

THEORY
OF
LEGISLATION;

BY
JEREMY BENTHAM.

TRANSLATED FROM THE FRENCH OF ETIENNE DUMONT,

BY
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TRANSLATOR'S PREFACE.



WHATEVER may be thought of the *Principle of Utility*, when considered as the foundation of morals, no one now-a-days will undertake to deny that it is the only safe rule of legislation.

To establish and illustrate this proposition, and to show how it ought to be, and might be carried into practice, was the aim and end of Bentham's life and writings.

Bacon derives his fame from the fact that he was the first who fully appreciated and formally laid down the proposition, now familiar to everybody, that experiment and observation are the only solid bases of the physical sciences. In the moral sciences, and especially in legislation, the principle of utility is the only certain guide; and, in the estimation of an impartial posterity, Bentham will rank with Bacon, as an original genius of the first order.

Already, upon the continent of Europe, his writings have attained the highest reputation. In England and America, though frequently spoken of, they are little read; though they are often criticised, or sneered at, by persons who have never seen them, and who are totally ignorant of their contents. This circumstance is easily explained. Bentham was born and bred in England, and spent all his life there; but his works, in any compact

together, so as to form a perfect whole. The author perhaps had thrown aside some occasional composition, which now would not be interesting, or even intelligible. Unwilling that the whole should perish, I have stripped it, like an abandoned house, of everything worth preserving. When he has delivered himself up to abstractions too profound, to metaphysics, I do not say too subtle, but too dry, I have endeavoured to give more development to his ideas, to illustrate them by applications, by facts, by examples; and I have allowed myself to scatter, with discretion, some ornaments. I have been obliged to write out some entire chapters, but always after hints and notes of the author; and the difficulty of the task would have sufficed to bring me back to a modest estimation of myself, if at any time I had been exposed to the temptation of thinking otherwise.

“The author’s *Introduction to the Principles of Morals and Legislation*, regarded by a small number of enlightened judges as one of those original productions which form an epoch and a revolution in science, in spite of its philosophical merit, and perhaps on account of that merit, produced no sensation, and remained almost unknown to the public,—though in England, more than elsewhere, a useful book may come into notice, though it does not happen to be easy and agreeable. In using many chapters of that work to form the *General Principles of Legislation*, I have endeavoured to avoid what prevented its success,—forms too scientific, sub-divisions too much multiplied, analysis too abstract. I have translated not the words, but the ideas; I have sometimes made an abridgment, and at others a commentary, I have been guided by the advice and the hints of the author, contained in a preface, written many years after the work itself; and I have found among his papers all the additions of any consequence.

“Upon considering how much this enterprise, which I thought to confine to two or three volumes, has extended by

degrees, and what a vast career I have run through,* I regret that the labour had not fallen into abler hands; yet I am encouraged to applaud my perseverance, convinced as I am that otherwise these manuscripts would for a long time have remained buried in their own bulk, and that the author, always rushing forward, would never have found the leisure nor the courage to give himself up to the ungrateful labour of a general revision.

“This ardour to produce, and this indifference to publication; this perseverance in the severest labours; and this disposition to abandon his work at the moment of completion, presents a singularity which needs to be explained.

“As soon as Bentham had discovered the great divisions, the great classifications of laws, he embraced legislation as a whole, and formed the vast project of treating it in all its parts. He considered it not as composed of detached works, but as forming a single work. He had before his eyes the general chart of the science, and after that model he framed particular charts of all its departments. Hence it follows that the most striking peculiarity of his writings is their perfect correspondence. I have found the earlier ones full of references to works which were merely projected, but of which the divisions, the forms, the principal ideas, existed already in separate tables. It is thus that, having subjected all his materials to a general plan, each branch of legislation occupies its appropriate place, and none is to be found under two divisions. This order necessarily supposes an author who has for a long time considered his subject in all its relations; who masters the whole of it; and who is not influenced by a puerile impatience for renown.

“I have seen him suspend a work almost finished, and compose a new one, only to assure himself of the truth of a single proposition which seemed to be doubtful. A problem in finance

* This refers to other works of Bentham, announced by Dumont as ready for publication.

has carried him through the whole of political economy. Some questions of procedure obliged him to interrupt his principal work till he had treated of judicial organization. This preparatory labour, this labour in the mines, is immense. No one can form an idea of it except by seeing the manuscripts, the catalogues, the synoptical tables in which it is contained.

“But I am not writing a panegyric. It must be confessed that the care of arrangement and correction has few attractions for the genius of Bentham. While pushed on by a creative force he feels only the pleasure of composition; when it becomes necessary to shape, to put in order, to finish, he experiences nothing but fatigue. If a work is interrupted the evil becomes irreparable; the charm vanishes; disgust succeeds; and passion, once quenched, can only be rekindled by a new object.

“This same turn of mind has prevented him from taking any part in the compilations which I now present to the public. It was rarely that I was able to obtain any explanations, or even that aid of which I was absolutely in need. It cost him too much to suspend the actual course of his ideas, and to return again upon old tracks.

“But it is, perhaps, to this kind of difficulty that I owe my perseverance. If it had been my business only to translate, I should soon have grown wearied of a task so uniform yet so difficult; while the labour of a free compilation flatters by a kind of illusion, which lasts as long as it is useful, and vanishes when the work is done.”

Among Dumont's first publications from the manuscripts of Bentham, was the treatise of which these volumes contain a translation. He afterwards brought out several other works, compiled in the same way, and from the same sources; and it is only in these compilations that we find anything like a clear and complete development of the ideas of Bentham, or a full exposition of his system of legislation.

Public attention in America is every day more and more attracted to the subject of Legal Reform ; and the translator flatters himself that he will have performed a useful and acceptable service, in restoring to its native English tongue the following treatise.

It includes a vast field, never before surveyed upon any regular plan, and least of all according to such principles as Bentham has laid down. In the application of those principles he has, doubtless, made some mistakes ; for mistakes are of necessity incident to a first attempt. But he has himself furnished us with the means of detecting those mistakes and of correcting them. He asks us to receive nothing on his mere authority. He subjects everything to the test of *General Utility*.

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