

Thoughts on a Historical Curiosity: Jeremy Bentham and *Panopticon*

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Most of us are sufficiently familiar with the legacy of Jeremy Bentham to associate him with the philosophical principles of utilitarianism. According to the utilitarians, the overarching test for any social policy, moral principle or legislative enactment would be, roughly speaking whether it would produce the greatest good for the greatest number of people—or, to put it in the terms more current among the utilitarians themselves, whether it would produce the greatest amount of pleasure and the least amount of pain for the greatest number of people.

Though we tend to associate Bentham with the nineteenth century, he was, in fact, born in 1748, and his intellectual roots were firmly in the scientific and rationalist currents of the eighteenth century. Indeed, one of the hallmarks of the utilitarian reformers was their attempt to apply scientific principles to their analysis of social phenomena, and to the creation of solutions for social problems.

Consistent with this rationalist outlook, Bentham was not a fan of the wayward and erratic manners of the common law, and placed his faith in legislation as a means of procuring a society constructed according to objective and rational criteria. Bentham's philosophical project was nothing less than the complete reordering of society, and if he became, even in his own lifetime, something of a figure of fun because of his reformist preoccupations, it must be remembered how ambitious his ideas were and how prolifically he wrote about them.

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Among the many things in which Bentham took an interest was penal law and penal reform. His Panopticon project, which he worked on for twenty years, was perhaps the initiative into which he put the most practical effort. It was also the one which left him most disappointed. In his old age, he wrote:

“I do not like [...] to look among Panopticon papers. It is like opening a drawer where devils are locked up—it is breaking into a haunted house.¹”

Bentham was only one of those who took up the cause of prison reform in the late eighteenth and early nineteenth centuries. John Howard was the most famous, and ultimately, in many ways, the most influential of these, but others like William Wilberforce, the famous abolitionist, and Sir Samuel Romilly also took an interest in this issue.

When we look back now at the work of these reformers, we view them through the prism of the nineteenth and twentieth experience of the legacy they created, or, to put it more fairly, what other people made of what they created. It is perhaps instructive to consider briefly what they were reacting against in their reform program.

The prison played a considerably different role in the eighteenth century than it came to play later on. It largely served the need to deal with prisoners sentenced to relatively short terms of incarceration, imprisoned for debt or detained awaiting trial. The idea of the prison as a long-term means of sequestering criminals from society was really not part of this system.

On the other hand, there were, in 1750, over 150 offences for which the penalty was death. By the beginning of the nineteenth century, this number had risen to more than 200.² Many of these offences were property crimes, and crimes like forgery and fraud. Transportation to the

¹ Semple, Janet, *Bentham's Prison* (Oxford: Clarendon Press, 1993), at 16.

² There is some question about how consistently capital punishment was used in relation to this list of offences. The work of E.P. Thompson and others suggests that the draconian regime of sanctions was accompanied by a flexibility in applying it. See E.P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (New York: Pantheon Books, 1975); Douglas Hay (ed.), *Albion's Fatal Tree* (New York: Pantheon Books, 1975).

American colonies, and, after the American Revolution, to Australia, was another means of dealing with serious crimes. In the late eighteenth century, some serious crimes were punished by lengthy incarceration in prison hulks, disused naval vessels moored off the English coast.

Prisons were administered by contractors, whose return depended on the gains they could make by charging the inmates for food, drink and lodging, and on the fees they commonly assessed for such things as removing the fetters when a prisoner's sentence had elapsed. There were few restrictions on public access to the prisons, and criminal fraternities continued to carry out their operations virtually unaffected by the incarceration of one or more of their members. In the case of debtors, of course, they could continue to live with their families inside prison, and often carried out their trades in order to discharge their debts.

If this sounds like a fairly minor modification of the lives people were living before they were convicted and imprisoned, it should be remembered that the contract basis of administration meant that large numbers of prisoners without personal wealth or family resources to draw on were vulnerable to being denied adequate food and accommodation. The profit orientation of prison keepers also removed any incentive to maintain high standards of repair or hygiene in prisons. With some exceptions, they were dark, cold and airless. The prisoners were exposed to disease - in one famous case, an entire courtroom of judge, jury, lawyers and spectators was borne off by typhus transmitted by two prisoners from Newgate.³ Prisoners were also exposed to violence from other inmates, and to constant noise and lack of privacy—unless they could afford to pay for private quarters.

The starting point for Bentham lay in the idea that all human beings could be rehabilitated, could be transformed into productive members of society, both by the proper application of the utilitarian pain and pleasure principles, and by gaining an understanding of how to use those principles to guide their lives. In this respect, Bentham repudiated capital punishment, partly because he did not favour "irremittable" punishments, but mainly because it constituted a waste of potentially productive human capital. To him all forms of social dysfunction,

³ Ignatieff, Michael, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978) at 44.

including poverty, idleness and mental illness, as well as crime, could be addressed by essentially the same scientific remedial approach.

Central to this approach was the idea of what the reformers referred to as the “total institution,” a closed environment in which those who needed to be turned into productive citizens could be provided with every opportunity to achieve this transformation.

In 1791, Bentham outlined the first version of his Panopticon project, and he modified and elaborated this conception in extensive writings over the succeeding two decades. The writings included many notes and memoranda for his own use, as well as formal proposals and draft legislation.

Panopticon was in part an architectural conception, envisioned as addressing many of the shortcomings of the institutions it would replace. The basic design was one devised by Jeremy Bentham’s brother Samuel, and engineer and inventor. The prison would be constructed of cast iron and glass, along the lines of Crystal Palace or a conservatory. It would be bright, well-heated, safe and sanitary.

The transparency of this structure would serve other, more significant purposes, however. At the core of Panopticon, both literally and figuratively, would be the warder, who would be able to see into all corners of the institution at all times, whether by daylight or by lamplight. The open cells in which prisoners would be housed would be arrayed around a central hub from which the warder and his staff could maintain vigilance to ensure that each inmate was occupied appropriately.

It was anticipated that the warder would administer Panopticon on a contract basis. Indeed, it was clearly Bentham’s hope that, were the project to be accepted, he would be given an opportunity to oversee its evolution by assuming this role. In order to make Panopticon a self-supporting concern, it was expected that prisoners would be engaged in productive and profitable work. The performance of such work was expected to help inmates to begin to see themselves as useful members of society, as well as to pay for the costs of the prison.

Bentham acknowledged that the profit opportunities for prison keepers in the old prisons had led to many of the evils he was trying to address. He argued that it was possible, nonetheless, to operate prisons on a commercial footing without exposing prisoners to abuse. One check he suggested was a system of penalties to be levied by the government for

prisoners who died or became ill in prison outside the scope of the numbers which would be anticipated in any setting.

The most important way of ensuring that the warder would not profit unduly at the expense of prisoners involved transparency in a further sense. Though, unlike the old prisons, the prisoners in Panopticon would not have free interaction with their families and associates, the prison itself would be open to public or official inspection at all times. Bentham planned that the central core of the prison would have a gallery which would attract curious members of the public, conscientious politicians, journalists and academics, as well as those charged officially with monitoring its operation.

A regime of useful work, silence, decent if plain food and an opportunity to contemplate the future would, in Bentham's scheme, turn recalcitrant criminals into citizens who could contribute something of social and economic value to society. Unlike John Howard, Bentham did not see personal religious salvation as a necessary element of this transformation, although he saw religion as having a useful civilizing influence.

Bentham had influential friends, and there was always a chance, over the twenty years Panopticon was under discussion, that the project might actually proceed. Bentham himself was, however, somewhat naive about politics, and about the relative attention which could be paid to the issue of prison reform in a country which was, after all, at war during this period. He continually underestimated the impact which competition, enmity and indifference would have on the success of his proposals. His obsession with details gave him a reputation for eccentricity; he described, in detail, what kind of decorative motif should be used for each kind of offender, and some of these were, to say the least, obscure—for absconding fathers, for examples, he suggested a figure of an ostrich with its head in the sand.

He worked and reworked the Panopticon project over two decades. He decided, for example, that it was perhaps unreasonable to expect the warder and his family to live in the central core of the prison under conditions in which they would be exposed to as much scrutiny as the prisoners themselves, and he redesigned the warder's quarters with this in mind.

It is not surprising that, after putting in huge amounts of effort, and having his hopes raised a number of times, Bentham was bitterly disappointed at the ultimate rejection of Panopticon. There were a number of factors which led to its failure, one of which was the lingering concern with the “farming” or contract model of administration. The decision about Panopticon was in part a decision to place prisons firmly under public control.

Another important element seems to have been Bentham’s failure to satisfy the politicians that rehabilitation of all prisoners, and, by implication, their ultimate release, could serve the interests of the public as adequately as capital punishment, transportation or permanent imprisonment. In refining the Panopticon proposal, Bentham devoted a great deal of effort to outlining a system of what might be called “aftercare” for released prisoners, consisting of a scaled series of institutional working environments where they would continue to be under decreasing, but significant, supervision. In spite of this, those who might have given life to Panopticon were not persuaded that public safety could be sufficiently protected by this means.

The historical “what ifs” are always tantalizing, and it is difficult to know what would have been the result if Panopticon had become the template for later evolution of prisons. Nearly two centuries later we know that at that particular fork in the road, the pattern was chosen which was more fortress than greenhouse, where public scrutiny and communication with the outside world for those within prison walls became severely restricted, and where labour became for a considerable time a penal sanction in itself rather than a component of a scheme of preparation for rejoining the ranks of productive citizens.

Panopticon became an unfulfilled dream for Jeremy Bentham, and a dead end in terms of the course of prison reform. It does, however, serve to remind us of some important things in the context of the issues you have been discussing here, and in the context of the theme of reexamining punishment as we reach the end of another century.

Much of the debate which surrounded the Panopticon proposal and other initiatives for prison reform sounds quite contemporary. Leaving aside the familiar sounding discussion of whether prisons are best run as commercial enterprises, many of the matters which troubled politicians and reforming activists as the nineteenth century began, though they emerged in a social context which might require some explaining to us,

raised questions which are still of concern as we consider the nature and purpose of punishment

The most important of these questions is whether, as we formulate systems of punishment, we mean to signify that those who commit crimes are still “us” or whether they have become “the other.” When we devise and calibrate our range of sanctions, do we wish to hold out the hope of restoration of the offender to the bosom of society, or do we rather wish to indicate that the commission of a crime has taken a person outside social boundaries to a place of social limbo?

Bentham himself was, of course, thoroughly optimistic about the possibility of rehabilitation and the restoration of criminals to a productive role in society. To him, a prison was just one of a range of sophisticated social institutions in which citizens who were for a variety of reasons not living up to their social potential could have their deficiencies ironed out—his critics, indeed, might have said that he wished to treat everyone as a prisoner to a greater or lesser degree.

Bentham made it clear where he thought the offender belonged on the us/them scale:

“It ought not to be forgotten, although it has been too frequently forgotten, that the delinquent is a member of the community, as well as any other individual—as well as the party injured himself; and that there is just as much reason for consulting his interest as that of any other [...]. It may be right that the interest of the delinquent should in part be sacrificed to that of the rest of the community; but it can never be right that it be totally disregarded.⁴”

In our dealings with those who commit crimes, we seem somewhat more confused about the rationale for the punishments we impose. We have difficulty deciding whether those we punish are ourselves gone wrong, and in need of an opportunity to discover how to return to our midst, or whether they have become strangers to our society and banished from it.

⁴ Quoted in Semple, *supra*, note 1, at 26.

Two hundred years on, we seem to be caught in the same quandary which faced those who reacted to Panopticon. We cannot decide whether to acknowledge that criminals remain members of our communities and to take responsibility for their ultimate recovery, or whether to regard the commission of a crime as an event which takes the criminal beyond the boundaries of social membership. We cannot decide whether the price of crime should be social reconciliation or banishment, retribution or an opportunity to make amends.

It may be that the policies of our society on punishment will always reflect a mixture of objectives. Most public policy must accommodate a range of interests which are not easily reconciled. On the other hand, to be effective, measures taken in the name of public policy should surely identify and acknowledge those interests, and try to accord them some priority status in the scheme of things.

Though we may not be so sanguine as Bentham was about the power of “science” to effect human transformation, we should surely be able to articulate some convincing rationale for our response to issues of crime and punishment. The historical evolution in the characterization and punishment of crime suggests that we will still be wrestling with these issues two hundred years from now. Yet, if we are to regard Bentham’s Panopticon as the folly of an eccentric philosopher, it should, perhaps make us somewhat uneasy that we have nothing which is as responsive to a coherent set of principles, and nothing which is as fundamentally optimistic about human nature, to put in its place.

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