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INSIDE "AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION" BY JEREMY BENTHAM

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Abstract
Jeremy Bentham (1748-1832) published the first edition of *An Introduction to the Principles of Morals and Legislation* (1789) a century after the Glorious Revolution. He sought to encapsulate in the juridical field the reform needs that were coming from England and the rest of Europe: a moral science which would allow the legislator to make his choices depending on rational external calculations rather than on his arbitrary whims deriving from customary law in order to ensure the greatest happiness for his subjects. In Bentham's thought, there was no longer true rationality in the ancient natural law construction; utility was the main principle that could be attributed to reason in order to support a rational legislative science that would be comprehensible and not oppressive. Through this detailed masterpiece, the English philosopher brought to fruition a sort of Copernican revolution of law that had already begun some decades earlier with Claude-Adrien Helvétius and Cesare Beccaria (to mention but two names), by seeking to extirpate prejudice and superstition from legal science.

Keywords: beyond customary law, rational legislative science, utility as inspiring principle of reason.

1. A Copernican Work in the Legal and Philosophical Sciences

The present work as well as any other work of mine that has been or will be published on the subject of legislation or any other branch of moral science is an attempt to extend the experimental method

of reasoning from the physical branch to the moral. What Bacon was to the physical world, Hélvétius was to the moral. The moral world has therefore had its Bacon, but its Newton is yet to come[1] .

Through these words contained in the Appendix to *Of Laws in General* (1782), Jeremy Bentham (1748-1832) described the main purposes of *An Introduction to the Principles of Morals and Legislation* (hereafter referred to as AIPML). It was a research program similar to the one advanced by Hume – from which he appropriated the same formula of «experimental method of reasoning» that appeared in the subtitle of the *Treatise of Human Nature*[2]; by not mentioning David Hume's previous attempt, the English philosopher probably underlined the new road he wanted to take[3].
AIPML was published for the first time in 1789[4]; more precisely, a previous version dated back to 1780, but it remained unpublished for nine years because Bentham had encountered unexpected difficulties in the last chapter, in which he explained the distinction between penal and civil law. In this regard, he decided to write a separate book, which remained unknown for a long time; it is now published under the title *Of Laws in General*[5], but an account of its contents could be found in the long concluding note which Bentham appended to AIPML of 1789. A second edition with some corrections was published in 1823 and a third edition, into which were inserted some passages taken from Étienne Dumont's French version of Bentham's manuscripts on the *Principles of Penal and Civil Law*[6], appeared in 1838 in the first volume of Bowring's edition of Bentham's works[7].
Already in *A Comment on the Commentaries* – published anonymously as *A Fragment on Government* (1776)[8] – Bentham had criticized William Blackstone's *Commentaries on the Laws of*

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[1] See J. BENTHAM, Appendix to *Of Laws in General*, quoted in E. HALÉVY, *La jeunesse de Bentham*, Paris, Alcan, 1901, pp. 289-290; this quotation can also be found in D.G. LONG, *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to His Utilitarianism*, Toronto-Buffalo, University of Toronto, 1977, p. 164.

[2] See D. HUME, *A Treatise of Human Nature*: *Being an Attempt to Introduce the Experimental Method of Reasoning into Moral Subjects* (1739-40), edited by L.A. Selby-Bigge, Oxford, Clarendon Press, 1888.

[3] In a letter to Étienne Dumont dated 6 September 1822, Bentham specified: «The difference between Hume and me is this, the use he made of [the principle utility], was to account for that which *is*, I to show what *ought to be*». For this letter, see HALÉVY, *La jeunesse de Bentham*, cit., p. 282.

[4] See J. BENTHAM, *An Introduction to the Principles of Morals and Legislation*, London, Payne, 1789.

[5] ID., *Of Laws in General* (1782), edited by H.L.A. Hart, London, The Athlone Press, 1970.

[6] ID., *Traités de législation civile et pénale*, edited by E. Dumont, 3 vols., Bossange-Masson-Besson, Paris 1802.

[7] ID., *The Works of Jeremy Bentham*, 11 vols., edited by J. Bowring, Tait, Edinburgh 1838-1843, vol. I, pp. 1-154.

[8] See J. BENTHAM, *A Fragment on Government; Or A Comment on the Commentaries*, in ID., *The Works of Jeremy*

England (1765–1769)[9], particularly his justification of the social contract theory. This subject still reverberated greatly because about a century before King James II had broken his contract with the English people by attempting to promote Catholic restoration and establish an absolute monarchy; the Glorious Revolution (1688-89) had determined his replacement with William III of Orange, a devout Protestant. Through the Bill of Rights (1689), the new constitutional monarchy had recognized the prerogatives of Parliament and the limits placed on the King who, however, remained the holder of executive power.

But the meaning of AIPML can be better understood in the context of an overall paradigm of scientific study of human conduct developed by English and Scottish philosophy in the XVIII century. Bentham noted that the use of the experimental method had already consolidated in different areas. Compared to David Hume's science of human nature or to Adam Smith's general theory concerning moral sentiments and economy, there was still no scientific work in the fields of morality and legislation; therefore, he thought that this gap had to be filled. AIPML (as *A Fragment on Government*) can be traced back to the first part of his long intellectual biography; he elaborated this work when he was in contact with some famous French Encyclopaedists (he studied and translated Voltaire and was in correspondence with Jean-Baptiste Le Rond d'Alembert) with whom he shared progressive and reformist goals. On the one hand – as pointed out by the British philosopher Ross Harrison – it was necessary to carry out a reform of the laws, freeing them from the superstition of the past with the help of reason; on the other hand, this reform was to be promoted by «enlightened despots»[10].

It was in the context of the struggle against prejudice and superstition through the light of reason that we can highlight the influence exerted by Claude-Adrien Helvétius (1715-1771) and Cesare Beccaria (1738-1794) on Bentham's *modus pensandi*; this sort of intellectual debt allows us to reconnect AIPML with European Enlightenment thought. With reference to *De l'esprit* by Helvétius, Bentham appreciated the idea of relating the principle of general happiness to a certain number of individual pleasures; Helvétius had affirmed the idea that the main task of the legislator was to realize an artificial identity of interests by operating through punishments and rewards in order to ensure that

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Bentham, edited by J. Bowring, cit., vol. I, pp. 221-295.

[9] See W. BLACKSTONE, *Commentaries on the Laws of England*, 4 vols., Oxford, Clarendon Press, 1765-1769. At Oxford, Bentham had attended the lectures given by William Blackstone (1723-1780), first Vinerian Professor of English Law.

[10] See R. HARRISON, *Bentham*, London, Routledge & Kegan, 1983, pp. 7-11.

the subjects could find for themselves useful to avoid crimes and seek general happiness. It was an idea to support the achievement of a «political arithmetic» through which the legislator could elaborate a «calculation of probabilities» to plan his intervention better[11]. Bentham explicitly motivated his admiration for Beccaria, defined as «the first evangelist of Reason» who «raised Italy so far above England and I would add above France, were it not that Helvétius […]»; in fact, he found *Dei delitti e delle pene* not only «the first reference to the principle of utility» but also a stimulus to create a «moral science» capable of facing and solving the questions of the legislation with «the precision, clearness and incontestability of mathematical calculation»[12]. In addition, Bentham appreciated the Italian intellectual's idea of «measuring the value of each sensation by analyzing it within four elements», namely intensity, duration, proximity and certainty; he also considered the critical revision of the traditional system of punishments developed by Beccaria as «the foundation of a complete system of moral science»[13]. In this way, the English philosopher inherited from Beccaria – as argued by the Italian philosopher Eugenio Lecaldano – that «moral tension» which would inspire his critical re-examination in AIPML[14].

At the beginning of this work, Bentham enunciated the axiomatic psychological assumption of the utilitarian principle: «Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do»; and immediately afterward he underlined: «In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while»[15]. Moreover, enlightened public opinion in Europe also perceived the reform of the oppressive system of criminal law inherited from the past as a great need. Like Voltaire, Bentham hoped to extirpate prejudice and superstition; the purpose of legislative science – as he pointed out – was to enable men to «rear the fabric of felicity by the hands of reason and of law» (ch. I, par. 1). Laws were often not only barbaric in substance and

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[11] See C.-A. HELVÉTIUS, *De l'esprit*, Paris, Durand, 1758. Regarding Helvetius' influence on Bentham, see above all BENTHAM, *The Works of Jeremy Bentham*, edited by John Bowring, cit., vol. X, p. 27.

[12] Bentham's reflections on Beccaria can be found in C. BECCARIA, *Dei delitti e delle pene* (1764), edited by Franco Venturi, Torino, Einaudi, 1965, pp. 562-563 (translation from the Italian by Claudio Giulio Anta).

[13] Ivi.

[14] See E. LECALDANO (ed.), *Introduzione ai principi della morale e della legislazione*, Torino, Utet, 1998, p. 14 (translation from the Italian by Claudio Giulio Anta).

[15] See BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., ch. 1, par. 1.

chaotic in form; they were also inefficient because they attached a quite illusory importance to the severity of punishment and did not guarantee clarity and certainty in their own application. The belief that legislation should be characterized by a conception of punishment as a means of preventing crime at the least cost in human suffering and therefore an instrument of social progress was an important part of the legal philosophy of Enlightenment thought; it was not by chance that Bentham stated firmly that «all punishment in itself [was] an evil» (ch. XIII, par. 2). The precise calculation of the pleasures and pains involved in the penal system was not an end in itself, but it was aimed at avoiding unnecessary suffering and alleviating the cruelty and duration of punishment by relying on its certainty and prompt applicability.

Bentham's viewpoint was that of a legislator enacting a code of conduct based on the principles of utility and backed by punitive sanctions regulated by the same principles. His account of utility was also significant due to its rejection of two rival approaches: he designated the first as the concept of asceticism, which had its roots in various versions of Stoic morality. The second principle opposed to the utility one was the sympathy-antipathy binomial; it looked to a series of phrases relating to approval or disapproval in order to assess the validity of various ideas and actions; they included notions such as moral and common sense, understanding, rule of right, fitness of things, law of nature, law of reason, right reason, natural justice, natural equity, good order, truth. Bentham's suggestion according to which the net measure of pleasures and pains for a group of people was the means of determining the utility deriving from a particular policy, the greatest happiness, attracted several names such as "felicific calculus", "hedonic calculus", "hedonistic calculus"; however – as pointed out by the US political philosopher David Braybrooke (1924-2013) – the English intellectual used none of these expressions in AIPML, though the first locution was the most suitable[16]. Despite Bentham's central concern with legal reform – as properly stated by the British philosopher and jurist Herbert Lionel Adolphus Hart (1907-1992) – in AIPML there was no discussion of constitutional law and not even a suggestion concerning the reform of the British Parliamentary system which denied thousands of citizens the right to vote, and against which Bentham was later to direct his fiercest criticism[17]. Hence there was no attempt to draw from the principle of utility, arguments for democracy

[16] See D. BRAYBROOKE, *Felicific Calculus*, in J.E. CRIMMINS (ed.), *The Bloomsbury Encyclopedia of Utilitarianism*, New York, Bloomsbury, 2013, pp. 163-165.

[17] See H.L.A. HART, *Bentham and the United States of America*, in «Journal of Law and Economics», October 1976, vol.

being seen by Bentham as an anarchical doctrine of natural rights. In fact, in those years, as he later recognized himself, politically he was a somewhat naïve conservative: «I was [however] a great reformist, never suspecting that the people in power were against reform. I suppose they only wanted to know what was good in order to embrace it»[18]. Therefore, this work did not constitute a treatise on political theory in the usually sense.

In the Preface (written by Bentham in the third person) of AIPML, he noted that «in addition to the analysis it [the preface] contains of the extensive ideas signified by terms *pleasure*, *pain*, *motive*, and *disposition*, it ought to have given a similar analysis» of the not any less extensive concepts «annexed to the terms emotion, passion, appetite, virtue, vice and some others». His method of critical analysis of jurisprudence was to take the fundamental and abstract words of science and relate them with simple ideas by long chains of definitions. A renewed jurisprudence also involved the need to draw a distinction between penal and civil law: «Wherein consisted the identity and completeness of a law? What the distinction, and where the separation, between a penal a civil law? What the distinction, and where the separation, between the *penal* and *other branches of the law*?»[19]. The reason which forced Bentham to explore these fundamental relations – as pointed out by the US philosopher Douglas G. Long – was brought on by his growing awareness that «criminal» or «penal» elements could be found in each traditional branch of law, including the civil and constitutional ones[20]. Bentham's research later led him to the conclusion that every complete law had a penal and civil element; in his opinion, the labels «civil» and «penal» embraced different essential tasks performed by the law; the civil part concerned the definitional, distributional, and ultimately constitutive tasks, while the penal part the regulative ones; as a matter of fact, in a *General View of a Complete Code of Laws* (1802), he wrote: «A civil law is that which establishes a right; a penal law is that which, in consequence of the establishment of a right by the civil law, directs the punishment in a certain manner of him who violates it»[21].

19, no. 3, pp. 547-567.

[18] See J. BENTHAM, *Memoirs and Correspondence*, in ID., *The Works of Jeremy Bentham*, edited by John Bowring, cit., vol. X, p. 66.

[19] See BENTHAM, Preface from *An Introduction to the Principles of Morals and Legislation*, cit.

[20] See LONG, *Bentham on Liberty*, cit., ch. 9.

[21] See J. BENTHAM, *General View of a Complete Code of Laws*, in ID., *The Works of Jeremy Bentham*, edited by John

Starting from the need to evaluate laws according to rational calculations, Bentham believed that a new scientific jurisprudence could not derive, as in the past, from a purely moral perspective, but it had to be the result of the consistent application of an external criterion. Through the critical reflections of customary law and natural law theory, the latter inherited by the tradition of Hobbes and Locke, in AIPML he delineated the nucleus of a new legislation inspired by the utilitarian principles, but all this involved a careful re-examination of language by the legislator. The very vagueness of traditional legal language was one of the recurring themes in AIPML; Bentham considered arbitrariness the main fault of customary (unwritten) law. In his opinion, laws were expressions of the sovereign or legislative power, and common law lacked this positive and definite character because it was the judge who, in light of the precedents, pronounced on the legality of an action[22]. The English philosopher believed that the codification of laws would allow citizens to know the punishments through the enunciation of a complete list of offenses with the respective penalties. In the perspective of the utilitarian principle, the overcoming of customary law could provide rigor and precision to the instruments used by legislators to control the conduct of their subjects. He also highlighted that legal language was characterized, even once purified by the legal fictions introduced by the theorists of customary and natural law, by «fictitious entities»; these were none other than artificial linguistic constructions that, unlike concepts used to name objects and things, could be traced only indirectly to real entities.

According to Bentham, the nature of the «fictitious entities» of the main notions of legislation caused a consequent difficulty for the project of reconstruction of an ethical language in which utilitarian theory was engaged because it was a source of mystification and obscurity. From the perspective of a universal jurisprudence, in AIPML, he stated that in all national legal languages there were a series of words almost corresponding to each other and closely linked[23]. However, it was not possible – as he also wrote in the *Essay on Language* – to consider the individual words separately; it was necessary to include them in a wider communication process: «No word [was] of itself the complete sign of any

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Bowring, cit., vol. III, pp. 155-210 (for the quotation see p. 160).

[22] For this reason Bentham specified that common law was a «fictitious composition which [had] no person for its author, no known assemblage of words for its substance» (Preface from AIPML).

[23] In this regard, Bentham referred principally to the concepts of «power», «right», «obligation», «liberty» (ch. XVII, par. 24).

thought», but rather «it was in the form of entire propositions that when first uttered, discourse was uttered. Of these integers, words were but so many fragments, as afterwards in written discourse letters were of words»[24]. For example, Bentham asserted that we could not face imperatives and commands with Aristotelian and scholastic logic; instead, one had to make all their logical relations explicit. In this sense, in AIPML, he developed a language characterized by an original semantic nature and effective syntactic structure.

The elaboration of an ethical conception deriving from the utility principle involved two main aspects depending on whether one used a descriptive or a normative point of view. On the descriptive level, it was necessary to reconcile the realization of the objectives proper to morality and legislation – general happiness, security, stability and order of associated life – with the thesis of psychological hedonism according to which each individual could not but be driven to seek their own pleasure and avoid their own pain. Through a reading of AIPML, it is possible to share the reflection of Élie Halévy (1870-1937); the French historian and philosopher affirmed that Bentham had taken from Hume «the principle of the artificial identification of interests»[25]. In fact, at the center of his utilitarian project there was not only the main idea of general happiness but also the appeal to the legislator to solve, by means of a correct application of punishments, «the great problem of morals, to identify the interest of the individual with the interest of the community»; in this sense – as Helévy specified further – Bentham's first great work was an «introduction to the principles not only of morals, but also and above all of legislation»[26]. Regarding the normative level, the English intellectual dedicated the seventeenth and last chapter of AIPML to the relations between private and public ethics; about this specific aspect, the US political and legal philosopher David Lyons affirmed that Bentham supported a natural harmony between private and public interests. Moreover, Lyons denied that his utilitarianism could be attributed to a merely universalistic ethical principle because the legislator sought to satisfy the interests of the governed and, therefore, his calculations did not go beyond a specific community[27]. By dealing with the interests of a given community, the art of government

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[24] See J. BENTHAM, *Essay on Language*, in ID., *The Works of Jeremy Bentham*, edited by John Bowring, cit., vol. VIII, pp. 295-338 (for the quotation see p. 322).

[25] See E. HALÉVY, *The Growth of Philosophic Radicalism*, London, Faber and Faber, 1928, p. 17.

[26] Ivi, p. 18.

[27] See D. LYONS, *In the Interest of the Governed. A Study in Bentham's Philosophy of Utility and Law* (1973), Oxford,

could artificially create, with the application of various sanctions, a sort of convergence of private and public interests.

2. A Rational Classification of Legislative Science

Utilitarian ethics was presented by Bentham as a context where it was possible to place a rational legislative activity that was comprehensible and not oppressive; his program aimed to create a moral science which could allow the legislator to make his choices depend on rational external calculations rather than on his arbitrary whims to ensure the greatest happiness for his subjects. The English philosopher considered utility «that principle which approves or disapproves of any 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»; shortly afterward, he pointed out: «I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government» (ch. I, par. 2). In the first two chapters, Bentham conceived of the principle of utility as the only acceptable criterion to define what was «right» and «wrong» which reasonable men could accept. His remarks about the meaning of these terms were as follows:

Of an action that is conformable to the principle of utility, one may always say either that it is one that ought to be done, or at least that it is not one that ought not to be done. One may say also, that it is right it should be done; at least that it is not wrong it should be done: that it is a right action; at least that it is not a wrong action. When thus interpreted, the words *ought*, and *right* and *wrong*, and others of that stamp, have a meaning: when otherwise, they have none (ch. I, par. 10).

The Montenegrin political philosopher John Petrov Plamenatz (1912-1975) claimed that Bentham had considered the words «ought», «right» and «wrong» as descriptive terms, meaning «conducive to the greatest possible amount of pleasure» and to have put forward the principle of utility as following from the meaning of these terms[28]. Bentham also dismissed a range of theories which seemed to offer alternatives; they were presented in terms of «common sense», while others passed under such names as «reason», «right reason», «natural justice», «fitness of things» (ch. II, par. 14n).

Clarendon Press, 1991, pp. 24-27 and pp. 50-81.

[28] See J.P. PLAMENATZ, *Man and Society*, 2 vols., London, Longmans, 1965, vol. II, pp. 1-3.

But these concepts were for him more or less well–disguised forms of caprice according to which each man's unregulated feelings of sympathy or antipathy were taken as arbitrary reasons for deciding who was right when men's opinions conflicted.

He believed that the potential contradiction between the need to pursue our own greatest pleasure (selfish hedonism) and the greatest happiness of all (ethical hedonism) could be solved through certain forces capable of making individual interest coincide with the public one; they were called «sanctions», namely the tools used by the legislator to work in an understandable and proportionate way. Bentham conducted his analysis thoroughly and precisely: in the third chapter, he identified four different types of sanctions defined as «physical», «political», «moral» and «religious» (ch. III, pars. 3-6). The physical sanction operated in the ordinary course of nature without human or divine intervention; the political one was linked to the legislator's activity and constituted by legal sanctions. The moral one was not created by the legislator, since it consisted in the tendency of every citizen to be influenced by public opinion; therefore, it concerned realities such as reputation, good name and fear of shame. Even in the case of religious sanction, the legislator had to limit his intervention on the conduct of subjects, without evaluating the level of truth of the belief involved[29]; it derived from the «immediate hand of a superior invisible being, either in the present life or in a future» (ch. III, par. 6). To this purpose, some chapters of AIPML were characterized by a deism typical of the Age of *Enlightenment;* as a matter of fact, he defined religion as a «kind of fictitious personage» which «[did not] seem to be completely fettled into a neutral sense» and highlighted the need to distinguish the «love of God» from the «fear to God»[30]. These words were consistent with English Deism, which supported a sober natural religion without the trappings of Roman Catholicism and the Anglican Church, and regarded as blasphemous any manifestation of fanaticism and representation of God with His vindictiveness, jealousy, and destructive cruelty[31]. The deistic vision upheld the idea of a

[29] In AIPML Bentham pointed out: «I consider religion in no other light than in respect of the influence it may have on the happiness of the present life. As to the effect it may have in assuring us of, and preparing us for, a better life to come, this is a matter which comes not within the cognizance of the legislator» (ch. XVI, par. 18n).

[30] In a good sense, God was synonym of «devotion, piety and pious zeal», while in other cases of «fanaticism or fanatical zeal» (ch. X, par. 24).

[31] At the turn of the XVII century, England was characterized by relative freedom of religious expression following upon the Glorious Revolution; in this historical context, deism had assumed a more militant form, particularly in the works of Lord Ashley (1621-1683), Matthew Tindal (1656-1733), Thomas Woolston (1768-1733), John Toland (1670-1722), and Anthony Collins (1676-1729). Regarding English deism, see M. SINA, *L'avvento della ragione. "Reason" e "above*

«Supreme Being» (AIPML contained some references to this concept[32]), loving and benevolent, and intended men to behave towards one another in the same kindly and tolerant manner; this *modus pensandi* could be related to English Freemasonry and this led one to speculate about Bentham's Masonic membership[33].

The English philosopher did not limit himself to proposing the classic and famous idea that human conduct was governed by two main masters, namely pain and pleasure; his particular contribution consisted in a deepening of those details that, in the fourth chapter, allowed him to develop a real scale for measuring the extent of these two concepts. In this sense, he fixed seven principles of «intensity, duration, certainty or uncertainty, proximity or remoteness, fecundity, purity and extent» (ch. IV, par. 4). In the fifth chapter, Bentham also defined pleasures and pains as «interesting perceptions» that, in turn, could be «simple» or «complex»; in this regard, he specified: «The simple ones [were] those which [could not] any one of them be resolved into more: complex [were] those which are resolvable into divers simple ones»[34]. In the sixth chapter, he recognized that pleasures and pains could be perceived by individuals in different ways; he examined this under the heading "Circumstances Influencing Sensibility". Thus he distinguished thirty-two circumstances, such as sex, age, strength, mental state, moral sensibility and education (ch. VI, par. 6). They were to be examined by legislators and judges so that the punishment designed by the former and applied by the latter could achieve the intended effect; each of these was explained carefully, especially where there was danger of confusion such as that between physical strength and hardiness, and sensibility and moral bias. Bentham provided an «analytical view» (ch. VI, par. 6n) in which circumstances were classified as primary or secondary, connate or adventitious, personal or exterior, concerning the body or the mind, the understanding or the affections. From his perspective, no simple version of Epicurean

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Reason" dal razionalismo teologico inglese al deismo, Milano, Vita e Pensiero, 1976; J.V. PRICE (ed.), *History of British Deism*, 8 vols., London, Routledge-Thoemmes Press, 1995; J.R. WIGELSWORTH, *Deism in Enlightenment England: Theology, Politics and Newtonian Public Science*, Manchester-New York, Manchester University Press, 2009.

[32] For the concept of «Supreme Being», see ch. 5, par. 10; ch. 5, par. 25; ch. 10, par. 24.

[33] The question concerning Bentham's Masonic membership was raised several times; however, in the Library of "The United Grand Lodge of England" it is not possible to trace any record of him as a member of an English lodge. This does not constitute conclusive evidence that he was not a Freemason, however, since in the XVIII century record of membership within the lodges was by no means thorough.

[34] Immediately afterwards he wrote: «A complex interesting perception [might] accordingly be composed either, 1. Of pleasures alone: 2. Of pains alone: or, 3. Of a pleasure or pleasures, and a pain or pains together» (ch. V, par. 1).

hedonism could be applied to determine public policy and legislation; at the same time, he was concerned to show that hedonism could provide the foundations for understanding and developing a program of political reform.

Hence came Bentham's great and certainly excessive concern with classification by the method of bipartite or dichotomous division designed to yield an exhaustive conspectus and analysis of a given field of study; this method, which could be traced back through the scholastics to Aristotle, proceeded by dividing a given *summum genus* or widest class into two mutually exclusive and jointly exhaustive species or sub-classes, which were then in turn followed by similar sub-divisions until no distinctions of importance remained to be made[35]. As highlighted by Herbert Lionel Adolphus Hart, Bentham was «at his ease […] in the close, minute analysis and classification of concrete detail, attention to which [was] required in the application of the principle of utility»[36]. Hart himself pointed out that the way through which the English philosopher analyzed the meaning of the main notions of the language of ethics and legislation as «fictitious entities» or «logical fictions» recalled models of language analysis of the XX century, such as the theory of logical construction developed by Bertrand Russell (1872-1970)[37]. However, Bentham realized that the detailed classifications characterizing many chapters of AIPML ran the risk of not attracting the reader; it was not by chance that in his Preface, he anticipated that the immense discussion of details could appear «dry and tedious» and suggested to the reader «to support the fatigue of wading through an analysis of such enormous length» as, for example, the sixteenth chapter on the classification of offences which occupied nearly a third of the book. It was indeed easy without a guide to get lost in the forest of details of what the British political and moral philosopher Anthony Quinton (1925-2010) had termed «Bentham's lust for classification»[38].

The second part of AIPML was devoted to an account of the «logic of the will», defined emblematically at the beginning of this work as follows: «It is, to the art of legislation, what the

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[35] See J. BENTHAM, *Chrestomathia* and *Essay on Logic*, in ID., *The Works of Jeremy Bentham*, edited by J. Bowring, cit., vol. VIII, p. 110n. and 252n.

[36] ID., *An Introduction to the Principles of Morals and Legislation*, edited by J.H. Burns and H.L.A. Hart, London-New York, Methuen, 1982, p. xlii.

[37] See H.L.A. HART, *Essays on Bentham: Studies in Jurisprudence and Political Theory*, Clarendon Press, Oxford 1982, pp. 128-131.

[38] See A. QUINTON, *Utilitarian Ethics*, London, Palgrave Macmillan, 1973, p. 32.

science of anatomy is to the art of medicine: with this difference, that the subject of it is what the artist has to work with, instead of being what he has to operate upon» (Preface). In the chapters on "Human Actions in General" (VII) and their mental components, which Bentham called "Intentionality" (VIII) and "Consciousness" (IX), he wrote some of his most illuminating contributions to philosophy and jurisprudence; he sought to describe a human act depending on circumstances, contexts and the purposes in hand, by providing the basis for the third part of the work concerning the theory of punishment. He distinguished actions as «positive» or «negative», «absolutely» or «relatively», «external» or «internal», «transitive» and «intransitive», «transient» and «continued», «indivisible» or «divisible» (ch. VII, pars. 8, 9, 11, 13, 16, 19). Besides, the same act could be perceived in different terms; Bentham believed that men had to be aware of the ambiguities of language, more precisely of certain «unsolvable doubts» concerning the individuation of acts:

It has been every now and then made a question [in which] one act has ended, and another act has begun: whether what has happened has been one act or many. These questions, it is now evident, may frequently be answered, with equal propriety, in opposite ways: […] the answer will depend upon the nature of the occasion, and the purpose for which the question is proposed. A man is wounded in two fingers at one stroke – Is it one wound or several? A man is beaten at 12 o'clock, and again at 8 minutes after 12 – Is it one beating or several? (ch. VII, par. 20).

Simple acts could have intentional or unintentional consequences; Bentham's careful discussion displayed a remarkable analysis of the complex way in which cognitive and volitional factors were involved in the structure of intentional action[39]; the latter involved not only a matter of will but also of understanding, which he defined as «consciousness». More precisely, he argued: «When the act itself [was] intentional, and with respect to the existence of all the circumstances advised, as also with respect to the materiality of those circumstances, in relation to a given consequence, and there [was] no mis-supposal with regard to any preventive circumstance, that consequence must also be intentional» (ch. IX, par. 10). In other words, advisedness, if cleared from of the missupposal of any

[39] This original and brilliant account was mainly focused on those aspects of a man's intention which were of prime importance in criminal law in determining whether a criminal offence had been committed, and so it constituted what Bentham called a «criminative circumstance» (ch. XVI, par. 66).

preventive circumstance, extended the intentionality from the act to the consequences. In addition, Bentham treated bodily movements as the first stage of ordinary intentional acts (examples of which included touching a person, pushing them down or throwing water in their face); he seemed to recognize as consequences only those which were material for the purposes of a utilitarian legislator; thus he regarded touching a person as an act, but hurting them as a combination of act and consequence (the whole action)[40].

The author of AIPML supported bluntly the use of neutral forms of expression to promote a real progress of legislative science. In the tenth chapter on "Motives", he drew attention to this «imperfection of language» (ch. X, par 13n) as an obstacle concerning the reform of legislation; he insisted on a precise and neutral vocabulary as part of a larger need to sharpen citizens' awareness when confronted with the law. Since the legislator had to create a judicial system of punishments in accordance with the principle of utility, facts must be described accurately. Ordinary language was full of names for motives such as «lust», or «avarice» (ch. X, par. 13) which were laden with a condemnatory moral judgment. Furthermore, he classified motives as «purely social», «semi-social», and «dissocial» depending on their general tendency to give rise to actions which coincided with the requirements of utility or opposed to it. He laid down the main principles of a rational and systematic legal system, above all the characteristics of penal law. In XVIII-century penology, the general view of punishment – as written by James Edward Crimmins – was characterized by «the desire of vengeance»[41]; in contrast, Bentham highlighted that punishment was a particular category of pain derived from a legal process, an «artificial consequence annexed by political authority to an offensive act» (ch. XII, par. 36), a kind of expense requiring frugality or the avoidance of unnecessary suffering. This economic terminology ran through Bentham's identification of "Cases Unmeet for Punishment" (ch. XIII); in resorting to criminal sanctions, the legislator had not to lose sight of the utilitarian prospect according to which «all punishment [was] mischief» (ch. XIII, par. 2). A man was not to be

[40] In this regard, Bentham's disciple, the British jurist and philosopher John Austin (1790-1859), wrote in *Lectures on Jurisprudence* (1861) published posthumously, that «bodily movements [were] the only objects to which the term "acts" [could] be applied with perfect precision and propriety […]. Most of the names which seem[ed] to be names of acts [were] names of acts coupled with certain of their consequences». See J. AUSTIN, *Lectures on Jurisprudence* (1861), London, Murray, 1885, p. 415.

[41] See J.E. CRIMMINS, *Punishment*, in Id. (ed.), *The Bloomsbury Encyclopedia of Utilitarianism*, cit., pp. 454-459 (for the quotation see p. 455).

punished if he was unaware of the relevant circumstances or consequences of his conduct and so acted unintentionally, or if he acted under duress, or while incapacitated by insanity or drunkenness; all such cases fell into the class where «punishment must be inefficacious» (ch. XIII, § 3), since its infliction involved suffering for no purpose.

The fourteenth chapter ("Proportion between Punishments and Offences") was also characterized by detailed and precise rules in cost–benefit terms: «The value of the punishment must not be less in any case than what [was] sufficient to outweigh that of the profit of the offence» (ch. XIV, par. 8). The central core of Bentham's project was to elaborate a complete classification of the crimes by delimiting the sphere of human conduct; since the English philosopher attributed to the legislator the aim of increasing the happiness of citizens, he elaborated thirteen rules on proportionality between offences and punishments (ch. VIV, pars. 8-25). Frederick Rosen affirmed that Bentham's idea of proportionality was influenced by the conception of constitutional freedom by Charles-Louis de Montesquieu (1689-1755)[42] because it involved not only the acceptance of the criterion of utility but also the principle of maximizing individual security against State power. However, Bentham elaborated a new and rational theory compared to the generally accepted features of criminal law; he presented punishment as operating mainly through fear both as a general and individual deterrent, but he also considered it as «a moral lesson» (ch. XIV, par. 27) to inspire the behaviour of public opinion against pernicious habits. The determination of the appropriate degree and forms of punishment was not a matter to be left to feelings of sympathy or antipathy but called for reasoned and informed assessment.

Legislators' success involved exhaustive knowledge of the crimes potentially committed by subjects; if punishments were previously enunciated through comprehensible laws, it was possible to reduce the amount of suffering inflicted by the penal system, thereby functioning as a deterrent against the accomplishment of offences. In order to make law a real science, Bentham outlined a "Division of Offenses" in the sixteenth chapter; he behaved like a botanist, taking as a model the great Swedish scientist Carl Linnaeus (1707-1778), who had produced a complete and systematic classification of living systems. By excluding the arbitrary intervention of legislators motivated by their sinister and

[42] Regarding the influence of *The Spirit of the Laws* by Montesquieu on Bentham, see F. ROSEN, *Jeremy Bentham and Representative Democracy*, Oxford, Clarendon Press, 1983, pp. 67-75.

partial interests, a more rational and economic system of punishments had to be applied to prevent the commission of an offence and determine a strictly necessary amount of suffering. The overall classification of offences included not only what were called crimes but also what were now termed civil offences or civil wrongs, such as a breach of contract or trust, or torts such as libel or trespass. The solidity of such a judicial system could avoid useless or ineffective, as well as excessively burdensome, penalties; it was not by chance that the English philosopher argued that a functional penal system must not foresee the barbarism of the death penalty. One of the most significant concepts of this chapter was what Bentham termed «self regarding offences»; in this case, the primary mischief caused by the offender's act was to himself. He considered the issue too controversial to set it within the main text, relegating to footnotes examples of what might be considered as offences, such as «gluttony», «drunkenness», «excessive venery» and «suicide» (ch. XVI, par. 33n). In this regard, however, there was no real damage to be prevented or, at least, it was useless or unprofitable to interfere with legal punishment; indeed, men knew their own interests and what was harmful to their happiness better than the legislator and, in general, he believed that legal systems had been too prone to interfere in such cases. In short, Bentham's «map of universal delinquency» (ch. XVI, par. 59) presented the widest possible view combined with the most meticulous detail trough which law could exert its coercive powers by inspiring its standards to the principle of utility; it was a sustained effort to get behind lawyers' technical and artificial classification in order to identify the human interests which a rational system of law would protect[43].

The distinction between «penal» and «civil» law (a topic already mentioned in the Preface) was highlighted in the seventeenth chapter ("Limits of the penal branch of jurisprudence") and in the "Concluding notes" added to AIPML in 1789. In his opinion, there were not two bodies of law because each of it included a penal and a civil part; the first was the purely imperative element imposing the sanctions, while the second was the exposition of circumstantitative matter specifying the conditions and expectations to which the penal part was subject. In this last chapter, Bentham also

[43] The appeal of Bentham's scheme could be found in John Stuart Mill's *Autobiography*: «When I found scientific classification applied to the great and complex subject of Punishable Acts under the guidance of the ethical principles of Pleasurable and Painful Consequences, followed out in the method of detail, I felt taken up into an eminence from which I could survey a vast intellectual domain and see stretching out into the distance intellectual results beyond all computation. As I proceeded further there seemed to be added to this intellectual clearness the most inspiring prospect of producing improvements in human affairs». See J.S. MILL, *Autobiography* (1873), Oxford, Oxford University Press, 1969, p. 55.

put into question the selfishness of human species which wanted to limit ethics only to itself; coherently with the general assumptions that led one not to discriminate aprioristically any pleasure and pain, he hoped for the furthering of moral consideration even to animals (ch. XVII, par. 4n)[44]. Consistently with his thoughts developed during the French revolutionary events, he blamed the «obscure phantom» of natural law that had led some – like Grotius, Pufendorf, Burlamaqui and others – to write works in which there was not a clear difference between «political or ethical, historical or legal, expository or censorial» approach (ch. XVII, par. 27n).

3. The Historical and Philosophical Meaning

These were some of the detailed meanders through which AIPML was articulated; in spite of the complexity of the topics, Bentham's *idem sentire* clearly emerged. In his attempt to support an objective criterion instead of the individual arbitrariness that governed the administration of justice, he was a true and farsighted paladin. Moral laws had expressed above all the individual or collective prejudices of an entire epoch; in contrast, legislative sciences had to be founded on the principle of utility; that is, the value of an action was objectively definable as an algebraic sum of pleasures and pains (even if it was not always measurable in a precise way); both the judge and the legislator should have been inspired by this sort of calculation. By placing utilitarianism at the base of his project, the English philosopher became an essential reference point for the evolution of the philosophy of law.

Bentham's contemporaries ascribed considerable influence to the principles proclaimed in AIPML. In 1828, the British statesman Henry Peter Brougham (1778-1868), who would become Lord Chancellor of Great Britain two years later, in discussing penal reform told the House of Commons that «the age of reform and the age of Jeremy Bentham [were] one and the same»[45]; he added that «none before him [could] be said to have treated [legislation] as a science»[46]. The Whig politician Thomas Babington Macaulay (1800-1859) described him, on the same wavelength as Galileo Galilei and John Locke, as «the man who found jurisprudence a gibberish and left it a science»[47]. In 1849,

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[44] The role of Bentham as one of the initiators of the fight against speciesism and the liberation of animals has been highlighted in the writings of Peter Singer (*Liberazione animale*, Milano, Mondadori, 1991, pp. 16-39).

[45] See H.P. BROUGHAM, *Speeches*, 4 vols., London, James Ridgway and Sons, 1838, vol. II, p. 287.

[46] Ivi, p. 291.

[47] See T.B. MACAULAY, *Works*, 8 vols., London, Trevelyan, 1866, vol. V, p. 613.

the British politician John Arthur Roebuck (1802-1879) argued that Bentham's writings, starting from AIPML, produced a «silent revolution» in the way of analysing «political and moral subjects»[48]; subsequently, he specified that «the habits of [his] thought were entirely new»[49]. While the Scots jurist and historian Henry James Sumner Maine (1822-1888) wrote in 1875: «I do not know a single law reform effected since Bentham's day which cannot be traced to his influence»[50]. Bentham was also criticized not only by exponents of the English idealistic and Romantic Movement, from Thomas Carlyle (1795-1881) to William Whewell (1794-1866), and by supporters of spiritualistic tendencies such as Alessandro Manzoni (1785-1873) in Italy, but also by some prestigious utilitarians. For example, in two articles John Stuart Mill enunciated, respectively, the limits and merits of the utilitarian critique of the law realized in AIPML; more precisely, in 1833 he criticized Bentham for «his insufficient knowledge and appreciation of the thoughts of other men», for having «confounded the principle of utility with the principle of specific consequences», for his faults as «analyst of human nature» who had introduced «a very deceptive phraseology, and furnishing a catalogue of the "springs of action", from which some of the most important [were] left out»; for having sought to enumerate fully those motives of human conduct that were in reality uncountable[51]. Instead, in 1838 Mill took a more balanced position by recognizing a series of merits to AIPML: in fact, Bentham had «expelled mysticism from the philosophy of law» and «cleared up the confusion and vagueness attaching to the idea of law in general, to the idea of a body of laws». Furthermore, he had demonstrated «the necessity and practicability of codification» and taken «a systematic view of the exigencies of society for which the civil code [was] intended to provide», and moving from here, he had formulated «the principles of human nature by which its provisions [were] to be tested»; finally – Mill specified – he had «carried almost to perfection […] the philosophy of judicial procedure, including that of judicial establishments»[52].

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[48] See J.A. ROEBUCK, *The Life and Letters of John Arthur Roebuck*, edited by Robert Eadon Leader, London, Arnold, 1897, p. 217.

[49] Ivi.

[50] See H.J.S. MAINE, *Lectures on the Early History of Constitution*, London, Murray, 1875, p. 397.

[51] See J.S. MILL, *Remarks on Bentham's Philosophy* (1833), in ID., *The Collected Works of John Stuart Mill*, edited by J.M. Robson, 33 vols., Toronto-London, University of Toronto Press-Routledge, 1963-1991, vol. X, pp. 3-18 (for the quotations see pp. 6, 8, 12).

[52] See J.S. MILL, *Bentham* (1838), in ID., *Collected Works of John Stuart Mill*, cit., vol. X, pp. 75-116 (for the quotations

During the second half of the XX century several scholars highlighted Bentham's pioneering and farsighted role in the history of utilitarian ethics, with particular reference to the significance of AIPML. There were ethical theorists who appreciated his consistency and rigor; for example, the English philosopher Richard Mervyn Hare (1919-2002) praised Bentham's thought, since he examined the different foreseeable consequences of each act by seeking to obtain the maximum pleasures and satisfactions of all those involved, understanding that in the calculation each one had to count for one[53]. In contrast, in Bentham's consistency in asserting the criterion of maximizing general happiness for each particular action, the US philosophers John Rawls (1921-2002) and Ronald Dworkin (1931-2013) identified the source of a profound insensitivity of his utilitarianism, both for the protection of distributive justice and the need for a distinction between right and effective law[54]. However, Bentham considered utilitarianism as developed in AIPML as a sort of primary principle; about this, the US scholar of comparative literature James Steintrager affirmed that the English intellectual did not bother to outline the utility principle because he conceived it as a «fertile hypothesis» to be subscribed primarily for his «heuristic force» to reorganize the legal system and guarantee individual freedom and security[55].

In the context of this authoritative and lively debate, it is possible to affirm that, through the publication of AIPML, Bentham sought to encapsulate the reform needs in the juridical field coming from England and the rest of Europe; his main and valuable contribution was to give a pragmatic formulation to these aspirations. The drafting of AIPML coincided with his youth spent as an Enlightenment philosopher and with the caesura operated in world history by the American and French revolutionary events. A century had passed since the Glorious Revolution when Bentham published the first edition of his detailed work; he perceived that the English political system had remained rigid because of the power of the king and the lack of a real representativeness by Parliament. The first Industrial Revolution had profoundly changed British society through the

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see pp. 103-104).

[53] See R.M. HARE, *Moral Thinking. Its Levels, Method, and Point*, Oxford-New York, Clarendon Press-Oxford University Press, 1981.

[54] See J. RAWLS, *A Theory of Justice*, Harvard, Harvard University Press, 1971; R. DWORKIN, *Taking Rights Seriously*, Cambridge, Harvard University Press, 1977.

[55] On this thesis, see J. STEINTRAGER, *Bentham*, Ithaca, Cornell University Press, 1977, pp. 28-29.

redistribution of wealth and influences, but it had left the power structure, unchanged, which had become even more closed and exclusive with the advent of the authoritarian King George III. The English political system did not intend to satisfy the demands of the new entrepreneurial and financial bourgeoisie; it protected corporate interests rather than the goal of «the greatest happiness of the greatest number». In this political, economic and social context, the natural law theory, the institution of the original contract, the division of powers, the conception of sovereignty, and customary law – in short, the English constitutional apparatus – were subjected by Bentham to a series of objections. In his opinion, there no longer was true rationality in the ancient natural law construction; the concept of utility was the only principle attributable to reason. The axiom of Bentham's utility, namely «the greatest happiness of the greatest number», became inseparably linked with his name; for half a century, "Benthamite" was the epithet commonly used to designate the older generation of utilitarians who exerted a great influence upon practical legislation between the XIX and XX centuries. Bentham's thought became a unifying scientific principle of human behaviours; this seemed to provide a direct analogy with Newtonian physics, which reduced all physical phenomena to the principle of gravitation. However, the English philosopher liked to see himself as the Isaac Newton of the moral sciences, even if human nature could be observed but not proven by experiments[56]; he also regarded himself as the Martin Luther of jurisprudence[57].

AIPML was Bentham's work most closely linked to his fame. However, its renown was greater beyond the Channel (especially in France) than in England; indeed, it was initially related to Dumont's French translation of the first six chapters. As for his influence in the history of utilitarian ethics and philosophy of law, Bentham confirmed the ancient Roman saying according to which "nemo propheta in patria": some of the main needs expressed in this work, for example a general codification capable of replacing the tradition of customary law, were not accepted, so much so that in Anglo-Saxon societies, the common law system generally remained in force; instead, the codification processes were adopted above all in continental Europe with the diffusion of the Napoleonic system.

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[56] See J. BENTHAM, *Bentham manuscripts*, University College London Library, UC, CLVII, p. 32.

[57] ID., *Rationale of Judicial Evidence*, in ID., *The Works of Jeremy Bentham*, edited by J. Bowring, cit., vol. VII, p. 270n.

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