

The liberty of the press and opinion in Jeremy Bentham's philosophy

By Angelo Amante (065882)

The main purpose of this work is to analyze the concepts of liberty of the press and opinion in Jeremy Bentham's political thought. I am going to discuss two different essays, *On the Liberty of the Press and Public Discussion* (1820) and *Securities against Misrule* (1822), in which Bentham claimed that in order to have a good government it is necessary to limit governmental power by creating an active public opinion and a free-press regime.

In the first part I shall introduce the concept of public opinion, presenting its main features and considering the role of newspapers in influencing it. The second chapter is devoted to Bentham and in particular to his Utilitarianism and his political theory, as well as to an analysis of the two essays mentioned above. In the final part, after reviewing the main points of the work, I shall try to put Bentham's reflections in relation with the current decline of newspapers and public opinion.

1. The concept of public opinion

The idea of public was firstly developed in the eighteenth century, within the liberal and democratic thought. In the twentieth century an important distinction between two different meanings of the term

opinion,¹ and between two different meanings of the word *public*,² was made. *Opinion* may referred both to a judgement based on a personal belief, different from a point of view based on facts, and to the common consideration of something or someone. We should define *public* a public good, a road or a park, or something like the *State*, seen as the place in which the common interest lies.

Also the difference between *crowd*, *public* and *mass* is to be considered.³ The first two terms refer to phenomena driven by a collective will, that permits a true cooperation between the members. The only difference is that we should talk about a *public*, or better a *public opinion*, when the members of it discuss a problem in the attempt to convince the others of their arguments. The final result of the discussion will be a sort of least common denominator between the arguments presented, the *public opinion*. A *mass* is s a group dispersive and devoid of rationality, composed by people interested in a particular fact or event beyond their experience, without any collective will.

From a historical point of view, the birth of modern public opinion was stimulated by some important events. First, the rise of capitalism and international trade needed a continuous flow of news, useful to merchants in their business. In this political and economical context the *Sphere of Public power*, represented by the State, and the *Private sphere*, represented by the middle-class,⁴ had their rise. Trade growth enriched the bourgeoisie, which, thanks to its wealth, became the

1 See Price (2007: 13)

2 See Habermas (2002: 7-18) and Price (2007: 15)

3 See Price (2007: 35-41)

4 See Habermas (2002: 18-32)

greatest opponent of absolutism. The second important event linked to the public opinion's birth was an increased circulation of a new political literature, stimulated by the emergence of new social institutions, such as cafés and literary salons. This fact encouraged public and open discussions, which were crucial to build a critical conscience among the middle-class. England knew a gradual development of institutions, hand in hand with the development of civil society, with a press increasingly free and a parliament more and more powerful. The situation on the continent was quite different. In France, for example, things changed suddenly with a revolution, that created a free press, a party system and a parliament in a very few years.

As said before, public opinion plays a key role in democracy. It comes from the *public debate*, a process of mutual influence between people and between people and institutions. The result of this mechanism is the birth of a common point of view and, sometimes, of a *class action*. The main role is played by some individuals that Walter Lippman called *actors*, who influence all the others, called *spectators*, thanks to their communication skills and their knowledge.⁵ All the organizations called lobbies, political parties or trade unions could be the result of an aggregation around a certain issue, which persists even at the end of the specific debate stimulating it.

It is interesting to highlight the concept of *stereotype* in Walter Lippman's thought.⁶ He claimed that often the judgements expressed by public opinion were the result of widespread prejudices, useful to

5 See Lippman (1925: 110)

6 See Lippman (2004: 61-114)

take position on something. This means that there is a tendency to *economize* on attention and talking without knowing the details. Stereotypes are also a defence mechanism, based on the necessity to live in a predictable and safe world, and obviously an obstacle to a full knowledge of reality.

Newspapers have always been fundamental for democracy, because of their capacity to encourage participation, especially in a representative democracy, and to control the public power. Moreover, newspapers are useful in creating collective identities, both local and national. In England as in continental Europe, the birth of a free press was a crucial moment in the transition to parliamentary systems. Modern journalism began in the United States, with the so called *penny press*, closer to the common people than before, when printing press was reserved only to the ruling classes. The penny press created a new conception of *news*, developing modern newspaper formats and changing the way of understanding the profession connected to newspapers.⁷ The press, according to Lippman, is a fragile institution, which can be used as an instrument of power. By themselves, newspapers are unable to create an active public opinion : to this purpose the role of government, political parties, trade unions and citizens associations is fundamental.⁸

2. Jeremy Bentham

The *principle of utility*, meant as the principle that promotion of *the greatest happiness of the greatest number* of people is the main goal

7 See Di Sisto (2011: 23)

8 See Lippman (2004: 259-263)

of government and individual action, is the core of Bentham's thought. Jeremy Bentham (1748-1832), was the main theorist of *Utilitarianism*, a philosophical doctrine aiming at improving society and political institutions taking inspiration from the principle of utility. Bentham's theory starts from the single individual and reaches the collective dimension. This justifies Bentham's interest for politics and society, and his desire to propose deep reforms. In his *Article on Utilitarianism* (1829).⁹ Bentham listed the authors who developed the doctrine, underlining the contributions of each to his own philosophical research.

The main aim of Bentham's ethics was to apply *the duty and interest junction principle* through legislation, on the ground of human psychology. Human beings act for reasons given by pleasures and pains, because of a selfish tendency to maximize their utility. Thus, it is necessary to create a system of sanctions based on these motives, thereby inducing individuals to behaviours that maximize the collective interest.¹⁰ From a political point of view, Bentham thought that representative democracy is the only political regime compatible with his legislative project. He justified democracy by a Utilitarian argument, based on the fact that the main purpose of government is to achieve the greatest happiness of the greatest number. Accordingly, sovereignty should belong to citizens, who are directly part of the “greatest number”. However, democracy itself is not enough. It is necessary to provide some *securities against misrule*, able to avoid abuses of power finalized to satisfy the personal interest of officials

9 See Bentham (1983b: 283-328)

10 See Pellegrino (2010: 35-43)

and politicians. Among these securities there is the *Public Opinion Tribunal*, an institution composed by all the members of the community, built on the basis of a *publicity regime* of the acts of government.¹¹

Bentham's *On the Liberty of the Press and Public Discussion* (1820)¹² was written during the Spanish *Constitutional Triennium* (1820-1823), on the occasion of a parliamentary debate about a law limiting the freedom of the press and of association. This act was justified appealing to public safety. The main idea in Bentham's essay was that if a government not guaranteeing the liberty of association and of the press can be considered *despotic* and contrary to the achievement of the greatest happiness of the greatest number. A good government must permit to everyone to have opinions contrasting it, in the same way in which it permits to voice favourable opinions. The advantages of a free-press regime are comparatively greater than the disadvantages, which primarily consist in damages to the reputation. Freedom of association is necessary for circulation of ideas and development of popular movements against potential misrules.

In the final part of the essay, Bentham criticizes again the institutional system of his own country, improperly taken as a good example of government by an unidentified Spanish minister. English legislative system is based on common law, a form of customary law which doesn't permit, in Bentham's opinion, to identify a real legislator, being a sum of principles subjectively developed throughout history, often contrary to the common interest. For the

11 See Pellegrino (2013: ms)

12 See Bentham (2007b)

same reason, Bentham rejects all natural law theories .

Securities against Misrule (1822)¹³ was written in order to suggest some reforms useful to decrease governmental misrule in Tripoli's kingdom. The main idea is that the way to stop the arbitrary exercise of the power is to create a publicity regime. The Public Opinion Tribunal is a particular court of justice where press joins public opinion. It is composed by each member of the political community who is able to deal with the current affairs. The main purpose of the Tribunal is to apply its judgements using a system of social sanctions, creating a sophisticated mechanism of power control. Obviously, its main instrument is publicity. The degree of publicity of something is defined as its level of notification. Notification is applied to three different categories of objects: ordinances, transgressions and suffrages. Every category needs a different notification procedure and the suffrages are the most important one, being necessary to the work of the Tribunal. Suffrages notification process has to be accomplished through a newspaper. The newspaper editor is the most important member of the Tribunal, a sort of president. He has the responsibility to stimulate the expression of individual opinions. A well-informed citizenship will be the best guarantee against misrule, ensuring that power will be used only in order to pursue the greatest happiness of the greatest number. The principle of utility must be used to establish the newspaper structure, by assigning different weights to news. There are some similarities between the Tribunal and a common court of justice. In receiving complaints or defences, and in collecting and

13 See Bentham (2007c)

gathering proofs, their way of working is similar. The most important difference, as said, is in the way of sanctioning. The Tribunal should issue its judgements on everything, beyond the formal laws. For Bentham this Tribunal has also two important drawbacks. First, it is often lacerated by the conflict between rich and poor; second, there are communication problems in it, because of the distances between the members. In the final part of this essay, Bentham tries to give some suggestions about ways to convince the king of Tripoli to grant a publicity regime. The reaping of such concessions is a key condition to achieve a true economic development, which can be possible only with a significant political progress.

3. Conclusions

A public opinion able to discuss government and governmental issues is a key feature of democracy. Newspapers are crucial in forming a critical conscience in the public, being also a point of reference for the whole citizenship. A free-press regime is the logical precondition for the establishment of the Public Opinion Tribunal, which, together with the liberty of association, is one of the main securities against misrule.

In Bentham's political theory, the only way to achieve the greatest happiness of the greatest number is to create a democratic regime, in which sovereignty is attributed to citizens, by grounding the legislation on the principle of utility.

Bentham shed light on many issues regarding the freedom of the press and public opinion and most of them are still discussed. Bentham had an unwavering faith in constructive discussion and in the

press seen as a point of union between communities, both local and national.

About two hundred years ago, Bentham imagined a new kind of newspaper, accepting also contributions from the audience. He would have wished an instrument useful to organize the social life and to satisfy the request of participation and involvement in public affairs.

Is there a *Public Opinion Tribunal* nowadays? Although it is almost always possible to distinguish between a crowd, a mass and a conscious public opinion, the drawbacks detected by Bentham are still present. In many countries, even in the most developed ones, newspapers are often at the mercy of power. If they can't fulfil their duties, we should rely on the most informed and conscious citizens, who play the role of human newspapers, stimulating the circulation of ideas. Accordingly, freedom of association should be still considered as important as freedom of the press.