

**AN INTRODUCTION TO THE
PRINCIPLES OF
MORALS AND LEGISLATION**

BY
JEREMY BENTHAM

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NOTE.—The First Edition of this work was printed in the year 1780; and first published in 1789. The present Edition is a careful reprint of 'A New Edition, corrected by the Author,' which was published in 1823.

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P R E F A C E.

THE following sheets were, as the note on the opposite page expresses, printed so long ago as the year 1780. The design, in pursuance of which they were written, was not so extensive as that announced by the present title. They had at that time no other destination than that of serving as an introduction to a plan of a penal code *in terminis*, designed to follow them, in the same volume.

The body of the work had received its completion according to the then present extent of the author's views, when, in the investigation of some flaws he had discovered, he found himself unexpectedly entangled in an unsuspected corner of the metaphysical maze. A suspension, at first not apprehended to be more than a temporary one, necessarily ensued: suspension brought on coolness, and coolness, aided by other concurrent causes, ripened into disgust.

Imperfections pervading the whole mass had already been pointed out by the sincerity of severe and discerning friends; and conscience had certified the justness of their censure. The inordinate length of some of the chapters, the apparent inutility of others, and the dry and metaphysical turn of the whole, suggested an apprehension, that, if published in its present form, the work would contend under great disadvantages for any chance, it might on other accounts possess, of being read, and consequently of being of use.

But, though in this manner the idea of completing the present work slid insensibly aside, that was not by any means the case with the considerations which had led him to engage in it. Every opening, which promised to afford the lights he stood in need of, was still pursued: as occasion arose, the several departments connected with that in which he had at first engaged, were successively explored; insomuch that, in one branch or other of the pursuit, his researches have nearly embraced the whole field of legislation.

Several causes have conspired at present to bring to light, under this new title, a work which under its original one had been imperceptibly, but as it had seemed irrevocably, doomed to oblivion. In the course of eight years, materials for various works, corresponding to the different branches of the subject of legislation, had been produced, and some nearly reduced to shape: and, in every one of those works, the principles exhibited in the present publication had been found so necessary, that, either to transcribe them piece-meal, or to exhibit them somewhere where they could be referred to in the lump, was found unavoidable. The former course would have occasioned repetitions too bulky to be employed without necessity in the execution of a plan unavoidably so voluminous: the latter was therefore indisputably the preferable one.

To publish the materials in the form in which they were already printed, or to work them up into a new one, was therefore the only alternative: the latter had all along been his wish, and, had time and the requisite degree of alacrity been at command, it would as certainly have been realised. Cogent considerations, however, concur, with the irksomeness of the task, in placing the accomplishment of it at present at an unfathomable distance.

Another consideration is, that the suppression of the present work, had it been ever so decidedly wished, is no longer altogether in his power. In the course of so long an interval, various incidents have introduced copies into various hands, from some of which they have been transferred, by deaths and other accidents, into others that are unknown to him. Detached, but considerable extracts, have even been published, without any dishonourable views, (for the name of the author was very honestly subjoined to them,) but without his privity, and in publications undertaken without his knowledge.

It may perhaps be necessary to add, to complete his excuse for offering to the public a work pervaded by blemishes, which have not escaped even the author's partial eye, that the censure, so justly bestowed upon the form, did not extend itself to the matter.

In sending it thus abroad into the world with all its imperfections upon its head, he thinks it may be of assistance to the few readers he can expect, to receive a short intimation of the

chief particulars, in respect of which it fails of corresponding with his maturer views. It will thence be observed how in some respects it fails of quadrating with the design announced by its original title, as in others it does with that announced by the one it bears at present.

An introduction to a work which takes for its subject the totality of any science, ought to contain all such matters, and such matters only, as belong in common to every particular branch of that science, or at least to more branches of it than one. Compared with its present title, the present work fails in both ways of being conformable to that rule.

As an introduction to the principles of *morals*, in addition to the analysis it contains of the extensive ideas signified by the terms *pleasure, pain, motive, and disposition*, it ought to have given a similar analysis of the not less extensive, though much less determinate, ideas annexed to the terms *emotion, passion, appetite, virtue, vice, and some others*, including the names of the particular *virtues and vices*. But as the true, and, if he conceives right, the only true ground-work for the development of the latter set of terms, has been laid by the explanation of the former, the completion of such a dictionary, so to style it, would, in comparison of the commencement, be little more than a mechanical operation.

Again, as an introduction to the principles of *legislation in general*, it ought rather to have included matters belonging exclusively to the *civil* branch, than matters more particularly applicable to the *penal*: the latter being but a means of compassing the ends proposed by the former. In preference therefore, or at least in priority, to the several chapters which will be found relative to *punishment*, it ought to have exhibited a set of propositions which have since presented themselves to him as affording a standard for the operations performed by government, in the creation and distribution of proprietary and other civil rights. He means certain axioms of what may be termed *mental pathology*, expressive of the connection betwixt the feelings of the parties concerned, and the several classes of incidents, which either call for, or are produced by, operations of the nature above mentioned¹.

¹ For example.—*It is worse to lose than simply not to gain.—A loss falls*

The consideration of the division of offences, and every thing else that belongs to offences, ought, besides, to have preceded the consideration of punishment: for the idea of *punishment* presupposes the idea of *offence*: punishment, as such, not being inflicted but in consideration of offence.

Lastly, the analytical discussions relative to the classification of offences would, according to his present views, be transferred to a separate treatise, in which the system of legislation is considered solely in respect of its form: in other words, in respect of its *method* and *terminology*.

In these respects the performance fails of coming up to the author's own ideas of what should have been exhibited in a work, bearing the title he has now given it. viz. that of an *Introduction to the Principles of Morals and Legislation*. He knows however of no other that would be less unsuitable: nor in particular would so adequate an intimation of its actual contents have been given, by a title corresponding to the more limited design, with which it was written: viz. that of serving as an *introduction to a penal code*.

Yet more. Dry and tedious as a great part of the discussions it contains must unavoidably be found by the bulk of readers, he knows not how to regret the having written them, nor even the having made them public. Under every head, the practical uses, to which the discussions contained under that head appeared applicable, are indicated: nor is there, he believes, a single proposition that he has not found occasion to build upon in the penning of some article or other of those provisions of detail, of which a body of law, authoritative or unauthoritative, must be composed. He will venture to specify particularly, in this view, the several chapters shortly characterized by the words *Sensibility, Actions, Intentionality, Consciousness, Motives, Dispositions, Consequences*. Even in the enormous chapter on

the lighter by being divided.—The suffering, of a person hurt in gratification of enmity, is greater than the gratification produced by the same cause.— These, and a few others which he will have occasion to exhibit at the head of another publication, have the same claim to the appellation of *axioms*, as those given by mathematicians under that name; since, referring to universal experience as their immediate basis, they are incapable of demonstration, and require only to be developed and illustrated, in order to be recognised as incontestable.

the division of offences, which, notwithstanding the forced compression the plan has undergone in several of its parts, in manner there mentioned, occupies no fewer than one hundred and four closely printed quarto pages¹, the ten concluding ones are employed in a statement of the practical advantages that may be reaped from the plan of classification which it exhibits. Those in whose sight the Defence of Usury has been fortunate enough to find favour, may reckon as one instance of those advantages the discovery of the principles developed in that little treatise. In the preface to an anonymous tract published so long ago as in 1776², he had hinted at the utility of a natural classification of offences, in the character of a test for distinguishing genuine from spurious ones. The case of usury is one among a number of instances of the truth of that observation. A note at the end of Sect. xxxv. Chap. xvi. of the present publication, may serve to show how the opinions, developed in that tract, owed their origin to the difficulty experienced in the attempt to find a place in his system for that imaginary offence. To some readers, as a means of helping them to support the fatigue of wading through an analysis of such enormous length, he would almost recommend the beginning with those ten concluding pages.

One good at least may result from the present publication; viz. that the more he has trespassed on the patience of the reader on this occasion, the less need he will have so to do on future ones: so that this may do to those, the office which is done, by books of pure mathematics, to books of mixed mathematics and natural philosophy. The narrower the circle of readers is, within which the present work may be condemned to confine itself, the less limited may be the number of those to whom the fruits of his succeeding labours may be found accessible. He may therefore in this respect find himself in the condition of those philosophers of antiquity, who are represented as having held two bodies of doctrine, a popular and an occult one: but, with this difference, that in his instance the occult and the popular will, he hopes, be found as consistent as in those they were contradictory; and that in his production whatever

¹ The first edition was published in 1789, in quarto.

² A Fragment on Government, &c., reprinted 1822.

there is of occultness has been the pure result of sad necessity, and in no respect of choice.

Having, in the course of this advertisement, had such frequent occasion to allude to different arrangements, as having been suggested by more extensive and maturer views, it may perhaps contribute to the satisfaction of the reader, to receive a short intimation of their nature: the rather, as, without such explanation, references, made here and there to unpublished works, might be productive of perplexity and mistake. The following then are the titles of the works by the publication of which his present designs would be completed. They are exhibited in the order which seemed to him best fitted for apprehension, and in which they would stand disposed, were the whole assemblage ready to come out at once: but the order, in which they will eventually appear, may probably enough be influenced in some degree by collateral and temporary considerations.

Part the 1st. Principles of legislation in matters of *civil*, more distinctively termed *private distributive*, or for shortness, *distributive, law*.

Part the 2nd. Principles of legislation in matters of *penal law*.

Part the 3rd. Principles of legislation in matters of *procedure*: uniting in one view the *criminal* and *civil* branches, between which no line can be drawn, but a very indistinct one, and that continually liable to variation.

Part the 4th. Principles of legislation in matters of *reward*.

Part the 5th. Principles of legislation in matters of *public distributive*, more concisely as well as familiarly termed *constitutional, law*.

Part the 6th. Principles of legislation in matters of *political tactics*: or of the art of maintaining *order* in the proceedings of political assemblies, so as to direct them to the end of their institution: viz. by a system of rules, which are to the constitutional branch, in some respects, what the law of procedure is to the civil and the penal.

Part the 7th. Principles of legislation in matters betwixt nation and nation, or, to use a new though not inexpressive appellation, in matters of *international law*.

Part the 8th. Principles of legislation in matters of *finance*.

Part the 9th. Principles of legislation in matters of *political economy*.

Part the 10th. Plan of a body of law, complete in all its branches, considered in respect of its *form*; in other words, in respect of its method and terminology; including a view of the origination and connexion of the ideas expressed by the short list of terms, the exposition of which contains all that can be said with propriety to belong to the head of *universal jurisprudence*¹.

The use of the principles laid down under the above several heads is to prepare the way for the body of law itself exhibited *in terminis*; and which to be complete, with reference to any political state, must consequently be calculated for the meridian, and adapted to the circumstances, of some one such state in particular.

Had he an unlimited power of drawing upon *time*, and every other condition necessary, it would be his wish to postpone the publication of each part to the completion of the whole. In particular, the use of the ten parts, which exhibit what appear to him the dictates of utility in every line, being no other than to furnish reasons for the several corresponding provisions contained in the body of law itself, the exact truth of the former can never be precisely ascertained, till the provisions, to which they are destined to apply, are themselves ascertained, and that *in terminis*. But as the infirmity of human nature renders all plans precarious in the execution, in proportion as they are extensive in the design, and as he has already made considerable advances in several branches of the theory, without having made correspondent advances in the practical applications, he deems it more than probable, that the eventual order of publication will not correspond exactly with that which, had it been equally practicable, would have appeared most eligible. Of this irregularity the unavoidable result will be, a multitude of imperfections, which, if the execution of the body of law *in terminis* had kept pace with the development of the principles, so that each part had been adjusted and corrected by the other, might have been avoided. His conduct however will be the less swayed by this inconvenience, from his suspecting it to be of the number of

¹ Such as obligation, right, power, possession, title, exemption, immunity, franchise, privilege, nullity, validity, and the like.

those in which the personal vanity of the author is much more concerned, than the instruction of the public: since whatever amendments may be suggested in the detail of the principles, by the literal fixation of the provisions to which they are relative, may easily be made in a corrected edition of the former, succeeding upon the publication of the latter.

In the course of the ensuing pages, references will be found, as already intimated, some to the plan of a penal code to which this work was meant as an introduction, some to other branches of the above-mentioned general plan, under titles somewhat different from those, by which they have been mentioned here. The giving this warning is all which it is in the author's power to do, to save the reader from the perplexity of looking out for what has not as yet any existence. The recollection of the change of plan will in like manner account for several similar incongruities not worth particularising.

Allusion was made, at the outset of this advertisement, to some unspecified difficulties, as the causes of the original suspension, and unfinished complexion, of the present work. Ashamed of his defeat, and unable to dissemble it, he knows not how to refuse himself the benefit of such an apology as a slight sketch of the nature of those difficulties may afford.

The discovery of them was produced by the attempt to solve the questions that will be found at the conclusion of the volume: *Wherein consisted the identity and completeness of a law? What the distinction, and where the separation, between a penal and a civil law? What the distinction, and where the separation, between the penal and other branches of the law?*

To give a complete and correct answer to these questions, it is but too evident that the relations and dependencies of every part of the legislative system, with respect to every other, must have been comprehended and ascertained. But it is only upon a view of these parts themselves, that such an operation could have been performed. To the accuracy of such a survey one necessary condition would therefore be, the complete existence of the fabric to be surveyed. Of the performance of this condition no example is as yet to be met with any where. *Common law*, as it styles itself in England, *judiciary law*, as it might more

aptly be styled every where, that fictitious composition which has no known person for its author, no known assemblage of words for its substance, forms every where the main body of the legal fabric: like that fancied ether, which, in default of sensible matter, fills up the measure of the universe. Shreds and scraps of real law, stuck on upon that imaginary ground, compose the furniture of every national code. What follows?—that he who; for the purpose just mentioned or for any other, wants an example of a complete body of law to refer to, must begin with making one.

There is, or rather there ought to be, a *logic of the will*, as well as of the *understanding*: the operations of the former faculty, are neither less susceptible, nor less worthy, than those of the latter, of being delineated by rules. Of these two branches of that recondite art, Aristotle saw only the latter: succeeding logicians, treading in the steps of their great founder, have concurred in seeing with no other eyes. Yet so far as a difference can be assigned between branches so intimately connected, whatever difference there is, in point of importance, is in favour of the logic of the will. Since it is only by their capacity of directing the operations of this faculty, that the operations of the understanding are of any consequence.

Of this logic of the will, the science of *law*, considered in respect of its *form*, is the most considerable branch,—the most important application. It is, to the art of legislation, what the 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. Nor is the body politic less in danger from a want of acquaintance with the one science, than the body natural from ignorance in the other. One example, amongst a thousand that might be adduced in proof of this assertion, may be seen in the note which terminates this volume.

Such then were the difficulties: such the preliminaries:—an unexampled work to achieve, and then a new science to create: a new branch to add to one of the most abstruse of sciences.

Yet more: a body of proposed law, how complete soever, would be comparatively useless and un instructive, unless explained and justified, and that in every tittle, by a continued accompaniment.

a perpetual commentary of *reasons*¹: which reasons, that the comparative value of such as point in opposite directions may be estimated, and the conjunct force, of such as point in the same direction, may be felt, must be marshalled, and put under subordination to such extensive and leading ones as are termed *principles*. There must be therefore, not one system only, but two parallel and connected systems, running on together, the one of legislative provisions, the other of political reasons, each affording to the other correction and support.

Are enterprises like these achievable? He knows not. This only he knows, that they have been undertaken, proceeded in, and that some progress has been made in all of them. He will venture to add, if at all achievable, never at least by one, to whom the fatigue of attending to discussions, as arid as those which occupy the ensuing pages, would either appear useless, or feel intolerable. He will repeat it boldly (for it has been said before him), truths that form the basis of political and moral science are not to be discovered but by investigations as severe as mathematical ones, and beyond all comparison more intricate and extensive. The familiarity of the terms is a presumption, but it is a most fallacious one, of the facility of the matter. Truths in general have been called stubborn things: the truths just mentioned are so in their own way. They are not to be forced into detached and general propositions, unincumbered with explanations and exceptions. They will not compress themselves into epigrams. They recoil from the tongue and the pen of the declaimer. They flourish not in the same soil with sentiment. They grow among thorns; and are not to be plucked, like daisies, by infants as they run. Labour, the inevitable lot of humanity, is in no track more inevitable than here. In vain would an Alexander bespeak a peculiar road for royal vanity, or a Ptolemy, a smoother one, for royal indolence. There is no *King's Road*, no *Stadtholder's Gate*, to legislative, any more than to mathematic science.

¹ To the aggregate of them a common denomination has since been allotted—the *rationale*.

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