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Jeremy Bentham

**An Introduction to the
Principles of Morals and Legislation**

edited by
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Introduction

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1. Utilitarianism between the XVIII and XIX Centuries

Utilitarianism is generally conceived of as a normative–ethical theory that considers whether an action is right or wrong depending on its tendency to promote happiness or otherwise (not only that of the performer of the action, but of everyone affected by it)¹. A hedonistic vision of the value

1. On utilitarianism see D. LYONS, *Forms and Limits of Utilitarianism*, Clarendon Press, Oxford 1965; D.H. HODGSON, *Consequences of Utilitarianism*, Clarendon Press, Oxford 1967; J.J.C. SMART, B. WILLIAMS, *Utilitarianism: For & Against*, Cambridge University Press, Cambridge 1973; B. WILLIAMS, *Kritik des Utilitarismus*, Klostermann, Frankfurt am Main 1979; A.K. SEN, B. WILLIAMS (eds.), *Utilitarianism and Beyond*, Cambridge University Press–Éditions de la Maison des sciences de l’homme, Cambridge–Paris 1982; L. ALLISON (ed.), *The Utilitarian Response*, Sage, London–Newbury Park 1990; J. GLOWER (ed.), *Utilitarianism and Its Critics*, Macmillan, New York–London 1990; A.O. EBENSTEIN, *The Greatest Happiness Principle: An Examination of Utilitarianism*, Garland, New York 1991; R. BRANDT, *Morality, Utilitarianism and Rights*, Cambridge University Press, New York 1992; M. HAYRY, *Liberal Utilitarianism and Applied Ethics*, Routledge, London–New York 1994; R.E. GOODIN, *Utilitarianism as a Public Philosophy*, Cambridge University Press, Cambridge 1995; G. SCARRE, *Utilitarianism*, Routledge, London–New York 1996; J.W. BAILEY, *Utilitarianism, Institutions, and Justice*, Oxford University Press, New York–Oxford 1997; T. TÄNNISJÖ, *Hedonistic Utilitarianism*, Edinburgh University Press, Edinburgh 1998; F. ROSEN, *Classical Utilitarianism from Hume to Mill*, Routledge, London–New York 2003; D. BRAYBROOKE, *Utilitarianism: Restorations, Repairs, Renovations*, University of Toronto Press, Toronto 2004; T. MULGAN, *Understanding Utilitarianism*, Acumen, Stocksfield 2007; J. GROTE, *An Examination of the Utilitarian Philosophy*, edited by J.B. Mayor, Kessinger, Whitefish 2009; K. BYKVIST, *Utilitarianism*, Continuum, London–New York 2010; J.E. CRIMMINS (ed.), *The Bloomsbury Encyclopedia of Utilitarianism*, Bloomsbury, New York 2013; B. EGGLESTON, D.E. MILLER (eds.), *The Cambridge Companion to Utilitarianism*, Cambridge University Press, Cambridge 2014.

of life dates back to the early fifth century BC in the ethics of Aristippus of Cyrene, the founder of the Cyrenaic school; approximately a century later, it is found in the ethics of Epicurus, whose materialistic and mechanistic conception of reality was founded on the principles of *ataraxia* and *aponia*. The French philosopher Pierre Gassendi (1592–1655) revived the Epicurean tradition by referring to «Right or Natural Equity» as «nothing else but what [was] marked out by Utility or Profit»². This view was confirmed by the English writer Thomas Stanley (1625–1678), who wrote that «to speak properly, Natural Right or Just [was] no other than a symbol of Utility»³. The close ideological link between Epicureanism and utilitarian thought was subsequently highlighted by Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873)⁴.

The greatest Scottish philosophers — such as Francis Hutcheson (1694–1746), Adam Smith (1723–1790), and David Hume (1711–1776) — attributed a more rigorous meaning to utilitarianism by integrating it with the concept of “moral sense”. In particular, Hutcheson conceived of the latter idea as a way of overcoming Hobbes’s concept of individual egoism; in his opinion, human psychology was characterized by a feeling of innate benevolence, which served as a premise of moral sense. This premise would allow for the transition from a pursuit of individual happiness to a collective one; in his *An Inquiry into the Original of Our Ideas of Beauty and Virtue* (1725), Hutcheson coined the famous utilitarian sentence that would be accepted and re-proposed by Bentham: the best action was that which

2. See P. GASSENDI, *Three Discourses of Happiness, Virtue, and Liberty. Collected from the Works of the Learn’d Gassendi. By Monsieur Bernier*, Awnsham & John Churchill, London 1699, p. 315.

3. See T. STANLEY, *The History of Philosophy, Containing the Lives, Opinions, Actions, and Discourses of the Philosophers of Every Sect* (1701), 4th edition, Millar, London 1743, p. 707.

4. Bentham ascribed the origins of utilitarianism to a passage in Horace’s *Satires*: «Utilitas, iusti proper mater et aequi» («Utility, the mother of justice and equity»), well known to modern writers as an Epicurean saying. See HORACE, *Satires* (35 BC), edited by P.M. Brown, Aris and Phillips, Warminster 1993, p. 40 and p. 123. Mill’s reflections were equally emblematic; in describing the standard of morals of his father, James Mill (1773–1836), he stated: «[It] was Epicurean inasmuch as it was utilitarian, taking as the exclusive test of right and wrong, the tendency of actions to produce pleasure and pain». See J.S. MILL, *Collected Works of John Stuart Mill*, 33 vols., edited by J.M. Robson, University of Toronto Press–Routledge, Toronto–London 1963–1991, vol. X, p. 209.

procured «the greatest happiness for the greatest number»⁵. Smith pointed out that Hutcheson had contributed to overcoming man's original egoism, which focused on one's own exclusive well-being, by introducing a method of rational calculation of social utility⁶. In *Enquiry Concerning the Principles of Morals* (1751), Hume wrote: «The circumstance of utility, in all subjects, [was] a source of praise and approbation [...] and constantly appealed to in all moral decisions concerning the merit and demerit of actions»; more precisely, it was «the sole source of that high regard paid to justice, fidelity, honour, allegiance [...] inseparable from all the other social virtues, humanity, generosity, charity, affability, lenity, mercy and moderation»⁷. In his *A Fragment on Government* (1776), Bentham acknowledged the importance of the idea of utility in Hume's writings; indeed, he highlighted that the Scottish philosopher «felt as if scales had fallen from my eyes [and] I then, for the first time, learnt to call the cause of the people the cause of virtue»; he subsequently added: «I learnt to see that utility was the rest and measure of all virtue [...] and that the obligation to minister to general happiness, was an obligation paramount to and inclusive of every other»⁸.

5. See F. HUTCHESON, *An Inquiry Into the Original of Our Ideas of Beauty and Virtue, in Two Treatises* (1725), edited by W. Leidhold, Liberty Fund, Indianapolis 2004, p. 125 and pp. 128–131.

6. Concerning English utilitarianism, see L. STEPHEN, *The English Utilitarians*, 3 vols., Duckworth & Co., London 1900; E. ALBEE, *A History of English Utilitarianism*, Swan Sonnenschein–Macmillan, London–New York 1902; J.P. PLAMENATZ, *The English Utilitarians*, Blackwell, Oxford 1949; W.C. HAVARD, *Henry Sidgwick and Later Utilitarian Political Philosophy*, University of Florida Press, Gainesville 1959; W. TEUBNER, *Kodifikation und Rechtsreform in England*, Duncker & Humblot, Berlin 1974; J.B. SCHNEEWIND, *Sidgwick's Ethics and Victorian Moral Philosophy*, Oxford University Press, Oxford 1977; B. SCHULTZ, G. VAROUXAKIS (eds.), *Utilitarianism and Empire*, Lexington Books, Lanham 2005; O. ASBACH (Hrsg.), *Vom Nutzen des Staates: Staatsverständnisse des klassischen Utilitarismus: Hume–Bentham–Mill*, Nomos, Baden–Baden 2009; T. HURKA (ed.), *Underivative Duty: British Moral Philosophers from Sidgwick to Ewing*, Oxford University Press, Oxford 2011; M. NAKANO–OKUNO, *Sidgwick and Contemporary Utilitarianism*, Palgrave–Macmillan, London 2011; S. CREMASCHI, *Utilitarianism and Malthus's Virtue Ethics: Respectable, Virtuous and Happy*, Routledge, London–New York 2014.

7. See D. HUME, *An Enquiry Concerning the Principles of Morals*, Millar, London 1751, p. 231.

8. See J. BENTHAM, *A Fragment on Government; Or A Comment on the Commentaries*, in ID., *The Works of Jeremy Bentham*, 11 vols., edited by J. Bowring, Tait, Edinburgh 1838–1843, vol. I, pp. 221–295 (for the quotation see pp. 268n–269n).

In the second half of the XVIII century, the idea of happiness acquired an increasingly important significance within the concept of utilitarianism⁹. The preamble to the United States Declaration of Independence of 1776, drawn up mainly by Thomas Jefferson, stated: «We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness»¹⁰. Probably John Locke greatly influenced Jefferson; so much so that in *An Essay Concerning Human Understanding* (1690), Locke pointed out that attaining happiness was a fundamental human desire, almost concluding that there had to be a natural right to pursue it¹¹. The concept of pleasure was regarded more and more as a means of achieving happiness directly; in short, pleasure was considered as a principle of motivation or a synonym of pleasurable experiences. In the first case, people acted to increase their pleasure and reduce their pain by pursuing a larger goal of happiness, while the second interpretation was generally referred to as hedonism. In this regard, Mill considered the pleasures of the intellect as more valuable than others; as he famously proposed, it was «better to be Socrates dissatisfied than a fool satisfied»¹². William Paley (1743–1805) made a similar distinction between the «pleasure of sense» and «the more refined pleasures»¹³.

Utilitarian philosophy also revolved around the concept of “interest”. Through a conservative pragmatism ideally referable to the Tory principle of “authority”, Hume conceived of public utility as a concrete convergence of self-interests: «Two men, who pull[ed] the oars of a boat, [did] it by an agreement or convention, tho’ they [had] never given promises to each other»¹⁴. In omitting the giving of promises, the Scottish philosopher

9. The ancient philosophers identified happiness with virtue; among the Greeks, Aristotle began the *Nicomachean Ethics* (349 B.C.) by conceiving happiness as the highest human good and the most complete of human ends.

10. See T. JEFFERSON, *The Writings of Thomas Jefferson*, 20 vols., edited by P.L. Ford, Putnam’s Sons, New York–London 1899, vol. X, p. 343.

11. See J. LOCKE, *Essay Concerning Human Understanding* (1690), 3 vols., edited by A.C. Fraser, Clarendon Press, Oxford 1894, vol. II, ch. XXI, par. 51.

12. See J.S. MILL, *Collected Works of John Stuart Mill*, cit., vol. X, p. 212.

13. See W. PALEY, *The Complete Works of William Paley*, 4 vols., edited by R. Lyman, Cowie, London 1825 (for the quotation see vol. II, p. 27).

14. See D. HUME, *A Treatise of Human Nature* (1739–40), edited by L.A. Selby–Bigge, Clarendon Press, Oxford 1888, p. 490.

rejected the tradition of «social contract» theory; in its place, he employed a kind of reckoning of utility as the criterion for the assessment of laws and moral rules. Otherwise, Smith considered the Whig supporters of interest as «bustling, spirited, active folks», who were able to «naturally join in with the democratical part of the constitution and favour the principle of utility only»¹⁵. Hume's and Smith's reflections inspired Bentham: «interest» — he wrote in *An Introduction to the Principles of Morals and Legislation* (1789) — «[was] one of those words, which not having any superior genus, [could not] in the ordinary way be defined»¹⁶; more precisely, he considered utility as a summation of relevant interests. In the second edition of the *Introduction* (1823), he reformulated the principle of utility by affirming that «the only right and proper and universally desirable end of human action» or governmental activity was «the greatest happiness of all those whose interest [was] in question»¹⁷.

In more general terms, utilitarianism had relevant relations with law and also with political and economic thought. Just think of the link between utility and constitutional theory; a law based on social contract was limited by uncritically conventional acceptance and it ran the risk of becoming either too abstract and detached, or self-justifying and thus oppressive. By contrast, a constitutional theory was more socially dynamic because it emerged from a methodology that highlighted utilitarianism as a psychological and moral theory¹⁸. Constitutional theory ensured that the

15. See A. SMITH, *Lectures on Jurisprudence*, edited by R.L. Meek, D.D. Raphael, P.G. Stein, Oxford University Press, Oxford 1978, pp. 318–320.

16. See J. BENTHAM, *An Introduction to the Principles of Morals and Legislation* (1789), edited by J.H. Burns and H.L.A. Hart, Methuen, London–New York 1982, p. 12n.

17. Ivi, p. 11n.

18. With respect to the relationship between utilitarianism, law, and constitutional theory see N. RESCHER, *Distributive Justice: A Constructive Critique of the Utilitarian Theory of Distribution*, Bobbs–Merrill, Indianapolis 1966; R.E. SARTORIUS, *Individual Conduct and Social Norms: A Utilitarian Account of Social Union and the Rule of Law*, Dickenson Publishing Company, Encino 1975; H.L. POHLMAN, *Justice Oliver Wendell Holmes and Utilitarian Jurisprudence*, Harvard University Press, Cambridge 1984; R.W. TRAPP, «Nicht-klassischer» Utilitarismus: *Eine Theorie der Gerechtigkeit*, Klostermann, Frankfurt am Main 1988; C.L. SHENG, *A New Approach to Utilitarianism: A Unified Utilitarian Theory and Its Application to Distributive Justice*, Kluwer, Dordrecht 1991; M.S. STEIN, *Distributive Justice and Disability: Utilitarianism Against Egalitarianism*, Yale University Press, New Haven–London 2006; M. FLEURBAEY, M. SALLES, J.A. WEYMARK (eds.), *Justice, Political*

principle of utility, as the supreme constituent power of *praxis* and *phronēsis*, would guarantee constant interaction, renegotiation of propositions and mutual influence between governors and governed; in this way, utilitarianism provided an alternative to theories of natural law and social contract¹⁹. Bentham developed his reflections on how the principle of utility, rather than the social contract, had to function as the operative principle of government; and when he coined the term «utilitarian» in 1781, he had been at work on his science of legislation for a decade by exploring the idea of utility as an organizing concept for his «critical jurisprudence»²⁰.

It is worth highlighting the relationship between utilitarianism and democracy, two concepts essentially concerned with the identification and evaluation of the above-mentioned general interests. In fact, the arithmetic of democratic consensus and electoral politics echoed the utilitarian calculus of pleasures and pains; albeit with different nuances, classical utilitarianism, from Hume to Mill, was a system of social and political decision-making and of personal ethics. By pursuing the goal of «the greatest happiness of the greatest number», Bentham gave a clear content to the otherwise amorphous and malleable idea of public interest. He was also influenced by the utilitarian “theory of punishment” intended to prevent further crime and protect society; the origins of this theory were located in Charles-Louis de Secondat de Montesquieu’s *L’esprit des lois* (1748), Claude-Adrien Helvétius’ *De l’esprit* (1758) and Cesare Beccaria’s *Dei delitti e delle pene* (1764). Montesquieu counselled adopting a humane spirit in setting penalties, opposed unnecessary punishment as an exercise in tyranny, and argued that deterrence depended upon a proper proportion between crimes and punishments²¹; Helvétius supported above all

Liberalism, and Utilitarianism: Themes from Harsanyi and Rawls, Cambridge University Press, Cambridge 2008.

19. On the link between utilitarianism and contractualism, see P. COMANDUCCI, *Contrattualismo, utilitarismo, garanzie*, Giappichelli, Torino 1984; S. VECA, *Interesse e identità: osservazioni sui contrasti fra utilitarismo e contrattualismo*, in BOVERO M. (ed.), *Ricerche politiche due: identità, interessi e scelte collettive*, Il Saggiatore, Milano 1983, pp. 153–178; C.K. ROWLEY (ed.), *Utilitarian and Contractarian Goals*, Elgar, Aldershot 1993.

20. See J. BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 11.

21. See C.L. MONTESQUIEU (DE SECONDAT DE), *The Spirit of the Laws* (1748), translated and edited by A.M. Cohler, B.C. Miller and H.S. Stone, Cambridge University Press, Cambridge 1989, pp. 82–95.

the idea that penal law had to be founded on public utility; and Beccaria argued that the objective of government was to support a system of laws and punishments «upon the foundation of self-love», making «the general interest [...] the result of the interests of each»²². Like Beccaria, Bentham suggested limiting the cases in which punishment was applied to those in which public utility appeared to be clearly served.

Sometimes classical utilitarianism was misrepresented as being fundamentally hostile to liberty²³. Bentham pointed out that the object of his system of morals and legislation was the optimization of the condition of mankind «as far as depend[ed] upon the law» by means of «the perfection of the law»²⁴, that is, the deployment of a full set of legal codes: civil, penal, and constitutional. Like Thomas Hobbes in *Leviathan* (1651), Bentham conceived of liberty as a residual space of unconstrained movement, existing in those sectors where a specific law was absent. Parodying *Genesis*, he imagined an anarchist and violent condition, a pre-legal political scenario characterized by the absence of happiness; therefore, the legislator understood the need for a measured circumscription of liberty to guarantee security, namely not a «liberty entire», but a «liberty in perfection»²⁵. Between the XVIII and XIX centuries, utilitarians generally supported representative democracy, by which government could promote the interests of the governed; however, they favored the progressive evolution from a radical democratic vision to a liberal one. Taking their cue from the notion of a market economy, they called for a political system that would be able to simultaneously guarantee the defense of individual liberties

22. See C. BECCARIA, *An Essay on Crimes and Punishments* (1764), translated by H. Paolucci, Bobbs-Merrill, Indianapolis 1963, p. 10 and p. 59.

23. Regarding the relationship between utilitarianism and liberty, see A.P. BROGAN, *John Locke and Utilitarianism*, in «Ethics», January 1959, vol. 69, no. 2, pp. 79–93; D.G. LONG, *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to His Utilitarianism*, University of Toronto Press, Toronto–Buffalo 1977; D.A. LLOYD THOMAS, *Liberalism and Utilitarianism*, in «Ethics», 1980, vol. 90, no. 3, pp. 319–334; J. RILEY, *Liberal Utilitarianism: Social Choice Theory and J.S. Mill's Philosophy*, Cambridge University Press, Cambridge 1988; D. WEINSTEIN, *Equal Freedom and Utility: Herbert Spencer's Liberal Utilitarianism*, Cambridge University Press, Cambridge 1998; ID., *Utilitarianism and the New Liberalism*, Cambridge University Press, Cambridge 2007; J. SEBO, *Utilitarianism, Multiplicity and Liberalism*, in «Utilitas», September 2015, vol. 27, no. 3, pp. 326–346.

24. See *Bentham manuscripts*, University College London Library, UC, CXLII, p. 200.

25. Ivi, LXIX, p. 209.

— including freedom of religion, speech, press, and assembly — and the preservation of social harmony. These liberties received their classic advocacy in John Stuart Mill's *On Liberty* (1859)²⁶; on utilitarian grounds, he argued for the relation between authority and liberty, and emphasized the importance of individuality, conceived of as a prerequisite to the higher pleasures, by criticizing the errors of past, namely democratic, ideals that had resulted in the «tyranny of the majority».

One of the most prestigious exponents of the classical economics such as Adam Smith (*The Wealth of Nations*, 1776) had conceived the price of a commodity as the amount of labor required to produce it (value as embedded labor). Karl Marx developed further this theory: he pointed out that the economic value (or price) of a commodity was determined by the social necessary labor, rather than by the use or pleasure its owner got from it; in summary his theory was framed primarily in terms of the cost of production rather than utility. Neoclassical economics rejected the labor theory of value and the Marxian notion of exploitation; on the contrary, it supported a theory of price determined by supply and demand and based on individual's rationality and his ability to maximize profit. Utilitarianism played a primary role in the neoclassical economics; its main exponents embraced Bentham's ethics, but only insofar as it lent itself to a mathematical representation of human choice. The analysis of demand was made possible by the theory of utility, developed by Hermann Heinrich Gossen (1810–1858) in Germany, Carl Menger (1840–1921) in Austria, Léon Walras (1834–1910) in France and William Stanley Jevons (1835–1882) in England. It was actually the latter, one of the founders of the marginal utility school, who presented economy as a mere matter of convenience between opposite sentiments: «Pleasure and pain [were] undoubtedly the ultimate objects of the calculus of economics»²⁷.

One cannot help but consider classical utilitarianism as one of the most prominent kinds of consequentialism, according to which every action was to be judged morally right or wrong depending on whether its consequences increased or not the net balance of pleasure over pain. This view was often called “hedonistic utilitarianism”; Bentham elaborated a

26. See J.S. MILL, *On Liberty*, Parker and Son, London 1859.

27. See W.S. JEVONS, *Theory of Political Economics* (1871), Macmillan, London 1879, p. 101.

model based on a “hedonic calculus” through which factors had to be determined both in individual cases and in choices involving government actions and policies. One of the main objections against this conception held that the value of life was more than a mere affirmation of pleasure over pain. Unlike Bentham, Mill sought to overcome the idea of utility as simple calculation; utilitarianism was compatible with moral rules and principles relating to justice, honesty, and truthfulness, capable of maximizing utility²⁸. Some intellectuals recognized certain wholly nonhedonistic values without losing their utilitarian credentials. For example, the British philosopher George Edward Moore (1873–1958) developed a different form of consequentialism; in the final chapters of his *Principia Ethica* (1903)²⁹, he regarded many kinds of consciousness — including love, knowledge, and the experience of beauty — as intrinsic values, independent of their pleasantness, thus conceiving a sort of “ideal utilitarianism”.

The concept of consequentialism allows us to understand better the fundamental dichotomy between “act” utilitarianism and “rule” utilitarianism. The first claimed actions were right only if they maximized utility and for this reason it left no room for personal projects or interests that were not strictly necessary; the most common argument against this thesis was that it gave “wrong answers” to moral questions³⁰. On the contra-

28. See J.S. MILL, *Utilitarianism*, Fraser’s Magazine, London 1861. About Mill’s utilitarianism see J.M. SMITH, E. SOSA (eds.), *Mill’s Utilitarianism: Text and Criticism*, Wadsworth, Belmont 1969; W.E. COOPER, K. NIELSEN, S.C. PATTEN (eds.), *New Essays on John Stuart Mill and Utilitarianism*, Canadian Association for Publishing in Philosophy, Guelph 1979; R. CRISP, *Routledge Philosophy Guidebook to Mill on Utilitarianism*, Routledge, London–New York 1997; D. LYONS (ed.), *Mill’s Utilitarianism: Critical Essays*, Rowman & Littlefield, New York 1997; H. WEST (ed.), *The Blackwell Guide to Mill’s Utilitarianism*, Blackwell, Oxford 2006; I. ÁLVAREZ GÁLVEZ, *Utilitarismo y derechos humanos. La propuesta de John Stuart Mill*, Consejo Superior de Investigaciones Científicas–Plaza y Valdés, Madrid 2009; H–C. SU, *Economics Justice and Liberty: The Social Philosophy in John Stuart Mill’s Utilitarianism*, Routledge, London–New York 2013; G. LÓPEZ SASTRE, *John Stuart Mill: l’utilitarismo che può cambiare il mondo*, Hachette, Milano 2016.

29. See G.E. MOORE, *Principia Ethica*, Cambridge University Press, Cambridge 1903.

30. The English moral philosopher Bernard Williams (1929–2003) offered the famous example of “Jim and the Indians”. Jim became lost while on a botanical expedition; he arrived in a small South American town, where he saw twenty Indians tied up against a wall. A man who turned out to be the captain in charge informed Jim that the Indians had engaged in several acts of protest against the government; for this reason, they were going to be killed to serve as an example to the rest of the villagers. The man told Jim

ry, rule utilitarianism was indirect; the widespread internalization of a set of rules maximizing utility determined the moral rightness or wrongness of an action; the correct rules were those whose inclusion in our moral code produced better results (more well-being). This concept was coined by the American philosopher Richard Brandt (1910–1997)³¹; nevertheless, an expression of this theory dated back to 1712, when the Irish bishop and philosopher George Berkeley, in framing the general laws of nature, wrote: «The rule [was] framed with respect to the good of mankind; but our practice must be always shaped immediately by the rule»³². In the XIX century, this idea would be developed by John Austin (1832) and John Stuart Mill (1861)³³. One of the main arguments to support rule utilitarianism pointed out that it might be better than other rival theories at identifying a fundamental moral principle; for example, the widespread internalization of rules prohibiting murder and torture would clearly deliver a better result than the general acceptance of a code with no prohibitions on such acts, even if these resulted in somewhat more utility³⁴. In principle, if Bentham and Henry Sidgwick could be considered “act” utilitarians, Mill was a “rule” utilitarian.

However, the difference between these two kinds of utilitarianism was not always clear; as a matter of fact, the American philosopher David Lyons affirmed that rule utilitarianism could «collapse» into act utilitarianism³⁵. To understand this criticism, just consider Immanuel Kant’s claim that lying was always morally wrong, even when this could save a person’s

that since he was a guest, he could have the privilege of killing one of the Indians; had he accepted, the remaining nineteen would go free. For the act utilitarianism, it was obvious that the right choice for Jim would be to kill one Indian in order to save the lives of the other nineteen. See B. WILLIAMS, *A Critique of Utilitarianism*, in J.J.C. SMART, B. WILLIAMS, *Utilitarianism: For & Against*, cit., pp. 97–99.

31. See R. BRANDT, *Morality, Utilitarianism and Rights*, Cambridge University Press, New York 1992.

32. See G. BERKELEY, *Passive Obedience, Or the Christian Doctrine of not Resisting the Supreme Power, Proved and Vindicated upon the Principle of the Law of Nature*, Clements, London 1712, sec. 31.

33. See J. AUSTIN, *The Province of Jurisprudence Determined*, Murray, London 1832; J.S. MILL, *Utilitarianism*, cit.

34. See T. NAGEL, *The View from Nowhere*, Oxford University Press, New York 1986, p. 177.

35. See D. LYONS, *Forms and Limits of Utilitarianism*, cit.

life³⁶; since this view was considered too rigid, it was thought subsequently that would justify the circumstances in which a lie could be told. In other words, the correct rule was do not lie except when lying will generate more good than telling the truth; at this point, it was possible to identify this version of rule utilitarianism with act utilitarianism. That rule utilitarianism was formulated in terms of internalization and its subsequent acceptance appeared crucial to answering this objection.

No less relevant was the difference between “analog” and “binary” utilitarianism³⁷. Starting from the observation that various actions led to different degrees of happiness or mitigation of suffering, «analog utilitarianism» affirmed that acts could have varying levels of moral goodness. In this regard, at the beginning of *An Introduction to the Principles of Morals and Legislation*, Bentham stated: «An action then may be said to be comfortable to the principle of utility [...] when the tendency it has to augment the happiness of the community is greater than any it has to diminish it»³⁸. A similar view was supported by Mill in his *Utilitarianism* (1861); indeed, he indicated the potential for degrees of ethical goodness of possible acts: «The creed which accepts as the foundation of morals “utility” [...] holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness»³⁹. By contrast, «binary utilitarianism» asserted that the right act was one of all possible actions that created the most happiness, while all other actions were ethically wrong. In his *The Methods of Ethics* (1874) Sidgwick adopted this interpretation: «By utilitarianism is here meant the ethical theory, that the conduct which, under any given circumstances, is objectively right, is that which will produce the greatest amount of happiness on the whole»⁴⁰.

36. See I. KANT, *On a Supposed Right to Lie from Philanthropy* (1797) (original title: Über ein vermeintes Recht, aus Menschenliebe zu lügen), in Id., *Practical Philosophy*, translated and edited by M.J. Gregor, Cambridge University Press, Cambridge 1996, pp. 611–615. This short essay was written in response to Benjamin Constant’s essay *On Political Reactions* (1797).

37. In this regard, see J.G. SHAY, *Analog and Binary Utilitarianism*, in J.E. CRIMMINS (ed.), *The Bloomsbury Encyclopedia of Utilitarianism*, cit., pp. 14–16.

38. See J. BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 12.

39. See J.S. MILL, *Collected Works of John Stuart Mill*, cit., vol. X, p. 210.

40. See H. SIDGWICK, *The Methods of Ethics* (1874), The Macmillan Company, New York 1907, p. 411.

This initial paragraph is a synthetic attempt to highlight the multiform character of utilitarianism with specific reference to the XVIII and XIX centuries. Through a simple but effective image, we can consider the utilitarian tradition — as the British philosopher James Edward Crimmins emblematically wrote — «an ancient but still living tree»⁴¹; from its roots dating back to antiquity, it grew over the centuries into a solid trunk marked by various ideological traditions and from which, in the XX century, new branches would continue to sprout.

2. Jeremy Bentham: Almost a Portrait

Philosopher, economist, and jurist: these three features summarize the far-sighted personality of Jeremy Bentham⁴². He was born on 15 February 1748

41. See J.E. CRIMMINS (ed.), *The Bloomsbury Encyclopedia of Utilitarianism*, cit., p. IX.

42. Of the most recent bibliography on Bentham, see D.G. LONG, *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to His Utilitarianism*, University of Toronto, Toronto–Buffalo 1977; L.J. HUME, *Bentham and Bureaucracy*, Cambridge University Press, Cambridge–New York 1981; H.L.A. HART, *Essays on Bentham: Studies in Jurisprudence and Political Theory*, Clarendon Press, Oxford 1982; R. HARRISON, *Bentham*, Routledge & Kegan, London 1983; L. CAMPOS BORALEVI, *Bentham and the Oppressed*, Walter de Gruyter, Berlin–New York 1984; G.J. POSTEMA, *Bentham and the Common Law Tradition*, Clarendon Press, Oxford 1986; B. PENDAS GARCIA, *Jeremy Bentham: política y derecho en los orígenes del estado constitucional*, Centro de Estudios Constitucionales, Madrid 1988; J.R. DINWIDDY, *Bentham*, Oxford University Press, Oxford 1989; P.J. KELLY, *Utilitarianism and Distributive Justice: Jeremy Bentham and the Civil Law*, Clarendon Press, Oxford 1990; M.E.L. GUIDI, *Il sovrano e l'imprenditore: utilitarismo ed economia politica in Jeremy Bentham*, Laterza, Roma–Bari 1991; B. PAREKH (ed.), *Jeremy Bentham: Critical Assessments*, 4 vols., Routledge, London–New York 1993; C. LAVAL, *Jeremy Bentham. Le pouvoir des fictions*, PUF, Paris 1994; N. SIGOT, *Bentham et l'économie. Une histoire d'utilité*, Economica, Paris 2001; G.J. POSTEMA (ed.), *Bentham: Moral, Political and Legal Philosophy*, 2 vols., Ashgate, Aldershot 2002; G. HOOGENSEN, *International Relations, Security and Jeremy Bentham*, Routledge, London 2005; J.-P. CLÉRO, *Bentham: philosophe de l'utilité*, Ellipses, Paris 2006; P. SCHOFIELD, *Utility and Democracy: The Political Thought of Jeremy Bentham*, Oxford University Press, Oxford 2006; F. ROSEN (ed.), *Jeremy Bentham*, Ashgate, Aldershot 2007; C. BLAMIRE, *The French Revolution and the Creation of Benthamism*, Palgrave Macmillan, London 2008; E. CHAMPS (DE), "La déontologie politique" ou la pensée constitutionnelle de Jeremy Bentham, Librairie Droz, Genève 2008; J.E. CRIMMINS, *Utilitarian Philosophy and Politics: Bentham's Later Years*, Bloomsbury Publishing, London–New Delhi 2011; G. TUSSEAU (ed.), *The Legal Philosophy and Influence of Jeremy Bentham*, Routledge, London–New York 2014; E. CHAMPS (DE), *Enlightenment and Utility: Bentham in French, Bentham in France*, Cambridge University Press, Cambridge 2015.

in London, the eldest son of a prosperous attorney who sought to produce a future Lord Chancellor of England by encouraging his education; by the age of ten, the young Bentham was able to compose verses in Greek and Latin. His youthful enthusiasm for philosophy led him to study the writings of Locke, Montesquieu, Hume, Priestley, Helvétius, d'Alembert, and Beccaria; he took his BA in 1764 and his MA in 1767. He subsequently became a law student in the Court of King's Bench, Westminster Hall, and in 1769 was admitted to the Bar. At Oxford, he also attended the lectures given by William Blackstone (1723–1780), first Vinerian Professor of English Law. Already in *A Comment on the Commentaries* — published anonymously as *A Fragment on Government* (1776)⁴³ — Bentham criticized Blackstone's *Commentaries on the Laws of England* (1765–1769)⁴⁴, 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.

In 1785, Bentham travelled to Russia, where his brother Samuel, a naval architect, was collaborating with Prince Grigory Aleksandrovich Potemkin (1739–1791) as director of a large shipyard. During his stay, he drafted the project of penal reform: the “Panopticon” (it was written as a series of letters, headed “Crichoff, in White Russia”)⁴⁵. The Panopticon was conceived of as a kind of model prison (this idea was also applicable to hospitals, schools, and industrial enterprises); it was inspired by the concepts of efficiency and morality because it envisaged only a warden to control all prisoners and the recovery of criminals through forced labor⁴⁶. This

43. See J. BENTHAM, *A Fragment on Government; Or A Comment on the Commentaries*, in ID., *The Works of Jeremy Bentham*, edited by J. Bowring, cit., vol. I, pp. 221–295.

44. See W. BLACKSTONE, *Commentaries on the Laws of England*, 4 vols., Clarendon Press, Oxford 1765–1769.

45. See J. BENTHAM, *Panopticon: Or, the Inspection-House*, Byrne, Dublin 1791.

46. On the idea of the Panopticon, see D. LYONS, *Bentham's Panopticon*, in «Queen's Quarterly», 1991, vol. 98, no. 3, pp. 596–617; J. SEMPLE, *Bentham's Prison: A Study of the Panopticon Penitentiary*, Clarendon Press, Oxford 1993; M. QUINN, *The Fallacy of Non-In-*

analysis was stimulated not only by his philanthropic personality but also by the dreadful conditions of the prison on the Thames and the failure of the widespread and brutal use of capital punishment to deter crime.

Since his early works, Bentham became a convinced supporter of free trade, a non-interventionist regarding government economic action. He read and appreciated *An Inquiry into the Nature and Causes of the Wealth of Nations* by Adam Smith (1776)⁴⁷, who influenced his *Defence of Usury* (1787)⁴⁸; this last essay — as written by the English economist Terence Wilmot Hutchison (1912–2007) — was a kind of plea for the ending of legislative interference in favor of freedom of economic initiative characterized by «a more Smithian–than–Smith point of view»⁴⁹. In the early 1790s, Bentham referred to Smith as «a writer of great and distinguished merit» and explained that his own *Manual of Political Economy* (1800) was in conformity with his principles⁵⁰. He also called for the removal of national jealousies and sought to oppose the desire for colonial expansion as a means of enriching the mother country⁵¹; in his opinion, it was no longer necessary to consider colonies with the «greedy eyes of the fiscal-

terference: The Poor Panopticon and Equality of Opportunity, in «Journal of Bentham Studies», June 1997, vol. 1, no. 1, pp. 1–28; G. TUSSEAU, *Democracy and Information: The Perspective of Jeremy Bentham's Political Panopticism*, in «Schriften zur Rechtstheorie», 2003, vol. 215, no. 1, pp. 175–197; M.E.L. GUIDI, *My Own Utopia. The Economics of Bentham's Panopticon*, in «European Journal of the History of Economic Thought», 2004, vol. 11, no. 3, pp. 405–431; A. BRUNON-ERNST, *Le Panoptique des pauvres; Jeremy Bentham et la réforme de l'assistance en Angleterre (1795–1798)*, Presses de la Sorbonne Nouvelle, Paris 2007; M. LA MONICA, *Dal Panopticon di Bentham a modelli parzialmente panottici*, Pitti, Palermo 2014; C. WELZBACHER, *Il folle radicale del capitale: Panopticon e Auto-Icona di Jeremy Bentham*, Libreria, Macerata 2016.

47. See A. SMITH, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Strahan and Cadell, London 1776.

48. See J. BENTHAM, *Defence of Usury*, Payne, London 1787.

49. See T.W. HUTCHISON, *Jeremy Bentham as an Economist*, in «Economic Journal», June 1956, vol. 66, no. 262, pp. 288–306 (for the quotation see p. 292).

50. See J. BENTHAM, *Jeremy Bentham's Economic Writings: Critical Edition Based on His Printed Works and Unprinted Manuscripts*, 3 vols., edited by W. Stark, Royal Economic Society by Allen & Unwin, London 1952–1954, vol. I, p. 223.

51. Bentham's liberalism was also notable in his writings on colonies; just remember the pamphlet written for France, *Jeremy Bentham to the National Convention of France* (1793), subsequently published as *Emancipate Your Colonies!*, Heward, London 1830.