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*Jeremy Bentham, Performance Philosopher: (Per)happiness, Performative Language and the Figure of the Automaton: reading the deconstructive wedge of Felicific Calculus*

Performance philosophy is a relatively new field of enquiry. It can be that of a particular philosopher, or it can be a framework for taking into consideration acts of reading and writing in the study of philosophy. A reading of Bentham as a performance philosopher intervenes into metaphysically-based morals by effectively outsourcing “the good” to contextual and conditional factors, continuing a line of thought that the efficacy or performativity of Bentham’s Utilitarianism is fundamentally linguistic, and that language, as the basis of law, is “operative.” Happiness is achieved as a consequence of legislation that has been put through the tests of Utilitarian principles. Bentham, an early thinker of sign systems at work, recognized a certain split between language and its referent, between law and morals, and he recognized, too, the “*mischievousness*” which is the *other* tendency of language once it goes into machine mode, when sovereignty itself becomes transferable, self-generating, or otherwise non-absolute. Thus Happiness, the desired end to action, is always accompanied by the tendency to diverge from that end. For a law to be “happy” or felicitous, the pleasure or pain it brings about must be tested and evaluated, working to counteract what Jacques Derrida theorizes as “the essential drift” inscribed in the structure of language.

One outcome of determining felicity through a calculus such as Bentham’s is that Happiness becomes objectified, a work-able sort of material otherness. This material otherness is language, even law, itself. With the exemplary case of law as the ultimate performative language, Bentham’s intervention into notions of sovereignty and legal powers constitute a positivist linguistic performativity, as theorized by the legal scholar Guillaume Tusseau.[[1]](#footnote-1) Tusseau proposes that the bestowing of legal powers in Bentham’s philosophy, unlike that of John Austin, is not so directly the product of a monolithic, sanctioning sovereign power. Instead, sovereignty in Bentham becomes (I think quite radically) confer-able and divisible. Sovereignty is a property which can be shared by several entities (indeed, we might add here that Bentham is emphatic about pleasure and pain being sovereign masters as well), and, by its very inscription, it only works in conjunction with what its subjects *do* with it. This ability to “adopt” sovereignty and thus legal power, says Tusseau, comprises “the specific mark of the framework of [Bentham’s] legal positivism as a theory of law, i.e. at the level of the object language.” (Tusseau, 13)

Thus as Philip Schofield has pointed out, the very depth of Bentham’s thought has to do with Bentham’s operations of language, whereby language is worked towards the physical, away from the metaphysical. For Bentham, the physical is the “real entity” that must anchor language. If language loses this indexical relation to physical substance, or if it never had it to begin with, it becomes “fictional”—which is not, much to Bentham’s agony, uncommon. In fictional entities, language has no “real” referent behind it at all, operating only through the shared but misled beliefs in a substantial originating cause. Thus fictional language takes on a being of its own causation —like the automaton to which Bentham likens it.[[2]](#footnote-2) Bentham’s agitation arose from the fact that law is constituted through language, and that what I am underlining as the performative nature of the law made for a potentially forceful operation of actions completely untethered from real entities, with dangerous consequences. His explanation sees clearly the hyper-performativity attributable to even one word:

In a play or a novel, an improper word is but a word: and the impropriety, whether noticed or not, is attended with no consequences. In a body of laws... an improper word would be a national calamity: and civil war may be the consequence of it: out of one foolish word may start a thousand daggers. (Ogden, cxlviii)

Here, Bentham’s deconstructive marking of *catachresis*—where the “misuse of a word” has the consequence of actively dismantling the new context into which it has been grafted, which, in the more fragile body of law, provokes more of what Jacques Derrida would describe as “a displacement of force...”[[3]](#footnote-3) In this scenario, the word “improper” signifies the character of fiction, in that it seems to be right at home, or “proper,” within fictional genres. When it is misused, in a more “real” context such as a body of law, it has a productive effect which could be directed towards pain (hence the daggers as metaphor). Bentham’s recounting of the rogue word and its internal mechanism which propels the word and forcefully re-orients it, resonates with his *automaton* configuration of Fiction.

The automaton was a highly ambivalent figure in Bentham’s lifetime. On the one hand, the public optimistically embraced the mechanical ingenuity evident in automatic body-machines. On the other hand, Enlightenment thinkers also positioned the Man-Machine as something which possessed threatening logic of its own. Bentham’s figure of the automaton (fiction), is a machine which very cleverly “resembles a man,” but it also makes possible the super-operative subsumption of human control and intention and the misapplication of the operation. Coinciding with the Machine-Man discourse at this time was that of Happiness. Happiness and the operative function of a machine seem to converge in the 18th-century imagination.

The mid-20th century Oxford philosopher J.L. Austin theorizes Happiness in the operative linguistic sense and also within the history of Happiness in philosophy. Therefore it makes sense to read Bentham’s linguistically structured felicific calculus through J.L. Austin. For both philosophers, the word “happiness” indicates *operation*, in particular, *successful* operation. Austin introduces the Performative as an act which takes place because of, language; words themselves either perform an act in their very utterance (an “illocution”), or, they are a “perlocution” and inscribe a consequential action. The performative utterance is “happy” if the action is successfully performed. Bentham’s concept of sovereignty entailed a successful uptake of what the sovereign legislated in order for that law to bring about “happiness.” Bentham’s calculus of happiness is fundamentally performative in these consequential modes of operation. It is an economy predicated on the probability of fulfilling conditions which would yield a higher quotient of happiness.

For Bentham, more pleasure is tallied if an object or law is “*conducive*” to happiness; there is a drive in the economy of the language. His positivist activation of the law through linguistic performativity has been noticed by legal theorists such as Tusseau and before him, H.L.A. Hart (Austin’s colleague at Oxford[[4]](#footnote-4) and one of Bentham’s editors.)

In a series of lectures delivered at Harvard in 1955 entitled “How to do things with Words,” Austin parsed out the conditions, categories, and philosophical implications of the performative utterance, often using law as the exemplary illustration. His jumping-off point was the single point that the referential structure of the Statement has always been the presumed approach to language. And no wonder, because philosophy has proceeded from metaphysical investments in the Truth behind all representation. Not unlike Bentham’s anti-metaphysical inspiration, Austin’s program for the “performative” utterance attempts to de-throne abstract Truth to replace it with something material.

Interestingly, both Austin and Bentham also note the play of mischief that, unfortunately\*[[5]](#footnote-5), characterizes performative language. Bentham frequently mentions mischievousness throughout his writing, in fact, it comprises a central position from his earliest point of writing, the *Fragment on Government*, onwards.[[6]](#footnote-6)

Here, Bentham’s characterization of mischievousness as a “divergency” belies the directional force of any act. Literally meaning “minus a head,” mischief has not gone in a happy direction. But mischief is not an anomaly; it is presented by Bentham as being the *other* tendency. Mischief is, in fact, an equal tendency as that towards Happiness. That it has lost its head or “chief” reveals the anxiety that Bentham expressed in his invocation of the automaton, as cited by Ogden in his Introduction to Bentham’s *Theory of Fictions[[7]](#footnote-7)*: language has lost its intention, its thought; it is purely operational, and, being untethered to any real entity, opens up boundless possibilities for the assumption of power, and for any other acts of signification.[[8]](#footnote-8) Derrida actually encourages the play of what he explicates as the *dérive* of writing, “[t]his essential drift [*dérive*] bearing on writing as an iterative structure, cut off from all absolute responsibility, from *consciousness* as the ultimate authority,” (*LI*, 8) radically resisting “the teleological lure of consciousness”. (*LI*, 18) For Derrida, “unhappiness” or “mischievousness” are part of the very structure of not only writing but of all language, the force of words the only sovereignty.

Austin’s theories on unhappiness and language converge with Bentham’s in Austin’s “Doctrine of the *Infelicities*”[[9]](#footnote-9):



Here, Austin is, in a sense, breaking down “mischievousness” into its various manifestations, namely, Misfires, Abuses, Misinvocations, Misexecutions, Insincerities, Misapplications, Flaws and Hitches.[[10]](#footnote-10)

Says Austin, “Acts...necessitate, since they are the performing of actions, allowance being made for the ills that all action is heir to. We must systematically be prepared to distinguish between ‘the act of doing *x*, i.e. achieving *x,* and ‘the act of attempting to do *x*.’” (Austin, 1975, 105.) Achieving Happiness is a matter of avoiding misfire, mischief, et. al., surviving a gauntlet of divergences. Happiness is *perhaps*.

 One of J.L. Austin’s earliest essays, “αγαθόν and εύδαιμία in the *Ethics* of Aristotle” (1939)[[11]](#footnote-11), suggests a happiness that we might characterize as objective, as opposed to subjective, well-being. Austin emphatically insists that in the *Ethics*, eudaemonia does not mean feeling happy. What Aristotle is identifying, says Austin, is “not the nature of happiness but the conditions of its realization.” (Austin, 1979, 10). And, it most definitely does not, Austin argues further, mean “feeling pleasure.” (ibid., 18) A more accurate translation of *eudaemonia* would be, “a *complete* life of *activity* of a certain kind”; or “success”.  Happiness is achieved by a movement out of the interiority of meaning into external criteria. The criteria may, or may not, be met, depending on, according to the etymology of *eudaemonia*, a life being “prospered by a deity” (ibid, 17). If that life has been prospered so, it is measured from the most objective perspective: from one’s death: “...hence the saying ‘call no man εύδαίµων until he is dead’(I.x.i).... and it would be silly to say ‘call no man pleased until he is dead.’” (ibid,18)

 We can’t help but think of Bentham’s final proposal for greater Happiness: the auto-iconization of our selves in the form of our preserved heads, which would face each other in the sum-total successes of our lives, best calculated from death.[[12]](#footnote-12) These felicitous head-objects perform the philosophical position that Happiness happens in the calculable auto-thanatographical object-being (or being-object). Bentham’s Utilitarian tests would ward off pesty exterior forces, including chance, which might mis-direct the due course of happiness.

* As radically linguistic as J.L. Austin was in his approach to philosophy, Derrida argues that Austin still reverts to the comforts of the proper, relegating the risk of infelicity, despite being what appears to be an almost “essential predicate or... *law*”, to the absolute alterity of *accident*. [[13]](#footnote-13) Derrida asks: “*What is a success when the possibility of infelicity [échec] continues to constitute its structure?”* (Derrida, *LI*, 15)

 Derrida would propose to incorporate the mischievousness which Bentham decries, acknowledging its constitutiveness in the happiness machine, which can now be more accurately designated the “*per*-happiness machine.” This possibility of failure to perform felicitously at the heart of all language, is thus a part of the structure of Happiness in philosophy. Bentham’s calculus of felicity does recognize the inevitable infelicity inherent to language, the social instrumentality of which leaves it heir to illness or mischief, but he does his best to secure felicity against all the odds which language introduces.

 In conclusion, why read Bentham as a “performance philosopher”? It’s fun to consider his felicific calculus, and its production of legislation as deconstructive of metaphysical premises of intention and the Truth implied in Natural Law. Bentham’s performance philosophy, in its material and economic approaches to language, comprises an object-performance which paves the way for some of our most dynamic and radical frameworks for reading and writing today.

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1. Guillaume Tusseau, “Positivist Jurisprudents Confronted: Jeremy Bentham and John Austin on the Concept of a Legal Power,” in *Revue d’études benthamiennes*, v. 2, 2007. [↑](#footnote-ref-1)
2. As cited by C.K. Ogden in his Introductory Notes to Bentham’s *Theory of Fictions*, Bentham puts forth the automaton, very much an ambivalent category within the 18th century imagination, as the figure of what he sees as the nearly inevitable confounding of fictional entities with real ones endemic to language when language has not undergone his prescribed operations. See C.K. Ogden, ed., *Bentham’s Theory of Fictions*, Paterson, NJ: Littlefield, Adams & Co. 1959, xlii-xliii, citing Bentham’s *Works*, Vol. VIII, p. 129. [↑](#footnote-ref-2)
3. Jacques Derrida, *Limited Inc*, Evanston, IL: Northwestern University Press, 1988, vii. [↑](#footnote-ref-3)
4. Austin and Hart jointly ran seminars at Oxford during the 1950s. See Neil MacCormick, *H.L.A. Hart*, Stanford, CA: Stanford University Press, 2008, 27. [↑](#footnote-ref-4)
5. \* Here I am using the word “unfortunately” intentionally. [↑](#footnote-ref-5)
6. For example: “Now then, with respect to actions in general, there is no property in them that is calculated so readily to engage, and so firmly to fix the attention of an observer, as the tendency they may have to, or

divergency (if one may so say) from, that which maybe styled the common end of all of them. The

end I mean is Happiness: and this tendency in any act is what we style its utility: as this

divergency is that to which we give the name of mischievousness. With respect then to such actions

in particular as are among the objects of the Law, to point out to a man the utility of them or the

mischievousness, is the only way to make him see clearly that property of them which every man is

in search of; the only way, in short, to give him satisfaction.” From *A Fragment on Government;*

*being an examination of whit is delivered, on the subject of government in general in the introduction*

*to sir william blackstone's commentaries (*Jeremy Bentham,M.DCC.LXXVI, from <https://portalconservador.com/livros/Jeremy-Bentham-A-Fragment-on-Government.pdf>, p.8.

 [↑](#footnote-ref-6)
7. “”Beholding at a distance, in the dress of a man, sitting and playing upon an organ, an automaton figure, constructed for that purpose by the ingenuity of the mechanist, to take this creature of human art for a real man, is a sort of mistake which, at a certain distance, might happen for a time to be made by the most acute observer. In like manner, beholding a part of speech cast in the same mould with the name of a real entity, a really existing substance, no wonder if, on a variety of occasions, to the mental eye of a very acute observer, this fictitious entity thus accoutred should present itself in the character of, and be regarded and treated as if it were a real one? How should it be otherwise, when on every occasion on which, and by every person by whom it is spoken of at all, it is spoken of as if it were a real entity?” (C.K. Ogden, 1959, xlii-xliii) [↑](#footnote-ref-7)
8. The explanation of Bentham’s “Fictions of Law” by his editor John Hill Burton, writing in 1828, also highlights the force of the act as being able to be assumed and diverted:

Where the purpose of 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. ‘A Fiction of Law’, says Bentham, ‘may be defined a wilful falsehood, having for its object the stealing legislative power, by hand for hands which durst not, or could not, openly claim it; and, but for the delusion thus produced, could not exercise it.’” (C.K. Ogden, ed., *Theories of Fiction*, xvi-xvii)

Parallel to but symptomatic of the same untethering of language is Bentham’s radically semiotic approach to language, which pries apart meaning *within* language by recognizing the nonsense mayhem of polysemy. Bentham writes:

...a perpetual vein of nonsense, flowing from a perpetual abuse of words—words having a variety of meanings, where words with single meanings were equally at hand; the same words used in a variety of meanings in the same page; words used in meanings not their own, where proper words were equally at hand; words and propositions of the most unbounded significations, turned loose without any of those exceptions or modifications which are so necessary on every occasion to reduce their import within the compass...(Ogden, lxxii-lxxiii)

Ogden is interested overall in a semiotic approach to language (being a student of Lady Welby, who was correspondent of the American philosopher C.S. Peirce, who coined the term “semiotics”), and he happily includes himself within the group of what he aptly names “geographers of Symbolic Distance.” (xlv) [↑](#footnote-ref-8)
9. J.L. Austin, 1975, 18. [↑](#footnote-ref-9)
10. J. L. Austin, 1975, 18. Sadly, only in a footnote can I add to the mis-directions listed here Jacques Lacan’s “missed encounter” put forward in his essay “Tuchē and Automaton.” (*The Four Fundamentals of Psychoanalysis*, ed. J.A. Miller, trans. Alan Sheridan, New York and London: W.W. Norton & Co., 1977, 53-64.) For Lacan, too, this is the “happy” encounter with a tendency to be missed in generality of “the coming-back, the insistence of the signs, by which we see ourselves governed by the pleasure principle”—what Lacan, too, called “the *automaton”*. For Lacan, language, part of the Symbolic order, comprises the repetitions that we all live, every day, which shield us from something more “real”—in this case, a traumatic event in our memory. This “real” is almost impossible to access through the thicket of language, but it does erupt, in the form of an encounter, a chance encounter, a “happy” encounter for the psychoanalyst. Psychoanalysis seeks to elicit this encounter, which Lacan names, after Aristotle, *Tuchē*. [↑](#footnote-ref-10)
11. J.L. Austin, “αγαθόν and εύδαιμία in the *Ethics* of Aristotle,” in *Philosophical Papers*, London: Oxford UP, 1979. [↑](#footnote-ref-11)
12. See Bentham’s remarkable last essay, “AUTO-ICON or, Farther Uses of the Dead to the Living,” ed. Robert A. Fenn, Toronto: 1992. (not published) Among other comparisons, Bentham compares his proposition of preserving our heads for display after we die to the wooden head-puppet performances by George Stevens, “Lecturer-Errant or Itinerant upon heads.” Stevens’ wooden head performances were popular in England and the United States during the late 18th and early 19th centuries. (8) [↑](#footnote-ref-12)
13. J. Derrida, *LI*, 15. [↑](#footnote-ref-13)