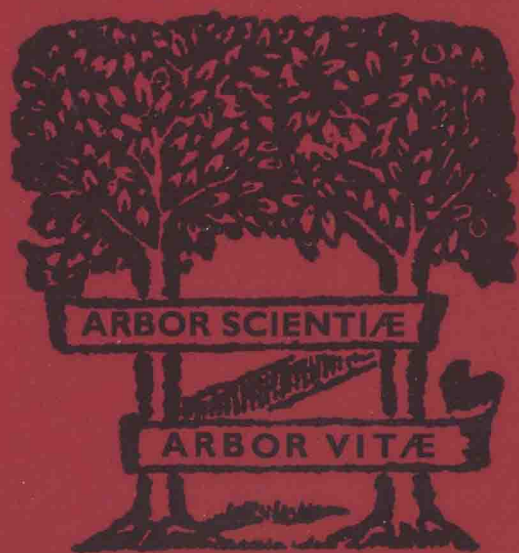


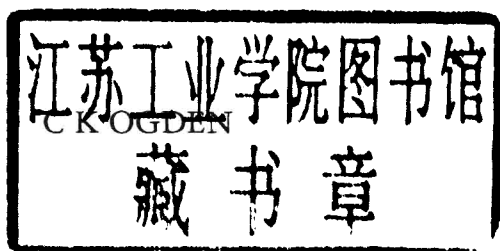
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BENTHAM'S THEORY OF FICTIONS



Founded by C. K. Ogden

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Bentham's Theory of Fictions

INTRODUCTION

By C. K. OGDEN

I.—ORIGINS AND INFLUENCES

IF the History of Philosophy ever comes to be rewritten so that philosophers are assessed rather for their ability to recognize the linguistic basis of 'philosophy' than for their attempts at an imaginative reformulation or a static analysis of the legacies of various types of Word-magic, many surprising revaluations will be necessary.

Bacon, Hobbes, Locke, Berkeley, Hume . . . Mill, Bradley, Russell—such is the tradition, with appropriate variants for the three final links, which is generally supposed to constitute the English contribution to the highest or the deepest Thought of humanity. To his five great predecessors Bentham acknowledges his debt. It is the purpose of the present volume to give some indication of the debt which future generations may acknowledge to Jeremy Bentham, when he has taken his place as sixth in the line of the great tradition—and in some respects its most original representative.

From D'Alembert as well as from Horne Tooke Bentham also derived suggestions for his remarkable anticipations of the modern approach to the symbolic tangle by which physics and psychology are alike confronted; but quite apart from all such influences, there are certain features of his treatment of Fictions which suggest that he would have arrived quite independently at the analysis which posterity has hitherto so completely neglected.

Ghosts, no less than his horror of Legal Fictions, can be

shown to have played their part in determining the intensity and pertinacity of his researches. For over sixty years he struggled with the primary technique of linguistic psychology; for nearly eighty years he was acutely conscious of the problem of fictional entities.¹

As an infant, instead of the travel or history which fascinated him hardly less than ordinary tales of imagination, he was set to read the Fables of Phaedrus, but their arbitrarily fictional character annoyed him. "Fables, inasmuch as they are stories in which inferior animals are represented as talking together like men and women, never had any charm for me." This was at the age when English children of the last two centuries were afflicted by the collects, and Bentham *père*, though sane enough in some respects, did not refrain from subjecting his offspring to such linguistic tribulations.

Equally potent in impressing on a sensitive mind the power of Word-magic was the influence of his grandmother, who would nightly insist on giving her blessing before he climbed the stairs to her bed in the old Barking house. Seventy years later, the memory was still fresh:

"Previous to the ceremony, I underwent a catechetical course of examination, of which one of the questions was—'Who were the children that were saved in the fiery furnace?' Answer—'Shadrach, Meshach and Abednego'; but as the examination frequently got no farther, the word *Abednego* got associated in my mind with very agreeable ideas, and it ran through my ears, like Shadrach, Meshach, and *To-bed-we-go*, in a sort of pleasant confusion which is not yet removed."²

This same old lady also assisted him to consolidate his experience of the mystery of Fictions; for on her walls hung a 'sampler' depicting Adam, Eve, and the forbidden fruit.

¹ Cf. *The Theory of Legislation*, uniform with the present volume, where this aspect of Bentham's work is related to his achievement in the general field of Jurisprudence (Introduction, pp. xi ff.).

² *Works*, Vol. X, p. 18. Later, when too old to be his grandmother's bedfellow, he "became the sole occupant of a large unfurnished room—a fit place for the visitation of nocturnal visitors; and then and there it was that the devil and his imp appeared to me" (*Ibid.*, p. 20).

"One thing alone puzzled me ; it was the forbidden fruit. The size was enormous. It was larger than that species of the genus *Orangeum* which goes by the name of the forbidden fruit in some of our West India settlements. Its size was not less than that of the outer shell of a cocoa nut. All the rest of the objects were, as usual, in *plano* ; this was in *alto*, indeed in *altissimo relieve*. What to make of it, at a time when my mind was unable to distinguish fictions from realities, I knew not."

SPECTRES AND BOGEYS

His grandmother's mother was a "matron of high respectability and corresponding piety ; well-informed and strong-minded. She was distinguished, however ; for, while other matrons of her age and quality had seen many a ghost, she had seen but *one*". And, added Bentham in his old age, "this subject of ghosts has been among the torments of my life. Even now, when sixty or seventy years have passed over my head since my boyhood received the impression which my grandmother gave it, though my judgment is wholly free, my imagination is not wholly so". His infirmity was not unknown to the servants.

"It was a permanent source of amusement to ply me with horrible phantoms in all imaginable shapes. Under the Pagan dispensation, every object a man could set his eyes on had been the seat of some pleasant adventure. At Barking, in the almost solitude of which so large a portion of my life was passed, every spot that could be made by any means to answer the purpose was the abode of some spectre or group of spectres. The establishment contained two houses of office : one about ten yards from the kitchen, for the use of 'the lower orders', another at the farther end of the little garden, for the use of 'the higher', who thus had three or four times the space to travel, on these indispensable occasions, more than that which sufficed for the servile grade : but these shrines of necessary pilgrimage were, by the cruel genius of my tormentors, richly stocked with phantasms. One had for its autocrat no less a personage than 'Tom Dark' ; the other was the dwelling-place of 'Rawhead and Bloody Bones'. I suffered dreadfully in consequence of my fears.

I kept away for weeks from the spots I have mentioned ; and, when suffering was intolerable, I fled to the fields."

So dexterous was the invention of those who worked upon his apprehensions " that they managed to transform a real into a fictitious being. His name was *Palethorp* ; and Palethorp, in my vocabulary, was synonymous with hobgoblin ". The origin of these horrors was this :—

" My father's house was a short half-mile distant from the principal part of the town, from that part where was situated the mansion of the lord of the manor, Sir Crisp Gascoigne. One morning, the coachman and the footman took a conjunct walk to a public house kept by a man of the name (Palethorp) : they took me with them ; it was before I was breeched. They called for a pot of beer ; took each of them a sip, and handed the pot to me. On their requisition, I took another ; and when about to depart, the amount was called for. The two servants paid their quota, and I was called on for mine. *Nemo dat quod non habet*—this maxim, to my no small vexation, I was compelled to exemplify. Mr. Palethorp, the landlord, had a visage harsh and ill-favoured, and he insisted on my discharging my debt. At this very early age, without having put in for my share of the gifts of fortune, I found myself in the state of an insolvent debtor. The demand harassed me so mercilessly that I could hold out no longer : the door being open, I took to my heels ; and, as the way was too plain to be missed, I ran home as fast as they could carry me. The scene of the terrors of Mr. Palethorp's name and visitation, in pursuit of me, was the country-house at Barking : but neither was the town-house free from them ; for, in those terrors, the servants possessed an instrument by which it was in their power, at any time, to get rid of my presence. Level with the kitchen—level with the landing-place in which the staircase took its commencement—were the usual offices. When my company became troublesome, a sure and continually repeated means of exonerating themselves from it, was for the footman to repair to the adjoining subterraneous apartments, invest his shoulders with some strange covering, and, concealing his countenance, stalk in, with a hollow, menacing, and inarticulate tone. Lest that should not be sufficient, the servants had, stuck by the fireplace, the portraiture of a hobgoblin, to which they had given the name of Palethorp. For some years I was in the condition of poor Dr. Priestley,

on whose bodily frame another name, too awful to be mentioned, used to produce a sensation more than mental."

THE DEVIL AND HIS IMP

Another instance of the influence of fictional horror occurred when the child was about nine :

"I went to see a puppet-show : there were Punch and Joan—the devil, whom I had seen before ; but I saw, for the first time, the devil's imp. The devil was black, as he should be ; but the devil's imp was white, and I was much more alarmed at his presence than at that of his principal. I was haunted by him. I went to bed ; I wanted to sleep. The devil appeared to me in a dream ; the imp in his company. I had—which is not uncommon in dreams, at least with me—a sort of consciousness that it was a dream ; with a hope that, with a little exertion, I might spring out of it : I fancied that I did so. Imagine my horror, when I still perceived devil and imp standing before me. It was out of the rain into the river. I made another desperate effort. I tried to be doubly awake ; I succeeded. I was in a transport of delight when the illusion altogether vanished : but it was only a temporary relief ; for the devil and the imp dwelt in my waking thoughts for many a year afterwards."

A little later Literature played its part. His French tutor, La Combe, induced his father to give him the *Lettres Juivres*, which filled his mind with vague terrors : "I could not understand the book, but I was frightened by the accounts of the vampires in it."¹ The story of the Goat of the Cave in *Robinson Crusoe* also disturbed him : "It was a moot point with me whether it was a goat or the devil. I was indeed comforted to find it was a goat." *The Pilgrim's Progress* frightened him still more : "I could not read it entirely through. At Westminster School, we used to go to a particular room to wash our feet : there I first saw an imperfect copy of *The Pilgrim's Progress* ; the devil was everywhere in it, and in me too. I was always afraid of the devil : I had seen him sowing tares, in a picture at Boghurst ; how should

¹ *Works*, Vol. X, pp. 11 and 21.

I know it was not a copy from the life ? " And he had actually seen the devil, in the puppet-show ; " I dreamt about him frequently : he had pinched me several times, and waked me. . . . How much less unhappy I should have been, could I have acknowledged my superstitious fears ! but I was so ashamed. Now that I know the distinction between the imagination and the judgment I can own how these things plagued me, without any impeachment of my intellect."

OXFORD

On the opposite page appears a portrait¹ of Bentham at Oxford, shortly after his arrival there at the age of twelve and a half, in 1760. " Paternal authority ", he wrote at the age of eighty, " compelled me to hammer out and send in, as a candidate for admission into the customary academical collection of half lamentational, half congratulatory, rhythmical commonplaces, the subject of which was the loss of one thing and the acquisition of another, a copy in Sapphics (*sic*) the first stanza of which

¹ First in the possession of the Earl of Shelburne, then of Sir John Bowring, and now in the National Portrait Gallery. The artist was a certain Mr. Fry, and the stanza in question reads :—

" Eheu Georgi ! jamne Britannica
Gestare taedet sceptrum pia manu
Linguisque perculsum Senatum
Et populum Patre destitutum ? "

Dr. Johnson made some criticisms of these verses but pronounced them " a very pretty performance of a young man ". Bentham was not impressed by Johnson's emendations and gave them to a lady who wanted Johnson's signature. He later (1776) " belonged to a dinner club, of which Johnson was the despot " ; and in a note written in 1785 he refers to him as " the pompous vamped of commonplace morality—of phrases often trite without being true ".

A further sidelight on the picture is a note in the diary of Bentham *père*, dated June 27-8, 1760 : " Paid for a commoner's gown for my son, £1, 12s. 6d. Paid for a cap and tassel, 7s." We are also told that a grievous annoyance to Bentham, at Oxford, was the formal dressing of the hair. " Mine ", he said, " was turned up in the shape of a kidney ; a quince or a club was against the statutes ; a kidney was in accordance with the statutes. I had a fellow-student whose passion it was to dress hair, and he used to employ a portion of his mornings in shaping my kidney properly." (*Works*, Vol. VIII, pp. 36, 39, 41, 51, 142 ; Vol. I, pp. 241-2.)



BENTHAM AT OXFORD, *ætat* 12½

(By permission of the National Portrait Gallery)

figures in a whole length portrait of me, in my academical dress."

At Oxford he found a physical and intellectual environment that distressed him considerably; but in due course he succeeded in moving his rooms in Queen's College from "the two-pair-of stairs' floor, on the farther corner of the inner quadrangle, on the right hand as you enter into it from the outer door", to the ground-floor, "on the right hand of the staircase, next on the left hand, as you go from the outer quadrangle to the staircase that leads to the former ones"—partly as a result of these childhood experiences.¹

The first chamber "was a very gloomy one. It looked into the churchyard, and was covered with lugubrious hangings. Bentham's fear of ghosts, and the visitations of spiritual beings was strong upon him; and the darkness of the chamber and its neighbourhood added to his alarms".²

On this grim foundation was to be built a theory of symbols applicable not only to the sins of the law and the confusions of philosophy but even to the respect and awe with which otherwise worthless individuals can be invested, *qua* dignitaries. In the *Constitutional Code* this attribute is described as "altogether curious—deplorable, considering how mischievous it is". First, of course, there is the obvious fact of association, the potency of the symbol. "The dignity has in every instance for its immediate efficient cause, or rather instrument, some symbol perceptible to sense—to the sense of hearing at the least; an appellation—most commonly in addition to it some symbol perceptible to the sense of sight, an embroidered imitation of a star, a ribbon of a particular

¹ *Works*, Vol. X, p. 39.

² Throughout his life Bentham retained a vivid impression of his own early experiences at the hands of uneducated domestics, and in his educational writings he constantly urges that children should as far as possible be rescued from their ministrations. On this occasion he comments (*Ibid.*, p. 64): "My fear of ghosts had been implanted in my mind from earliest infancy by the too customary cultivation of that most noxious weed, domestic servants." And, as is well known, J. S. Mill was among the first to profit by his enlightened policies.

shape and colour, a medal. Of this power of symbols or signs over opinions the cause lies in the association of ideas—in the principle of association between idea and idea." But there is more to it than mere association—and here came the ghosts :

"The curious circumstance is the irresistible force with which, in this instance, the cause operates in the production of the effect. Here are a set of men whom, taken in the aggregate, I cannot, upon reflection, look upon as fit objects of a greater portion of esteem and respect, nor even of so great a portion as an equal number of men taken at random. At the same time, spite of myself, by the idea of any one possessed of any of these symbols, a greater degree of those social affections is excited than is excited by the idea of any one not possessed of any one of those symbols. Whence this inconsistency? By a continually renewed train of association, commencing at the earliest dawn of reason, this opinion of the constant connexion between the possession of the external symbol in question and the mental quality in question, has been created and confirmed : for the revival of the erroneous opinion, a single instant suffices at all times : for the expulsion of it, nothing less than a train of reflection can suffice.

To this case I feel a very conformable parallel may be seen in the case of ghosts and other fabulous maleficent beings, which the absence of light presents to my mind's eye. In no man's judgment can a stronger persuasion of the non-existence of these sources of terror have place than in mine ; yet no sooner do I lay myself down to sleep in a dark room than, if no other person is in the room, and my eyes keep open, these instruments of terror obtrude themselves ; and, to free myself of the annoyance, I feel myself under the necessity of substituting to those more or less pleasing ideas with which my mind would otherwise have been occupied, those reflections which are necessary to keep in my view the judgment by which the non-existence of these creatures of the imagination has so often been pronounced. The cause of these illusions were the stories told by servants in my childhood.

The tale of the apparition of ghosts and vampires is not more fabulous than is in general the tale of worth, moral or intellectual, as applied to these creatures of a monarch who form the class of state dignitaries." ¹

¹ *Works*, Vol. IX, pp. 83-4.

LEGAL FICTIONS

At the age of sixteen, while Bentham was still at Oxford and attending Blackstone's lectures, a new and even more sinister symbolic product was forced on his attention; for in Blackstone's approach to jurisprudence he found at all points a direct antithesis to the orthologal clarity which his early horror of darkness made imperative. In the *Fragment on Government* he noted the tone of regret in which Blackstone refers to the historical development of the English language as a legal medium:—

“The case is this. A large portion of the body of the Law was, by the bigotry or artifice of Lawyers, locked up in an illegible character, and in a foreign tongue. The statute he mentions obliged them to give up their hieroglyphics, and to restore the native language to its rights.

This was doing much; but it was not doing everything. Fiction, tautology, technicality, circuitry, irregularity, inconsistency remain. But above all, the pestilential breath of Fiction poisons the sense of every instrument it comes near.”¹

Says Bentham's Editor, John Hill Burton, writing in 1828 to point the moral: “The ‘Fictions of Law’, of which the English practice is so full, were repeatedly and earnestly attacked by Bentham, both collectively and in detail. The example shown to the world, of falsehoods deliberately, and on a fixed system, told in the very workshops of justice, and by those who are employed to support truth and honesty, he looked upon as holding out a pernicious example to the public. Without any sarcastic or reprehensory qualification, a Fiction of Law may be defined in general as the saying something exists which does not exist, and acting as if it existed; or *vice versa*.”

Where the purpose of the Fiction is desirable, it should have been achieved directly, without falsehood or ambiguity, by the Legislature. But whether used to a good or a bad purpose, it is an assumption of arbitrary power.

¹ *Works*, Vol. I, p. 235.

"A fiction of law", says Bentham, "may be defined a wilful falsehood, having for its object the stealing legislative power, by and for hands which durst not, or could not, openly claim it; and, but for the delusion thus produced, could not exercise it."¹

It is true, continues Burton, that new Fictions are not now invented—at least on any considerable scale; and those formerly created have become a fixed part of the law, uniform in their operation. "It is still the case, however, that from the nominal repetition of the fraud under which they were originally perpetrated, they are a cumbrous and costly method of transacting judicial business. But they have a much worse influence than this. By the obscurity and complexity with which they surround operations which might be simple and open, they afford concealment to fraud and professional chicanery; they exclude the unprofessional man from the means of knowing what the lawyer is doing among the windings of the professional labyrinth, and they show him that the law countenances palpable falsehoods." And he quotes Bentham as follows:—

"When an action, for example, is brought against a man, how do you think they contrive to give him notice to defend himself? Sometimes he is told that he is in jail; sometimes that he is lurking up and down the country, in company with a vagabond of the name of Doe; though all the while he is sitting quietly by his own fireside: and this my Lord Chief Justice sets his hand to. At other

¹ "Thus", he continues by way of example, "by the system of pleading anterior to the late Uniformity Act, the defendant over whom the Court of King's Bench extended its jurisdiction, was said in the writ to have been in the custody of the Marshall of the King's Bench Prison for an offence, though no such circumstance had taken place. The court had originally no jurisdiction over any one who was not so in custody; the lie was told that the court might have an excuse for interfering; the court would not allow the lie to be contradicted, and it assumed jurisdiction accordingly. The origin of this class of fictions was of the most sordid character—the judges and other officers of court being paid by fees, a trade competition for jurisdiction took place; each court trying to offer better terms to litigants than the others, and adopting the fictions as a means of accomplishing this object. Of another class are the Fictions as to Common Bail, Fines and Recoveries, Docking, Entails, etc."

times, they write to a man who lives in Cumberland or Cornwall, and tell him that if he does not appear in Westminster Hall on a certain day he forfeits an hundred pounds. When he comes, so far from having anything to say to him, they won't hear him : for all they want him for, is to grease their fingers."

THE WAY OUT

It was to an analysis of Language that Bentham turned in the first instance for weapons against an evil that had its origin primarily in Word-magic. But he had great faith in the progress of Science as such, and above all of Physics. "In knowledge in general, and in knowledge belonging to the physical department in particular, will the vast mass of mischief, of which perverted religion is the source, find its preventive remedy. It is from physical science alone that a man is capable of deriving that mental strength and that well-grounded confidence which renders him proof against so many groundless terrors flowing from that prolific source, which, by enabling him to see how prone to error the mind is on this ground, and thence how free such error is from all moral blame, disposes him to that forbearance towards supposed error, which men are so ready to preach and so reluctant to practise."¹

Hence his dissatisfaction with D'Alembert whose treatment, in his Encyclopedical Map, of the Irregularities of Nature he regarded as presenting itself "in the character of a blotch, to which a sponge might apply a not incongruous cure". For Bacon there was some excuse :

"In the time of the English Philosopher, the mind was annoyed and oppressed by terrors which in the time of his French disciple had lost, though not the whole, the greater part of their force. In Bacon's time—in the early part of the seventeenth century—everything in nature that was, or was supposed to be, *extraordinary*, was *alarming* ; alarming, and in some shape or other, if not *productive*, *predictive* at least of human misery. In this place, as in other places—at this time, as at other times—*Ghosts* and *Witches* composed a constant part of the population, *Devils* an occasional

¹ *Works*, Vol. VIII, p. 13.

one. Patronized by Queen Elizabeth, Dee had not long ceased to hold converse with his disembodied intimates: Lilly was preparing for the connexion he succeeded in forming with *his*. To burn heretics, to hang witches, and to combat devils, were operations, for all which Bacon's Royal Patron held himself in equal and constant readiness." ¹

THE DEVELOPMENT OF THE THEORY

In 1775 Jeremy Bentham at the age of twenty-seven wrote:—

"What we are continually talking of, merely from our having been continually talking of it, we imagine we understand; so close a union has habit connected between words and things, that we take one for the other; when we have words in our ears we imagine we have ideas in our minds. When an unusual word presents itself, we challenge it; we examine it ourselves to see whether we have a clear idea to annex to it; but when a word that we are familiar with comes across us, we let it pass under favour of old acquaintance.

The long acquaintance we have had with it makes us take for granted we have searched it already; we deal by it, in consequence, as the custom-house officers in certain countries, who, having once set their seal upon a packet, so long as they see, or think they see that seal upon it, reasonably enough suppose themselves dispensed with from visiting it anew."

Fictions of Law, he added, "are mightily pretty things. Locke admires them; the author of the *Commentaries* adores them; most lawyers are, even yet, well pleased with them: with what reason let us see". ²

In 1780, the year before Kant published his *Critique of Pure Reason*, Bentham printed his preliminary treatise on Jurisprudence, but "found himself unexpectedly entangled in an unsuspected corner of the metaphysical maze", and decided to hold up publication till he had set his mind at rest.

What was this unsuspected corner? Nine years later, in 1789, he had sufficiently satisfied himself of the

¹ *Ibid.*, p. 78.

² *Works*, Vol. X, pp. 74-5.