

is paralleled in our other dozen institutions for the support of invention, by deliberate, personal evaluations of the invention, made ahead of time. Such are most imperfect in the case of Prizes, which are offered when the invention is unmade and therefore not well appraisable. With Awards, granted after an invention has proved itself, it may be better evaluated, but still not so well as by the 17th or later year of a patent. In every case someone, if only the inventor himself, but usually an officer of a government, corporation, university, foundation, or trade association, must evaluate a future invention before it is complete, sometimes before work on it has even started, in order to allot the money and labor necessary to try to create it. Support for invention is far more effective if it comes *now*, while the work is a-doing and the bills are to be met, rather than many years later, and most uncertainly.

[242] Summarizing those three related merits of the patent system, as compared to our other systems for securing inventions—Uniformity, Automatic Adaptation, and Postponed Evaluation—are real merits, but so hedged with counter considerations, that their balance of profit is dubious.

[243] A brave string of adjectives was used by the oldtime philosopher Bentham to garland the patent system.²⁴⁶ "An exclusive privilege is of all rewards the best proportioned, the most natural, and the least burdensome. . . . [A patent] unites every property which can be wished for in a reward. It is variable, equable, commensurable, characteristic, exemplary, frugal, promotive of perseverance, subservient to compensation, popular, and revocable." And he adds that patents cost nothing, meaning presumably that their charges are collected by producers from consumers without burdening the fisc and government, and that according to the old theory we disposed of (§ 146, 7), it is impossible that a patentee should charge more than the benefit he confers, because without himself personally we could never have got the invention. Bentham's previous point, that patents keep the assessment, collection, allotment and spending of inventional costs in the hands of private enterprise rather than a government, will appeal to people of *laissez-faire* philosophy, who would minimize government, more than to those who look on government as one of various instrumentalities available for improving the citizens' lot and fostering any kind of good.

C. BASIC FAULTS AND LIMITATIONS OF THE PATENT SYSTEM

[244] 1. *The uniform 17-year period* of patents, as well as other shortcomings, make them almost wholly useless for supporting the great, basic, Fundamental Inventions, which under present conditions, with little support from patents or any other source take long—40 years or so—to develop. This subject is so important and neglected that we shall devote to it our next chapter.

[245] Uniformity of patent treatment (§ 239) for all inventions, big and little, from the supremely difficult ones like a hydrogen-fusion powerplant, to the almost easiest, is not a *necessary* trait of the patent system, unless in the sense that whenever a custom is almost universal, the world over, like gambling, it may be called psychologically necessary; or it may be so bound up in traditional and worldwide culture