Bentham’s 1789 Footnote to The Introduction to the Principles of Morals and Legisation [Revised Edition, 1789]

Peter J. Aschenbrenner, Purdue University
BENTHAM’S 1789 FOOTNOTE TO
THE INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION
[REVISED EDITION, 1789]
2 OCL 384
PETER ASCHENBRENNER
Department of History, Purdue University
paschenb@purdue.edu

ABSTRACT.
In the 1789 (revised edition) of Jeremy Bentham’s The Introduction to the Principles of Morals and Legislation, Bentham appended a footnote of 4,089 words. First, Our Constitutional Logic leaves various identifiable exceptions to one side. Second, Bentham’s sentences may be taken in natural or semi-regimented style. All laws may be divided into three types: commands, prohibitions and permissions. Leaving to one side Bentham’s wheelbarrow of neologisms, ‘Bentham’s Sieve’ receives its due attention.

KEY WORDS: command, prohibition, permission, Bentham’s Sieve.

A. INTRODUCTION. Bentham went to some pains to demonstrate that output of public officials could be sieved into commands, prohibitions and permissions. This sieving requires some screening: actors and bodies frequently declare status, which Bentham recognizes as a major exception to his division of shouldness, like all Gaul, in partes tres.

Bentham required, in addition, that these semi-regimented sentences possess a pedigree that connected them with sovereign will: “the expression of an act of the will exercised” as such. In short, official action is obliged to stamp shouldness upon the product offered by political society to the civil society whose needs it thereby serves.

This point was first made by Aristotle in Book III of The Politics. See Aristotle Divides ‘Laws Correctly Laid Down’ from ‘Laws [Which] Must Necessarily Be Just,’ 2 OCL 326.

Bentham’s sieve is a tremendous step forward, if only because it offers to divide rules, in their hundreds, into patterns easy to handle by the men and women of the polyciences who lost maths and statistics in the 1760s. See The Great Divorce I: Was Wm. Blackstone’s Investigation of ‘Thirty-Five’ Gradual Improvements (in the Final Chapter of the Commentaries) a Scientific Enterprise? 2 OCL 266:

To further elaborate the settecento’s motto Look! Graph! Math! one need only quote Price on Bayes: In Bayes’s solution of the problem of inverse probability he demonstrates “with distinctness and precision, in every case of any particular order or recurrency of events, what reason there is to think that such reccurrence
or order is derived from stable causes or regulations in nature, and not from any of the irregularities of chance.”

B. RESOURCES. For on-line access to Peter Aschenbrenner’s articles, tables and charts see purdue.academia.edu/PeterAschenbrenner or works.bepress.com/peter_aschenbrenner/

C. THE CONSEQUENCES OF SIEVING LAW. First, the reader is invited to sever and discard rhetoric from Command, Prohibition and Permission. Rhetoric confers no economic benefit on civil society. Its production is always unsolicited and never compensated. Second, the reader is invited to subsume conditions, contingencies and lesser predicated statements to the shouldness as found; that is, to each instance of shouldness found to be most pertinent. Third, the sieve invites the reader to create and check lists of shouldness (as sieved) for completeness, consistency and proximity. Finally, and not at least of Bentham’s gifts, the reader is invited to see patterns in shouldness, such as the rate of change, which is one of Blackstone’s major contributions to legal science. A terribly Newtonian contribution, to be sure, in concept and execution, but after Voltaire made us all Newtonians, there was a gold standard in play and it was fulfilled via the differential and integral calculus.

D. COMPLETE, CONSISTENT AND PROXIMATE. See OCL’s The Doctrine of Semantic Purity: Madison’s Project (and Its Difficulties) Introduced, 2 OCL 798. The subject there was the one-off effort to locate semantic values in a word, or more precisely, locate values via one’s encounter with a word.

However, Bentham (and Blackstone) are much more concerned with examining entire grids of rules and subrules. Doubters should do searches on ‘intent_’ or ‘meaning’ in Blackstone, see William Blackstone’s Commentaries on the Laws of England In Machine Searchable Text, 2 OCL 940. If Blackstone believed that the dead hand of the law-giver survived in the grapheme, rising zombie-like to torture present day rule-users, he surely kept this faith to himself. Bentham’s utility, of course, eschews such clap-trap; however the utility of a rule is to be determined, the inquiry belongs to the present.

Performance standards for constructing such grids is now mooted:

- Complete: the grid should account for all semantic values as to the subject word.
- Consistent: the contexts for each selected passage semantic should be exploited in like fashion.
- Proximate: the survey should target the correct level of semantic abstraction or concreteness.

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Generally, investigation/survey via Blackstone’s grid or Bentham’s sieve enables the casual or serious reader, whether general or specialist, to critique the assignment of values to the subject word, which also enables the reader to encounter divergent semantic values on her own. These three requirements for scientifically provable propositions – complete, consistent and proximate – may be traced, for purposes of this essay, to Richard Crakanthorp, *Logicae Libri Quinque* (London, 1622) [the predicate must apply to all cases of the subject, must be in harmony with itself, and must not extend beyond the limits of the nearest general class to which the subject can belong], appearing at Lib. III, C. I: the chapter is titled 310-320 “De Demonstratione.”


E. Bentham on Blackstone. 1,771 words into Bentham’s *A Fragment on Government; Being an Examination of what is delivered, On the Subject of Government in General In the Introduction to Sir William Blackstone’s Commentaries: by Jeremy Bentham With A Preface, In Which Is Given A Critique on The Work At Large* (London: 1776) the author raises his colours. “In the mean time that I may stand more fully justified, or excused at least, in an enterprize to most perhaps so extraordinary, and to many doubtless so unacceptable, it may be of use to endeavour to state with some degree of precision, the grounds of that war which, for the interests of true science, and of liberal improvement, I think myself bound to wage against this work.”

Bentham appears to put his trust in ‘science’: his 12 deployments in 48,437 words earn him a log score of -3.606 while Blackstone’s deployment of science, 41 times in 676,058 words garners the lower score (-4.21). The difference, .61, when fed into an anti-log calculator, assures the reader that Bentham is 10^0.61 or 4.07 times more likely to deploy ‘science’ than Blackstone. Blackstone is as likely to deploy ‘science’ as James Madison and Alexander Hamilton (*The Federalist* essays scoring 15 hits in 189,469, yielding a log score of -4.10, very comparable to Blackstone’s -4.21 score).

Hamilton, the former Captain of Artillery, assures us in that: “The science of politics, however, like most other sciences, has received great improvement” by which quotation we should oblige ourselves to locate the patterns of kinesis that inspired the settecento to do science in law, keeping in mind that the cumulative word scores for the *Castle of Otranto, Frankenstein, Pride and Prejudice*, and *Ivanhoe* yield 47 hits in 551,675 for a log score of -4.09.

It was a science-crazed epoch. Our task is merely to make sense of their science. Yes, this section of the essay begins with an Arabic number. Obedience to silly rules
should be overthrown and most certainly in an essay devoted to Bentham’s most famous footnote.

F. **Jeremy Bentham Famous Savaged American Declarations of Rights.** One cannot leave Bentham’s footnote without a reference to *Jeremy Bentham Mocks the Declarations: ‘Every Law ... Is Void’,* 2 OCL 282. Constitutional theory was a blood-sport. It mattered to the gladiators who entered the arena and they drew and spent blood gladly for the sake of glory.

So what irked JB? If individuals had rights that government was bound to honor, then philosophy was obligated to address the conflict between the two. Settle it? Too ambitious. Ignore it? Too lazy.

The consequences of Bentham’s unwillingness to survey American constitutions and legislation (using his own tools) were surveyed at 2 OCL 282; it is worth making the point that Bentham had more weapons at his disposal than he bothered to deploy, at least at this point in his career.

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