Not Kant, but Bentham: On Taste

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1. Kant *avec* Bentham

The history of modern aesthetic thought is usually traced to Immanuel Kant and his *Critique of the Power of Judgment*, with an obligatory nod to Alexander Gottlieb Baumgarten, who had first used the term "aesthetics" in 1735 to identify judgments of taste.[1] Kant's place in modern aesthetic thought is so secure that it commands acknowledgment: even writers who oppose it root and branch feel the need to frame their work as a response to it. Jeremy Bentham, by contrast, has scarcely figured in discussions of aesthetics, in spite of his avowed interest in measuring actions and objects by their ability to generate pleasure and losses to it.

Kant's account of aesthetics revolved around individual autonomy, and he treated aesthetic judgment as an emblem of the freedom of individuals, their ability to form judgments even when others did not share them. Bentham's first-personal stance, by contrast, was seen to be mired, on one hand, in sensory experience that could not move past its commitment to *number one* and, on the other, to strategic thinking that was all too oriented to outcomes. Kantian aesthetics aimed to achieve a first-personal experience that was at the same time disinterested—that is, unconcerned with the actual existence of the aesthetic object and detached from immediate

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1. Quoted in Paul Guyer, "Editor's Introduction," in Immanuel Kant, *Critique of the Power of Judgment*, trans. Guyer and Eric Matthews, ed. Guyer (New York, 2000), p. xiv; hereafter abbreviated *CPJ*.

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satisfactions. Bentham was seen to suggest that judging subjects thought only about improving their situations. To support this view of Bentham's thought, literary critics and aesthetic historians cited John Stuart Mill's remark that Bentham "says, somewhere in his works, that, 'quantity of pleasure being equal, push-pin is as good as poetry.'"[2] Subsequent readers felt no need to look to Bentham for illumination on anything like aesthetic pleasure because Mill had painted Bentham as a philistine. Mill conceded that Bentham was an admirer of music and "painting, sculpture, and the other arts addressed to the eye," but he accused Bentham of disparaging "'All poetry [as] misrepresentation'" ("B," pp. 113, 114). Bentham's philosophy could, in Mill's words, "teach the means of organizing and regulating the merely *business* part of the social arrangement," but it could not speak to emotions such as love or religious feeling ("B," p. 99). Bentham's intellectual project was thought to be utilitarian in the narrowest sense, both anesthetic and antiaesthetic.

In the following discussion, I affirm the recurrent consensus that Kant and Bentham lay out opposed positions, but I argue that Bentham should be credited with a significant and expansive account of aesthetic judgment. Although Kant and Bentham did not address one another's views directly, juxtaposing their positions on taste helps to focus their foundational questions and their characteristic answers. Kant's thinking about aesthetics springs from his sense of the inadequacy of explanations of aesthetic feeling if those explanations can be resolved into cognitive statements about what objects are or statements about sensory satisfaction. The reflective judgment of aesthetics is provoked by perceptual experience, in Kant's view, but it quickly shows itself to exceed the sensory experience that occasions it. Sexuality does not figure in any of his discussions of aesthetic judgment but appears instead, in *The Metaphysics of Morals*, in an itemization of the duties of spouses to one another. "In this act a human being makes himself into a thing," a situation that is only admissible because "while one person is acquired by the other *as if it were a thing*, the one who is acquired acquires

2. John Stuart Mill, "Bentham," in *Essays on Ethics, Religion, and Society*, vol. 10 of *Collected Works*, ed. J. M. Robson (Toronto, 1969), p. 113; hereafter abbreviated "B." See William K. Wimsatt, Jr., and Cleanth Brooks, *Literary Criticism: A Short History* (New York, 1965), p. 415. See also Jeremy Bentham, *Rationale of Reward* (London, 1830), p. 206.

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the other in turn; for in this way each reclaims itself and restores its personality."[3]

In contrast to Kant, Bentham highlighted the importance of sexual appetite in *Of Sexual Irregularities*, *Sextus*, and *Not Paul, but Jesus*, expanding the catalog of senses from five to six to include the sexual sense, which he termed "Sextus" and abbreviated in his manuscripts as "Sex."[4] He thus reserved a central place for sexual experience in his thinking about taste. In addition to installing sensory experience—and sexuality considered as sensory experience in its most intense form—in taste, Bentham gave a public face to sexuality. That is, he analyzed the legal system as a social transcendental, treating it as a system that needed to be considered as a self-consistent whole (rather than the iteration of laws tested primarily by time that he took William Blackstone to have laid out in his *Commentaries on the Laws of England*).[5] In *An Introduction to the Principles of Morals and Legislation*. Bentham had argued for rationalizing English law, in particular to assign punishments that were proportional to the crimes they aimed to prevent or redress.[6] In *Of Sexual Irregularities* and *Not Paul, but Jesus*, he aimed both to argue against the severe punishments that were meted out to persons who practiced "irregular" pleasures and to demonstrate how the penal system created a new layer of derivative pleasures and pains. The English laws governing sexuality privileged some persons' judgment (of disgust) on other persons' pleasure, and allowed the practitioners of "regular" pleasures to take pleasure in the sufferings visited on practitioners of "irregular" pleasures.

Bentham held up the English law as an aesthetic regime that became systematic in the moment that it meted out capital punishments for male-

3. Kant, *The Metaphysics of Morals*, in *Practical Philosophy*, trans. and ed. Mary J. Gregor (New York, 1999), p. 427.

4. Bentham headed the text sheets for one essay on sexuality "Sex": "Bentham's abbreviation for 'Sextus,' referring to the sixth sense or the sexual appetite" (Philip Schofield, Catherine Pease-Watkin, and Michael Quinn, "Editorial Introduction," in Bentham, *Of Sexual Irregularities, and Other Writings on Sexual Morality*, ed. Schofield, Pease-Watkin, and Quinn, vol. 19 of *The Collected Works of Jeremy Bentham*, ed. Schofield [New York, 2014], p. xvii). See also Bentham, *Doctrine*, vol. 3 of *Not Paul, but Jesus* (London, 2013); hereafter abbreviated *D*. Louis Crompton published related material; see Bentham, "Offences Against One's Self: Paederasty Part 1" and "Offences Against One's Self: Paederasty Part 2," *Journal of Homosexuality* 3–4 (Summer–Fall 1978): 389–405, 91–107. Philip Schofield first published the text of *Sex* in Bentham, *Sex*, ed. Schofield, in Bentham et al., *Selected Writings*, ed. Stephen Engelmann (New Haven, Conn., 2011), pp. 33–101.

5. See Bentham, "*A Comment on the Commentaries*" *and* "*A Fragment on Government*," ed. J. H. Burns and H. L. A. Hart (New York, 2008) for the opening salvoes in Bentham's long-running criticism of William Blackstone's *Commentaries on the Laws of England* (1765–1769).

6. See Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. Burns and Hart (New York, 1996).

male sexuality.[7] Such an analysis of the English law as structured human interaction made it possible for him to maintain a resolutely sensual aesthetics, on the one hand, and, on the other, to depict how social interaction created occasions for aesthetic judgment at a different level. Aesthetic experience did not for him, as it did in Kant, begin in first-personal experience and end in first-personal reflection. It needed to be tracked to its social manifestations. Kant and Bentham both rejected the idea that aesthetic judgments were and should be justified by appeal to the taste of the majority. But Bentham had a more robust answer than did Kant to the time-honored claim that there is no point in disputing about taste because everyone thinks his own taste best. Bentham's analysis of the laws governing sexual behavior in what he called its "irregular" forms amounted to an argument that one should dispute the validity of the taste (the disgust of the many) that English law encourages about taste (sexual pleasure of the minority).

Kant omitted sexuality from his treatment of aesthetics because his account of sexual objectification in the *Metaphysics of Morals* made it seem that a literature that evidenced sexual desire would be a contradiction in terms. Sexuality, one might imagine him saying, is so much concerned with the existence of one's sexual object as an object that it allows no latitude for the reflective judgment that operates in taste. Bentham, however, discovered something like evidence of reflection in two opposed directions. He identified an extensive literature eulogizing sexuality that he counted as public reflection. Canvassing an assortment of literary works that included Virgil's *Aeneid* and eclogues, Plutarch's lives, and Plato's dialogues, he treated them as evidence of pleasures that continued to declare themselves even when the immediate physical sensations that occasioned them were past or only anticipated.[8] Moreover, he depicted the legal statutes that enforce the taste of some (who feel disgust) in criminalizing the taste of others (who practice male-male sexuality) as, equally but oppositely, a representation

7. In the balance of this essay, I shall speak of Bentham's discussion of male-male sexuality and leave to the side his discussions of female-female sexuality and infanticide. He speaks briefly of female-female sexuality, but notes that it is not met with capital punishment, for all its apparent analogy with male-male sexuality. He observes that female-female sexuality is "left altogether exempt from punishment" (Bentham, *Sextus*, in *Of Sexual Irregularities*, p. 57 n. a; hereafter abbreviated *S*). Bentham, on the other hand, groups male-male sexuality with infanticide to bring out the importance of capital punishment in raising questions about the proportionality of punishment. Although he opposed criminalization of these "irregular" sex-related charges, he focused his argument for decriminalization on male-male sexuality in the thought that it was the most actively punished sex-related behavior in his time.

8. See Bentham, *Of Sexual Irregularities—or, Irregularities of the Sexual Appetite*, in *Of Sexual Irregularities*, pp. 32–33; hereafter abbreviated *OSI*.

of aesthetic judgment. Kant's exclusion of sexuality from discussions of taste made aesthetic judgment primarily individual and incidentally social. Bentham's inclusion of sexuality in discussions of taste made aesthetic judgment at least as social as individual.

Kant and Bentham thought that aesthetic discussion needed to address two quite different issues. Kant's way of framing his central problematic obliged him to draw a sharp line of distinction between aesthetic experience and what he termed the merely sensuous. A full stomach or the gratifying warmth of a fire might give sensory satisfaction, but Kant thought that reflective aesthetic experience could not be explained in those terms. He aimed to identify what was involved in taking pleasure in imitations or derivatives of actual phenomena. When one could look at a mountain, why did one need a painting of a mountain? When a viewer was hungry, how did one explain his ability to admire a beautiful painting of food that he couldn't eat? And, further, why would one take pleasure in natural objects that remained what they were whether they pleased or not? For Kant the treatment of aesthetic judgment needed to explain why understanding did not exhaust our relation to the world, needed to say why we are drawn to what Niklas Luhmann calls a "doubling of reality."[9]

For Kant, sensuous experience triggers aesthetic response: one needs to have a perceptual object rather than merely a nonsensuous and allegorical thought for aesthetic experience. But in his view sensuous experience quickly refers past itself to supersensuous faculties that can recognize beauty and sublimity in objects that were not designed for human appreciation. Aesthetic pleasure, because it is outside the realm of any human negotiation or exchange, is enough of an accomplishment for it to seem proximate to morality. Bentham, by contrast, continually imagines sensory experience in terms of the possibilities of pleasure between persons. And while Kant suggests that aesthetic pleasure provides something like training in individual autonomous judgment that is an intimation of morality, Bentham argues that the laws governing sexuality provide a basis for challenging the morality of the law itself.

Kant, in the *Critique of the Power of Judgment*, and Bentham, in *Of Sexual Irregularities* and *Not Paul, but Jesus*, develop very different pictures of the way in which aesthetic judgment relates to social judgment. Kant sees aesthetic judgments as symptoms of individual freedom because they can-

9. See Niklas Luhmann, *The Reality of the Mass Media*, trans. Kathleen Cross (Stanford, Calif., 2000), pp. 4–5, 55–59. Luhmann's analysis initially addresses journalism and the periodical press, but he is interested in a wide range of "copying technologies," including realist novels and other entertainments (p. 2).

not be compelled. When he introduces the question of the acknowledgment of other people's aesthetic judgments, his discussion of taste comes close to depicting other people's individual judgments as both imaginable enough for discussion and unavailable to be taken up. The aesthetic judgment dictates agreement with its pronouncements even in the absence of actual social endorsement. Bentham, on the other hand, begins and ends in examples of shared experience—to such an extent that he names masturbation as the only nonviolent form of sexual pleasure that he would proscribe (see *OSI*, p. 30). His stated reason is that masturbation, being a form of sexual pleasure that an individual always has available to himself or herself, can become addictive.[10] Masturbation is for him the sensuous version of Kant's projecting that an individual might become monomaniacal and go "mad with reason."[11] Many might exculpate masturbation on the grounds that it is, if a crime, at any rate, a victimless crime, but Bentham objects to it as an example of antisociality, of allowing oneself to become what twenty-first century parlance terms a loner. For Bentham continually imagines experience taking place in a world that always includes other people, a world in which one has partners in sexual activity and allies and opponents in games and the various representations of games that he devises in his plans for prisons and schools.

Kant, defending the importance that individuals attach to their own aesthetic judgments, struggles to reconcile individual aesthetic judgments with sociability. Although he suggests that social motivations underwrite aesthetic judgments of both the beautiful and the sublime, his discussions of taste show him searching for a principle of reconciliation that would allow aesthetic judgments to cement social relations rather than disrupt them. Aesthetic judgments for him present themselves as such thoroughly inaugural moments that they raise questions about their possible integration into a social world. While Kant wants to analyze the importance of the faculty of judgment, Bentham looks at pleasure from the outside, citing various love songs and historical accounts and accepting them as a plausible record of a history of pleasure that has been built up over time. The love song that was written to appeal to a particular person and the biographical sketch that was intended to recount a particular person's activities are for him especially important for philosophy precisely because they were not devised

10. See Stephen G. Engelmann, "Queer Utilitarianism: Bentham and Malthus on the Threshold of Biopolitics," *Theory and Event* 17, no. 4 (2014): 157–64.

11. Kant, *Critique of Judgment*, trans. J. H. Bernard (New York, 1951), p. 116. Guyer translates as "to rave with reason" (*CPJ*, p. 156).

as philosophical examples developed to illustrate an account of aesthetic experience. Their evidentiary use is all the more compelling because he takes them merely to have expressed pleasure-seeking desires and not to have participated in a philosophical debate about pleasure and its objects. That is to say: he takes love songs at their word.

2. Kant on Taste and Other People

Kant offered up an account of aesthetics that conspicuously minimized the importance of sensation and of immediate advantage and purpose. Moreover, he had no interest in assessments that might claim any degree of confirmation or success of the kind that games of bridge or whist or push-pin do when they identify winners and losers as play unfolds. In subordinating anything like actual purposes to what he termed purposiveness, he made the look of purposiveness the very mark of the self-transcendence that aesthetic experience might afford. He centered his discussion on our appreciation of natural beauty and the difficulty we have explaining it if we don't have the reasons of the landscape gardener or the forester. He thus distinguished purposiveness from purposes—in his famous phrase "purposiveness without purpose"—and treated the pleasure that we take in representations as a symptom of individual human freedom because we are treating unmotivated beauties as if they were meant for us.[12] When we find this tree or that flower beautiful, our pleasure is disinterested and entirely unforced—by others and even by a distinct purpose. And when we realize that we take pleasure in green even though our friends like blue, Kant would say that we see further evidence that aesthetic judgment is symptomatic of freedom. We like what we like from a first-personal perspective. Aesthetic judgment is insistently first-personal. We as aesthetic individuals like what we like; we don't like it because someone else does. And this first-personal basis allows Kant to frame aesthetic judgment as a distinct counter to the kind of imitativeness that he associates with the unfreedom of childhood.[13] Indeed, autonomy is so central a notion for Kant that children become his example of the difference between a mere imitation of someone else's taste and aesthetic judgment that deserves the name. Aesthetic judgment for Kant involves not just an expression of individual freedom. In the process of freeing an individual from recognizing an object exclusively in terms of its purpose—what

12. Kant, *Critique of Judgment*, trans. Bernard, p. 55.

13. See Kant, "Anthropology from a Pragmatic Point of View (1798)," trans. Robert B. Louden, in *Anthropology, History, and Education*, trans. Guyer et al., ed. Günter Zöller and Louden (New York, 2007), p. 348; hereafter abbreviated "A."

it's supposed to be—acts of aesthetic judgment in Kant reveal both the subjective element of the experience of beauty for a perceiver and catch objects up in the allure that results from the "activity of the subject" in lingering over "the consideration of the beautiful because this consideration strengthens and reproduces itself" (*CPJ*, p. 107).

Here I am simply rehearsing some of the most basic elements of Kantian aesthetic doctrine as he lays it out in the third and last of his three critiques. Most starkly put, the three different critiques identify three different stages of freedom or subjectivity. In the *Critique of Pure Reason* Kant describes how our perceptions of physical objects in the world are determined by the existence of those objects. Although he takes human faculties of representation to fall short of capturing the thing-in-itself (the *Ding an sich)*, judgments of the understanding are as minimally subjective as he thinks it's possible to be. In the *Critique of the Power of Judgment*, however, the pleasure in perception operates in advance of and independent of any cognition of the object, so that aesthetic judgment escapes from the trammels of the determining judgments that pure reason makes. The *Critique of the Power of Judgment* establishes moral judgment as the supreme expression of individual autonomy, "a supersensible property of the subject, namely that of freedom" (*CPJ*, p. 107).

The three Kantian critiques—in so far as they try to isolate three different ways that humans have for operating in the world—identify the conditions of possibility for cognitive, aesthetic, and moral judgments. But because they aim to distinguish the various relations to experience, the examples—particularly for the aesthetic judgment—betray their origin in laboratory conditions. On the one hand, we might imagine that the *Critique of the Power of Judgment* rightly treats all its examples as provisional, mere ways of gesturing toward the basic lines of argument. On the other, the observations for living that Kant offered his students in the lectures on anthropology that he delivered between 1772 and 1796 continually take up examples of pleasure and displeasure in social conduct that sit uneasily with the position he lays out in the *Critique of the Power of Judgment*. The anthropological lectures describe and rationalize social roles and modes of behavior; the *Critique* provides a tortuous path for human sociability. For even though Kant maintains that we only decorate our houses out of a sense of sociability, he also insists that our aesthetic judgments don't arise—or shouldn't arise—from imitating others.

Paul Guyer has suggested friendly amendments to Kant's account of the individualized sociality of aesthetic judgments, even as Pierre Bourdieu has, in opposition to Kant, insisted that aesthetic judgments are so thoroughly socioeconomic and so socially imitative acts that they can be used to diag-

nose class positions (see *CPJ*, pp. xxiii–xxx).[14] But neither of them addresses the worry I've developed—largely as a result of reading Bentham's *Sexual Irregularities* and *Not Paul, but Jesus*. The examples in the *Critique of the Power of Judgment* are designed to distinguish aesthetic experience from mere recognition of both an object ("That's an oak") and of someone else's aesthetic experience ("She likes oaks"). They thus depict the possibility of individuals acknowledging something new to the world—whether for oneself alone or for presentation to others. This is the aspect of Kant's attack on imitativeness that has convincingly led to the kind of interest in language games and conversations that proceed by someone's saying something, being understood, and being replied to not with a repetition of the same words but with statements that are themselves new. We don't need an example from someone else, he thinks, to take pleasure in natural beauty, just as we don't need to have heard a particular statement before to understand it.

But the claim about universal communicability operates in a surprising way. This is the claim that we hold firm to our evaluations of aesthetic objects and insist that they are shareable even if others do not immediately share them. It is a position that Kant lays out as a generalization from experience rather than a mere conjecture. While the inability to ground aesthetic judgments in distinct acts of cognition might make someone look comparatively unwilling to take their stand on aesthetic judgment, Kant represents them, paradoxically, as more assertive than acts of understanding. The rather surprising result of this line of argument is that reports on the physical senses are open to more pluralistic accounts than aesthetic judgments as Kant describes them. A sensory statement of taste is definite but not universalizable. Someone tasting cilantro can readily pronounce it to be a pleasant herb even while accepting someone else's assertion that it tastes like soap. Someone who is color-blind may not see red or green where I do, but they do see some color (something like brown). We may label it a mild disability not to experience the taste of cilantro as pleasant and not to see color as most other people see it, but we do not require every individual to uphold our most common statements about cilantro or color. While we don't relinquish our perceptions, we make room for the possibility that others' perceptions might differ from ours.

Aesthetic judgment as Kant presents it is, however, more militant. It has a certain intransigence and intractability. While it can seem accommodative in yielding up claims to rational explanation and suasion, I'm suggesting

14. See Guyer, *Kant and the Claims of Taste* (New York, 1979), pp. 22–29, 159–66. See also Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, trans. Richard Nice (Cambridge, Mass., 1984), pp. 4–5, 53–63.

that we can hear in Kant something like the snarl with which William Wordsworth says in the preface to *Lyrical Ballads* that he doesn't imagine that he can reason his readers into an appreciation of the kind of poetry he's offering them.[15] Kant tends to present concessiveness about the first-personal aesthetic judgment as appropriate only in the future, as an acknowledgment of one's future self. In the kind of example that will be repeated in lionizing literary biographies, Kant suggests that the artist is someone heroic enough to maintain his poetic convictions in the face of his friends' disparagements. He may change his mind later, when he is another person who can see his earlier work differently, but Kant suggests that he is right not to accept editorial judgments and amendments at the time he is writing (see *CPJ*, p. 163).

What I mean to stress about Kant's account of aesthetic judgment as he lays it out in the *Critique of the Power of Judgment* in 1790 and in the lectures on anthropology is its emphasis on the importance of an individual's trusting herself or himself. The anthropological account stages itself as a discussion of persons who are social persons, and in that sense it values the social exchange of observations about the beautiful between persons. Thus he can affirm that "Taste is . . . a faculty of making *social* judgments of external objects within the power of imagination," and that "taste . . . concerns the *communication* of our feeling of pleasure and displeasure to others, and includes a susceptibility, which this very communication affects pleasurably, to feel a satisfaction . . . about it in common with others (sociably)" ("A," pp. 344, 347). In the *Critique* this appeal to the common and communicable appears with the greatest intensity in the discussion of a common sense. There he maintains that, even though we are grounding our judgment only on our feeling, we treat that feeling "not as a private feeling, but as a common one" (*CPJ*, p. 123). We, in other words, perform acts of aesthetic judgment as ourselves but also as exemplars. We can thus see ourselves as exemplifying humanity in our own persons (as he says in the discussion of the sublime).

Yet what I mean to stress here is that this line of argument develops something of a one-way street for the communicability of aesthetic judgments. Kant makes it clear that he thinks aesthetic judgments cannot count on being accepted, but at the same time he thinks that the experience of nonconfirmation does not undermine the experience of conviction: "Now this common sense cannot be grounded on experience for this purpose,

15. Wordsworth explains that he had been reluctant to introduce the poems in *Lyrical Ballads* with a substantial preface, "since [he] might be suspected of having been principally influenced by the selfish and foolish hope of *reasoning* him into an approbation of these particular Poems" (Samuel Taylor Coleridge and William Wordsworth, "Preface," *Lyrical Ballads: 1798 and 1800*, ed. Michael Gamer and Dahlia Porter [Peterborough, 2008], p. 172).

for it is to justify judgments that contain a 'should': it does not say that everyone **will** concur with our judgment but that everyone **should** agree with it" (*CPJ*, p. 123). Through something very much like a grammatical sleight of hand, Kant, by moving from the first-person singular to the first-person plural, makes individual aesthetic judgments look as though they have a claim on other people, even if their assent isn't forthcoming. But both the *Critique* and the lectures on anthropology continually warn us against being taken in by pleasures that others put on offer. We rightly cease to take pleasure in the song of a bird, he thinks, when we realize that a young boy made it and not a nightingale. And we should distance ourselves from the fashionable because it appeals to "a compulsion to let ourselves be led slavishly by the mere example that many in society give us" ("A," p. 348).

Kant's emphasis on the centrality of individual judgment in aesthetics and in morality has produced a legacy of important restatements and extensions of his first-personal stance. Onora O'Neill, for instance, offered a powerful and powerfully Kantian treatment of the issue of trust in the lectures she presented several years ago on the BBC. There she essentially argued against imagining that external standards, benchmarks, and supervision could generate trust; ultimately trust arises from an individual's requiring herself or himself to be trustworthy—and thus inspiring others to be so as well.[16] For Ludwig Wittgenstein and many of his commentators the problem of pain assumed serious proportions—pain being indubitable from the first-person perspective but an opening on skepticism when someone else tells you about it. When I have a headache I know I do. When you have a headache I may wonder how bad it is and, even, whether you are simply producing an excuse that rests only on your testimony and is both unimpeachable and open to other people's doubt. Trusting others becomes, in one line of Kantian thought, a moral obligation to recognize them and their first-personal exemplarity of humanity in the absence of any possible empirical confirmation of the truthfulness of their statements.

But it is in his discussion of emotions that Kant offers a particular challenge to trust in the form of skepticism about one's ability to assess one's own emotions and their entanglement in a mixture of motives. In the *Lectures on Anthropology*, Kant offers numerous observations on pain and pleasure. By making pain internal to human nature, he makes it ineliminable and even fortunate. It is merely a stage on the road to pleasure and productivity: "As an incentive to activity, nature has put pain in the human being that he cannot escape from" ("A," p. 338). But he does not merely make

16. See Onora O'Neill, *A Question of Trust: The BBC Reith Lectures 2002* (New York, 2002), p. 96.

statements about the way that nature has arranged us as individuals. He also notices how we notice other people's pain. "It is," he says, "not exactly the nicest observation about human beings that their enjoyment increases through comparison with others' pain" ("A," p. 341). He does not mention *Schadenfreude* alone. He also focuses on cases that involve mixtures of pain and pleasure; an object such as the death of a woman's husband "can be *unpleasant*; but the *pain* [the grieving widow feels] concerning it *pleasing*" ("A," p. 340). With such a shift from the widow's pain to her observer's pleasure, Kant expands the range of pleasurable objects.

With remarks like the ones I've just quoted, Kant seems to be replying without directly confronting the centrality that Bentham accorded to Epicurus as the truest philosopher. Using pleasure and pain as the measure of human conduct, Kant seems almost to be saying, is impractical because pleasure and pain are so intimately interconnected. But at the beginning of his *Lectures on Anthropology* he also seems to be anticipating a criticism of his first-personal position and attempting to distinguish it from egoism. He relieves himself of an obligation to connect his metaphysics to his remarks, and insists that anthropology concerns thinking "in which one is not concerned with oneself as the whole world, but rather regards and conducts oneself as a mere citizen of the world" ("A," pp. 241–42). The human being may, from the day he "begins to speak by means of the 'I,' . . . [bring] his beloved self to light" if egoism is allowed to progress "unchecked" ("A," p. 240). And appeals to other people make it possible for him to imagine himself as mistaken. One avoids logical egoism, the egoism of the understanding, whenever one checks with others about the testimony of one's own senses—to ask, say, whether experiencing a room as hot is "just me." One avoids aesthetic egoism by recognizing that he "deprives himself of progress" by isolating "himself with his own judgments" and not listening to the appraisals of others ("A," p. 241). And he objects to what he identifies as a eudaemonism in which a moral egoist "limits all ends to himself" and prefers utility to duty ("A," p. 241).

This tendentious equation between moral egoism and utility may have set the tone for much of the criticism of Benthamite utilitarianism and its characterization as a philosophy that always begins from *number one*. But precisely because Bentham is infinitely less concerned than Kant to identify an appropriate first-person perspective, Bentham's writings on sexual irregularities provide a stronger statement than Kant does about other people's pleasure. On the one hand, Kant produces a variety of observations on human conduct to show how we judge it—in a fashion that suggests how far he himself is from sorting the aesthetic from the understanding and the reason. On the other, he is driven to wry remarks about why we

believe reports from others. "It is," he says, "so certain that we cannot dispense with [newspapers as a] means of assuring ourselves of the truth of our judgment that this may be the most important reason why learned people cry out so urgently for *freedom of the press*" ("A," p. 240). We value reports, particularly—and perhaps almost only—when they confirm us in the judgments that we already have.

Such a statement, for all its distancing, tends to collapse the lines of distinction among various different kinds of judgment—and it does so even as the *Critique of the Power of Judgment* has isolated them to suggest how aesthetic judgment imposes certain limits on itself. Ralf Meerbote has made an accurate and trenchant statement on Kantian reflective judgment in the *Critique* in saying: "In the act sense, reflective judgment is mere reflecting."[17] This is as much as to say aesthetic judgments don't amount to acts because they don't do anything in the world. But confining aesthetics to reflection that never enters the field of action is a limitation that sits uneasily alongside Kant's account of anthropology, which sounds like a series of statements about the social world that individual observers might make. The *Lectures on Anthropology*, that is, resembles a conduct book with various urbane rules of thumb that might be used as a guide to living. Kant's anthropology honors the attention we accord to the objects of our perception and the people we encounter, but it does not offer much in the way of what Luhmann calls second-order observation, a way of observing how individual observations interact with public social and legal systems. Kant's way of avoiding excessive satisfaction with one's own judgments is to change one's understanding of the situation of the observer—to shift from one's attachment to one's own perceptions and evaluations to a consciousness of oneself in the role of "mere citizen of the world."

3. On Observation

I've said as much as I have about Kant to prepare the way for further explicit and implicit distinctions between his aesthetics and Bentham's. But I also want to underscore one crucial preoccupation that Kant and Bentham shared. What is often seen as a generalized movement toward democracy does not arise specifically in relation to discussions of government in the eighteenth and early nineteenth centuries. Accounts that emphasize the rise of democratic feeling can suggest that the right to express one's opinion (by publishing one's view or by voting) emerged through a series of abstract arguments about rights. What I want to propose instead is that such things

17. Ralf Meerbote, "Reflection on Beauty," in *Essays in Kant's Aesthetics*, ed. Ted Cohen and Guyer (Chicago, 1985), p. 73.

as the extension of the franchise ultimately acknowledged the fact that a broader and broader segment of the population was being called upon to notice features of their world and the people in it. Writing in the wake of Locke's appreciation of consciousness and its ability to take hold of sensible ideas and to develop abstract ideas through reflection, Kant and Bentham—in their different ways—recognized that people, by virtue of taking their perceptions seriously, were claiming a right to acknowledgment. This was the fundamentally democratic gesture that they were continually honoring as they insisted that questions of civil society did not, could not, proceed merely as an elaboration of the will of the governors. More and more people were authorized, encouraged, and pressured to pay attention, to observe. To some extent I'm describing the knock-on effects of the printing press as Bentham, William Godwin, and Joseph Priestley all gesture toward it. But I also mean to point to the importance of the rise of intellectual domains such as anthropology (as a science of the observation of persons in society) and aesthetics (as a philosophy concerned with the modes of our observing). And those intellectual products, momentous as they are, are in their way slight by comparison with the importance of the rise of the newspaper and the rise of the novel. For daily newspapers and regular periodical publications don't just deliver information to us. They, in their variety, both convince us of the rightness and the freedom of our views (as Kant wryly said) and also constitute a demand that we notice, that we pay attention to the world and inform ourselves of the ways in which the circumstances it offers are continually being updated. Novels commit their characters so thoroughly to the project of observing others that they can, as in Jane Austen, make their plots out of the observations we rightly call gossip and the occasional observational correction that a novelistic plot can deliver. Catherine Morland of *Northanger Abbey* may be mistaken in thinking that General Tilney must have murdered his wife because her rooms are unvisited and Tilney no longer seems in mourning eight years after her death. But the novel insistently asserts that she may have been wrong in her observations but that she has not been wrong to observe. Everyone observes: "every man is surrounded by a neighbourhood of voluntary spies, and . . . roads and newspapers lay every thing open."[18]

Austen's novel points a humorously accusatory finger at novels that have worked up Catherine's imagination, but a wider target here is the pleasure people take in having opinions and sharing opinions, most often about other people—and especially in feeling that they know other people better than

18. Jane Austen, *Northanger Abbey*, ed. Marilyn Butler (New York, 1995), p. 186.

others do and even better than those other people know themselves. The distinctive fictional device known as free indirect style or free indirect discourse captures the dilemma. Persons in society are continually in the position of talking to one another, having something to say if only by way of rehearsing every news item they've read that day. And both gossip and novelistic free indirect style have a tendency to overwrite the thoughts and motives of the persons whom they ventriloquize. Free indirect style, in which a narrator seems to merge with the inner thoughts of the character, participates in an activity of overknowing analogous to the way we overknow political figures or anyone else who counts for us as a public personage.

This phenomenon of overknowing—feeling certainty about things well past any remit provided by what one can plausibly claim to know—is, I think, the issue that Bentham is getting at when he insists, in what H. L. A. Hart describes as "a dangerously ambiguous phrase"—"'That to which expression is given [in language], that of which communication is made is always the man's opinion nor anything more.'"[19] Hart may be right to say that "it may even be true that human discourse could not function as it does unless there is a generally, though not universally, respected convention that we do not say what we do not believe."[20] I think, however, that Bentham's point is the one that Luhmann has foregrounded in saying that "Whatever we know about our society, or indeed about the world in which we live, we know through the mass media."[21] We have heard tell. The mass media here stand in for all communications that revolve around reports, the communications that we take as reliable even though we haven't proved them for ourselves and the communications we make in our reports to others. These are communications—such as those of novels and of newspapers, law, and literary works—that explicitly interpose themselves between persons and effectively disrupt the convention of face-to-face interaction that might lead us to believe that we usually say only what we believe and usually believe what others say to us. Luhmann's analysis helps us see that even face-to-face interaction is not a guarantee of truthfulness but only a communication made as "always the man's opinion nor anything more."

Aesthetic judgment as Kant models it is a notably intense version of conviction in a report. When Kant imagines a check on the conviction of individual judgment, he appeals to an individual's capacity to shift roles—to think of himself as a "mere citizen of the world" who knows that there

19. H. L. A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (New York, 1982), p. 13.

20. Ibid., pp. 13–14.

21. Luhmann, *The Reality of the Mass Media*, p. 1.

are other citizens in it. Yet one can easily imagine that the perspective that one takes as a citizen of the world is virtually no check at all and that it opens on suspicions like those that Mill expressed about majority rule and its impulse toward tyranny. For one particularly tyrannical aspect of individual egoistic judgment is its tendency to lapse into a conviction of its own minority status and to intensify itself in the process of imagining itself as a moral stance because of its minority status.

It is at this point that we can begin to see the advantage that Bentham derives from adopting the stance of an observer rather than a self-observer when he includes sexual pleasure, on the one hand, and governmental structures, on the other, in his account of pleasure. The task that Bentham imposes on himself in *Of Sexual Irregularities* is to argue in favor of the decriminalization of male-male sexuality—and to do so by analyzing the legal structure of punishments and submiting it to rationalization. In the face of his awareness of the social and dissocial judgments that attend anyone's sexual choices, he does not pitch his argument as an appeal to a public audience. It is not an oratorical performance. Nor do *Of Sexual Irregularities* and the writing associated with it rally men who have sex with men to think of themselves as an identity group. Although Bentham seems to have imagined that William Beckford, who had been banished to the continent for his sexual congress with young men, might have been willing to edit the volume, the work is not a call to action on the part of men who have sex with other men.[22] Nor does it suggest that persons should be allowed their sexual pleasures so long as they keep them out of view of the general public—and closet themselves or take themselves off to a more tolerant continent. Instead, in the face of a daunting consciousness of the opprobrium that his arguments will receive, Bentham argues that it is not male-male sexuality but the law that must justify itself.[23] "It belongs to" any man in power who marks "out for punishment" anyone who engages in nonnormative sex "to shew cause why he has done so" and to demonstrate "that in the effect and tendency of . . . the practice is . . . productive not only of mischief, but of a net balance [on] the side of mischief" (*OSI*, p. 5). While Kant's cit-

22. See Schofield, Pease-Watkin, and Quinn, "Editorial Introduction," pp. xxiv–v. The editors of *Of Sexual Irregularities* quote portions of newspaper reports from 1784 and 1785 about Beckford's sexual activity and his whereabouts. Beckford left England in 1785 and returned only briefly and occasionally for the next twenty years; see *S*, pp. 122–23 n. 1.

23. Bentham speaks at various points of his own consciousness of the anger that his writings on sexuality are likely to arouse. In 1823 he published a text that is close to that of the first volume of *Not Paul, but Jesus* under the pseudonym Gamaliel Smith; see Schofield, Pease-Watkin, and Quinn, "Editorial Introduction," p. xi. For an example of Bentham's explicit concern about countering popular opinion, see *OSI*, p. 8.

izenly judgment may seem merely like a magnification of his individual judgment, Bentham addresses individual sexual choices not just by rescuing them from opprobrium. He also situates individual choice within a legal structure that functions—or, rather, should function—as a public statement of the moral choices of the society, a comprehensive guide to behavior that draws its various elements into a systematic whole so as to be able to judge penalties and assess their proportionality.

Bentham's position here effects an astonishing reversal. He, on the one hand, recognizes that male-male sexuality is so widely scorned and criminalized in English society that popular judgments on it move with the kind of instantaneity that Kant associated with judgments of natural beauty. For him, the idea that *there is no disputing about taste* does not translate into a statement of every individual's freedom to maintain her or his aesthetic judgments in the absence of social confirmation. For him judgments of taste are merely evaluations that we happen not to dispute. He recognizes that the senses are legislative within an individual, in that one experience of pleasure recommends further experiences of that kind (in what Hume called habit and what later analysts would describe as sexual identity or sexual orientation). At the same time, however, they never develop the relative imperviousness to social opinion that Kant at least heuristically claims for aesthetic judgments. Judgments of taste are for Bentham cumulative within the individual and socially cumulative as well, not merely communicable but communicated.

In the effort to argue against judgments that seem to go without saying, Bentham describes the supports to the popular opprobrium attached to irregular sexuality. The legal code and the pronouncements of judges and news reports all encourage his contemporaries to calumniate male-male sexuality. Recognition of such cumulative judgments leads Bentham to adopt a striking way of depicting principles in argument. Contemporaries such as Joseph Priestley urged that orators inculcate belief and opinion in others by doing such things as putting their own beliefs on display and recommending them in manifest sincerity of affirmation.[24] Bentham, however, does not lay out his own thinking as a direct address to an audience—either specific individuals such as particular legislators or members of the public at large. Instead, he depicts principles, stipulations, and definitions as analogous to theorems in geometry. He invokes theorems instead of represent-

24. See Joseph Priestley, *A Course of Lectures on Oratory and Criticism* (London, 1777), pp. 108–13. See Ann L. George, "Grounds of Assent in Joseph Priestley's *A Course of Lectures on Oratory and Criticism*," *Rhetoric* 16 (Winter 1998): 106.

ing proofs in its lengthiest forms, as some writers use definitions to limit the scope of a discussion and opposing parties in court can use stipulations to accept certain facts without fighting them out. Such principles or theorems are the shorthand—the expositional accelerants—that individual judgments derive from an historical survey of legal and religious opinions. In judgments of sex, the principle of antipathy or the principle of asceticism has, Bentham thinks, established itself so firmly that most people never pause to ask why they confidently pronounce anyone else's sexual experience disgusting. What Mill called "Bentham's . . . method of detail" takes the form of his unpacking the principle of antipathy or the principle of asceticism, of his "elaborate demonstrations" of their underpinnings ("B," p. 83)

Bentham appeals to his own theorem, the greatest happiness (or least misery) principle or the principle of utility, to evaluate the principle of antipathy, of asceticism (see *OSI*, p. 4). His insight is to see that one may not be able to talk anyone out of their tastes in art or sex but that one can treat the written cultural record as evidence of positive pleasures. On any occasion when one pronounces "the very idea" of someone else's way of taking pleasure "a cause for disgust" one is underwriting a legal system that incorporates aesthetic judgments by making some tastes punishable. The affection of antipathy, Bentham says, has "the property to seek its gratification in the pleasure of subjecting to pain the person by whose conduct the dissocial affection has been excited" (*OSI*, p. 4). And, in alignment with his life-long practice, Bentham's contribution to the discussion of the social behavior of individuals is to insist that the law as it stands should be put under obligation, should justify itself by something other than the claim to be natural. The repeated use of an inflammatory word such as *unnatural* should not be allowed to stand for an unalterable cultural and legal edict. Instead, those who propose punishment should show that particular acts are crimes and therefore need to be censured.

Of Sexual Irregularities, *Sextus*, and *Not Paul, but Jesus* offer a particularly striking way of offering criticism of legal and popular sanctions against male-male sexuality. These writings do not attempt to counter prevailing opinion simply by affirming a different opinion or trying to win their way with satire. Occasional brilliant turns of phrase remind us that Bentham as the author of the *Book of Fallacies* could produce accounts as satirical as Gustave Flaubert's in his *Dictionary of Received Ideas*, but Bentham in *Of Sexual Irregularities*, *Sextus*, and *Not Paul, but Jesus* offers long-form descriptions that analyze the position of those who hold opposed views and does so without satirizing them. He commits himself to understanding taste as judgments of pleasure and pain (or the absence of pleasure), and

he similarly commits himself to observing the work that dyslogistic words such as *unnatural* do in condensing a judgment and picking out sundry occasions for deploying it. Infanticide and rebellion may not have much in common—and indeed might seem opposed to one another—but the dyslogistic work of the epithet *unnatural* pulls them together.

I'll leave to the side Bentham's elucidation of the work of the senses, except to observe the obvious importance of his decision to represent sex as the sixth sense and to note its intensity by comparison with the five senses that are conventionally named.[25] Bentham's exploration of the testimony of the various senses and comprehensive iteration of the various possible combinations of sex acts, as important as they are, are chiefly important for setting up the question: Why does anyone think that sex between men is "disgust[ing]"? His analysis of the immediate and longer-term effects of male-male sexuality makes it hard to see why pleasure-giving acts should be censured—indeed, punished as capital crimes—when his analysis acquits them of doing damage to individuals. He takes up the possibility that women might be injured by male-male sexuality if it led to the neglect of women and the possibility that society at large might be injured by nonprocreative sex. In both cases, he acquits male-male sexuality of deleterious effects. He takes the former objection to male-male sexuality to be so vague as to be virtually meaningless, while also suggesting that it would not diminish women's authority for there to be some men who were "unsusceptible" to their influence (*OSI*, p. 37). And he maintains that Thomas Robert Malthus's projections of population—and his own analysis—have established that society has more to fear from redundant, or excessive, population than from a low birth rate (see *S*, pp. 78–79).[26]

The centerpiece of Bentham's discussion is what turns out to be a history of the Principle of Asceticism. And it is Bentham's reliance on an historical record that most sharply distinguishes him from Kant. When Kant presents various kinds of aesthetic objects as pleasurable, he focuses on the possibilities that those objects offer for aesthetic judgments in the present. Attention falls so directly on the judgment being passed on the beauty of an object that its content becomes nearly irrelevant. A beautiful painting or poem—precisely because it is not treated under the terms of the under-

25. The editors of *Of Sexual Irregularities* note that Buffon spoke of sexual sensations as the sixth sense, and their note on William Beckford includes an interesting suggestion that Beckford lays out various chambers in *Vathek* as if they constituted a mapping of the senses; see *S*, p. 122 n. 1.

26. See Thomas Robert Malthus, *An Essay on the Principle of Population*, ed. Philip Appleman (New York, 2004), pp. 20–26.

standing—does little to coordinate the judgments of the characters depicted within its precincts. (Hence, the persistent disagreements about what aesthetic objects are and mean.) Bentham, by contrast, consults a historical literary record—materials in writing that fall on both sides of the distinction we now draw between the historical and the literary. He names both actual and legendary characters not to anatomize their writings and their exploits but instead to capture evidence of their beliefs. When Kant in the *Anthropology* speaks of writings about sexual love, he notices its deceptiveness: writers use "*obscure* representations," he maintains, in writing about "sexual love, in so far as its actual aim is not benevolence but rather enjoyment of its object" and in the process waste "wit . . . in throwing a delicate veil over" behavior that announces its own animality ("A," p. 247). Bentham, however, takes classical poems and histories as evidence that a number of ancient writers believed that sex acts between men were pleasurable and desirable. And he also notes that classical literature did not take a man's desire for sex with another man to disqualify him for admiration and heroic renown. Socrates was "represented, if not as a model of perfect virtue, as a model of the most perfect virtue that heathenism . . . admitted of" (*S*, p. 88). Virgil's shepherd Corydon singing his love laments for Alexis and the Theban band celebrated for their courage all mark out "love operating in this irregular shape" and mark it as "*pius*" (a noble emotion). As Bentham observes, "In a case such as this, fiction in its nature affords more conclusive evidence than any particular realities: it shews the conclusion drawn by opinion from universal and continual experience" (*OSI*, p. 33).

Bentham's compelling point here is that literature is evidence of judgments of taste that needed no apologies in their own time. It testifies to behavior that is "not simply innoxious but positively beneficial" and "never is performed" "unless attended with pleasure" (*S*, p. 58). The eulogistic aims of love poetry and tales of heroes bespeak a taste that never imagines that it will be judged harshly by posterity. In that global sense, it expresses the convictions of the heart's affections and does so without self-censorship. In that regard, it provides an amendment to—and improvement on—Mill's distinction between oratory that is heard and poetry that is overheard. Literature testifies to feelings that need not seek for any further justification. They carry conviction within them. It was a thought that various writers had as they were trying to free literature from absorption in its own history and conventions, from simply being enmired in one poet's conversation with other, previous poets. And it was a thought that Wordsworth clearly had a couple of decades earlier when he pronounced that "Poetry . . . is the history or science of feelings" and that Anna Letitia Barbauld had had when she declared that novels testify to individual and social judgments

in their time—and do so more accurately than laws and the opinions of posterity do.[27]

Bentham's aim, in extending an account of judgment and taste to include the sexual sense, is to draw attention to the issue of conviction. When Bentham observes that it is simply tautologous to say that "to every man that which is his own taste is the best taste," he is restating Kant's observation that everyone thinks that everyone else should share and second their aesthetic judgments (*S*, p. 77). But he's extending judgments of taste to include the pleasures of the sixth sense, of sex, so as to secure them against derogation by others:

> In the case of the fine arts, when the object is of a complex nature, by being made to observe this or that circumstance which he had not observed before—this or that feature of defect or excellence which till now had passed unobserved—a man may now and then be made to change his taste. But in the field of appetite—of physical appetite—so simple is the object, no place can be found for any such discovery. [*S*, p. 77]

People continue to have sex—albeit with greater and lesser frequency at different points in their lives—because sexual experience is so intensely pleasurable that they are willing to risk all manner of trouble and inconvenience in pursuit of it.

Sexual pleasure in its various forms—including the form of sex between men—counts for Bentham as an unambiguous pleasure. He takes sexual taste to be so unsusceptible to fashion and other people's taste that he recounts a story from Lucian in which a young man is so enamored of a statue of Venus that he has sex with it—not by following prescribed heterosexual practices but by having sex with "a part which is common to" both sexes (*S*, p. 77). People do not, in Bentham's account, have regular or irregular sexual experiences because they have been educated by other people's examples. The education of the senses—the education out of the senses—begins, however, when the priests of Bentham's conjectural history treat other people's pleasures as a currency that they can traffic in. In a conjectural history of religion that will turn out to have specific bearing on sexuality, the idea of a god or gods creates priests, those who claim to be able to interpret the wishes of a supersensible being. Priests develop political authority and social precedence by claiming special knowledge of the divinity.

27. Wordsworth, "Note to 'The Thorn,'" *Lyrical Ballads*, p. 288. See also Anna Letitia Barbauld, "On the Origin and Progress of Novel-Writing," in *Selected Poetry and Prose*, ed. William McCarthy and Elizabeth Kraft (Peterborough, 2001), pp. 416–17.

And the most important strategy that the priesthood develop for maintaining and consolidating their authority is the asceticism principle; it confiscates the pleasures of others by offering those pleasures up in sacrifice, a sacrifice meaningful because painful (and painful because it involves foregoing pleasure). Normativity by priestly cabal.

In Bentham's version of a discourse on the origin of inequality, conducted as a discussion of sexuality and pleasure, the ascetic principle exercised by priestly authority has its purchase because it functions as legislation; it recommends a pattern of ascetic behavior among the faithful and makes conspicuous acknowledgment of the law of asceticism desirable. While Kant has made confidence in one's own (nonsexual) tastes central to aesthetic experience, and Bentham has argued that individuals can trust their own sexual tastes, Bentham asserts that priestly evangelism for asceticism has thrown individuals into self-doubt and, more importantly, suspicion of others. Social, political, and religious precedence mystify in so far as they distract individuals into distrusting—and calumniating—other people's judgments. In Bentham's view, the doctrine of original sin itself feeds into this pattern of despotic asceticism. As continually ratified in the service of the Church of England, it traffics in a market of pleasures and pains by allowing individuals to purchase indulgences merely by uttering a few words to disparage others: "All men are sinners. Yet some are saved. Therefore, without prejudice to salvation, a certain quantity of sin may always be committed," he writes in paraphrase of Anglican doctrine (*D*, p. 77). "At so cheap a price as that of a few words," one may acquire "the reputation of the love—the ardent love—of virtue" (*D*, p. 49). This social transaction has its analogue in the supposedly soul-saving act of imagining that any potential sinfulness in one's own pleasures may be washed away by making the pleasures of others look damnable. And Bentham underscores his observation by aptly quoting Samuel Butler's *Hudibras* on the technique of "Compound[ing] for sins they are inclined to, / By damning those they have no mind to" (quoted in *D*, p. 50).

Now as Bentham lays out the various kinds of sexual behavior that have been made punishable by death, he does not avail himself of the most direct challenge to the legitimacy of the laws. He does not say, "By whose authority?" or, more simply, "Who says so?" Nor does he adopt the Marquis de Sade's mockery of the Christian Gospels. Though he indicts the laws governing sexuality of absurdity, his most stunning argument is that Christian scriptural teaching is a plausible grounding for Christian belief and that it only needs to be recovered from the texts that have grown up around it and obscured it in the process. The writings of the Hebrew Bible, the Christian Gospels, and the letters of Saint Paul may all be bound together

in the volume called the Bible, and they may thus make up one composite text. Together they make up a form of legislation—prompts to behavior. But, as he fully recognizes, they enjoin all manner of different behaviors: one could gloss practically any action by saying "The Bible tells me so."

Bentham's approach, in response to such a recognition, is to sift the Scriptures and perform a crucial act of philological criticism, much like that of Spinoza in the *Tractatus Theologico-Politicus*. Bentham argues that the ascetic principle—enunciated, affirmed, and reaffirmed by Moses, John the Baptist, and Paul—has no legitimacy in the face of the statements that the Gospels attributes to Jesus and to the statements they make about him. Moses and Paul may have legislated minutely to condemn sex between men and varieties of sex between men and women, but, Bentham says, Jesus did not. Although a writer like Sade recounts the Gospel story with a sneer, Bentham treats Jesus's words and deeds as worthy evidence of his *scheme of instruction*. Further, Bentham recommends that the Christians among whom he lives take that legislation as the basis of their conduct and their judgments on the conduct of others. Jesus framed his teachings as an explicit repudiation of Mosaic law, and the Gospels demonstrate that such repudiation extended to laws governing sexuality. The Gospels, Bentham points out, both show Jesus's tolerance for male-male sexuality and also attest to his personal sexual relations with men and with women.

What seems to me most remarkable about Bentham's line of argument here is how thoroughly he detaches it from his own religious beliefs—or, rather, his beliefs about religion (that there is no God and that the image of an omniscient and omnipotent judge that Christianity holds out is a pernicious one). Instead, he focuses on identifying the best version of other people's beliefs—or, rather, the beliefs that they should lay claim to in identifying themselves as Christians. The legislation of Jesus—the legislation of the Gospels—is what British Christians should keep before them. Any backsliding into what Bentham takes to be the viciousness of Moses or the militant asceticism of Paul should be arrested simply by their recalling to themselves who they are, what their name is: Christians. Jesus may have replaced the law of Moses, but his succession was more than merely chronological. Thus, though Paul wrote after Jesus's death, the persistence of the name Christianity shows how little his teachings have a claim to succeed those of Jesus. (Paul's writings are, as Priestley continually insisted, among the corruptions of Christianity.)[28] Bentham may see the congruence between Jesus's teachings and the principle of utility, insofar as both

28. See Priestley, *A Course of Lectures on Oratory and Criticism*.

center on increasing human pleasure and decreasing human pain, but he is not asking his fellow Britons to subscribe to utilitarianism. He is saying, above all else, that the very name of their religion—Christianity—constitutes an ongoing affirmation of Jesus's preeminence as a guide to their thought and behavior.

The significance of this line of argument is that Bentham never needs to rely on simple relativism; he need not admit every judgment on the grounds that someone has believed it at some point in time or in some place in the world. Nor does he ever need to claim that the ancients held the correct views, or that the moderns have eliminated errors as moral judgments have been transmitted and refined over time. Instead, he establishes a coherent picture of the laws as he knows them and a coherent picture of the laws as others should know them. These are two different routes toward arriving at what one might think of as organic form. In neither case is organic form a sign of immediacy or naturalness. In the case of law, the organic quality of the law derives not from the stories of natural cultural growth that someone like Edmund Burke put forward. In the case of the Scriptures, the organic quality of the law derives from submitting the body of texts to the pressure of the authority of Jesus. Both of these contrast sharply with the Kantian depiction of organic form, which introduces immediacy and perceived satisfaction. Benthamite form holds judgments to account and produces what biblical scholars might have called a harmony of Christian Scripture so as to capture what he takes to be other people's reasons—public law, Christian Gospels. Not Paul, but Jesus. Not Kant, but Bentham.