

BENTHAM AND LEGAL THEORY. Edited by M. H. James. [Northern Ireland Legal Quarterly, 1974. 150 pp + 4 pp index. £1.25]

To any observer of contemporary Singapore the concept of utility has a significance of some sort, in some degree, and on that score alone this book has much to commend it. "By the principle of utility", of course, "is meant that principle which approves or disapproves of every action whatsoever according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question, or what is the same thing, to promote or oppose that happiness."

As is pointed out by Professor A.J.M. Milne in the first essay in this volume, the principle seeks the "maximising (of) intrinsic good and minimising intrinsic evil, intrinsic good and evil being interpreted in terms of psychological hedonism". Sometimes known as the "greatest happiness" principle, it has formed the popular core of Bentham's teachings. Whether Singapore's politicians think in terms of such criteria as hedonism;—a word that implies a possible surfeit of pleasure and therefore, one hopes, not acceptable to those working to a less corrupted society—is to be doubted: but less luxurious concepts of the principle are to be seen around us. The aim of economic advancement has been paramount, and that objective implies a quest for utility in its purest and most materialistic form. To a large degree it has been achieved, and that is a tribute to the government of the day; to the extent that the price paid has been, in terms of cultural activity, high, is a criticism of the people.

In this collection of articles from the *Northern Ireland Legal Quarterly* emphasis is placed on aspects of Bentham's thought which have hitherto not come to popular notice. After a short introduction by M.H. James—a lecturer in political science—there follow five articles, each dealing with separate aspects of Bentham's writing, and some of them not, hitherto, well-known.

In an article on *Bentham's Principle of Utility and Legal Philosophy* Professor A.J.M. Milne carefully considers that especial principle and finds that "it has nothing to contribute to legal philosophy". This idea I find entertaining. Does, say, the legislative draftsman move in a world of utility? One can speculate on the efficiency of a written law: how successful is it in terms of achieving what it sets out to do? For example, to what extent is the law imposing caning or the death penalty for a crime efficient? Useful it may be, in offering an illusion of re-assurance to the multitude; effective in preventing such a crime it may or may not be—depending on the crime; as for its efficiency, this must await the passage of time: and then other factors, beyond the law, become operative. All the same, the concept of utility in the Benthamite sense, is, I believe, much in the minds of our legislators. That it may be a fiction, an illusion, is no doubt true, but it is, I am sure, there: read any *explanatory memorandum* to any Government Bill. Professor Milne argues that the principle of utility cannot, "because of its philosophical defects" be "a good guide" to the legislator. He observes that "the felicific calculus cannot help because it is inextricably bound up with psychological hedonism. Moreover, by putting the emphasis solely on the consequences, the principle is seriously misleading. Laws can be unjust in themselves, quite apart from their consequences," he affirms, "for instance, laws upholding slavery". True enough, the principle does not help in the matter of morality; but one has to start somewhere, and Bentham's concept, with its nice pragmatic flavour, does help in affording a sort of rough yardstick, a primitive guide in a still shadowy area.

Of most value to the general reader of this highly interesting collection of articles will be Bentham's comments on torture—"fascinating and tantalising for the Bentham scholar..." and for the "non-specialist" possibly "distasteful or shocking or alarming", as Professor Twining observes. I was a little surprised to discover that Professor Twining should think it necessary to note that Bentham's treatment of the subject "provides salutary shocks to the complacent assumption that the question of the morality of torture is simple and self-evident". It certainly is not. Those of us who have been immediately involved in wars and other situations in which the public security may rest on the knife-edge of one man's knowledge know that the question is one of terrible concern: the more so as the necessity of torture often imposes its own especial horror on the torturer. Professor Twining quotes from Mangakis' *Letter to Europeans*, written in 1971: "It is not an easy thing to torture people. It requires inner participation...the men who humiliate you must first humiliate the notion of humanity within themselves. Never mind if they strut around in their uniforms, swollen with the knowledge that they can control the suffering, sleeplessness, hunger and despair of their fellow human beings, intoxicated with the power in their hands. Their intoxication is nothing other than the degradation of humanity. The ultimate degradation."

Mangakis offers an optimistic view of human nature: the Commandant of Auschwitz might have had other views: as might, too, a one-time victim, the local author of *Kempetei Kindness*. What is clear is that this essay and Twining's comments bring before us a few of the sharper realities of crime and punishment. Some years ago, I remember, there was a stabbing in a coffee-shop in Johore Bahru: it was a secret society murder. Two waitresses had seen the killer, but were reluctant to disclose his identity for fear of reprisals. What does the zealous police officer then do? So intimidate the witnesses that they break down and offer information leading to the arrest of the killer, or leave the matter alone, let a guilty man escape, and so augment the power of an effective secret society?

These issues are far from academic. They face the police every day, and involve measures of judgment requiring a grounding in philosophy and humanity before they can be reasonably settled; sometimes, indeed, one doubts whether they can ever be happily resolved, for the pernicious doctrine of ends justifying means haunts modern man in almost all his political activity.

Those involved in the teaching of law may find this particular essay of value as a basis for discussion with students. Seldom have the issues on a topic most of us avoid been put so clearly, and I for one am grateful to Professor Twining for his lucid comments. Grivas, I think, was one of the few who have offered us a justification for terrorism: Bentham offers one for torture. It is perhaps significant that the fundamental rights and liberties enjoyed in Malaysia and Singapore do not include an absolute prohibition on torture and inhuman and degrading treatment on the lines of, for example, article 3 of the European Con-

vention for the Protection of Human Rights and Fundamental Freedoms or section 17 of the Constitution of Jamaica. It may be that the issues are, after all, more complex than we suppose.

The collection concludes with essays on *Bentham on the Individualism of Laws* by M.H. James, *Bentham on the Aspects of a Law* by L.J. Lysaught and *Bentham on Sovereignty: an Exploration*, by the General Editor of the Bentham Project (a project aimed at the publication of a definitive edition of Bentham's writings), Professor J.H. Burns. At this point I felt that I was moving into a world that has perhaps replaced, or perhaps continues as a parallel universe with, that of the theologian. There is, however, much here for the student, especially if his mind is not still active with Professor Twining's observations on torture.

The Soviet writer Tumanov asserts that "modern bourgeois legal thought is powerless when confronted with issues which test its social potential, its ability to define the way forward for law".* This collection of essays, together with Bentham's theories, suggests that the West is not so bereft of intellectual vigour as some of us may fear. Of course, what is it we're after? One suspects that whatever it is, it is likely to turn out to be a Snark: and we all know that "the Snark's a peculiar creature, that won't Be caught in a commonplace way."

This, then, is not a commonplace book. Bentham's writings sparkle with ideas, and they have well been captured here. Indeed, this review does scant justice to a useful paperback volume likely, if used aright, to offer the advanced student scores of stimulating ideas. As Hart (quoted in a headnote to *Bentham on Torture*) observes, "...it is true ...that where Bentham fails to persuade us, he still forces us to think." Few writers have that gift; and this collection of material and comments offers a seminal work of far greater value, both to law teacher and law student, than its modest appearance would indicate.