarch of working in 'partnership' to usurp power from the people and exercise it for their own benefit.⁹²

The role of sinister interest is a critical element in Bentham's definition of tyranny, which for the purposes of this paper is defined as a form of government in which power is exercised in the interest of the rulers and against the interest of the people. The defining characteristic of bad government was the pursuit of the particular (or 'sinister') interest of the ruling classes, in contrast to that of good government,

⁹⁰ On Bentham's political radicalization, see note 45.

⁹¹ 'A Fragment on Government', 508.

⁹² 'A Fragment on Government', 509–13.

which was the pursuit of the ‘greatest happiness of the greatest number.’⁹³ This is admittedly a simplified definition of bad government, with tyranny as an extreme form of it; sinister interest is a necessary but not a sufficient component of tyranny. ‘Tyranny’ could be used to refer both to the structure of government and to the effects of bad government; in his pamphlet *A Plea for the Constitution*, for example, Bentham criticized the colonial government of New South Wales both for making laws without legislative authority from the British Parliament, and for making oppressive laws.⁹⁴

Closer to home, in his call for radical parliamentary reform, Bentham worried about the suppression of ‘English liberties’, such as the suspension of the Habeas Corpus Act and the passing of the Seditious Meetings Act, as well as the corresponding transformation of the English government from a ‘disguised despotism’ to a ‘despotism in form, to which disguise is no longer necessary’.⁹⁵ The cause of the problem, Bentham argued, was ‘the sacrifice made...of the interest and comfort of the subject many, to the overgrown felicity of the ruling few: the effect of corruption being...to engage all whom it has corrupted to bear their respective parts in the perpetual

⁹³ ‘A Fragment on Government’, 508, and 508–15 *passim*.

⁹⁴ In *A Plea for the Constitution*, Bentham wrote, ‘In this complicated body of enormity, perspicuity requires that the distinction between the two main branches be kept in view. The one consists in the system of groundless as well as illegal punishment; the other in the system of illegal legislation and government; – the former, in the oppression exercised upon individuals; the latter, in the usurpation exercised by the servants of the crown over the authority of parliament: – the former, in the wound given to the penal branch, and through that alone to the constitutional branch of the law; the other in a system of delinquency, striking more directly against the constitutional branch.’ (Jeremy Bentham, *A Plea for the Constitution* (London, 1803 [printed]), 64.) See Grace Karskens and Richard Waterhouse, “‘Too Sacred to be Taken Away’: Property, Liberty, Tyranny and the ‘Rum Rebellion’”, *Journal of Australian Colonial History* 12 (2010): 1–22 on the 1808 mutiny against the governor, and especially page 16 for the role Bentham’s pamphlet may have played in providing justifications for the mutiny.

⁹⁵ *Plan of Parliamentary Reform*, iii; also see Schofield, *Utility and Democracy*, ch. 6.

accomplishment of their perpetual sacrifice.’⁹⁶ The monarch and the aristocrats colluded to exercise power, through ‘corruption’ and ‘waste’ (such as through the creation of dignities, sinecures and places for themselves and their allies, and through the pursuit of overseas wars and the maintenance of overseas colonies), for their own interest and at the expense of the interest of the people – their interest being the pursuit of wealth, power and honours, the ‘good things of this wicked world’, not uncoincidentally the same things Paul had pursued at the expense of the interest of his followers.⁹⁷ The English government was not exactly tyrannical, but there were no structural barriers to tyranny; ‘Englishmen,’ Bentham warned pessimistically,

cannot too soon prepare themselves for being shot, sabred, hanged, or transported, at the pleasure of the placed and momentarily displaceable creatures, of a Monarch, free from all check, but the useless one of an Aristocracy, sharing with him in the same sinister interest.⁹⁸

For the principle of asceticism to provide support to tyranny, it would at least have to help rulers exercise power in their own interest, and against the interest of their subjects. This paper argues that the principle of asceticism provided an ideological ‘cloak’ for tyranny, by justifying the elevation of ascetic rulers and the creation of ascetic laws, as well as practical support, by creating the conditions of fear and social isolation, which enhanced the obedience of subjects to their rulers.⁹⁹

⁹⁶ *Plan of Parliamentary Reform*, xxv.

⁹⁷ *Plan of Parliamentary Reform*, xii–xxiii, xviii; ‘A Fragment on Government’, 513–15; Bentham, ‘Sextus’, in *Of Sexual Irregularities*, ed. Schofield et al, 76.

⁹⁸ ‘A Fragment on Government’, 514.

⁹⁹ *Book of Fallacies*, 233.

2.3 A 'Cloak' for Tyranny

What was it about the repudiation of sensual pleasures which made the principle of asceticism a good ideological support for tyranny? In *Sextus*, one of the unfinished essays from the Ford Abbey period, Bentham remarked on the element of snobbishness in the appeal of the principle of asceticism. Asceticism, he suggested, consisted of 'sacrifice', first in the sacrifice of meat and wine to the gods, and later in the sacrifice of the *pleasures* of eating meat and drinking wine, a development which had the advantages both of polite refinement and universality. The pleasures of eating and drinking were sensual pleasures, but the sacrifice of sensual pleasure was 'the reverse of sensual: it was a sort of negative sacrifice: nothing imaginable could be more refined'. It was also universally available: not every person could afford to purchase meat and wine for sacrifice, but every person had sensual pleasures they could sacrifice.¹⁰⁰ The story might have been partly tongue-in-cheek, but elements of it are serious: sensual pleasures are common pleasures, and shared by all persons. The sacrifice of sensual pleasure, conversely, is the 'reverse' of sensual: it connotes refinement, extraordinariness, uncommonness.

More specifically, sensual pleasures are common pleasures in all senses of the term, unrefined, universal and shared; the most representative common pleasure, in these senses, is sexual pleasure. The repudiation of sensual pleasures, is, on the face of it, uncommon – it elevates the ascetic above the common run of humanity. The philosophical ascetics were particularly keen on this way of thinking; the Stoics, for example, according to Bentham, were proud of their differentiation from common men

¹⁰⁰ 'Sextus', 72–73.

in this respect, and had only contempt for ‘the vulgar herd with their vulgar gratifications’.¹⁰¹ ‘Philosophical pride’ was

that species of pride which, among the Gentiles, gave birth to the sect of the Stoics: and among the Jews, if it did not give birth, contributed at least to the growth of the Pharisees; and in their hands we shall see it serving as an instrument to ambition and a ladder to power. To the herd of men pleasure is the object of pursuit; pain, of avoidance. ‘I am not as other men are’: of their minds, the texture is earthly and sordid; of mine, celestial and pure. Differing from them thus, I exalt myself above them, and in that awful respect which the exaltation thus obtained has for its fruit, I find an indemnity for whatsoever I renounce of vulgar pleasure.¹⁰²

The first *Not Paul* volume offered an example of the translation of self-exaltation into power, through an examination of Paul’s life from his conversion on the road to Damascus to his final journey to Rome, with particular attention to discrepancies in the accounts in Acts and the Epistles. Bentham argued that there was insufficient biblical evidence of the genuineness of Paul’s conversion to Christianity, and put forward an alternative view of Paul as an ambitious and greedy man, who saw in the early Christian church an irresistible opportunity to gain wealth and power. Paul, Bentham suggested, came to a business arrangement with the apostles; they would have Jerusalem, and he ‘the whole of the Gentile world’. But even this accommodation came to be inadequate in time, and ‘ambition, – rival ambition, – the same motive which sent Caesar to Rome’ sent him on his last, fateful visit to Jerusalem.¹⁰³ Bentham did not focus on Paul’s own asceticism in *Not Paul 1*, but argued that Paul used the unusual

¹⁰¹ Bentham, ‘Of Sexual Irregularities – or, Irregularities of the Sexual Appetite’ in *Of Sexual Irregularities*, ed. Schofield et al, 19.

¹⁰² *Not Paul, But Jesus*, vol. 3, 48.

¹⁰³ *Not Paul, But Jesus*, vol. 3, 177, 211; see also ch. 7.

circumstances of his conversion, and his personal behaviour – his uncommonness, as it were – as part of his ‘plan of worldly ambition’.¹⁰⁴

We might turn to a different ascetic saint for a more pointed illustration of the use of personal asceticism for political ambition. This example does not come from Bentham but from Hume’s *History of England*, in the transformation of Thomas Becket from a complaisant chancellor and hunting companion to the king, to an ascetic archbishop and an enemy to the same king. The use of Hume does not imply a claim of influence (Bentham had read the *History of England*, as had every English schoolboy of his time, but there is no suggestion in his correspondence that he had had this particular episode in mind when writing the *Not Paul* texts), but there are suggestive parallels between the two stories, on the relation between asceticism and power, and (the more minor point) on Bentham’s debt to a tradition of freethinking or otherwise sceptical writing on Christianity.¹⁰⁵

When he was Chancellor of England, Becket furthered the king’s projects and shared his enjoyments, and was rewarded by great offices and friendship in return. He cut a grand figure at this time; ‘[t]he pomp of his retinue, the sumptuousness of his furniture, the luxury of his table, the munificence of his presents, corresponded to these great preferments; or rather exceed any thing that England had ever before seen in any subject’.¹⁰⁶ After his appointment as Archbishop of Canterbury, however, Becket acted to secure and further his power by severing his ties with the king and his old world: he

¹⁰⁴ *Not Paul, But Jesus*, 124; see also chs. 2–4, 7, 12, 13.

¹⁰⁵ Hughes could have added Hume’s name to his list of Bentham’s predecessors, with perhaps more reason.

¹⁰⁶ David Hume, *The History of England*, vol. 1, ed. William B. Todd (Indianapolis: Liberty Fund, 1983), 307–08.

resigned the chancellorship, and adopted a new, ascetic persona. He wore dirty and vermin-ridden sackcloth next to his skin, ate only bread and drank only water, tore his back with self-flagellation, and knelt to wash the feet of thirteen beggars every day.¹⁰⁷ More so than Paul – who had other instruments to hand, such as the performance of ‘miracles’ and the invention of new religious doctrines, as well as ‘the whole of the Gentile world’ to rule over – Becket used his newly-adopted asceticism to signal his distance from common pleasures and his elevation over common men. ‘All men of penetration plainly saw’, Hume concluded, ‘that he was meditating some great design, and that the ambition and ostentation of his character had turned itself towards a new and more dangerous object’.¹⁰⁸

The examples of Paul and Becket illustrate the use of the principle of asceticism as an ideological support for tyrannical ambition and power, or as a ‘cloak’ for tyranny, to borrow a phrase from Bentham’s *Book of Fallacies*.¹⁰⁹ Following his classification of ‘political fallacies’ in that book, we could say that the principle of asceticism fell under the categories of fallacies applying to ‘men’s self-diffidence’ and to ‘the judicial faculty’.

The common character of fallacies applying to ‘men’s self-diffidence’, Bentham explained, was to ‘infuse into men’s mind[s] a weakness.’¹¹⁰ Included in this category were fallacies which originated from uncritical obedience to authority, one source of

¹⁰⁷ Hume, *History of England*, vol. 1, 309–10.

¹⁰⁸ Hume, *History of England*, vol. 1, 310.

¹⁰⁹ *Book of Fallacies*, 330. Bentham began the compilation of ‘political fallacies’ commonly found in parliamentary debate in 1809 and added to it intermittently in the 1810s and 1820s (*Book of Fallacies*, xix, 9–10, 31).

¹¹⁰ *Book of Fallacies*, 119.

which was religious authority.¹¹¹ He argued that religious authority was not a legitimate source of authority on matters of legislation; as mentioned previously, the ‘bare opinion of a Churchman’ should not be taken as authoritative on any legislative matter, including laws related to religion; if it were, there was a high chance that it would be ‘deceptive’, since the interest of churchmen as a class was opposed to the ‘universal interest’.¹¹² Religious authority, in other words, should not be transformed illegitimately to political authority, as it was in the case of Paul and Becket.

In his discussion of fallacies applying to the judicial faculty, Bentham considered the use of ‘eulogistic’ terms or phrases which masked the true meaning of the speaker, such as the use of broad or ‘cloudy’ terms in place of more specific terms – the use of ‘law’, for example, rather than specific laws, or the use of ‘order’ as a justification for any action of government in imposing its will on the people, including tyrannical actions.¹¹³ The purpose of this fallacy, he explained, was to use the ‘cloudy’ term as ‘a *cloak* or *cover* for the abuse’.¹¹⁴ In similar fashion, the principle of asceticism could be used as a ‘cloak’ for tyranny, to disguise the true intentions of the speaker by offering reasons for the elevation of ascetic rulers, the establishment of tyrannical laws, and obedience to such laws.

¹¹¹ *Book of Fallacies*, 121, 132.

¹¹² *Book of Fallacies*, 158–59.

¹¹³ *Book of Fallacies*, 315, 330–31, 333, 334–35.

¹¹⁴ *Book of Fallacies*, 333.

2.4 Fear

The principle of asceticism provided practical support for tyranny in two ways: in the justification of ascetic laws, which could be used to extend political power over the ordinary lives of the people in ways which could not be justified by the principle of utility, and in the creation of the conditions of fear and social isolation, which encouraged obedience to ascetic and tyrannical laws.

To begin with, the principle of asceticism, as a principle which repudiated sensual pleasure, justified the transformation of physical ‘impurities’ into moral ones, and so of personal antipathies against ‘impure’ physical practices (which could refer to just about any sensual act, including irregular sexual practices) into ascetic laws. The principle of asceticism, Bentham argued, traded on notions of ‘purity’ and ‘impurity’, and in particular on the equivalence of moral and physical impurity.¹¹⁵ This was an error on two levels: in the first place, the notion of ‘impurity’ was indeterminate, and depended entirely on the opinion of the speaker. Even the notion of ‘physical impurity’ was relative; what was offensive to one person might be the ‘aliment and delight’ of another.¹¹⁶ In the second place, even if we granted the existence of physical and moral impurities, there was no reason why the two phenomena should be related, except in their happening to share the same term. They were not analogous in treatment: the fact that one could burn physical impurities (such as dirt) away from material objects did not mean that one could therefore literally burn moral impurities (such as sin) away from

¹¹⁵ ‘Of Sexual Irregularities’, 12–13; ‘Essay on Paederasty’, pt. 2, 103.

¹¹⁶ ‘Of Sexual Irregularities’, 13*n*.

the soul.¹¹⁷ The conflation of the two phenomena, Bentham observed, had produced ‘confusion, and with it practical error, the source [of] antipathy, hatred, cruelty and its product human misery.’¹¹⁸

This ‘baneful and wide-spreading error’ had, nonetheless, been used as the basis of a wide range of ascetic laws, from Mosaic dietary laws to the contemporary punishment of sodomy in England.¹¹⁹ It was a productive error for tyrants, especially for religious tyrants:

[i]n the head of tyranny, at the nod of caprice, physical impurities were converted into moral ones. Under Moses as under Bramah, the list of impurities thus created, sometimes out of nothing, sometimes out of physical impurities, was a labyrinth without an end. The more extensive and above all the more indefinite the system of penal law, the more transgressions on the part of the subject many, the more power in the hand of the ruling few. Wherever the people are in a shivering fit, the physician of their souls is absolute.¹²⁰

As the above passage suggests, the principle of asceticism also gave the people a practical reason to obey the law, through an appeal to the passion of fear. Fear was a useful partner to tyranny on two levels. In the first place, it fed into a vicious cycle of fear and punishment: the more laws there were, and the more arbitrary the laws were, the greater the likelihood that people would transgress the law and be punished for it – or, to put it another way, the greater the likelihood that the government would have an

¹¹⁷ ‘Of Sexual Irregularities’, 13–15*nn*. In any case, burning resulted in the destruction of the burned object, not in its purification (‘Of Sexual Irregularities’, 15*n*.).

¹¹⁸ ‘Of Sexual Irregularities’, 14*n*.

¹¹⁹ *Not Paul, But Jesus*, vol. 3, 86–87, 28.

¹²⁰ ‘Of Sexual Irregularities’, 12–13.

opportunity to impose its will and display its power, and the more fear generated. More specifically, the principle of asceticism justified the establishment of laws restricting or prohibiting common pleasures, and so enabled the penetration of law into areas of ordinary life which would have been safe from legal intervention under a system of utilitarian law, notably (in Bentham's view) the areas of sex and religion.¹²¹

It would perhaps be more accurate to say that fear was a useful partner to *government*. As mentioned earlier, tyranny in Bentham's political thought was a function of the use of power, not of the degree of power exercised. Power and obedience were two sides of the coin of government: what it was to have power was to have the ability to compel obedience to one's commands, or (which was the same thing) to the laws one established. In the *Fragment on Government*, Bentham argued that it was the presence or absence of a 'habit of obedience', and not of an original contract, which differentiated political society from the state of nature. The distinction between political and natural society was not a sharp one: governments receded from or approached the state of nature in proportion to the degree to which a habit of obedience was established in the society.¹²² In *Not Paul 3* (among other works), Bentham drew a direct correlation between the degree of obedience offered by the people, and the power exercised by the government.¹²³ Fear was an aid to obedience, but that was applicable to all kinds of government, not only tyrannical ones; the 'business of government', as

¹²¹ 'Of Sexual Irregularities', 4; *Not Paul, But Jesus*, vol. 3, 50.

¹²² 'A Fragment on Government', 428–29.

¹²³ *Not Paul, But Jesus*, vol. 3, 88. Even more directly, '[p]ower on the one part, is created by obedience on the other part: correspondent, with perfect exactness, is this same power with this same obedience: correspondent and proportionate; neither greater nor less.' *Jeremy Bentham to his Fellow Citizens of France, on Death Punishment* (London: Robert Heward, 1831), 9.

Bentham put it, was ‘to promote the happiness of the society, by punishing and rewarding’, with punishment generally being more effective than reward.¹²⁴

The fear produced by ascetic laws, however, was different in degree and kind from that produced by utilitarian laws. It was greater in degree because the indeterminacy of the notion of ‘impurity’, supported by the religious or moral disapprobation of sensual pleasure, could be used to create a ‘labyrinth’ of ascetic laws, ‘sometimes out of nothing, sometimes out of physical impurities’. In contrast to the principle of utility, which provided an external standard for law, the principle of asceticism did not set any boundaries for law apart from the caprice of the ruler; the same principle, for example, could be used to prohibit irregular sexual practices, regular sex with infertile persons, and sex on the Sabbath.¹²⁵ As Bentham put it in the essay on pederasty, if the distaste for sexual irregularities were admitted as a sufficient ground for punishment, ‘one should never know where to stop’.¹²⁶

Ascetic laws also generated a different kind of fear. One reason for this came from the association of the principle of asceticism with Christian belief. In *Not Paul 1*, for example, Bentham discussed Paul’s use of fear to motivate his followers and maintain their belief in him and his teachings. His prophecy that the world would end and the day of judgement arrive at an indeterminate but impending time, was, for example, an example of the ‘fertility of his invention’, and had the expected effects of spreading ‘terror and self-mortification, or confidence and mischievous self-indulgence’

¹²⁴ *IPML*, 74, 201. See also Jeremy Bentham, *Of Laws in General*, ed. J. H. Burns (London: Athlone Press, 1970), 135–36nn.

¹²⁵ See for example the discussion of antipathy and caprice in the *IPML*, 21–30.

¹²⁶ ‘Essay on Paederasty’, pt. 2, 97.

among his followers, depending on whether they were afraid of divine judgement, or thought themselves protected by the ‘all-sufficiency’ of their faith.¹²⁷ Paul’s use of fear was a nuanced one: it was in his interest that fear did not detract from his followers’ ability to ‘walk honestly’ and work industriously, to maintain themselves and him, but it was also in his interest, though in this case not in theirs, that their minds, ‘at the expense of whatever torment to themselves, should be kept in a state of constant ferment, between the passions of hope and fear.’¹²⁸ The fear of eternal punishment distracted their minds from their present concerns to some extent, and kept them dependent on him for their salvation. ‘When the people are in a shivering fit,’ Bentham concluded, ‘the physician of their souls is absolute.’¹²⁹

Another kind of fear was the fear not only of disobeying the law, but also of *obeying* it. In *Sextus*, Bentham listed a number of ‘evils’ associated with the punishment of sexual irregularities, including the ‘loss of enjoyment’ and the ‘[p]ositive pain produced by the violence of the restraint’.¹³⁰ Persons with irregular sexual desires living under an ascetic regime might be afraid of the consequences of disobeying the law, namely punishment and infamy. They might also be afraid of the consequences of obeying the law, which would result in a different kind of pain (fear being one kind of pain), namely the pains of deprivation. On the one hand, the pains of deprivation applied to all desires: sexual taste was a taste like any other, and there was no reason to deprive individuals of irregular sexual pleasures, any more than there was to deprive

¹²⁷ *Not Paul, But Jesus*, 282, 287, 288.

¹²⁸ *Not Paul, But Jesus*, 288.

¹²⁹ ‘Of Sexual Irregularities’, 13.

¹³⁰ ‘Sextus’, 92.

them of such idiosyncratic pleasures as eating train oil or carrion.¹³¹ On the other hand, Bentham considered sexual taste a ‘sixth sense’, more like the sense of taste than, say, a taste for fine art; it could take different forms in different persons, but was itself a normal and basic part of the human condition.¹³² The pain of being deprived of sexual pleasure might be correspondingly great. The ability to justify the prohibition of a common pleasure offered greater scope for law, compared to a utilitarian system of law, and therefore greater opportunity for the government to manifest its power and exercise the obedience of the people.¹³³

2.5 Social Isolation

The second condition which encouraged obedience to the law was social isolation. The ‘fundamental principle’ of the Mosaic law, Bentham asserted, was ‘the design – the avowed design – of keeping up a wall – an everlasting wall – of separation’ between Jewish and non-Jewish peoples, for the ‘prevention of all convivial and thence of all social intercourse.’¹³⁴ The principle of asceticism facilitated the achievement of

¹³¹ *Not Paul, But Jesus*, vol. 3, 46.

¹³² ‘Of Sexual Irregularities’, 51; *Not Paul, But Jesus*, vol. 3, 55.

¹³³ This section owes a debt to Michel Foucault’s discussion of the ways in which power created, controlled, categorised and interacted with different kinds of ‘sexuality’ in the eighteenth and nineteenth centuries. On the one hand, Bentham had what Foucault called a ‘juridico-discursive’ understanding of power, as something exercised through laws and cashed out in terms of obedience. Bentham was primarily interested in the legal prohibition and punishment of ‘sexual irregularities’ rather than in ‘homosexuality’ as a condition (to put it anachronistically). On the other hand, I have tried to show that Bentham was aware of and interested in the mechanics of power, including the use of the principle of asceticism to justify the control, as Foucault put it, of ‘bodies and pleasures’ (Michel Foucault, *History of Sexuality*, vol. 1, trans. Robert Hurley (New York: Pantheon Books, 1978)).

¹³⁴ *Not Paul, But Jesus*, vol. 3, 90–91.

this design by justifying laws on common pleasures, which were also shared pleasures. The Mosaic dietary laws, for example, made it difficult to break bread with non-Jews.¹³⁵

The effects of social isolation appealed to the passions of fear and hope. Social isolation kept the Jewish people in ignorance and fear of the unknown, by preventing them from interacting with and learning about other cultures and religions. There was, Bentham suggested, fierce competition between ‘rival powers’ at the time. The Mosaic government was an ‘aristocracy of priests’, who were aware that the requirements of their religion were ‘preeminently heavy’, to the point that they might lose believers to priests who offered a ‘less burthensome yoke’, and so lose out in the competition for power and obedience.¹³⁶ Keeping their followers in social isolation and ignorance made it more likely that they would obey the laws of the regime they lived under, and less likely that they would consider defecting to other religious and political regimes.

Obedience was reinforced by the appeal to pride, or the ‘hope of honour and reputation’, by giving the people another, positive reason to obey the law. The separateness of the Jewish people was, from this perspective, the whole point of the ceremonial law and not a by-product of the principle of asceticism. Bentham quoted Leviticus to this effect: God had separated the Jews from other peoples, and they should *therefore* observe the difference between clean and unclean animals, and not contaminate themselves through contact with unclean animals.¹³⁷ The ceremonial law was a way of elevating the Jewish people above others and maintaining their exalted

¹³⁵ The ceremonial part of the Mosaic law, Bentham claimed, was ‘a system of asceticism’ (*Not Paul, But Jesus*, vol. 3, 88).

¹³⁶ *Not Paul, But Jesus*, vol. 3, 88, 91.

¹³⁷ *Not Paul, But Jesus*, vol. 3, 91.

status, through restrictions on social practices and common pleasures. The effect of pride was a mirror-image of the effect of fear discussed in the previous section. Both pride and fear entered into our conceptions of ourselves and our communities: in the case of fear, through the fear of transgression and the pain of obedience (from the deprivation of pleasure), and in the case of pride, in making the pain of obedience a point of pride (what it was to be a good Jew, for example, was, among other things, to regulate one's sexual relations in particular ways).

Bentham's analysis of the Mosaic ceremonial law, as an example of ascetic law, was deliberately reductive; he was making a political point, not a religious one. The eighteenth-century philosopher Moses Mendelssohn made a similar point about the integration of the ceremonial law into ordinary life, though he drew different political and religious conclusions. The ceremonial law, Mendelssohn explained, imbued 'men's everyday activities' with moral and religious significance, in order to encourage men to reflect on the connection between their religious teachings and ordinary practices, and in that way to close 'the division between doctrine and life'. As a result, 'teaching and life, wisdom and activity, speculation and sociability were most intimately connected', or should ideally be.¹³⁸ Bentham's point was that this intimate connection was potentially tyrannical. He depicted Paul, for example, as calling on his followers to sacrifice sexual pleasure (regular or otherwise), in order to weaken their ties to one another, and to focus their energies on serving his own needs. As Bentham put it,

What has at all times been visible to leaders of sects were sufficiently visible to Paul, viz. the more sedulously men were occupied by other pursuits of all sorts – whether pursuits of business or pursuits of pleasure

¹³⁸ Moses Mendelssohn, *Jerusalem, or on Religious Power and Judaism*, trans. Allan Arkush (Waltham, Mass.: Brandeis University Press, 1983), 118–20.

– the less sedulously would they be occupied with the pursuits in which it was his design and endeavour to engage them: the pursuits in which he led and they followed: the pursuits by which they were made sources of the good things of this wicked world – distinction, power, and money – to himself: the pursuits by means of which they became instruments in his hands.¹³⁹

Another ‘leader of sects’ who had adopted a similar strategy, with similar success, was the pope. Hume’s *History of England*, once again, offers a pithy illustration of Bentham’s point about the tyrannical connection between ‘doctrine and life’. The pope, Hume argued, used the rule of celibacy to establish an ‘absolute sovereignty’ over the clergy:

[He perceived] that the celibacy of the clergy alone could break off entirely their connexion with the civil power, and depriving them of every other object of ambition, engage them to promote, with unceasing industry, the grandeur of their own order. He was sensible, that, so long as the monks were indulged in marriage, and were permitted to rear families, they never could be subjected to strict discipline, or reduced to that slavery under their superiors, which was requisite to procure to the mandates, issued from Rome, a ready and zealous obedience.¹⁴⁰

As with Paul, the principle of asceticism enabled the pope to extend the sway of doctrine over life, by weakening the ties of the monks to the ordinary world and establishing a new locus for their energies and loyalty. The extension of papal law over the everyday lives of the monks also created more opportunities for transgression and punishment, or, in other words, for the demonstration of papal power and the imposition of the papal will over the clergy.

¹³⁹ ‘Sextus’, 76.

¹⁴⁰ Hume, *History of England*, vol. 1, 91.

The ultimate effect of encouraging celibacy among the early Christians or the Catholic clergy was to reinforce their obedience to Paul or the pope, just as the ultimate effect of the ceremonial law was to reinforce obedience to the Jewish government. The ‘main object’ of the ceremonial law, Bentham argued, was

...the perpetually calling down the attention to the whole system of ordinances taken together: the more incessantly repeated calls thus made upon it, the greater the security for its constancy, and for that habit of never-remitted obedience which was the expected fruit of it.¹⁴¹

The principle of asceticism, touching as it did common pleasures, justified the establishment of laws which penetrated men and women’s everyday activities, extending the scope of legal power and instilling in them a habit of obedience (as a point of pride and as a way to avoid fear). It gave, in other words, rulers a reason to establish tyrannical laws, and people reasons to obey them.

2.6 A Defence of Common Pleasures

In the introduction to this essay, I suggested that Bentham made two claims about asceticism, pleasure and tyranny: that the principle of asceticism could be an aid to ambitions of tyranny, and that pleasure could be a ‘formidable rival’ to such ambitions. How could pleasure be a barrier to tyranny?

One way was as a ‘rival’ for attention, energy and loyalty, as it was in Bentham’s account of Paul’s efforts to focus the attention and devotion of his followers on his own needs, for example, or in Hume’s account of the pope’s introduction of a rule of celibacy to consolidate his power over the clergy. Pleasure, on this view, was

¹⁴¹ *Not Paul, But Jesus*, vol. 3, 88.

something which focused men and women's minds on their interests in this present world, rather than the world to come.

A second practical use of pleasure as a barrier to tyranny was as something which grounded the lives of men and women. Against the repudiation of sensual pleasure was an emphasis on common pleasures, on pleasures available to every man and woman and shared among them, as a counterweight to the fear of transgression and deprivation, the pain of social isolation and the fear of the unknown.

An emphasis on common pleasures was also an ideological challenge to the principle of asceticism: it drew the 'cloak' back from tyranny, and exposed it for what it was. If the principle of asceticism could be used to elevate the ascetic above common men and women, an emphasis on common pleasures brought him down to earth, and made it more difficult for him to justify extending power over the lives of others.

Bentham's understanding of pleasure was deliberately reductionist; sexual pleasure, for example, was just one more pleasure among others, like a taste for turtle meat or the pleasure of scratching an itch, and not something sentimental, polite or redemptive (unlike love, perhaps).¹⁴² A defence of common pleasures, including irregular sexual pleasures, was a defence of all pleasures – of the incorrigible plurality of pleasures, the world crazier and more of it than we think.

It was, at the same time, a defence of the *liberty* of pleasure. In his comments on Paul's and Jesus's attitudes towards pleasure, Bentham remarked,

¹⁴² *Not Paul, But Jesus*, vol. 3, 55–56. On eighteenth-century attitudes towards sex, see Roy Porter, 'Mixed Feelings: the Enlightenment and Sexuality in Eighteenth-Century Britain' in *Sexuality in Eighteenth-Century Britain*, ed. Paul-Gabriel Boucé (Manchester: Manchester University Press, 1982), 1–27 and Dabhoiwala, *The Origins of Sex*, 116–40. For a contemporary account of sexual desire as love, see Richard Carlile, *Every Woman's Book* (London: R. Carlile, 1828) and M. L. Bush, *What is Love? Richard Carlile's Philosophy of Sex* (London: Verso, 1998), 1–51 on Carlile's book.

What every man knows – and what Jesus knew as well as any man – for neither in words nor in acts did he deny it – is, – that happiness, at what time soever experienced, – happiness, to be any thing, must be composed of pleasures; and, be the man who he may, of what it is that gives pleasure to him, he alone can be judge.¹⁴³

If each person were the only judge of his own pleasure, then, given the irreducible diversity of pleasures, the principle of utility required him to be free to choose his own pleasure, however eccentric it might seem (and on the condition that it produced no greater pain, a condition that was fulfilled in the case of irregular sexual pleasures). In his memorandum book of 1821, Bentham noted,

Liberty of conscience, liberty of the press, liberty of opinion at large—all these are in one place or another established. The last that remains to be established, and which yet, in its whole extent, is scarcely so much as advocated, is liberty of taste.¹⁴⁴

The *Not Paul* texts can be read as an extended argument against the principle of asceticism as a political principle, and an indirect argument for the principle of utility, as the only political principle which could secure individual liberty.

¹⁴³ *Not Paul, But Jesus*, 394.

¹⁴⁴ *Works*, vol. 10, 530.

III

Antipathy and Cruelty

3.1 Introduction

In Tobias Smollett's satirical novel *The Adventures of Roderick Random*, the eponymous hero is cheated out of his valuables by a gay nobleman and his hangers-on. Earl Strutwell detects in Random, on first acquaintance, both 'genius and virtue', and proceeds to shower him with 'paternal affection' and promise him a much-needed position as secretary to an ambassador. He also suggests to Random that the condemnation of homosexual love has been due more to 'prejudice and misapprehension' than to 'true reason and deliberation'; after all, the ancients condoned it, and it has the advantage over 'simple fornication' of avoiding both the debauchery of young maidens, and the production of 'miserable and deserted bastards' who would only be a burden to their parents or society. And there is, he concludes, 'another motive perhaps more powerful than all these...namely the exquisite pleasure attending its success'. Random, in his innocence, thinks the earl is testing him, and declares homosexuality to be 'unnatural, absurd, and of pernicious consequence'. It turns out, of course, that the earl is indeed homosexual, and furthermore is in no position to promise employment, but has a reputation for cheating impressionable young men out of their cash and chastity.¹⁴⁵

¹⁴⁵ Tobias Smollett, *The Adventures of Roderick Random*, ed. James G. Basker, Paul-Gabriel Boucé, Nicole A. Seary and O. M. Brack, Jr (Athens, Ga.: University of Georgia Press, 2012), 268–73. This episode is mentioned in 'Sextus', 85.

In his writings on sex, which spanned some forty years, Bentham consistently argued that ‘sexual irregularities’ did not result in harm to the participants or to other persons.¹⁴⁶ To borrow a phrase from *Roderick Random*, there was nothing ‘unnatural’ about sexual irregularities, beyond the mere fact of unconventionality (and ‘natural’ and ‘unnatural’ did not, in any case, indicate anything beyond the author’s own approbation or disapprobation of the act in question¹⁴⁷); irregular sexual desires were no more ‘absurd’ than any desire was; and their consequences were demonstrably not pernicious. In fact, it was the *punishment* of sexual irregularities which had pernicious consequences, through the denial of inoffensive pleasures and the infliction of pain (at the time, sodomy was a capital offence in English law). In Bentham’s view, the punishment of sexual irregularities, and the desire for punishment, could not be attributed to ‘true reason or deliberation’ but to ‘antipathy’ – an antipathy illustrated by the above episode in *Roderick Random*, in which Strutwell’s homosexuality (and his flamboyance, perhaps, as suggested by his name) appears to be one more proof of his nefarious nature.

This paper is about antipathy and cruelty. That Bentham disliked cruelty is hardly surprising; as Judith Shklar pointed out, a ‘moral theory that begins by identifying evil with pain will obviously take cruelty seriously.’¹⁴⁸ Thinking about cruelty, with regard to the writings on sex, draws our attention to three less remarked-upon features of Bentham’s political thought, which have implications for the principle

¹⁴⁶ The writings on sex discussed in this paper are the ‘Essay on Paederasty’, pts. 1 and 2; ‘Of Sexual Irregularities’; ‘Sextus’; ‘General Idea of a Work’; *Not Paul, But Jesus*, vol. 3. For commentary, see note 61.

¹⁴⁷ *IPML*, 27–28nn; ‘Of Sexual Irregularities’, 13–15nn.

¹⁴⁸ Judith Shklar, *Ordinary Vices* (Cambridge: Harvard University Press, 1984), 35.

of utility as a political principle, and for the relationship between utility and liberty in Bentham's political thought. The first is an emphasis on pleasure, not just on pain. Earl Strutwell is a caricature, and his remarks on homosexuality are not meant as serious argument. Bentham's arguments for the tolerance of homosexuality were different (although, as will be seen, he had a more sober version of the no-bastards remark, in that sexual irregularities at least do not contribute to the evils of overpopulation), but he did take seriously the thought that a 'powerful' motive for homosexual love was 'the exquisite pleasure attending its success'. The pleasure itself was a reason for tolerance. Conversely, the deprivation of pleasure for no good reason was an act of cruelty.

The second feature has to do with the 'pleasures of malevolence', one of the categories of pleasure Bentham distinguished in the *IPML*.¹⁴⁹ Does an emphasis on pleasure extend to the pleasures of cruelty? On the one hand, on Bentham's account of pleasure and pain, pleasure is pleasure, whatever its source; it should not be the pleasure one takes in cruelty which is problematic, but the efficacy of it. Which is to say, it should not be cruelty as a *motive* which is troubling, but cruelty as an *effect*. This is where the law should intervene, in preventing the desire to be cruel – a desire no more unnatural or absurd than any sexual desire – from taking effect. From this perspective, Bentham's writings on sex are an argument for the abolition of the legal punishment of sexual irregularities.¹⁵⁰ On the other hand, there is something troubling about cruelty,

¹⁴⁹ *IPML*, 44.

¹⁵⁰ In 'General Idea of a Work', his prospectus for the *Not Paul, But Jesus* texts (which made the case against asceticism, using both philosophical and biblical resources), Bentham noted that the '[s]ole real evil' from sexual irregularities was the 'general annoyance to popular feelings'. His proposed remedy was 'banishment', not legal conviction and punishment. Banishment was not mentioned, however, in the earlier writings on sex, on which the 'General Idea' was based, or in the *Not Paul* texts (as far as I know). The thrust of Bentham's arguments in the 'General Idea' and in the other writings was to argue against the legal punishment of sexual irregularities in any form; further, in the 'General Idea', he proposed an 'all-comprehensive liberty for all modes of sexual gratification not predominantly noxious', including the

even on Bentham's account, whether motivated by malevolence or the desire to gain some advantage or simply wilful ignorance. One of Bentham's strategies in his advocacy for the liberty of pleasure is exposure: exposure of the inconsistency and hypocrisy which often accompanied the antipathy against sexual irregularities, and of the sources of and motives for such antipathy. To inflict pain on people simply because we can is tyranny, and to the extent that we participate in it, we too are tyrants and persecutors. The pleasures of cruelty, on Bentham's account, are the pleasures of tyranny. From this perspective, his writings on sex can also be read as a condemnation of cruelty.

This brings us to the third feature, that the principle of utility was, in Bentham's view, the only political principle which could consistently avoid cruelty. Antipathy, as argued in Bentham's essays, was not a good guide to law; indeed, the principle of sympathy and antipathy, the more popular rival to the principle of utility (the other rival was the principle of asceticism), could give rise to cruelty as just as easily as to beneficence. The principle of utility was the only political principle which could consistently result in beneficence.

3.2 The Deprivation of Pleasure

The pursuit of pleasure, Bentham asserted, was limited by the principle of utility in two cases alone: where it was likely to result in injury to oneself, or to others.¹⁵¹ In

irregular modes of sexual gratification. In this paper, I will refer to Bentham's arguments for the abolition of the legal punishment for sexual irregularities, as representative of his actual opinions and of the logical extension of his arguments ('General Idea of a Work', 140, 142).

¹⁵¹ *Not Paul, But Jesus*, vol. 3, 16–17, 54–56; 'Sextus', 51.

his writings on sex, he considered three arguments in support of the punishment of sexual irregularities – arguments on the harmfulness of sexual irregularities to the participants or others, and which, if correct, would be *prima facie* grounds for punishment – but concluded that there was no scientific or historical evidence to support these claims.

The first argument, put forward by Montesquieu, was that irregular sexual practices were harmful to the health of participants. Yet pederasty, Bentham noted, had been common in the ‘most flourishing periods’ of ancient Greece and Rome, and nothing from the chronicles of those times suggested that irregular sexual practices impeded ‘bodily vigour’ or ‘mental intrepidity’. The one sexual practice which might be injurious to health was masturbation – the ‘social mode’ of gratification, Bentham suggested, was in every way ‘clearly and eminently’ preferable to the ‘solitary mode’ – but punishment would in this case be ineffective, as the act of masturbation could not be easily policed.¹⁵²

The second argument had to do with the impact of sexual irregularities on population growth. In his essays, Bentham consistently argued that sexual irregularities were unlikely to have any effect on population growth. Even if, as Voltaire claimed, the extension of pederasty as a general practice would destroy mankind, the fact was that pederasty was a minority taste, and there was no reason to believe it would ever be prevalent enough to affect population growth, not even in countries in which it was not restrained by legal, religious or popular sanctions.¹⁵³ In his later essays, Bentham followed Malthus in the latter’s concern with overpopulation, and suggested that any

¹⁵² ‘Essay on Paederasty’, pt. 1, 392, 391–96; ‘Of Sexual Irregularities’, 32, 30, 28–34.

¹⁵³ ‘Essay on Paederasty’, pt. 1, 396–98.

effect of sexual irregularities on population growth would, on this account, be beneficial. Malthus had identified three constraints on population growth, ‘misery, moral restraint and vice’. These constraints were not equally desirable; misery, for example, was the thing to be avoided. ‘Moral restraint’ was Malthus’s preference, but, in Bentham’s view, while it might have overall beneficial effects on population, *qua* restraint it was productive of evil effects. ‘Vice’, Bentham argued, was therefore the only remedy which, to the extent that it reduced population growth, was productive only of ‘pure good’, though the effect it had on population was uncertain and possibly negligible. That is to say, sexual irregularities were the only ‘purely good’ remedy to the evils of overpopulation, which was a consequence of the *regular* mode of sex.¹⁵⁴ (Or, one might say with Earl Strutwell, that sexual irregularities avoided the production of ‘miserable and deserted bastards’, and so saved the world that addition to the mass of misery.)

The last argument was that sexual irregularities harmed the status of women, by turning men away from women and marriage. There were, however, two points against this argument. Bentham pointed out that in the first place, there was no historical or contemporary evidence that the prevalence of pederasty or other sexual irregularities precluded the love of women or the desire for marriage. There were good reasons for marriage – such as the desire to have children, to form alliances between families, or to have a congenial lifelong companion – which would persuade men to the institution

¹⁵⁴ ‘Of Sexual Irregularities’, 25–27; ‘Sextus’, 79–83; *Not Paul, But Jesus*, vol. 3, 30–36. This was the one point on which Bentham changed the details of his argument between the mid-1780s and 1810s; in his earlier essay on pederasty, he believed that population growth was important to economic growth, but argued that sexual irregularities had no effect on the former, and so would not hurt the latter. See Boralevi, *Bentham and the Oppressed*, 48–52 and the editorial introduction to *Of Sexual Irregularities*, xiii, for a discussion of Bentham and Malthusianism.

regardless of their sexual preferences. It should not, he suggested, be necessary ‘to send a man to make love with a halter about his neck.’¹⁵⁵ The second point against this argument was circumstantial. Given that men in European countries were under a considerable degree of sexual restraint, and women under an ‘incomparably greater restraint’, it might be to the advantage of women to have *less* sexual attention from men. Extramarital sex had detrimental consequences for women: they were, Bentham remarked, either ‘secluded from all means of repeating the offence’, or were relegated to that ‘unhappy class’ of prostitutes, whose lives were marked by disease, poverty and misery.¹⁵⁶

Prostitution, like overpopulation, was an evil of the regular mode of sex, not the irregular mode. Prostitution brought with it a ‘complicated cluster of evils’, including ‘[d]ependency – the result of perpetually experienced contempt – disease from the excess – disease from the characteristic contagion – indigence – disease from the habit of intoxication’ as an escape from the above miseries, leading invariably to a life ‘blackened by affliction’ and ‘almost always cut short’.¹⁵⁷ The evils of the regular mode of sex were not exactly an effect of the punishment of sexual irregularities. But Bentham’s discussion raises two points, the first being that sexual pleasure was not in itself an evil. The evils of prostitution were social evils, not moral evils (as conventionally supposed): the problem was not that the women were ‘fallen’, but that they had fallen onto hard times, into social ostracism, poverty, disease and misery. Second, sexual irregularities could be an indirect remedy to the evils of sexual

¹⁵⁵ ‘Essay on Paederasty’, pt. 2, 103.

¹⁵⁶ ‘Essay on Paederasty’, pt. 1, 399, 398–401.

¹⁵⁷ ‘Sextus’, 100.

regularities, by providing an ‘unprolific’ outlet for male sexual desire.¹⁵⁸ Bentham observed that men placed a higher value on the chastity of women than on the chastity of men – at least, those men who expected to profit by the violation of the first – but did not otherwise comment on the inequity of a situation in which the evil effects of extramarital sex appeared to be visited almost entirely on the women (and their children, if any).¹⁵⁹ But he did suggest that changes in legal and social attitudes towards sex and childbirth – including the acceptance of measures such as birth control, voluntary abortion, infanticide and mutually consensual divorce – would go some way towards ameliorating the evils of the regular mode of sex, including the evils of overpopulation, and towards easing the lot of the women who found themselves in this invidious position.¹⁶⁰

Bentham concluded that irregular sexual practices did not harm participants or other persons, and that there were therefore no good reasons for the punishment of sexual irregularities.¹⁶¹ Conversely, there were ‘real mischiefs’ from such punishment.¹⁶² In *Sextus*, an unfinished essay on sexual irregularities, he identified eight distinct ‘parcels of evil’ from the punishment of sexual irregularities, including the pain of punishment and infamy for both the delinquent and the innocent (since charges of sexual irregularity were particularly vulnerable to false evidence); the fear of

¹⁵⁸ It was invariably *male* sexual desire which was seen as requiring an outlet; Bentham remarked on the inconsistency of the law in making sodomy a criminal offence, but not sex between women (*Not Paul, But Jesus*, vol. 3, 28–29nn).

¹⁵⁹ ‘Sextus’, 101.

¹⁶⁰ *Not Paul, But Jesus*, vol. 3, 57–67.

¹⁶¹ Sexual irregularities were only harmless on the condition that they were undertaken consensually. See notes 30 and 87.

¹⁶² ‘Of Sexual Irregularities’, 16, ‘Sextus’, 92.

punishment and infamy on the part of the same; the ‘loss of enjoyment’ from refraining from acts of pleasure, whether voluntarily or forcibly; and the ‘positive pain produced by the violence of the restraint’.¹⁶³ The ‘violence’ here refers to the strength of desire, rather than the fear or pain of punishment, which were accounted for separately.

Most of the items on Bentham’s list relate to punishment and the fear of punishment, in its legal, popular and religious variants. The last two items, however, are not effects of punishment, but of the deprivation of pleasure. The writings on sex draw our attention to the thought, reiterated by Bentham in other writings, that the deprivation of pleasure was a pain, no less than the active infliction of pain. The ‘loss of enjoyment’ was in itself a loss, and the ‘positive pain’ of frustrated desire was in itself a pain, separate from the pain or fear of punishment. Conversely, the primary benefit of *not* punishing sexual irregularities, and of permitting the ‘all-comprehensive’ sexual liberty which Bentham advocated for, was the addition to the sum of happiness in society. There were, Bentham thought, essentially two ways to add to the mass of pleasure in society: by diminishing existing pains, and by removing obstacles to pleasure. Abolishing the legal punishment of sexual irregularities was an obvious and efficient way of removing obstacles to pleasure, the more so since sexual pleasure was, in his view, superior in intensity, purity (in his specific use of the term), and extent to other sensual pleasures.¹⁶⁴

‘[E]very act,’ Bentham wrote in a letter to the *Morning Chronicle*, ‘by which, without prospect of preponderant good, pain is knowingly and willingly produced in any being whatsoever, is an act of cruelty.’¹⁶⁵ In her essay on cruelty, Shklar suggested

¹⁶³ ‘Sextus’, 92; ‘Essay on Paederasty’, pt. 2, 99 on false accusations.

¹⁶⁴ ‘Sextus’, 112, 110–13, 148–49.

¹⁶⁵ *Works*, vol. 10, 550. The letter was dated 4 March 1825.

that Bentham had been motivated by a hatred of cruelty. He had, she noted, attempted to reduce the physical cruelty of prisons and workhouses with his panopticon design, but had not realized that his designs traded ‘physical cruelty’ for ‘moral oppression’ (by depriving prisoners and workhouse members of the freedom of choice, for example).¹⁶⁶ The case of sexual irregularities offers a counterpoint to Shklar’s comment on the cruelty of Bentham’s institutional designs; in the writings on sex, at least, Bentham recognized that the deprivation of pleasure, for no good reason, was an act of cruelty. This was the case even for irregular sexual pleasures, which were ignoble pleasures if ever a pleasure was ignoble; they were sensual, unrefined pleasures, which were not necessary to the survival of the individual (unlike the sensual pleasures of eating and drinking, for example) or the species (unlike regular sexual pleasures), and which were held in contempt by the public and as a criminal offence by the court. The only justification for irregular sexual pleasures was pleasure itself. Bentham’s defence of irregular sexual pleasures, then, was a defence of pleasure itself.

It was also a defence of the *liberty* of pleasure. In his memorandum book of 1821, Bentham noted that the ‘liberty of conscience, liberty of the press, [and] liberty of opinion at large’ had all been established. ‘The last that remains to be established, and which yet, in its whole extent, is scarcely so much as advocated, is liberty of *taste*.’¹⁶⁷ Bentham compared different sexual preferences to different tastes in food and drink, and often to unusual or conventionally repugnant tastes, such as a taste for carrion rather than fresh meat. He pointed out, however, that with regard to tastes in food and drink,

¹⁶⁶ Shklar, *Ordinary Vices*, 36.

¹⁶⁷ *Works*, vol. 10, 530. Taste and pleasure are not quite the same things – taste is the disposition to take pleasure in something, rather than the pleasure itself – but the effects of the liberty of taste or the liberty of pleasure are the same.

‘the gratification of the palate alone is admitted as a sufficient warrant’.¹⁶⁸ Individuals should similarly be free to choose their sexual pleasures, however unconventional their choice might appear to others – including, in Earl Strutwell’s case, the pleasures of sex with, or sexual conquest over, personable young men. The defence of irregular sexual pleasures was a defence of the liberty of sexual pleasure – the freedom, one might say, to pursue one’s own pleasure in one’s own way.

3.3 The Pleasures of Cruelty

If there were no good reasons for the punishment of sexual irregularities, what explained the persistence of such punishment, and the demand for it? Bentham’s answer was that the ‘disposition to punish’ was based on nothing more than the ‘antipathy’ towards sexual irregularities.¹⁶⁹

Antipathy was, to some extent, a catch-all answer: if the answer was not reason, it had to be passion. Where did the antipathy come from? Bentham considered several sources of antipathy in the writings on sex. To begin with, there was ‘mere’ antipathy, the ‘unreflecting’ dislike of any opinion or taste which differed from one’s own. ‘Look the world over,’ he mused, ‘and we shall find that differences in point of taste and opinion are grounds of animosity as frequent and violent as any opposition in point of interest. To disagree with our taste [and] to oppose our opinions is to wound our sympathetic feelings and to affront our pride.’¹⁷⁰ As a result, antipathy towards an act

¹⁶⁸ ‘Sextus’, 60–61; ‘Essay on Paederasty’, pt. 2, 94; *Not Paul, But Jesus*, vol. 3, 46; ‘Sextus’, 61*n*.

¹⁶⁹ ‘Essay on Paederasty’, pt. 2, 94; ‘Of Sexual Irregularities’, 9.

¹⁷⁰ ‘Essay on Paederasty’, pt. 2, 94; see also *Not Paul, But Jesus*, vol. 3, 48.

often translated into antipathy towards the actor, and the desire to see him punished for it.¹⁷¹ Hatred, Bentham suggested, ‘naturally’ sought the torment or destruction of the hated object, as shown by the propensity of ‘persons of weak and irritable temperament’ to kill toads and spiders.¹⁷²

A related source of antipathy was envy, or ‘emulation accompanied by antipathy’, of a pleasure of which one could not partake.¹⁷³ Hatred and envy were a potent combination – it explained the antipathy, for instance, towards hermaphrodites, and towards irregular sexual pleasures more generally. A person born with an extra sense, Bentham suggested, and thereby an additional ‘source of enjoyment’, would be ‘hunted out of the world as a monster not fit to live’.¹⁷⁴

Another source of antipathy was asceticism. A belief in asceticism might be motivated by ‘philosophic pride’, the pride of the Stoics, the belief that one was above the common run of men, and so above their common pleasures; or it might be motivated by the fear of God, and the belief that abstaining from the pleasures of this world would bring happiness in the next.¹⁷⁵ Of the two types of asceticism, Bentham believed that religious asceticism (that is, Christian asceticism) had had the greater and more detrimental influence on policy, and attacked it accordingly. The principle of asceticism, he asserted, was the opposite of the principle of utility: it was that principle which

¹⁷¹ ‘Essay on Paederasty’, pt. 2, 94.

¹⁷² ‘Essay on Paederasty’, pt. 2, 106.

¹⁷³ ‘Of Sexual Irregularities’, 10.

¹⁷⁴ The latter thought was attributed to Hevétius and Voltaire (‘Essay on Paederasty’, pt. 2, 106, 97). See also ‘Sextus’, 112–13 and 112*n* on Nero’s offer of a ‘premium’ for the invention of a new pleasure.

¹⁷⁵ *IPML*, 18.

approved of actions to the extent that they tended to increase unhappiness, and decrease happiness.¹⁷⁶ The person who wished to see another person undergo pain or forego pleasure for no good reason was ‘*pro tanto* a malevolent being’, including in this category the Christian God.¹⁷⁷ The belief in asceticism was dangerous, for the purposes of this paper, because it led to the contempt of sensual pleasures and of persons who enjoyed them – and especially, perhaps, of irregular sexual pleasures which had no biological imperative – and so intensified the ‘natural’ antipathy to sexual irregularities.¹⁷⁸

At this point, Bentham’s list of the sources of antipathy sounds like a catalogue of vices: hatred, envy, pride, and fear. But the vices, such as they were, were not in themselves problematic; even the belief in asceticism was not in itself problematic, as long as it was confined to a personal ethic, and not extended to a political principle. Antipathy itself was not a harm; at any rate, it was not a harm that Bentham was prepared to regulate in law. He did acknowledge that public antipathy could be ‘a very galling punishment’ in itself, particularly since the antipathy was common, and argued that there was no need to add legal punishment for an act which was already punished by public opinion ‘beyond what is enough’.¹⁷⁹ His primary concern, however, was with the legal treatment of sexual irregularities. The real mischief, therefore, was not in antipathy, but in arming antipathy with power.

¹⁷⁶ *IPML*, 17–21; see also *Not Paul, But Jesus* and *Not Paul, But Jesus*, vol. 3 on asceticism.

¹⁷⁷ ‘Of Sexual Irregularities’, 17.

¹⁷⁸ ‘Of Sexual Irregularities’, 19.

¹⁷⁹ ‘Essay on Paederasty’, pt. 2, 98.

Bentham considered, in the writings on sex, two more sources of antipathy, which differed from the previous ones in being not vices, but *opportunities* for vice – opportunities, more specifically, for cruelty. The fifth source of antipathy was the ‘[o]ppportunity of affording a safe gratification to the passion of antipathy’, or, to put it another way, of ‘sharing in the pleasures of power without expence or risk’.¹⁸⁰ The kind of antipathy generated by differences in opinion or taste, he suggested, was difficult to appease, because it demanded the declaration or manifestation of conformity (as opposed to, say, compensation for injury to one’s interests). There were, however, very few opportunities in European countries to gratify such antipathy, not for ‘want of appetite’, but for want of opportunity – for want of support from law and public opinion.¹⁸¹ The only exceptions were in the case of religion opinion and sexual taste – and even then, in England at least, dissenters were not punished by death.¹⁸² It was only in the case of sexual taste, that ‘the man in power has stepped in and afforded to the wounded mind [relief]... Behold there, says he, your victim: behold here my arm which, if you can bring him within my reach, is ready for the sacrifice’.¹⁸³

The sixth and final source of antipathy was the desire for a reputation for virtue, or for the love of virtue.¹⁸⁴ This was not an opportunity for cruelty, as much as an incentive for it. The idea of virtue, Bentham argued, had two elements: it consisted both

¹⁸⁰ ‘Of Sexual Irregularities’, 10; *Not Paul, But Jesus*, vol. 3, 50.

¹⁸¹ ‘Of Sexual Irregularities’, 11. Even in the times of Stuart absolutism, James I, who disliked Anabaptists and tobacco-smokers, found himself able only to burn several Anabaptists at the stake, and had to content himself with writing a ‘flaming’ book against smoking tobacco (‘Essay on Paederasty’, pt. 2, 94–95; *IPML*, 30n).

¹⁸² ‘Of Sexual Irregularities’, 11; *Not Paul, But Jesus*, vol. 3, 50.

¹⁸³ ‘Of Sexual Irregularities’, 51.

¹⁸⁴ ‘Of Sexual Irregularities’, 19.

of the conventional idea of self-denial, and the less conventional but no less important idea of utility.¹⁸⁵ One of the easiest ways of obtaining a reputation for virtue was to display ‘virtue-evidencing indignation’ against any act regarded as vicious, regardless of one’s actual attitude towards the act.¹⁸⁶ Sexual irregularities were an obvious target, since they were the province of a relatively small minority, and could easily be deprecated without much self-denial on the part of the virtuous objector.¹⁸⁷ In fact, the further one was from virtue, conventionally speaking, the more attractive such an offer was. ‘At this price,’ Bentham suggested, ‘the most consummate sensualist beholds little difficulty in dressing himself up in the garb of the strictest moralist: and the more flaming the colours in which his weakness is in danger of display[ing] itself, the stronger the need he feels himself to have of a cloak so cheap and so commodious.’¹⁸⁸ As Shklar has observed, cruelty is often accompanied by hypocrisy, which may shield the oppressor from the knowledge of his own cruelty.¹⁸⁹

It appears, from the last two sources of antipathy, that it is not the desire to be cruel which is troubling, as much as the opportunity for cruelty. In *Sextus*, Bentham described a judge sentencing two men to the gallows for sodomy. ‘Delight and exultation glistened on his countenance: He spoke with joy and exultation of the exploit

¹⁸⁵ ‘Of Sexual Irregularities’, 20–21; cf. the discussion on virtue and effort in his ‘Deontology’ in Jeremy Bentham, *Deontology, Together with a Table of the Springs of Action, and the Article on Utilitarianism*, ed. Ammon Goldworth (Oxford: Clarendon Press, 1983), 178–80.

¹⁸⁶ ‘Of Sexual Irregularities’, 21.

¹⁸⁷ Though see ‘Of Sexual Irregularities’, 23, 23*n* on the inconsistency of James I’s attitude to sexual irregularity.

¹⁸⁸ *Not Paul, But Jesus*, vol. 3, 49; see also ‘Of Sexual Irregularities’, 22.

¹⁸⁹ Shklar, *Ordinary Vices*, 41–42.

he had been achieving.’¹⁹⁰ On the one hand, the delight and exultation of the judge are real pleasures – the pleasures of cruelty are real pleasures – and should be considered as such.¹⁹¹ The problem is not the antipathy against sexual irregularities – which, as we have seen, has multiple and varied sources, and appears to be a natural, though unfortunate, feature of the human condition¹⁹² – but the opportunity antipathy has for expressing itself through law. That is to say, the problem is not the pleasure the judge took in sentencing men to death for sodomy, but the opportunity a *judge* had of such pleasure – the opportunity for cruelty institutionalized in law. The same sentence, pronounced by a different judge in an appropriately grim and sorrowful manner, would be no less cruel to the condemned men. Instead of using law to limit the power of men to be cruel, legislators have armed antipathy with power; instead of basing the law on the principle of utility, they have based it on the principle of sympathy and antipathy, with pernicious consequences. The writings on sex, on this account, can be read as part of Bentham’s reformist project to establish a utilitarian foundation for law.

On the other hand, it is troubling that the judge took such delight and exultation in giving his judgement. It is troubling not merely from an ethical perspective, which is not the question here, but from a *political* perspective – as Bentham put it, it is ‘[from] a political point of view [a] matter of importance’¹⁹³ – because the judge took such delight and exultation in a man’s death for an inoffensive pleasure. The qualification is important: sexual pleasures of all kinds were demonstrably inoffensive, as Bentham

¹⁹⁰ ‘Sextus’, 96*n*.

¹⁹¹ See, for example, *IPML*, 44 on the ‘pleasures of malevolence’; ‘Of Sexual Irregularities’, 44.

¹⁹² *Not Paul, But Jesus*, vol. 3, 48.

¹⁹³ ‘Of Sexual Irregularities’, 19.

showed in his essays. To inflict pain, consciously and deliberately, without expectation of a greater good, was the essence of cruelty. Ignorance was, for him, not an excuse; wilful ignorance was still culpable, and ignorance in this case was wilful, when the means of enlightenment were readily at hand. The man, Bentham asserted, who persisted in ‘shutting his eyes and ears’ against the ‘fullest and clearest proof’ of the inoffensive nature of sexual pleasures was no less culpable than the man who knowingly took delight in cruelty, and ‘in proportion to the amount of evil which, in so great a variety of shapes, he [was] the author, [he was] a tyrant and a persecutor.’¹⁹⁴ Cruelty is the antithesis of what Bentham thought was the aim of good government, which was to bring about the ‘greatest happiness of the greatest number’, by expanding happiness and reducing unhappiness in society.¹⁹⁵

The description of that particular judge is a side remark in Bentham’s essay. But it illustrates one of his strategies for legislative reform, that of exposing the motives of his opponents. If the punishment of sexual irregularities was not based on reasons, which could be considered and refuted, but on antipathy, then the only way to counter the antipathy was to reveal its true nature to the public. This was a strategy he used in *Chrestomathia*, for example, which was written around the same time as the essays on sexual irregularities. In his discussion of potential obstacles to his proposed school, Bentham observed that a plan of ‘mass instruction’ for the middle classes was likely to be ‘an object of jealousy and envy’ to the wealthy classes, who understandably felt threatened by the prospect of a continual influx of better-educated young men. Rather

¹⁹⁴ ‘Sextus’, 93.

¹⁹⁵ See, for example, Jeremy Bentham, ‘Economy as Applied to Office’ in *First Principles Preparatory to the Constitutional Code*, 3.

than confess to their jealousy and envy, the wealthy classes were likely to disguise their true sentiments by accusing the plan of '[i]mpracticability, uselessness and mischievousness', the very opposite of what they feared from it. The only thing to do, in the face of unyielding hostility, was to expose it – to 'unmask' the passions of jealousy and envy, and reveal them for what they were. 'The uncovering of what may be termed the nakedness of the human mind, is a most unpleasant task; but on no occasion can it be said to be an unnecessary one.'¹⁹⁶ This is the same task that Bentham set himself in the writings on sex, to expose the passions motivating opposition to utilitarian ideas.

In the case of the Chrestomathic school, the consequence was the continued ignorance and uselessness of a good portion of the middle classes. In the case of sexual irregularities, the consequence was cruelty. The disguise adopted by the opponents of sexual freedom was more dangerous than that adopted by the opponents of educational reform, because it was the disguise of virtue. The people who acquired a reputation for virtue through the display of hostility to sexual irregularities, Bentham claimed, were 'naturally' among 'the most vitious and profligate of mankind.'¹⁹⁷ The virtue of the judge was the virtue of the tyrant and the persecutor. He spelled out this point clearly in his essays on sex:

...the virtue of the persecutor is the virtue of him whose delight is in the inflicting of tortures on such of his fellow creatures as their weakness has put into his power: in throwing at a cock while tied to a stake, driving a dog or cat to madness by a canister tied to its tail, and so forth.¹⁹⁸

¹⁹⁶ Jeremy Bentham, *Chrestomathia*, ed. M. J. Smith and W. H. Burston (Oxford: Oxford University Press, 1993), 50.

¹⁹⁷ 'Of Sexual Irregularities', 22.

¹⁹⁸ 'Sextus', 93.

[The persecutor] will obtain for himself the sort of enjoyment which an ill-taught boy gives himself by tail-piping a dog, or an ill-taught man by bull-baiting, or an English Judge by consigning a man to the pillory for an offence which affords a hope of his having a jaw broken or an eye beat out by the surrounding populace.¹⁹⁹

The comparison with animals brings home the point on cruelty. The definition of cruelty in the letter to the *Morning Chronicle* was formulated in relation to animals – to the opposition of the journal to a bill against cruelty to animals. In his famous footnote in the *IPML*, Bentham argued that the interest of animals should be considered in legislation, no less than that of other sentient beings.²⁰⁰ Neither persons with irregular sexual tastes nor animals have their interest represented in the law, which makes them good targets for cruelty. In both their cases, the opportunity for cruelty is the opportunity to impose one's will on beings who cannot defend themselves against it – the opportunity, that is, as suggested above, for 'sharing in the pleasures of power without expence or risk'. Bentham's judge delighted and exulted in his power not merely to sentence a man to death for inoffensive sexual pleasures (which might yet be repugnant to him personally), but to *sentence a man to death* – delighted and exulted in his power over life and death. The pleasures of cruelty are the pleasures of power without limit or responsibility.

¹⁹⁹ 'Of Sexual Irregularities', 22.

²⁰⁰ *IPML*, 282–3nn.

3.4 Cruelty and Power

It may be that some people just happen to be cruel. Tastes differ, after all: some people have a taste for turtle meat and some for train oil²⁰¹; some people have a taste for sodomy and some for blood. There is a sense in which Bentham was not concerned with cruelty as a motive, but as an effect – not with the desire to inflict pain, but with the actual infliction of pain. Cruel effects were often produced by malevolence, but could be produced by other motives as well, such as the desire for a reputation for virtue, or for a quiet life through wilful ignorance of inconvenient facts. (Though Bentham did think that such desires tended to heighten whatever ‘natural’ antipathy already existed.²⁰²)

In another sense, however, cruelty as a motive was also a concern for Bentham, for its indirect effects.²⁰³ In his manuscript writings on animals from the 1780s, Bentham outlined three reasons for the prevention of cruelty to animals: for the sake of the offenders, for the sake of other people, and for the sake of the animals. The first, he argued, was necessary to prevent the offenders from ‘giving way to habits of cruelty or insensibility, which where indulged [were] apt to lead men into the worst of crimes’. From this perspective, a law against cruelty to animals was ‘an act of indirect legislation against Personal Injuries, Murder and Incendiarism: and in short against all crimes which have malice for their source.’ In the same vein, he recommended Hogarth’s print, ‘The Progress of Cruelty’, as ‘[o]ne of the best moral lessons that ever were composed.’

²⁰¹ *Not Paul, But Jesus*, vol. 3, 46.

²⁰² ‘Of Sexual Irregularities’, 20.

²⁰³ See *IPML*, 124 on the consideration of motives in judging offences.

²⁰⁴ Bentham repeated this thought in his letter to the *Morning Chronicle*: after his definition of cruelty, he continued with the observation that cruelty, ‘like other bad habits’, grew stronger and ‘more frequently productive of bad fruits’ the more it was indulged.

I am unable to comprehend how it should be, – that to him, to whom it is a matter of amusement to see a dog or a horse suffer, it should not be a matter of like amusement to see a man suffer...nor does it appear to me, how it should be, that a person to whom the production of pain, either in the one or the other instance, is a source of amusement, would scruple to give himself that amusement when he could do so under an assurance of impunity.²⁰⁵

The thought here is that cruelty begets cruelty. Leaving aside the question of the comparative superiority of human beings and animals, we might say that permitting cruelty to animals emboldens offenders to be cruel to other beings in the same situation – beings who are under their power and unable to defend themselves. Permitting the formation of a ‘habit’ of cruelty means accepting that other acts of cruelty may be committed, and against other beings.

Perhaps this might be another way of saying that power corrupts – not absolutely, perhaps, but to a problematic extent, especially where the power is accompanied by an ‘assurance of impunity’, as it is in the case of animals and persons with irregular sexual tastes. Another case might be that of women in the eighteenth and nineteenth centuries. It was not Bentham but John Stuart Mill who argued that the

²⁰⁴ UCL, Box 72, Folio 214, 1–4; found on the Transcribe Bentham website <<http://www.transcribe-bentham.da.ulcc.ac.uk/td/JB/072/214/001>>. See also Boralevi, *Bentham and the Oppressed*, 165–75 for Bentham’s views on animals.

²⁰⁵ *Works*, vol. 10, 550.

subjection of women by men deformed the natures of both women and men, victims and oppressors. Unlike the exercise of political power, the subjection of women enabled just about every man to share in the pleasures of power; '[t]he clodhopper,' Mill observed, 'exercises, or is to exercise, his share of the power equally with the highest nobleman'.²⁰⁶

The punishment of sexual irregularities is not quite analogous to the subjection of women: it is not a power confined to a class of people (that is, men), and could not be exercised by a substantial part of the population (that is, not with respect to the legal punishment of sexual irregularities). But it was analogous in a different way, in that the antipathy to sexual irregularities, and demand for their punishment, was widespread at the time, while the victims were a minority of the population. The eighteenth century was a time of comparative sexual liberation (compared, say, to the following century), but sexual tolerance had its limits, and homosexuality was one of them.²⁰⁷ Common perceptions of homosexual men included the caricature of Earl Strutwell as well as that of Captain Whiffle and Whiffle's lover Simper from the same book, in which Whiffle is shown to be vain and lacking in fortitude, and Simper's name describes all that is important about the character.²⁰⁸

In his prefatory notes to his unpublished essays on sex, Bentham observed that his essays were unlikely to be well received, because of their subject matter; in no other

²⁰⁶ John Stuart Mill, 'The Subjection of Women', in *Mill: Texts and Commentaries*, ed. Alan Ryan (New York: Norton, 1997), 140–41. Also see Emma Saunders-Hastings, 'No Better to Give than to Receive: Charity and Women's Subjection in J. S. Mill', *Polity* 46, no. 2 (2014): 233–54 on Mill on charity, dependence and domination.

²⁰⁷ Roy Porter, 'Mixed Feelings'; Dabhoiwala, *The Origins of Sex*, 116–40.

²⁰⁸ *Roderick Random*, ch. 35. See 'Sextus', 66–70.

authorial task had he found ‘so much to fear, so little to hope’.²⁰⁹ Nevertheless, without hope of popularity or agreement, he warned his readers that to the extent that they supported and perpetuated the punishment of sexual irregularities, and so should be considered the ‘authors’ of the evils of such punishment, to the same extent were they to be considered tyrants and persecutors. The warning applied not only to judges and legislators, but also to ordinary men and women. Mill argued that the subjection of women afforded almost every man the opportunity to exercise power over another person; similarly, sexual irregularities were a perfect target for cruelty because they were both common and uncommon – everyone had some experience of sex, or could obtain some, or had a view on sex; but relatively few people had irregular sexual desires. The persecutors were comfortably in the majority, over an issue they could claim some knowledge of, and the victims were uncomfortably in the minority, over an issue which affected only them, but affected them deeply. Cruelty to persons with irregular sexual tastes, not unlike cruelty to women, was a good opportunity of sharing in the pleasures of power without expense or risk.

3.5 Utility and Beneficence

I have so far argued that Bentham’s arguments against the punishment of sexual irregularities can be understood as a defence of the liberty of pleasure. More precisely, they can be understood as a *utilitarian* defence of the liberty of pleasure – a defence which begins from pleasure, rather than from liberty, where pleasure is the stuff of

²⁰⁹ ‘Sextus’, 49; see also Bentham’s notes to his essay on pederasty in Louis Crompton, ‘Jeremy Bentham’s Essay on “Paederasty”: An Introduction’, *Journal of Homosexuality* 3, no. 4 (Summer 1978), 385.

which happiness is composed.²¹⁰ Bentham argued that the legal treatment of sexual irregularities should be based on the principle of utility, rather than the principle of sympathy and antipathy.

The focus on this paper has been on the antipathy part of the principle of sympathy and antipathy, but Bentham did not think sympathy would be any better as a guide for government. There was no guarantee that a focus on sympathy would achieve the end of good government, the greatest happiness of the greatest number. Misplaced sympathy could end up as cruelty as easily as antipathy. The ban on infanticide, Bentham suggested, was a case in point: there was no sympathy for the mother, who had to bear the stigma of bearing a child out of wedlock, the burden of raising it without sufficient resources (and most probably without the father), and possibly too the misery of having to depend on prostitution for a living; and misplaced sympathy for the infant, who were incapable of anticipating future pleasure and pain. Infanticide was treated as a kind of homicide in English law and punished accordingly, but, unlike homicide, it did not have mischievous secondary effects (since infants could not anticipate the future, infanticide would not create any alarm in other infants), and hardly any mischievous primary effects.²¹¹ We do not have to agree with Bentham's assessment of the relative sensibilities of women and infants to acknowledge his point on the 'savage barbarity' of the law towards women. 'It is thus,' he observed, 'that cruelty cloaths itself in the garb of mercy: vice in the garb of virtue. O men! &c...who wilt then hear the voice of calm and unprejudiced reason?'²¹²

²¹⁰ *Not Paul, But Jesus*, vol. 3, 13–14.

²¹¹ 'Sextus', 98–99; *Not Paul, But Jesus*, vol. 3, 60–66.

²¹² 'Sextus', 99.

More fundamentally, sympathy, like antipathy, was inherently capricious, because it relied on the sentiments or opinions of the author – whether the sentiment or opinion in question was that of the moral sense, common sense, right reason, the fitness of things, or the law of nature or other things.²¹³ Caprice was the foundation of tyranny; if the law depended on the sentiment or opinion of the ruler (who could be a monarchical despot or a democratic assembly), then anyone could be punished for any reason at all.²¹⁴ ‘The mischief common to all these ways of thinking and arguing,’ Bentham declared, was ‘their serving as a cloak, and pretence, and alimant, to despotism: if not a despotism in practice, a despotism however in disposition: which is but too apt, when pretence and power offer, to show itself in practice.’²¹⁵ As he argued it did, in the case of sexual irregularities. In that case, as in all cases, it was the principle of utility which was the voice of ‘calm and unprejudiced reason’, and the only political principle which could consistently avoid cruelty. It was only the principle of utility, in other words, and not the principle of sympathy and antipathy, which could consistently result in beneficence. ‘Utilitarianism,’ Bentham claimed, ‘working by calculation, is consistent and solicitous beneficence.’²¹⁶

²¹³ *IPML*, 26–8nn.

²¹⁴ See, for example, ‘Essay on Paederasty’ pt. 2, 97.

²¹⁵ *IPML*, 28n.

²¹⁶ Jeremy Bentham, ‘A Table of the Springs of Action’ in *Deontology*, 35.

IV

Religion and Judgment

4.1 Introduction

One of the charges Bentham made against the Church of England was of aiming at, and achieving to some degree, the ‘prostration of understanding and will’. The phrase was taken from a visitation sermon by William Howley, then Bishop of London, in which he warned against the dangers of Unitarianism as a shelter for ‘infidelity’. The appeal of Unitarianism, in Howley’s view, was fortunately as yet limited to men of some education who had not spent much thought on religion, or who,

loving rather to question than to learn, have approached the oracles of divine truth without that humble docility, that prostration of the understanding and will, which are indispensable to proficiency in Christian instruction.²¹⁷

Bentham took the phrase to represent the Church’s desiderata in its followers more generally. The ‘[p]rostration of understanding and will,’ he declared, was ‘in one word *slavery*’, and a more absolute slavery than that to be found in Barbary or the West Indies. The only reason he could think of for the establishment of a system of slavery was to exercise a corresponding tyranny over the people enslaved.²¹⁸ Despotism and slavery were two sides of the same coin: the attitudes and character of despotism were

²¹⁷ William Howley, *A Charge Delivered to the Clergy of the Diocese of London* (London: T. Bensley, 1814), 16.

²¹⁸ *Church-of-Englandism*, 47, 258.

the attitudes and character of servility. As Bentham put it, '[h]e who as towards one man acts the part of a despot, is but the more fitted for acting towards another man that of a slave. So many men as there are, one above another, standing in these relations to one another, so many links are there in the chain of slavery.' The prostration of understanding and will was a two-part act: the prostration of will was sufficient to create links in the chain of despotism and slavery, but the prostration of understanding was necessary to make the chain perpetual.²¹⁹

Contemporary reviews of *Church-of-Englandism* fell along predictable lines: the *Examiner*, which was generally supportive of Bentham's work, praised it for striking 'a great number of irresistible blows' at the 'roots of bigotry and worldliness' (meaning the Church); the *British Critic* and the *Quarterly Review*, which were not, attributed its composition to insanity and malevolence respectively.²²⁰ The last review ended with the complaint that the 'worst part' of the book was not the 'deep-seated malignity' it displayed towards the Church and its officers, but the 'indecent levity' with which it treated sacred subjects. 'These offences,' the reviewer concluded, 'must be answered for at a higher tribunal; but we would seriously recommend it to the author to consider,

²¹⁹ *Church-of-Englandism*, 419.

²²⁰ 'Shocking and Pernicious Absurdities of Bigotry', *Examiner* 559 (13 September 1818): 578–79; 'Church-of-Englandism, and its Catechism Examined', *British Critic* 10 (November 1818): 519–28; 'Church-of-Englandism and its Catechism Examined', *Quarterly Review* 21, no. 41 (1 January 1819): 167–77. The *Examiner* also published a laudatory review of *Mother Church Relieved by Bleeding* (London: R. Carlile, 1823), which consisted of an extract from *Church-of-Englandism* recapitulating the vices of the established church: 'never was there a more striking *exposé* of a mass of corruption' ('Church Establishment', *Examiner* 894 (20 March 1825), 177).

whether the decline of life cannot be better spent than in captiously cavilling at the doctrines of religion, and in profane ridicule of its most holy rites?’²²¹

This essay argues, in contrast to the *Quarterly Review*, that we should take Bentham’s charge seriously: that he thought religion in general, and the Church of England in particular, had a corruptive effect on judgment, with deleterious implications for the success of representative democracy and utilitarian government. In the preface to *Church-of-Englandism*, Bentham drew a parallel between that work and the *Plan of Parliamentary Reform* (published a year earlier in 1817, but written several years before), his pamphlet calling for radical electoral and constitutional reform: the former contained a sketch of the ‘spiritual’ nature of the British constitution, and the latter its ‘temporal’ nature.²²² (The title page of the *Plan* makes clear that it was written ‘in the form of a Catechism’.²²³) In the *Plan*, Bentham distinguished between legitimate and illegitimate influence over voters: he sought to eliminate the ‘influence of will on will’ (through the bribery or intimidation of voters, for example), and to clear the way instead for the ‘influence of understanding...on understanding’, as the only legitimate way of influencing votes for parliamentary seats.²²⁴ This paper follows recent scholarship in reading Bentham’s writings on religion in relation to his political thought, but places greater emphasis on the influence of understanding on understanding, rather than the

²²¹ ‘Church-of-Englandism’, *Quarterly Review*, 177. Bentham and the *Quarterly Review* were not on friendly terms; he called the journal ‘Saint Quarterly Review’ in his book (*Church-of-Englandism*, 386).

²²² *Church-of-Englandism*, 8.

²²³ *Plan of Parliamentary Reform*.

²²⁴ *Plan of Parliamentary Reform*, xlvi.

influence of will on will.²²⁵ On this view, the writings on religion do not only demonstrate the application of Bentham's political principles to religious institutions, but also highlight particular aspects of the exercise of political power.

The next section establishes the relation between religion, judgment and utility in the *Fragment on Government*, one of Bentham's earliest published works. The subsequent two sections consider the corruptive effect of the Church of England and religion more generally on judgment, with a focus on *Church-of-Englandism* and the *Analysis of the Influence of Natural Religion (AINR)* respectively.²²⁶ The last section concludes with implications for Bentham's conception of representative democracy and utilitarian government.

4.2 Private Judgment

In his preface to the *Fragment on Government*, Bentham explained that he had been moved to undertake a critique of Blackstone's magisterial *Commentaries on the*

²²⁵ Recent scholarship on the relation between Bentham's political and religious writings include James Steintrager, 'Morality and Belief: the Origin and Purpose of Bentham's Writings on Religion', *Mill Newsletter* 6, no. 2 (1971): 3–15; James Steintrager 'Language and Politics: Bentham on Religion', *Bentham Newsletter* 4 (1980): 4–20; Crimmins, *Secular Utilitarianism*; Schofield, 'Political and Religious Radicalism'; Crimmins, 'Bentham's Religious Radicalism Revisited'; Schofield, *Utility and Democracy*, ch. 7.

²²⁶ Philip Beauchamp [George Grote], *Analysis of the Influence of Natural Religion* (London: R. Carlile, 1822); henceforth 'AINR'. The *AINR* was composed by George Grote from Bentham's manuscript material on natural religion and the utility of religion, and so may reflect both Bentham and Grote's own views on religion. Catherine Fuller, after an examination of the *AINR* and Bentham's manuscripts, concluded that '[a] fair summation of Grote's work as a whole is that it echoes Bentham's text and summaries, but it is rewritten to accommodate Grote's own thoughts, and in his own style' (Catherine Fuller, 'Bentham, Mill, Grote, and *An Analysis of the Influence of Natural Religion on the Temporal Happiness of Mankind*', *Journal of Bentham Studies* 10 (2008), 10). See also Crimmins, *Secular Utilitarianism*, 208–10 and Schofield, 'Political and Religious Radicalism', 276n on the composition of the *AINR* and its fidelity to Bentham's views. For a survey of the manuscript material Bentham passed to Grote, see Fuller, 'Utility of Religion'. It seems reasonable to treat the *AINR* as reflective of Bentham's thought generally, especially where it is consistent with his other writings.

Laws of England in order to expose the ‘antipathy to reformation’ underlying the work, and the ‘obscure and crooked reasoning’ produced by such an antipathy.²²⁷ Any writer on the law, in Bentham’s view, had to keep in mind the distinction between exposition and censure: it was the task of the expositor to give an account of what the laws *were*, and of the censor to give an account of what they *should* be. Blackstone’s antipathy to reformation could be seen in his conflation of these tasks: he professed to give an exposition of the laws of England, but strayed beyond that remit to give a justification of the existing laws, and to imply that ‘every thing [was] as it should be’.²²⁸ Not only had he failed to take a critical view of the existing laws, he had also disparaged the exercise of ‘private judgment’ in criticizing the laws. Blackstone, Bentham reported, had called it ‘the utmost arrogance, “to censure what has, at least, a better chance to be right, than the singular notions of any particular man”’: meaning thereby certain ecclesiastical institutions’, and had also called it ‘indecenty’, to ““set up private judgment in opposition to public”, and this without restriction, qualification, or reserve.’²²⁹

In contrast, Bentham argued that it was not wrong, and was in fact laudatory, to exercise one’s judgment in critiquing existing laws and institutions. There was no danger in the ‘free censure’ of institutions, since precipitate criticism of good institutions would only draw attention to the benefits provided by the institution in question, and rebound to the discredit of the accuser.²³⁰ On the contrary, the danger was

²²⁷ ‘A Fragment on Government’, 394.

²²⁸ ‘A Fragment on Government’, 397–400.

²²⁹ ‘A Fragment on Government’, 400*n*.

²³⁰ ‘A Fragment on Government’, 400.

in the disparagement of private judgment: people who were unable or unwilling to speak truth to power were unlikely to press for the reformation of bad institutions, or to prevent further abuses by parliamentary representatives or government officials. The ‘abject and indiscriminating homage’ paid to the law in England could only produce, and had in fact already produced, a ‘passive and enervate race’ of lawyers, who were ‘incapable of distinguishing right from wrong...[and were] deaf to the voice of reason and public utility [and] obsequious only to the whisper of interest and the beck of power.’²³¹ The free exercise of private judgment, then, was a necessary condition of institutional reform, which was itself a necessary condition of utilitarian government. ‘Utilitarian government’ is perhaps a misnomer; Bentham thought that utility, or more precisely the ‘greatest happiness of the greatest number’, was the only proper end of any government.²³² ‘Thus much is certain,’ Bentham concluded,

that a system that is never to be censured, will never be improved: that if nothing is ever to be found fault with, nothing will ever be mended: and that a resolution to justify every thing at any rate, and to disapprove of nothing, is a resolution which, pursued in future, must stand as an effectual bar to all the *additional* happiness we can ever hope for; pursued hitherto would have robbed us of that share of happiness which we enjoy already.²³³

That the disparagement of private judgment came from a writer of Blackstone’s stature and reputation only increased the danger. Reputation, Bentham observed, could add weight to sentiments which might otherwise have drawn only contempt. As a

²³¹ ‘A Fragment on Government’, 402–03.

²³² ‘A Fragment on Government’, 393.

²³³ ‘A Fragment on Government’, 399

celebrated legal scholar and a university professor, Blackstone was in a good position to influence impressible young minds.²³⁴ He saw his task in the *Fragment*, therefore, as one of ‘overthrowing’ Blackstone’s authority; as he quoted in his epigraph, ‘*parce qu’avant d’instruire, il faut commencer par détromper*’.²³⁵

Blackstone’s remarks on private judgment were made in regard to religious offences, though Bentham took them, as he would Howley’s remarks, to be representative of Blackstone’s attitude towards private judgment and the law more generally. In the *Commentaries*, it was the offence of ‘reviling the ordinances of the church’ which carried with it the charge of ‘the utmost indecency, arrogance and ingratitude’:

indecency, by setting up private judgment in opposition to public; arrogance, by treating with contempt and rudeness what has at least a better chance to be right, than the singular notions of any particular man; and ingratitude, by denying that indulgence and liberty of conscience to the members of the national church, which the retainers to every petty conventicle enjoy.²³⁶

Later in the chapter on religious offences, Blackstone remarked that ‘[e]very thing [was] now as it should be’ with regard to the laws on heresy: the ‘sanguinary’ laws of the past

²³⁴ ‘A Fragment on Government’, 405.

²³⁵ ‘A Fragment on Government’, 420–21, 391.

²³⁶ Blackstone, *Commentaries*, vol. 4, 50. The passage was amended in a subsequent edition to:

indecency, by setting up private judgment in *virulent and factious* opposition to public authority; arrogance, by treating with contempt and rudeness what has at least a better chance to be right, than the singular notions of any particular man; and ingratitude, by denying that indulgence and liberty of conscience to the members of the national church, which the retainers to every petty conventicle enjoy (William Blackstone, *Commentaries on the Laws of England*, 4th edition, vol. 4, (Oxford: Clarendon Press, 1770), 50; emphases added).

For Bentham’s comment on the amendments, see ‘A Fragment on Government’, 401 *n*.

had been repealed, and heresy was currently subject only to ecclesiastical penalties and not to civil penalties (with an exception for anti-trinitarian heresies which were ‘very prevalent in modern times’).²³⁷ Heresy should perhaps be more precisely defined by the ‘proper authority’, but in all other respects the law was as it should be; the established church had the power to ‘censure’ heretics (which was, in Blackstone’s view, necessary for its support) but not to ‘exterminate or destroy’ them.²³⁸

Bentham extended Blackstone’s attitude towards private judgment to law and politics, in the *Fragment* as well as other works written in the same period. In his extended preface to the *White Bull*, for example, he explained to his readers that ‘the business [was] not to make people read...but to make them think’, though the injunction had to be limited to ‘proper subjects’ alone, ‘for *Dr. Blackstone* seems to think, as far as he allowed himself to *think*, it’s the worst trick a man can get when he reads *law*: For which reason he has done all he can to break us of it.’²³⁹ A similar comment can be found in the *Remarks on the Acts of the Thirteenth Parliament*, a pamphlet authored by John Lind, with significant contribution from Bentham: the author suggested that Blackstone would disapprove of his critique of parliamentary behaviour towards the American colonies, ‘for the same reason that [Blackstone was] hostile to every liberal plan of political discussion’.²⁴⁰

²³⁷ Blackstone, *Commentaries*, vol. 4, 50.

²³⁸ Blackstone, *Commentaries*, vol. 4, 49–50.

²³⁹ *White Bull*, vol. 1, xxxiv, xxxivn.

²⁴⁰ [John Lind,] *Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain* (London: Payne, 1775), v–vi, vn. On Bentham’s role in the composition or revision of Lind’s pamphlet, see Bentham’s letters to John Lind, 7 October 1774 and to Samuel Bentham, 18 May 1775 in *Correspondence*, vol. 1, 204–07 and 235 respectively.

I would like to suggest, despite appearances to the contrary, that Blackstone's comments were not entirely taken out of context. In the first place, religion was inextricable from politics; it would be difficult if not impossible, for example, to discuss laws on religious non-conformity without considering the status of the established church. Blackstone was clear on this point: 'mere non-conformity' was a matter of private judgment, and as such should not suffer civil penalties, but the tolerance of non-conformist beliefs should not be allowed to impinge on the powers and privileges of the established church.²⁴¹ His remarks on private judgment were made in regard to offences against the Church, but could be extended to political institutions as the 'temporal' pillar of the British constitution. The free exercise of private judgment was arguably at greatest threat in the areas of religion and politics.²⁴²

Second, as can be seen from contemporary responses to the *Commentaries* and Bentham's later works (discussed in the rest of this paper), there was a close connection between religion and judgment. For example, the Dissenting ministers Joseph Priestley and Philip Furneaux took issue with Blackstone's treatment of religious non-conformity in the *Commentaries*, and argued instead for the right of private judgment.²⁴³ What was at stake was the freedom to believe as they believed: to form their own judgment on

²⁴¹ Blackstone, *Commentaries*, vol. 4, 51, and 51–59 on penalties for non-conformity.

²⁴² See for example 'Of Sexual Irregularities', 11.

²⁴³ Joseph Priestley, *Remarks on Some Paragraphs in the Fourth Volume of Dr. Blackstone's Commentaries on the Laws of England* (London: J. Johnson and J. Payne, 1769); [William Blackstone,] *A Reply to Dr. Priestley's Remarks on the Fourth Volume of the Commentaries on the Laws of England* (London: C. Bathurst, 1769); Philip Furneaux, *Letters to the Honourable Mr. Justice Blackstone*, 2nd edition (Philadelphia: Robert Bell, 1773). In the preface to the second edition of his letters, Furneaux noted that he had originally published his letters to persuade Blackstone to reconsider several passages 'injurious to religious liberty', and to promote 'just conceptions of the right of private judgment, and of impartial liberty in matters of conscience' (Furneaux, *Letters*, iii). For the history of the phrase, the 'right of private judgment', see Andrew C. Thompson, 'Popery, Politics and Private Judgement in Early Hanoverian Britain', *The Historical Journal* 45, no. 2 (2002): 333–56.

religious matters, based on their consideration of the evidence, and not as directed by the state or the established church. It was the freedom, in other words, to be subject only to the influence of understanding on understanding, and not to the influence of will on will.

Similarly to Bentham, both Priestley and Furneaux argued that improvements in religion, philosophy, morality and politics could not have taken place without the setting up of private judgment in opposition to public judgment, or public authority.²⁴⁴ If it were indecent and arrogant to do so, then Galileo and Newton, Luther and Locke, would have to be included in the ranks of indecent and arrogant men.²⁴⁵

Furneaux also challenged Blackstone's views on heresy. It was not enough, he argued, that the Church was constrained from exterminating or destroying heretics. The only 'proper authority' for the definition of heresy was scripture; any human authority, whether political or ecclesiastical, was ultimately no more than the authority of fallible men, which was no authority at all.²⁴⁶ Moreover, Blackstone had misconceived the nature of belief: it could not be compelled by authority, but had to be based on one's own consideration of the evidence at hand. As Furneaux put it,

[E]very man's private persuasion of belief, must be founded upon evidence proposed to his own mind; and he cannot but believe, according as things appear to himself, not to others; to his own understanding, not to that of any other man. Conviction is always produced by the light

²⁴⁴ In the second edition of his letters, Furneaux noted that Blackstone had amended his passage to call indecent the setting up of private judgment in *virulent and factious* opposition to *public authority*. Virulence and faction were not to be justified, but as far as the mere opposition of private judgment to public authority or public judgment, the amended passage was essentially the same as the original one (Furneaux, *Letters*, 46n).

²⁴⁵ Priestley, *Remarks*, 50–51; Furneaux, *Letters*, 47–48, 47n.

²⁴⁶ Furneaux, *Letters*, 19.

which is struck into the mind; and never by compulsion, or the force of human authority.²⁴⁷

The truth of the Gospels, for example, was based on the testimony of the apostles, not on their authority. There was a ‘manifest difference’ between, on the one hand, ‘human testimony, as to matters of fact’, and, on the other, ‘human authority, as to matters of opinion, and principles of truth’: human testimony was a ‘rational ground of belief’, but to believe on human authority was to believe on no evidence at all, and to renounce reason altogether.²⁴⁸ Our understanding was the only, God-given faculty we had for distinguishing truth from error; to abstain from exercising this faculty in developing our own judgment in matters of conscience and to instead adopt the judgments of other people, was to exalt human authority over divine authority, and to put man in place of God.²⁴⁹

As will be argued below, Bentham shared Furneaux’s conception of belief to an extent, as well as his concern that Blackstone was advocating an uncritical submission to authority in place of the exercise of private judgment. A person could not be compelled by authority to believe in a particular claim, exactly, but he could be encouraged to bypass his own judgment and adopt the judgment sanctioned by authority, or to pay attention only to those facts which supported the claim. In his later writings on religion, Bentham argued that the Church of England in particular, and religion in general, corrupted the faculty of judgment, or the process of forming a

²⁴⁷ Furneaux, *Letters*, 20.

²⁴⁸ Furneaux, *Letters*, 20n.

²⁴⁹ Furneaux, *Letters*, 21.

judgment.²⁵⁰ The next section gives a reading of *Church-of-Englandism* as a challenge to the authority of the Church, and the subsequent section discusses the ways in which natural religion distorted the process of forming a judgment.

4.3 Authority

I would like to posit that Bentham had a juridical model of judgment, as illustrated by his conception of public opinion as a ‘tribunal’, before which the actions and opinions of authority figures (among other people) could be laid. The ‘Public Opinion Tribunal’ was obviously a fiction, but it operated in similar ways to legal tribunals, and the effects of its operations were real, and important to utilitarian government.²⁵¹ In the case of a newspaper, for example, in its role as an organ (and indeed the ‘only constantly acting visible’ organ) of the Public Opinion Tribunal. In similar way to a legal tribunal, a newspaper editor received contending claims (as a judge received claims and accusations, oppositions and defences); he received, compelled, collected and stored evidence; he received and heard or read arguments from the parties involved and their advocates; he formed an opinion or judgment on the matter, with a corresponding will; and he gave expression and execution to his judgment and will (in this case, by publishing his opinion and disseminating it to his

²⁵⁰ ‘Faculty’ was a fictitious term, but one which referred to a real mental operation (the act of judgment) and effects (the opinion or judgment produced). See the ‘Essay on Logic’ in *Works*, vol. 8, 233. ‘When upon and after examination and comparison made of any two or more of the objects that have presented themselves to the mind, any *inference* is made or *conclusion* come to in relation to them by it, a judgment is thereby said to have been formed and passed – an act of the judicial faculty exercised – an operation of the judicial faculty performed.’ (‘Essay on Logic’, 225).

²⁵¹ Jeremy Bentham, ‘Securities Against Misrule’ in Bentham, *Securities Against Misrule and other Constitutional Writings for Tripoli and Greece*, ed. Philip Schofield (Oxford: Clarendon Press, 1990), 28.

readers).²⁵² The analogy with the faculty of judgment is in the first four steps of this process: in the ideal case, every man's private persuasion of belief, as Furneaux put it, would be founded on evidence proposed to his own mind, as things appeared to him and not to other people. He would, in other words, consider the claims before him, collect evidence for or against them, consider arguments using the evidence, and come to a considered judgment or opinion on the matter.

In practice, however, people often made judgments as things appeared to other people; there seemed to be, Bentham lamented, a 'universal propensity' to take not only facts but *opinions* on trust.²⁵³ In morality and politics, for example, 'ninety-nine out of one hundred [people] have an adoptive judgment'.²⁵⁴ Given that circumstance, the distinction to be made was not just between fact and opinion, but between a 'self-formed' judgment, based only on one's own consideration of the evidence, and an adoptive or 'derivative' judgment, based on the opinions of other people. Bentham first made this distinction in the *Plan of Parliamentary Reform*, where he reassured readers that voters who did not know enough about the business of government to vote sensibly on the basis of their self-formed judgment, would be able to do so on the basis of their derivative judgment – most probably derived, in this case, from public opinion.²⁵⁵

²⁵² 'Securities Against Misrule', 45, 54–55, 60–61; this list is actually adapted from the functions of an *official* judicatory (the difference has to do with the operations of a newspaper *qua* newspaper, rather than *qua* judiciary). In the *Constitutional Code*, Bentham's monumental effort at a comprehensive code of law, the Public Opinion Tribunal had several functions, including the provision of facts to serve as grounds for judgment (this is the 'statistic or evidence-furnishing function') and the formation and expression of a judgment on the matter at hand (this is the 'censorial function') (Bentham, *Constitutional Code*, 36).

²⁵³ *Book of Fallacies*, 51.

²⁵⁴ 'A Table of the Springs of Action', 58.

²⁵⁵ *Plan of Parliamentary Reform*, xliv. The important thing was that voters acted on their 'self-formed' will, based on their own judgment, whether self-formed or derivative, and not on the will of other people, expressed through bribes or intimidation for example (*Plan of Parliamentary Reform*, lx).

More generally, the basis of a derivative judgment was authority.²⁵⁶ To borrow Furneaux's terms, there was a manifest difference between testimony as to matters of fact and authority as to matters of opinion, but the latter need not amount to the renunciation of reason; as implied in the *Plan*, it was not necessarily a bad thing to take opinions on trust in areas in which one was not competent to form a judgment. The question was, as Bentham put it in the *Book of Fallacies*, that of distinguishing between legitimate and illegitimate sources of authority.²⁵⁷

Bentham suggested that the trustworthiness, or 'legitimately persuasive force', of the authority in question (that is, the person whose judgment was taken as authoritative in the particular case) should depend on several factors, including the intelligence and probity of the authority figure, his access to information, and his interest in collecting and evaluating evidence. At the top of the scale of trustworthiness was what he called professional, scientific or intellectual authority (it came to the same thing: authority from the use of the understanding alone), because the scientist, assuming 'relative and adequate' intelligent and probity, had both the means of gathering accurate and comprehensive information on the subject, and a professional interest in forming a well-reasoned judgment based on the information gathered.²⁵⁸ Bentham himself was an example of such authority: in an open letter to the citizens of the United States in 1817, on his offers to draw up a legal code for various states, he noted that 'intellectual authority' was the 'sole and indispensable foundation for a derivative judgment', and provided, to that end, testimonials on his codification

²⁵⁶ *Book of Fallacies*, 121.

²⁵⁷ *Book of Fallacies*, 121.

²⁵⁸ *Book of Fallacies*, 124–27. 'Intellectual' is from his letter to the Americans; see note 259 below.

credentials from James Madison, John Quincy Adams and other American dignitaries. He also laid out his principles and proposals in the letter, so that readers could form their own judgment of his capabilities.²⁵⁹ After intellectual authority, in descending degree of trustworthiness, were authority derived from power, opulence and general reputation.²⁶⁰

Bentham's self-appointed task in the *Fragment* was to overthrow Blackstone's authority, by exposing the 'sinister bias of the affections' revealed in the work (which was a bias against reformation) and the 'errors of the understanding' it led to.²⁶¹ In light of the views on judgment above, we could say that his task was to overthrow Blackstone's *intellectual* authority – or rather, the intellectual authority that the celebrated author of the *Commentaries* was assumed by many people to have, but was actually lacking in his work. The authority of the *Commentaries* was based, in fact, on Blackstone's reputation alone; and general reputation, as mentioned above, was not a particularly trustworthy source of authority.

In similar vein, we can read *Church-of-Englandism* as a challenge to the authority of the Church. As with Blackstone, the Church professed and was commonly thought to have intellectual authority (on the basis of which, for example, Howley recommended the prostration of the understanding before the oracles of divine truth), but its authority was actually derived from another source – in this case, from power.²⁶²

²⁵⁹ Jeremy Bentham, 'Papers Relative to Codification and Public Instruction' in Bentham, *'Legislator of the World': Writings on Codification, Law, and Education*, ed. Philip Schofield and Jonathan Harris (Oxford: Clarendon Press, 1998), 114–17.

²⁶⁰ *Book of Fallacies*, 127–28.

²⁶¹ 'A Fragment on Government', 404.

²⁶² The *Quarterly Review*, in its review of Howley's *Charge* and Unitarian minister Thomas Belsham's critique of it, dismissed Belsham's worries about the *prostration* of the understanding. All Howley meant

Bentham sought to overthrow the Church’s authority in two ways. First, as he did with a passage from Blackstone’s introduction to his *Commentaries*, he gave a blow-by-blow critique of the Church of England Catechism.²⁶³ The National Society schools – the schools established by the National Society for the Education of the Poor in the Principles of the National Church (which was set up under the auspices of the Church of England) in villages across England – used the Catechism to teach their pupils to read and write. This was in contrast to the rival Lancaster schools – the schools established by the Quaker educationist Joseph Lancaster, which also employed the monitorial system of education adopted by the National Society schools – which used the Bible for teaching purposes instead.²⁶⁴ The problem with the Catechism as a teaching text, Bentham argued, was that it taught children things which were useless in practical life, unintelligible to young minds, inconsistent with clerical practice, or simply mendacious. This was not (or not entirely) captious cavilling at the doctrines of religion, as the *Quarterly Review* put it, but a demonstration of the unfitness of the Catechism as a source of intellectual authority.²⁶⁵

by the expression, according to the *Quarterly Review*, was to recommend to fellow Christians ‘a humble disposition to submit the understanding to revealed truth, to form no preconceived opinions of what a revelation ought to contain, but seriously to inquire into, and readily to embrace, those truths which are contained in the revelation we possess.’ ‘A Charge delivered to the Clergy of the Diocese of London’, *Quarterly Review* 14, no. 27 (1 October 1815), 47.

²⁶³ Bentham originally planned a more extensive study of the *Commentaries*, but did not complete it. His manuscript material has been published in *A Comment on the Commentaries*.

²⁶⁴ *Church-of-Englandism*, xi–ii. The establishment of National schools was a response to the popularity of the Lancaster schools, which were established by Joseph Lancaster, a Quaker, and open to pupils of all religious denominations. Bentham argued against the use of the Catechism in the National schools, in contrast to the use of the Bible in the Lancaster schools: it contributed to the exclusion of children who were not from Church-of-England families (*Church-of-Englandism*, 88–98).

²⁶⁵ The *Quarterly Review* noted that Bentham pointed to ‘minor offences of bad grammar and bad logic’ in the Catechism, as well as the ‘practice of “hypocrisy, lying, imposition, sin and vice in every other shape”’, and demurred from ‘disgust[ing] [its] readers with any specimens of the wretched and impious sophistry with which [the Catechism’s] expressions and doctrines are criticized’ (‘Church-of-

Children were taught in the Catechism, for example, that their godparents had committed them to renouncing (among other things) ‘the devil and all his works’ and ‘the pomps and vanity of this wicked world’. But the Catechism did not explain what the devil or his works were, or what renunciation required. The ‘pomps and vanity’ of the world might not require explanation, perhaps, but the injunction to renounce them was inconsistent with experience, if not simply hypocritical: anyone could see that the monarch, aristocrats and bishops – ‘these sitting and walking pageants’, with sceptre and crown, mitre and robe – had demonstrably failed to renounce ostentatious displays of power and wealth in this world.²⁶⁶

Children were also taught in the Catechism to rehearse the articles of their belief, including their belief in the crucifixion and resurrection of Jesus Christ, and to declare that they had learned, from this recitation, to believe in God the Father, who had created the world; God the Son, who had redeemed mankind; and God the Holy Ghost, who had sanctified his elect people.²⁶⁷ Bentham argued, however, that it was not useful to children to learn of the crucifixion and resurrection, or that Jesus had a human and a divine nature – these were not beliefs which would help them understand or contend with the death of persons who were only human.²⁶⁸ It was also not clear what it meant to believe in God as father, son and spirit. The ideas of creation and redemption were, perhaps, self-explanatory, but the idea of sanctification was not intelligible without

Englandism’, *Quarterly Review*, 170–71). One advantage of my proposed reading is that it gives Bentham’s examination of the Catechism, which is ostensibly the main text of the book (even though it comprises about ten percent of it), a starring role in the book.

²⁶⁶ *Church-of-Englandism*, 204, 207–10.

²⁶⁷ *Church-of-Englandism*, 212, 222.

²⁶⁸ *Church-of-Englandism*, 215.

further explanation. It was as if, Bentham remarked, that the authors of the Catechism had to ensure that each person of the Trinity had its own function; ‘thereupon, the less plainly incomprehensible functions of *creation* and *redemption* being already disposed of...comes the question – what can we find for the Holy Ghost to do? – Answer.

*Sanctification.*²⁶⁹

More generally, the Catechism sought to teach children to believe in things which they could not yet understand, because their ‘faculty of reason’ was as yet undeveloped; they were ‘completely incompetent to the forming of any *judgment* or so much as a *conception*’ on these matters, and so were not truly able to *believe* in the articles of the Catechism.²⁷⁰ What the Catechism could and did teach them to do instead was to *profess* belief in the articles of the Christian faith. In other words, Bentham argued, the ‘duty and practice of *lying* formed part of every Church of England child’s first lesson.’²⁷¹ The Catechism was not an effective instrument of education but it was an effective instrument of corruption, for ‘corrupting altogether the intellectual part, and to a great extent the moral part, of the minds thus impregnated’, by habituating them to the ‘practice of mendacity and insincerity’ and in that way weakening their ability and willingness to recognise and protest abuses of power.²⁷² It was in this way that the links in the chain of slavery and despotism were forged.

²⁶⁹ *Church-of-Englandism*, 224, 222–25.

²⁷⁰ *Church-of-Englandism*, 203. Bentham did not say at this point that children could not understand these things because they were simply incomprehensible, even to more mature minds. Cf. Colls, *Utilitarianism Unmasked* for a denunciation of Bentham’s irreverence and irreligion.

²⁷¹ *Church-of-Englandism*, 211.

²⁷² *Church-of-Englandism*, 67–68.

This brings us to the second way by which Bentham sought to overthrow the authority of the Church: the Catechism lacked intellectual authority because it was a ‘substitute’ for the Bible, not only as a teaching text in schools but as the foundational text of a religion.²⁷³ As an ‘exposition’ of the Bible, it was a poor substitute for it: it did not provide any biblical quotations or references as ‘securities for faithfulness’, for example, and more generally did not provide a ‘true picture’ of the ‘religion of Jesus’.²⁷⁴ It was so poor a substitute, in fact, that Bentham concluded that the ‘Religion thus taught by the Church of England’ was not ‘the Religion of Jesus’.²⁷⁵ However, the Catechism served its purpose as a foundational text of ‘Church-of-Englandism’, the ‘religion’ of the Church of England: it propounded the doctrines of the Church to children, and prepared them to submit uncritically to the authority of the Church.

On this view, the prostration of the understanding that Howley called for was not to God (before whom prostration was rightly due) but to man.²⁷⁶ The oracles of divine truth Howley referred to were not the literal word of God, or even scripture, but doctrines ‘deducible by the established laws of interpretation from Scripture’.²⁷⁷ However, Bentham argued that it was not clear what these laws might be, unless they were such laws as the laws of ‘virtual omission’, ‘virtual expunction’ and ‘virtual substitution’, by means of which the interpreter could make any change he wished to scripture, by inserting doctrines into or removing them from scripture, or by replacing

²⁷³ *Church-of-Englandism*, 62–67.

²⁷⁴ *Church-of-Englandism*, 67–73.

²⁷⁵ *Church-of-Englandism*, 82–83.

²⁷⁶ *Church-of-Englandism*, 258–59.

²⁷⁷ Howley, *Charge*, 15; *Church-of-Englandism*, 260

scripture altogether.²⁷⁸ The formularies of the Church (such as the Catechism) had been written by (fallible) men at a relatively primitive stage of human civilization; to continue to propagate these doctrines and perpetuate their errors, was to encourage believers to prostrate their understandings and wills before the ‘blindly assumed infallibility of a comparatively unenlightened age’, and to commit to keeping themselves ‘debarred from the free exercise of their judgments’ in these matters.²⁷⁹

If the authority of the Church was not based on intellectual expertise, what was it based on? Towards the end of his sermon, Howley urged clergymen to pay close attention to the National Society schools. The greater the effort they put into expanding and strengthening the schools, the more likely it was that the children of their parish would not only learn the doctrines and practices of the established religion, but also (and perhaps more importantly) to respect the authority of the established church – and consequently the authority of individual clergymen as officers of the church.

In proportion to the success of your attention to this important point, the course of your ministry will become smooth and easy. Your parishioners, from their infancy initiated in the principles, and inured to the practice, of pure Christianity, will crowd with pious affection to the altars of their Mother Church; and will learn to regard the pretences and artifices of corrupt or illiterate instructors with indifference or disdain. Your instructions and exhortations received with humble docility, as the oracles of God, by congregations who revere in your persons the dispensers of divine truth, will no longer be wasted on a barren soil.²⁸⁰

²⁷⁸ *Church-of-Englandism*, 264–71.

²⁷⁹ *Church-of-Englandism*, 471–72. See Melissa Schwartzberg, ‘Jeremy Bentham on Fallibility and Infallibility’, *Journal of the History of Ideas* 68, no. 4 (October 2007): 563–85 on Bentham’s arguments against infallibility.

²⁸⁰ Howley, *Charge*, 22–23, quoted in *Church-of-Englandism*, 259.

Bentham thought that he and Howley were in agreement on one point: on the effects of the Catechism in indoctrinating young minds, and cultivating in them a reverence for the Church and its clergymen. From Bentham's perspective, the Catechism did not only fail to teach children anything of practical use, but also actively contributed to their intellectual and moral depravation: by dissociating the profession of belief from the formation of judgment, it taught children to lie, and weakened their ability to detect or defend themselves against lies. It prepared their minds, in other words, not for the free exercise of their judgment, but for the submission of their understanding, and thereby their will, to the authority of the Church. Howley's desired outcome, Bentham asserted, was therefore

the establishment of a state of things, which, when described in plain English, is neither more nor less (for, what else is it?) than a system of slavery; – of intellectual, and thence, as a necessary consequence, of moral and corporeal slavery, – in which, his Lordship, and his Right Reverend Co-adjutors and Reverend Sub-adjutors, are to be tyrants and sub-tyrants, – all other, i.e. all profane Church of Englandists, in the character of subjects, and all non-Church of Englandists in the character of 'enemies', slaves; – and, of this tyranny, the National Society's Schools – i.e. the Bench of Bishop's Schools – are to be the instruments in one sense, – and this Catechism, together with the rest of that body of formularies of which it makes a part – but above, because before all, this Catechism – is to be an instrument, in another sense.²⁸¹

The Catechism, as an instrument for the corruption of judgment, was an instrument for tyranny.

²⁸¹ *Church-of-Englandism*, 260.

4.4 Rewards and Punishments for Belief and Disbelief

In the *AINR*, Bentham considered the utility of natural religion – characterized, in his view, by a system of future rewards and punishments, the existence of a supreme deity and the agency of the deity in this world – and concluded that it was harmful both to individual believers and to society more generally.²⁸² One of the mischiefs of natural religion was that it disqualified the intellect for purposes useful in this life, by offering rewards for belief in the supreme deity, and punishments for disbelief.²⁸³

As mentioned above, the Church of England Catechism was used to teach children what to believe, but could only effectively teach them what to *profess* belief in. Towards the beginning of the Catechism, after the child had been required to say that his godparents had committed him to the renunciation of the devil and his works, as well as the pomps and vanity of the world, he was then asked, ‘Dost thou not think that thou art bound to believe, and to do as they have promised for thee?’. In Bentham’s reading of the Catechism, the child was effectively compelled to assent to the beliefs set out in it. He was not taught the grounds of these beliefs, or how to form a judgment on

²⁸² These are also, arguably, some of the foundational beliefs of revealed religion. Blackstone, for example, listed some of these beliefs in his explanation of the importance of revealed religion to civil society: ‘The belief of a future state of rewards and punishments, the entertaining just ideas of the moral attributes of the supprime being, and a firm persuasion that he superintends and will finally compensate every action in human life (all which are clearly revealed in the doctrines, and forcibly inculcated by the precepts, of our saviour Christ) these are the grand foundation of all judicial oaths; which call to witness the truth of those, which perhaps may be only know to him and the party attesting: all moral evidence therefore, all confidence in human veracity, must be weakened by irreligion, and overthrown by infidelity.’ (Blackstone, *Commentaries*, vol. 4, 43–44.) Bentham had some choice things to say about the use of judicial oaths as guarantees of veracity in Jeremy Bentham, *Swear Not At All* (London: R. Hunter, 1817). It is not surprising that the *AINR*, despite its title, should encompass a critique of revealed religion as well. George Grote followed Bentham’s instruction to focus on natural religion in editing the *AINR*, but also drew from Bentham’s manuscript material on revealed religion. There was, in any case, a tradition of criticizing revealed religion under cover of natural religion (Fuller, ‘Utility of Religion’, 11, 9).

²⁸³ *AINR*, 92.

the matter, but only that it was his duty to believe as he was told, and to profess the requisite belief – that is, to lie.²⁸⁴

More generally, one could say that natural religion put belief in the supreme deity in the ‘catalogue of duties and merits’, and disbelief in that of crimes and offences. The reward for belief was eternal happiness and the punishment for disbelief was eternal misery. Bentham argued in the *AINR* that the purpose of offering rewards and punishments for belief and disbelief was to influence judgment; if men and women would naturally have arrived at the beliefs in question, then there would be no reason to offer incentives either way.²⁸⁵

It was not the case, however, that reward or punishment could directly influence belief; the will could not act directly on the understanding in this way.²⁸⁶ Conviction, as Furneaux put it, could only be produced by the light struck into the mind, and one could not *will* enlightenment in this regard. One could not, for example, make a man believe that he was *not* sitting in a chair or holding a book in his hand when he was doing these exact things.²⁸⁷ ‘[I]n the natural state of things,’ Bentham concluded in the *AINR*, referring to a state of things without the distortions of religious belief, ‘A man assents to that which he thinks is supported by the best evidence – dissents from what appears to

²⁸⁴ *Church-of-Englandism*, 211–12.

²⁸⁵ *AINR*, 110.

²⁸⁶ This account follows the discussion of the influence of interest on belief (or of the will on the understanding) in Harrison, *Bentham*, 144–46.

²⁸⁷ *Book of Fallacies*, 160; *AINR*, 111.

be refuted by the best evidence. Under such circumstances, there is nothing to guide his choice except the evidence.’²⁸⁸

However, not all judgments were as obvious and immediate as sitting in a chair or holding a book in one’s hand.²⁸⁹ A man might assent to what he thought was supported by the best evidence, but it was not always clear what constituted the best evidence, or any evidence at all, and how much weight he should give to contradictory pieces of evidence. It was not possible to make a person ‘really and immediately’ believe in the truth of a thing he knew to be false. However, it *was* possible to make him:

1. to refrain from declaring his disbelief of it: 2. to make him declare his belief in it: 3. to make him turn instantly aside from all considerations tending to confirm him in his disbelief of it: 4. to look out for, and fix his attention on, all considerations tending to induce him to believe in it: especially authority, an instrument by which, in so many instances, men have contrived to force themselves into the belief of [...] facts in repugnancy [to] the concomitant evidence of their own senses.²⁹⁰

The key term in the passage above is ‘attention’. The faculty of judgment was a faculty of the understanding, but the faculty of attention was a faculty of the will: to pay attention to something was to ‘fasten’ one’s mind, as it were, by an act of the will, to the thing in question.²⁹¹ In the juridical model of judgment outlined in the previous section,

²⁸⁸ *AINR*, 110.

²⁸⁹ Though these are not strictly judgments, but perceptions.

²⁹⁰ *Book of Fallacies*, 160.

²⁹¹ ‘This operation [of the faculty of attention]...has place in so far as by an act, by a more or less continued exertion of the *will*, and the psychological active faculty its servant, the mind is as it were fastened upon the object or subject from which a perception or conception is derived to it’ (‘Essay on Logic’, 224; see also 281).

judgment was produced by a consideration of the evidence – but the result of the ‘consideration of the evidence’ depended on how much attention one paid to collecting the relevant evidence, deciding which pieces of evidence were relevant, and privileging one piece of evidence over another. ‘[I]n matters where the truth does not obtrude itself so immediately,’ Bentham explained, ‘but must be gathered from various and wide-spread fragments of evidence, [a man] can withdraw his thoughts from some, and fasten them upon others, almost to an unlimited extent.’²⁹²

What a person fastened his thoughts to, or withdrew them from, depended on his motives – that is, on the prospect of pleasure and pain, since a motive was ‘substantially nothing more than pleasure or pain, operating in a certain manner’, to give rise to or prevent an action.²⁹³ In this case, the relevant motives were hope and fear: hope of future reward and fear of future punishment.²⁹⁴

In *Church-of-Englandism*, Bentham accused the Church of debilitating and depraving the minds of children through the introduction of ‘groundless and useless terrors’ in the Catechism.²⁹⁵ In the example mentioned above, the child was made aware of the devil and all his works. For adults, Bentham acknowledged, the existence of the devil was a matter of ‘doubt and difficulty’, and stories and pictures of the devil were not to be taken seriously, but as objects of indifference or subjects of merriment, depending on the reader’s temperament. For children, however, who took the words of the Catechism on trust, the stories and pictures of the devil would be real and terrifying.

²⁹² *AINR*, 111.

²⁹³ *IPML*, 100, 96.

²⁹⁴ *AINR*, 111.

²⁹⁵ *Church-of-Englandism*, 254.

‘How many,’ he demanded, ‘from whose minds the horrific being, – of which, from the most unquestionable authority, the existence is thus certified, – is never absent! How many to whom this his ideal presence is sufficient to render *solitude*, at least when coupled with *darkness*, a situation of never-ceasing torment?’²⁹⁶ (Bentham knew whereof he spoke, as he had been afraid of ghosts since childhood.²⁹⁷) More generally, in his later political writings, he accused ‘the priest’ of propagating ‘delusion’ as a means of advancing his own and the monarch’s interest: the priest provided believers with ‘a life of his own invention, a life which he fills with an all-comprehensive instrument of intimidation – a life filled with torments in intensity and duration infinite.’²⁹⁸ In order to escape these torments, believers would be more likely to follow the will of the priest and monarch, even if doing so would produce (a presumably smaller and less intense amount of) pain in this life.²⁹⁹

The situation was no better in natural religion. Without additional information from revelation, all we could conceive of the supreme deity was that it was omnipotent, invisible, essentially unknowable, and possessed of agency in this world; we would not be able to tell if such agency was benevolent or malevolent. That is, all we could conceive of the deity was as a ‘capricious tyrant’ or a ‘capricious despot’, modelled on our conception of capricious human tyrants, but with unlimited power at its disposal.³⁰⁰

²⁹⁶ *Church-of-Englandism*, 208–09.

²⁹⁷ *Works*, vol. 10, 18–20, 39, 64. Bentham told Bowring he had cured himself of his fear by reasoning that if ghosts appeared to him wearing clothes (as ghosts did), then there had to be ghosts of clothes as well as ghosts of people, which was a stretch too far for belief (*Works*, vol. 10, 587).

²⁹⁸ Jeremy Bentham, ‘Supreme Operative’ in *First Principles Preparatory to Constitutional Code*, 185.

²⁹⁹ ‘Supreme Operative’, 185–86.

³⁰⁰ *AINR*, 20, 25.

Fear, Bentham observed, was the ‘never-failing companion and offspring of ignorance’; in imagining the actions and behaviour of an omnipotent tyrant, our imagination would naturally tend towards scenes of terror and suffering.³⁰¹ We might try to placate the supernatural tyrant, as we would a human tyrant, by offering to him our own privations and sufferings – or, more appealingly, by offering to him the privations and sufferings of *other* people.³⁰²

To return to the concept of attention: Bentham’s theory was that people paid attention to things which tended to be pleasurable, and avoided thinking about things which tended to be painful. A system of rewards and punishments for belief and disbelief would skew one’s judgment towards belief, by skewing one’s consideration of the evidence. Take the discussion of witchcraft in the *Commentaries*, for example; on the one hand, Blackstone thought that the empirical evidence for the existence of witchcraft was sketchy at best. ‘[I]ndeed,’ he observed, ‘the ridiculous stories that are generally told, and the many impostures and delusions that have been discovered in all ages, are enough to demolish all faith in such a dubious crime’. On the other hand, the ‘contrary evidence’ from the Bible was, by definition, ‘extremely strong’. The legal prohibition of witchcraft in many countries implied, at least, ‘the possibility of a

³⁰¹ *AINR*, 5.

³⁰² *AINR*, 33, 54–57. On divine despotism, see also Fuller, ‘Utility of Religion’, 3. On human despotism, see also Bentham’s discussion of the principle of sympathy and antipathy in the *IPML*: he argued that the ‘various systems that have been formed concerning the standard of right and wrong [including moral sense, common sense, the law of nature, right reason, the doctrine of election, and others], may all be reduced to the principle of sympathy and antipathy.’ The principle of sympathy and antipathy could more accurately be called the ‘principle of caprice’, because it did not rely on an external standard of right and wrong, but only on the author’s own sentiment or opinion. Caprice was a defining characteristic of despotism; the upshot of the different systems of sympathy and antipathy, the ‘mischief common to all these ways of thinking and arguing...is their serving as a cloak, and pretence, and alimnt, to despotism: if not a despotism in practice, a despotism however in disposition: which is but too apt, when pretence and power offer, to show itself in practice.’ (*IPML*, 25, 21n, 25–8nn).

commerce with evil spirits'.³⁰³ Judging from his sardonic comments about Blackstone's and his own grandmother's superstitious belief in ghosts and witches in the *White Bull* and to John Bowring for his memoirs, Bentham did not think the Bible provided adequate evidence of the existence of witchcraft – or, more generally, the existence of any supernatural phenomena.³⁰⁴ Whether or not one thought biblical references to witchcraft sufficient evidence of their existence, as Blackstone did, or that they were not evidence at all, as implied in Bentham's works, depended on one's judgment of the reliability of biblical evidence – which might be influenced by the prospect of future rewards and punishments for religious belief or disbelief.

Or take sodomy, for another example; should the destruction of Sodom and Gomorrah in the Bible be considered as evidence for the harmfulness of sodomy? Blackstone argued that sodomy was a capital offence according to 'the voice of nature and of reason, and the express law of God', and offered as evidence the destruction of

³⁰³ Blackstone, *Commentaries*, vol. 4, 60.

³⁰⁴ His comments on Blackstone and ghosts are from the *White Bull*, vol. 1, lxix, and *Works*, vol. 10, 18. See also his manuscript musings on the evidence (or lack thereof) for the truth of Christianity in Fuller, 'Utility of Religion', 6–7. The *White Bull* is testimony to Bentham's lack of faith in this respect – see for example his comment on the 'penetrating *Stackhouse*; who has been so laudably industrious, in confirming the events and doctrines that occur in scripture, by parallel events and doctrines delivered under the Pagan dispensation.' A footnote on the 'house boat-warming of *Xiffuthres*, King of Thrace' makes fun of the attempts of Thomas Stackhouse and other religious writers who sought to find historical or empirical evidence for biblical events. (The Thracian ark was apparently larger than Noah's ark, and '[t]he learned are hard set to work to determine, which of these two venerable personages, *Noah* or *Xiffuthres*, is the most ancient' (*White Bull*, vol. 2, 25, 102n).) Bentham's mockery on this occasion was not far off the mark; see Stackhouse's discussion of the possible proportions of Noah's ark in Thomas Stackhouse, *A New History of the Holy Bible*, vol. 1 (London: T. Payne, 1733), 122–29. Stackhouse was not alone in his efforts; see for example *The Ancient Part of Universal History*, vol. 1 (London: C. Bathurst and others, 1779). On Bentham's use of satire in the *White Bull* to criticize methods of biblical exegesis, see de Champs, *Enlightenment and Utility*, 30–35. Bentham's view of the evidential basis of biblical events is neatly encapsulated in Cardinal Newman's remark that 'Mr. Bentham made a treatise on Judicial Proofs a covert attack on the miracles of Revelation' (John Henry Newman, *The Idea of a University Defined and Illustrated* (London: Longmans, Green and Co, 1893), 96).

Sodom and Gomorrah by ‘fire from heaven’.³⁰⁵ Bentham felt that he had to address this point, in his arguments against the punishment of sodomy (and by extension other sexual irregularities). In the third *Not Paul, But Jesus* volume, he argued that the cause of the destruction of the two cities was not sodomy, but the forcible rape of the strangers and the violation of hospitality.³⁰⁶ Perhaps, if one took seriously the threat of the devil and all his works, or the prospect of future punishment and eternal misery, one would put more weight than Bentham did on the burning of the two cities as evidence of the sinfulness of sodomy; or perhaps, without the influence of religious belief on judgment, the biblical events would not be considered evidence at all.

‘In sum,’ Bentham concluded in the *AINR*, ‘the religious premium offered for faith tends...to corrupt the judgment of an individual.’³⁰⁷ In the examples above, corruption entered not in the final stage of the judicial model of judgment, in the adoption of another person’s opinion as one’s own, but in the process of gathering and considering evidence for a claim. When judgment was no longer a matter of reason but ‘a question of profit and loss’, influenced by the religious premium for faith or penalty for disbelief, then reason itself had been brought into contempt.³⁰⁸

³⁰⁵ Blackstone, *Commentaries*, vol. 4, 216.

³⁰⁶ *Not Paul, But Jesus*, vol. 3, 134–38, 147–48. See also Bentham’s discussion of the destruction of the cities in his notes to the essay on paederasty, published in the ‘Essay on Paederasty’, pt. 2, 104–06.

³⁰⁷ *AINR*, 111.

³⁰⁸ *AINR*, 112.

4.5 Extra-Experimental Belief

Religion could also undermine knowledge, by weakening the link between belief and experience.³⁰⁹ The argument, in the *AINR*, was that there was an empirical basis to knowledge, or at least to ‘useful’ knowledge of pleasure and pain; all we knew about increasing pleasure or avoiding pain in this world was based on experience. Knowledge in this sense consisted of ‘believing facts conformable to experience’.³¹⁰ Religion, however, required belief in things for which there was no evidence, and could not be evidence. In the Catechism, for example, children were asked to believe in things for which there was neither evidence nor explanation. In natural religion, people were similarly asked to believe in a supreme deity, who by definition could not be seen or heard or even truly comprehended by human beings; in the benevolent agency of the unseen and unknown deity in their lives; and in the prospect of rewards and punishments after death. The ‘very basis...of natural religion’ was therefore ‘an article of *extra-experimental belief*, or belief altogether unconformable to experience’.³¹¹

But if experience were not the basis of knowledge, then there would be no way to predict future events based on past experience: there would be no way, for example, to refute falsehoods based on their inconsistency with past events, or to establish means

³⁰⁹ The term ‘extra-experimental belief’ is from Grote, not from Bentham (Fuller, ‘Bentham, Mill, Grote’, 9). However, I think Bentham would have agreed with the idea that religious belief was not derived from experience, and could not be substantiated by empirical evidence. For him, utility was based on empirical evidence – on the felt experiences of pleasures and pains. See for example his list of pleasures and pains in the *IPML*, ch. 5, and the editorial introduction to the *IPML*, li–lix.

³¹⁰ *AINR*, 93.

³¹¹ *AINR*, 97–99, 95. Bentham could perhaps have said the same of revealed religion.

of reliably producing pleasure or avoiding pain. There would be no way, in other words, to acquire knowledge useful in this world.³¹² As it was put in the *AINR*,

[T]he belief of an unseen agent, infringing at pleasure the laws of nature, appears to be pregnant with the most destructive consequences. It discredits and renders inadmissible the lessons of experience: It vitiates irrecoverably the processes both of proof and refutation, thereby making truth incapable of being established, and falsehood incapable of being detected: It withdraws us from the power of distinguishing the true methods, of procuring enjoyment or avoiding pain, from the false ones; and plunges us into the naked, inexperienced and helpless condition of a new-born child – thereby qualifying us indeed for the kingdom of heaven, but leaving us wholly defenceless against the wants and sufferings of earth.³¹³

Religious belief, even without the weight of establishment behind it, led to the corruption of judgment – in this case, in our ability to establish useful facts and navigate the world on the basis of past experience.

One could of course object that even if this were so, the disjunction of belief and experience was confined to the sphere of religion, and so had limited effect on human life more generally. However, this was to ignore the psychological basis of learning: ‘real facts’ tended to ‘hang together and...support each other’, and thus a person who learned something on the basis of experience was likely to learn more things on the same basis. In similar fashion, one error often led to another; a person who had a ‘mind so constituted’ to believe in the account of Lilliput, for example, was likely to believe in the account of Brobdingnag as well.³¹⁴

³¹² *AINR*, 99–101.

³¹³ *AINR*, 106.

³¹⁴ *AINR*, 94–95.

Moreover, extra-experimental belief, even if confined to ‘a corner of the mind’, could produce, and had already produced, harmful effects. The belief in witches, for example, despite the lack of empirical evidence, had led to the persecution and condemnation of many women; the victims of witch hunts and witch trials could be regarded as ‘sacrifices’ to extra-experimental belief, and the ‘thorough deprivation of the intellect’ which it brought about.³¹⁵

Another instance of the harmful effects of extra-experimental belief was trial by ordeal. Trial by ordeal was invented, on the account in the *AINR*, when men were ‘[u]nable to discover satisfactory criteria of guilt and innocence, by a just comparison of conflicting testimony’, and so turned instead to a ‘blind reliance on extra-experimental belief’. Instead of the careful collection and consideration of evidence in trial by law, there was instead a surrender of judgment to an unseen, unknown, supernatural agent – the effect of which was to maximize the suffering of the innocent, and protect the guilty from appropriate punishment.³¹⁶ If the formation of judgment can be thought of in terms of juridical processes, then trial by ordeal was a travesty of judgment – there was no evidence to speak of, no role for experience in the consideration of the evidence, and no role for reason in the evaluation of arguments: in sum, no ground for judgment at all. Trial by ordeal was an illustration of the effects of the corruption of judgment: the surrender of private judgment, not only to the public authority, but to an invisible, incomprehensible, unaccountable, supernatural source of authority – which was, to turn Furneaux around, no authority at all.

³¹⁵ *AINR*, 101–02.

³¹⁶ *AINR*, 104–05.

4.6 Judgment, Utility and Democracy

In this essay, I have argued that Bentham saw religion in general, and the Church of England in particular, as a threat to the free exercise of private judgment – not only to the expression of particular opinions (such as those deemed heretical by the established church), but also and perhaps more importantly to the process of forming a judgment. I suggested that Bentham had a juridical model of judgment: an opinion or judgment was produced after considering the evidence and arguments for opposing claims. The corruption of judgment could come about in taking another person’s opinion on authority, rather than forming one’s own opinion; in the religious influence on the collection and consideration of evidence, through the prospect of future rewards and punishments; and in the substitution of extra-experimental religious belief for the hard work of weighing evidence and coming to a considered judgment.

Judgment mattered for utility, as I argued in the second section, because it was a necessary condition for the reformation of laws and institutions; without the free censure of established institutions, it would be difficult, if not impossible, to recognise abuses and improve institutions, and so increase general utility. Judgment also mattered in another way – for the success of representative democracy, as the only system of government likely to lead to utilitarian outcomes. In the *Plan of Parliamentary Reform*, Bentham argued that the cause of the present political evils was the dominance of the ‘particular interests’ of the monarch and aristocrats, at the expense of the ‘universal interest’, or the interest of the people.³¹⁷ It was not unexpected that the ruling classes

³¹⁷ *Plan of Parliamentary Reform*, xxxvi. ‘And here we have one *partial*, one *separate*, one *sinister* interest, the *monarchical* – the interest of the ruling *one* – with which the *universal*, the *democratical* interest has to antagonize, and to which that all-comprehensive interest has all along been, – and, unless the only possible remedy – even parliamentary reform, and that a radical one, should be applied, – is destined to be for ever made a sacrifice’ (*Plan of Parliamentary Reform*, xviii).

would govern in their own interest.³¹⁸ But where their interest was opposed to the universal interest, such a system of government would result not in the ‘greatest happiness of the greatest number’, the utilitarian standard and only proper end of government, but in ‘the greatest happiness of the ruling few, at the expense of the subject many’.³¹⁹ What was needed was a system of government in which the interests of the ruling few and the subject many were aligned – that is, representative democracy.³²⁰

As noted earlier, Bentham drew a distinction between a self-formed and a derivative judgment in the *Plan of Parliamentary Reform*. This distinction was crucial for the success of democratic government; ‘upon it,’ he stressed, ‘depends not only the preeminence of democratic above every other form of government, but, upon a scale of any considerable extent, especially if for any considerable length of time, the possibility of its existence.’³²¹ Since the benefits of representative democracy depended on the

³¹⁸ On the alignment of interests, see Bentham’s essay on the ‘Identification of Interests’: the greatest happiness of the greatest number required the identification of interests between parliamentary representatives and government officials on the one hand (‘possessors of the Supreme Constitutive power’) and the whole community on the other (Jeremy Bentham, ‘Identification of Interests’ in *First Principles Preparatory to Constitutional Code*, 125–27). See also Schofield, *Utility and Democracy* on the role of sinister interest in Bentham’s political thought.

³¹⁹ The phrases were taken from the preface written for the 1823 edition of the ‘Fragment on Government’, 502 and ‘Economy as Applied to Office’, 61 respectively.

³²⁰ Bentham called for ‘democratic ascendancy’ in the *Plan of Parliamentary Reform*, to reassure readers that radical parliamentary reform did not require the elimination of the monarchy or peerage (*Plan of Parliamentary Reform*, xxiii–xxiv, xxxvi–lvi). See ‘Supreme Operative’, 150–223 for Bentham’s argument for the superiority of representative democracy over monarchy as a system of government. For comment on the relationship between utility and representative democracy in Bentham’s political thought, see Frederick Rosen, *Jeremy Bentham and Representative Democracy* (Oxford: Clarendon Press, 1983); Harrison, *Bentham*; Schofield, *Utility and Democracy*; James E. Crimmins, ‘Contending Interpretations of Bentham’s Utilitarianism’, *Canadian Journal of Political Science* 29, no. 4 (December 1996): 751–77; and Frederick Rosen, ‘Jeremy Bentham’s Radicalism’.

³²¹ *Book of Fallacies*, 121.

alignment of the interests of the ruling few and the subject many, then the wider the franchise, the more likely it was that voters would elect candidates who shared and would advocate for their universal interest – so long as voters could be trusted to vote sensibly on the basis of their self-formed or derivative judgments.³²²

The soundness of derivative judgment depended on the source of authority from which the judgment was derived. As noted earlier, Bentham thought the most trustworthy source of authority was intellectual (or scientific or professional) authority, followed by authority from power, wealth and general reputation. Religion was not a trustworthy source of authority. This was in part because the interest of churchmen as a class was opposed to the universal interest – like aristocrats as a class, churchmen were interested in money, power and factitious dignity (the good things of this wicked world), and sought to obtain them at the expense of the interest of their followers.³²³ It was also in part because the religious premium for faith corrupted the collection and consideration of evidence in forming a judgment, and brought judgment into contempt altogether.

In the case of elections, Bentham thought that voters would most probably derive their judgment from public opinion.³²⁴ Public opinion could be an effective aid to

³²² The extension of the franchise was also for purposes of equity: ‘If, in the instance of any *one* individual of the whole body of the people, it *be right* that the faculty of contributing to the choice of a representative – to the choice of a person, by whom, in the Representative Assembly, his interest shall be advocated, be possessed and exercised, – how can it be otherwise than right, in the instance of any one *other* such person?...If, in the instance of any one individual, it *be right* than he should possess a *share*, of a certain degree of *magnitude*, in the choice of a person, to form one in the aggregate body of the representatives of the people, – how can it be right that, in the instance of any other individual, the share should be either *less* or *greater*?’ (*Plan of Parliamentary Reform*, lix; see also the reasons for the virtual universality of suffrage on lxxx–lxxxii).

³²³ *Plan of Parliamentary Reform*, xvii–xx; *Book of Fallacies*, 146; *Church-of-Englandism passim*, but see especially Appendix 4.

³²⁴ *Plan of Parliamentary Reform*, xliv.

good government, but only if it tracked utility.³²⁵ The influence of religion here was also pernicious: not only did it corrupt the individual faculty of judgment, it could also corrupt public opinion – or public judgment, as it were – by attaching popular approval to actions which did not actually increase general happiness (the persecution of so-called witches, for example, or trial by ordeal), and attaching popular disapproval to actions which did not decrease general happiness (sodomy, for example).³²⁶ Religious belief was opposed to the principle of utility, as a standard for government policy or for public morality. As it was put in the *AINR*,

The science of morality having been thus degraded into a mere catalogue of the reigning sentiments, without any trial or warrant, not only do the prejudices of to-day meet with adoption and licence, but a sanctuary is also provided for those of to-morrow. Morality cannot, in this state, either instruct or amend mankind, nor is it capable of progress or improvement, because the standard, by which alone its advance can be measured, has been cast away.³²⁷

Recent scholarship on Bentham's writings on religion has related them to his political thought, mostly through the sinister influence of will on will: in the sinister influence of the episcopacy over the wills of their followers, for example, or the sinister

³²⁵ In 'Securities Against Misrule', Bentham argued that 'publicity', as employed by the Public Opinion Tribunal, was the sole remedy against mischiefs created by the suppression of political speech ('Securities Against Misrule', 27–28). See also Michael Quinn, 'Popular Prejudices, Real Pains: What Is the Legislator to Do When the People Err in Assigning Mischief?' in *Bentham's Theory of Law and Public Opinion*, ed. Xiaobo Zhai and Michael Quinn (Cambridge: Cambridge University Press, 2014), 63–89. On public opinion and publicity, see Fred Cutler, 'Jeremy Bentham and the Public Opinion Tribunal', *The Public Opinion Quarterly* 63, no. 3 (Autumn 1999): 321–36 and Jonathan Bruno, 'Vigilance and Confidence: Jeremy Bentham, Publicity, and the Dialectic of Political Trust and Distrust', *American Political Science Review* 111, no. 2 (May 2017): 295–307.

³²⁶ *AINR*, 84–92. On the production of 'spurious morality' through the creation of factitious antipathies (in this case, against sexual irregularities), see 'Sextus', 114–15. On sanctions, see *IPML*, ch. 3 and 'Deontology', 174–77.

³²⁷ *AINR*, 88–89.

interest of churchmen more generally as opposed to the universal interest of the people.³²⁸ In his seminal book on Bentham's writings on religion, James Crimmins related them on the one hand to Bentham's metaphysical, epistemological and psychological principles, and on the other to his vision of a secular society.³²⁹ In response to Crimmins's book, Philip Schofield has argued that Bentham's religious thought was best read as *part* of his political thought (and not, for example, conceptually prior to it); 'in the same way that sinecure offices, titles of honour, wars and colonies are all impediments to good government, so was religious belief and the institutions to which it gave rise.'³³⁰

The point of this essay is that religious belief and institutions were not impediments to good government in 'the same way', exactly. The writings on religion draw our attention to the exercise of power not through compulsion or the force of authority, but through the corruption of judgment – not through the influence of will on will, in other words, but through the influence of understanding on understanding. Bentham's religious thought is best read as part of his political thought – not only as an application of his political principles to religious institutions (analogous to their application to parliament or judiciaries or workhouses, for example), but as the best way to study this particular aspect of the exercise of power. Or, to answer the *Quarterly Review*, it was perhaps no bad use of the decline of life, to spend it in the criticism of the doctrines of religion and its most holy rites.

³²⁸ Crimmins, *Secular Utilitarianism*, 175–76; Schofield, *Utility and Democracy*, ch. 7.

³²⁹ Crimmins, *Secular Utilitarianism*, 1.

³³⁰ Schofield, 'Political and Religious Radicalism', 275.

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