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Nominalistic Roots of Jeremy Bentham's Legal Positivism

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Abstract: The article deals with the classification of the entities suggested by the utilitarian philosopher Jeremy Bentham. It is shown that Bentham's understanding of the nature of things has much in common with the ideas of Aristotle and William from Ockham: from the former Bentham adopted a doctrine of categories, from the latter – principles of nominalism. Particular attention is paid to the so-called spiritual entities, which, according to Bentham, are real, but do not have material existence. The Article contains an examination of concepts covered by the ten categories of Aristotle – these notions directly (in the case of a substance) or indirectly (in the case of other nine categories) are to indicate a real entity that, opposed to a fictitious, can be a subject of any science. Realizing Bentham's paramount interest in jurisprudence we explained his aspirations to replace fictions that have a questionable relation to the substances with the names of real things.

Key words: Jeremy Bentham · Ontology · Nominalism · Entity · Substance · Categories · Relation · Fictions · Law · Rights · Natural law · Legal positivism

INTRODUCTION

Jeremy Bentham (1748–1832) was the first legal philosopher who proposed a new approach to understanding the law's nature in contrast to the 'lex naturalis' doctrine that had predominated before his time. Bentham vigorously denied the existence of law without legitimate written expression. His ideas later formed the ideological basis for many philosophical and legal thoughts of countless generations of Anglo-American thinkers. A careful analysis of his philosophical principles is key to understanding legal positivism. Fortunately, Bentham left many treatises that enable us to clearly understand his views on ethics, logic and metaphysics.

At the very beginning of his *Fragment on Ontology,* Bentham states that ontology is "*a field of supremely abstract entities… yet untrodden labyrinth, – a wilderness never hitherto explored* [2, 195]." Subsequently, he aimed to analyze all entity types in order to make the ontological world view more understandable. Yet, Bentham approached this issue very carefully. An examination of his opinion on the problem of defining entities, which are the names of non-material things and considering his views on the nature of law as positivistic is crucial. Through his writings, Bentham's attitude to the very old philosophical debate between Nominalists and Realists on the mode of existence of universals is clear. This discussion is also presupposed to have begun in late antiquity, when Boethius presented his Latin translation of Porphyry's "Introduction" to the *Categories* of Aristotle (Isagoge), where the doctrine of the categories of being was interpreted in terms of entities.

The subsequent criticism against nominalism as an "inconsistent view on the nature of things" may be based on the argument that language consists of words and each word is a general name for many similar individuals. In fact, the problem doesn't occur with word use that denotes objects but it instead occurs with terms that do not reflect any perceptible entity. Taking into account the views of both parties, regardless of whether we recognize the independent existence of universals or not, we cannot deny the reality of thinking fictions. That is why the dispute, which should be seen as ontological, often assumes the character of psychological or ethical.

In this respect, Stephen Chak Tornay correctly noted that this revolutionary shift was made by the medieval philosopher William of Ockham who wrote that "*…transplanting the universal from the realm of ontology to that of psychology and logic*[4, 256]." Moreover, Tornay stresses that the logic of the 14th century lost the character of a scientific methodology and became a "*…science dealing not with aspects of truth and error, but with meanings and significations* [4, 247]." Thus, William of Ockham discovered a practical

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application of this abstract ontological problem. To do this, he looked at universals by being interested not only in their way of existence but by being interested primarily in the possibility of obtaining knowledge of them. Consequently, the focus was shifted along the epistemological path. In regards to universals, except for general names or with what Aristotle called "secondary substances" [Cat. 5, 2b 10–30; *1, 56-57*], these are in contrast to the primary ones and can be predicated, we also include notions that don't refer to any material entity like grammatical abstractions.

To further clarify Jeremy Bentham's views on this issue, it should be noted that he divides all entities into either perceptible (animals, plants and minerals) or as inferred by reason. As a result, perceiving sensible entities without reasoning or reflection is required [2, 195]. Among inferential entities, he considers those that we often call spiritual, like human (a soul) and superhuman (a God) as both real and immaterial. With other classes of entities, which are the names of non-existent things, Bentham considers them 'fictitious entities' and 'fictions'[2, 197]. Fictitious entities are those which do not have physical existence, while fictions are meaningless terms – words caused by impressions of sensible objects or ideas that appeared under the influence of imagination. However, it should be understood that terms that aren't called anything in the realm of perception should still specify some substance. Therefore, Bentham has no doubt in the possibility of reduction fictions in regards to the names of real entities.

Briefly, he succinctly saw the need to distinguish between names of touchable objects, inferential entities (soul and God) and the rest as fictions and fictitious entities. To sum up his division, the nature of these types of words is different and these distinctions require further attention.

Spiritual Entities: Strictly speaking, Bentham is not interested in the ontological analysis of spiritual entities. For him, it is a matter of his ethical reasoning because we could mention his works like *Swear Not At All*, *Not Paul, but Jesus*, *Analysis of the Influence of Natural Religion on the Temporal Happiness of Mankind* and *Church-of-Englandism*. Because it is impossible to obtain a more or less justified belief on spiritual issues like we assume were present in the days of Ockham, Bentham examined ontology in connection with epistemology. Additionally, we cannot make a radical assumption regarding his religious intolerance. He could not remain silent after seeing the possible harm from the understandings associated with clerics' specific terminology. In the *Fragment on Ontology* Bentham admits: *"... by the learner as well as by the teacher of logic, all these subjects of Ontology may, without much detriment, it is believed, to any other useful art, or any other useful science, be left in the places in which they are found* [2, 196]." A matter of religion in that treatise is not raised any further.

The way Bentham writes on this issue in his religious tracts may cause confusion. For instance, he criticizes biblical chronology and casts doubt on the mystical experience or on the acts of Apostles. For instance, the tract *Not Paul, but Jesus*, which was published in 1823 under the pseudonym Gamaliel Smith, is devoted to exposing the Apostle Paul. Bentham wrote: "*...of this miracle, the proof given consists solely in his own evidence: his own statement, unsupported by that of any other person, or by reference to that of any other person...*[5, 299–300]."

In this regard it is worth mentioning the article *Bentham's Metaphysics and the Science of Divinity* by James Crimmins who stresses that Bentham *"... could not accept the "noble lie" or "double truth" view of the social utility of religion held by Voltaire and others... Belief in anything other than verifiable real entities... prepared the intellect to receive unspecified quantities of other useless and uncertified beliefs* [6, 403]." Bentham himself says the following: "*If therefore you believe the agency of an incomprehensible Being in the affairs of this life, your belief is such as would, were it pursued consistently, exclude you from all application of past experience to the future*[7, 100]."

Therefore, an experience for Bentham is a basis that makes it possible to distinguish between pleasure and pain, which, according to him, are the main causes of possible judgments about the external world. He is also rather skeptical about clerical terms that have a dubious relation to substances, such as the "Holy Trinity." If believing in God is not enough, without believing in the Spirit of God, then Bentham asks: *"...To believe in the Spirit of God, in addition to God himself, how can this be sufficient, when, besides the Spirit of God... there are so many other things belonging to God... the hand of God, the arm...* [8, 21]" etc.

It is reasonable to conclude that Bentham does not intend to demean people's faith in God. Rather, he insists that religious dogmas generate problems in understanding, like in the reverence for religion as it is manifested in the ability to speak or to write about it without thinking. Bentham suggests that it is quite

sufficient to recognize the existence of God and the soul, or what he named "inferential entities," while denying all fictitious concepts derived from them. For example, in the case of a 'round square,' we know that it definitely does not exist. As a result, we call it a fiction which renders it moot. However, we cannot, without any doubt, refer to aliens as a fiction because we do not absolutely know whether they exist or not. Bentham then claims that God exists by saying: *"... Author and Creator... These, as well as God, are the names of real entities; not names of the fictitious* [2, 208]."

At the same time, James Crimmins finds a certain irony in Bentham's anticlericalism that directly attests to his nominalist views. For instance, the strange irony that the Holy Mother Church, a beautiful female, consists of largely sinful males has been criticized because the nominalist point dictates that the whole could never be greater than the sum of its components [6, 398].

But we need to say that Bentham's critique of religious beliefs is not fully consistent because the Holy Writ is beyond the realm of rational science and cannot be deconstructed by scientific reasoning. At the same time, we must say that Bentham should not be understood as a boorish man who creeps into a "strange monastery." It is not a secret that he was mainly interested in jurisprudence. His need to write religious tracts and later a *Fragment on Ontology* emerged as a practical necessity to find the root and nature of legal fictions.

Grammatical Abstractions: Now we should deal with the terminology, which do not designate physical objects. While making a classification of fictions, Bentham follows Aristotle by suggesting that the next divisions of the names of physically fictitious entities (nine categories without 'substance') like absolute fictitious entities of the first order (matter, form, quantity and space), absolute fictitious entities of the second order (quality and modification), fictitious entities connected with the category of relation and political and quasi-political fictitious entities.

It is obvious that all nine categories are fictions because they are mere predicates of substance. Aristotle explains very clearly that "*...everything except primary substances is either predicated of primary substances, or is present in them and if these last mentioned did not exist, it would be impossible for anything else to exist* [Cat. 5, 2b 5–10; *1, 56-57*]. "Speaking about these categories, Bentham focuses on the way of understanding of fictitious entities: if they relate to the substance directly (for instance, "the fall of the body") then there is no complication in understanding. However, if one fictitious entity concerns the other one, ("free fall"), it becomes necessary to take into consideration the notion that stands closer to the substance. In this particular case, it is the word "fall" that depends on the secondary substance "body," which indicates the primary substance –the physical body [2, 197].

The example above shows the problem of naming fictitious entities and fictions as "entities" because none of the following nine categories is a substance. The word "entity" refers to something that really exists. However, the adjunct "fictitious" indicates that an "entity" has not any existence. This contradiction in terms, according to Bentham, is possible to explain only by the fact that "*...to language alone –it is, that fictitious entities owe their existence – their impossible, yet indispensable existence* [2, 198]." It should be said this was also explained long ago by Aristotle who stated that"*... primary substances are most properly called substances in virtue of the fact that they are the entities which underlie everything else and that everything else is either predicated of them or present in them* [Cat. 5, 2b 15–20; *1, 57*]." This is Bentham's starting point of his ontological reflections, meaning that everything is either a primary substance or a grammatical abstraction that has no existence outside language.

We should make two comments regarding the statements above. The first is that Bentham distinguishes fictitious and non-entities. The latter is a product of our imagination that, in most cases, is not taken seriously (for instance, a fairytale character). However, a fiction, thanks to language, is perceived as an entity that may seem like a substance. The second point concerns Bentham's remark "*To this word fiction, we must not attach either those sentiments of pleasure or those sentiments of displeasure* [2, 199]*."*Actually it is understood that feelings cannot be fictions since they are not expressed in words. Moreover, they cannot be substances because they do not exist by themselves. Consequently, priests and lawyers, according to Bentham, play on feelings presenting them as a reality for their "mischievous ambitions [2, 199]."

Basically, when dealing with substance, we can understand it by using nine categories. Bentham does this in the following order: (1) it must be in some certain quantity, (2) of a certain quality, (3) be placed somewhere, (4) be in time, (5) in motion, (6) at rest, (7) in action, (8) in passion and (9) in relation. He deliberately moved the category of relation to the last place, though it was the fourth in the Aristotle's list. He did this because of its

features: "…*Under this head (relation), such is its amplitude, several of the others (categories) seem totally or partially to be included* [2, 201]."

Meanwhile, it is time to deal with absolute fictitious entities of the first order like form and matter. Regarding this, Aristotle states, "…*And in one sense, matter is said to be of the nature of substratum, in another, shape and in a third, the compound of these* [Met. VII, 3, 1029a 5–10; *2, 189*]." The fact that '*primary substances are most properly called substances'* and that they are composed of matter and form provokes a question of the mode of existence of these two causes. Bentham explains that regarding real substance, the idea attached to the word 'matter' cannot be considered without the idea of another entity called 'form.' Matters as well as form are considered to be in a group of entities that are distinct from the kind of entities that the word 'substance' is regularly employed [2, 201]. Furthermore, it appears that unlike the concept of 'substance,' the notion of 'matter'in most cases could not be applied to incorporeal entities. Substance, unlike matter, cannot additionally be employed in contradistinction to form. Therefore, Bentham wrote: "*the word 'matter' is but the name of a class of fictitious entities, springing out of the sort of real entity distinguished by the word 'substance'* [2, 201]."In other words, he meant that the word 'substance' is a name of a class of real entities (both corporeal and incorporeal). However, the word 'matter' refers to a class of fictitious entities that are related to corporeal substances; i.e. a similar status has a form.

This indicates that every physical body has form, matter and can be described by other fictitious concepts that are included in the nine categories. While all nine are the names of fictitious entities, the first one, substance, is in fact real. Moreover, it becomes worth reading Bentham's *Fragment* for his other goal based on jurisprudence. Its usefulness will be described later.

Fictitious Entities Connected with the Category of Relation: Aristotle says regarding relation: "…*the relative is least of all a substance and a real thing is the fact that it alone has no proper generation or destruction or movement…In respect of relation there is no proper change; for, without changing, a thing will be now greater and now less or equal, if that with which it is compared has changed in quantity. And the matter of each thing and therefore of substance, must be that which is potentially of the nature in question; but the relative is neither potentially nor actually substance. It is strange, then, or rather impossible, to make not-substance an element in and prior to, substance; for all the categories are posterior to substance* [Met. XIV, 1, 1088a 25–1088b 5; *2, 352-353*]*."*

Despite a fairly complete explanation of the philosopher, perhaps the biggest problem in nominalist arguments occurs when it comes to the category of relation. For instance, Willard Quine, when writing on Bertrand Russell's nominalism, said that trying to paraphrase all talk of qualities still indicated that we should be left with one universal, the relation of similarity [9, 662].

It goes without saying that 'relation' has no independent existence beyond substances. However, to reduce it to a particular entity using a method of paraphrase is impossible. Jeremy Bentham says in his Memoirs that "*Abstraction is one thing – association another; relation comprehends both; relation is the most abstract of all abstractions* [10, 72]."

When we speak about two real things with the names of the two substances, there must be the third name fictitious entity "relation." The mode of its existence is nominal only because, even if we imagine that diversity or identity, synonyms of relation have an objective existence outside language. For example, in the case of motion, we could still not deny that motion is a motion of something. Therefore, it appears that in order to say anything about substance, a fiction cannot be omitted. On this account Bentham claims "…*There not being any real entity to represent, the entity cannot be any other than fictitious: the name employed for the purpose of representation cannot therefore be anything else than the name of a fictitious entity* [2, 204]."

But we should not forget that the 'relation' may be applied not only to existing things, but to everything. This is why Bentham warns: "*...Once introduced upon the carpet, the fictitious entity called relation swells into an extent such as to swallow up all the others. Every other fictitious entity is seen to be but a mode of this* [2, 203]." In this account, Oscar Kraus citing Sir David Ross's "*Foundations of Ethics"* stresses that 'real' relations can only exist between things which really exist [11, 111]. For example, Kraus examines the expression 'round square.' First of all, he states that neither the term 'roundness' nor the term 'squareness' means anything while both are grammatical abstractions. At that time, there can certainly be a real relation between round and square things. For instance, they can be in contact and this show the relation of contiguity. Of course, it is true that a round thing can never be a square but this impossibility should not be called a 'real relation.'

Consequently, Kraus argues that it is improper to conclude about the existence of real things based on relations taken from fictitious entities. He states this because, regarding substances, the conclusion may differ.

We dare to bring here a passage from Bentham's *Anarchical Fallacies* where his relation to the grammatical abstractions of moral content (namely, natural and imprescriptible rights of man) is seen. It also seems to have a relation to jurisprudence. He states, "*...To proprietary rights. Good: but in relation to what subject? for as to proprietary rights –without a subject to which they are referable – without a subject in or in relation to which they can be exercised – they will hardly be of much value, they will hardly be worth taking care of, with so much solemnity. In vain would all the laws in the world have ascertained that I have a right to something. If this be all they have done for me – if there be no specific subject in relation to which my proprietary rights are established, I must either take what I want without right, or starve. ...Unfortunately, in most matters of property, what is every man's right is no man's right* [12, 503]."

As in the case of 'roundness' and 'squareness', 'natural' and 'imprescriptible' must refer to any substance. If the round square does not exist, although the round things are in some way related to the square, to talk about connection of imprescriptible and natural things is pointless. At the same time believing the 'right' is a substance for the predicates 'natural' and 'imprescriptible,' we accept the objective existence of natural rights. However, the concept of 'right' is a fiction related to the acts of a legislator. In the case of natural rights, which are in opposition to the legal ones, the legislator must be of a nature themselves. For Bentham, it is a complicated question about how nature can be a legislator in a legal meaning, especially given that under the laws of nature, are presupposed to be physics. One of the possible solutions to this issue is legal positivism that will be the focus of the final section.

Political and Quasi-Political Fictitious Entities: Bentham considers obligation, right, exemption, power, privilege, prerogative, possession–physical, possession–legal and property as the names of effects that take rise from the following causes of command, prohibition or inhibition, punishment, pardon, license, warrant, judgment and division [2, 206]. It should also be noted that all of these entities have pleasure and pain as their initial causes. From them, Bentham derives five sanctions or sources of pleasure or pain; 'sources' because the experience of pleasure and pain is, according to Bentham, the final cause. These include the physical sanction, the sympathetic sanction, the moral sanction, the political sanction that includes the legal sanction, as well as the religious sanction [1313, 290]. Of all these sources, the political is the strongest and the surest sanction in its operation. Therefore, the obligation derived from it is the strongest and most effective.

It is useful here to recall Bentham's "Swear not at all" where he doubts the usefulness of religious oaths that impose obligations but do not provide benefits [14, 192]. On this account James Crimmins observes that Bentham's "*...principal line of argument is that the divine punishment threatened for the breaking of an oath is of such an uncertain nature that the mere taking of an oath cannot be relied upon as testimony to the honesty of the swearer. Any supposition of certainty made by the Church, therefore, is the purposeful exploitation of a fiction – a method of deception and control* [6, 401]."

In Bentham's view, if obligation does not have a legal nature then it is too weak to provide any sufficient force or to have practical value. It should not be understood that Bentham neglected moral obligations. To the contrary, he recognized that each person is entirely subordinated to the five mentioned sanctions [13, 292]. Yet unlike the other four, the political source cannot be omitted in any case. And due to the above, Bentham writes: "*A legal obligation to perform the act in question is said to attach upon a man, to be incumbent upon him, in so far as in the event of his performing the act, he will not suffer any pain, but in the event of his not performing it he will suffer a certain pain* [2, 206]."

It should, therefore, be duly noted that all mentioned names of political fictitious entities (Bentham also called them 'quasi-political', because they are often used in other areas with no relation to politics and law) as well as the names included in nine categories, should be directly related to a certain substance. With regard to the 'obligation,' it must be a result of somebody's command that imposes it. In turn, Bentham emphasized many times that it is absurd to fulfill obligations without rights. The only basis for the imposition of duties and obtainment of rights must be a command of the state legislator of what we call 'the law'. Consequently, nothing can be a law if it has no written expression like supposed natural law. The latter is the name of an entity that doesn't exist among real things that are neither material, nor inferential. To recognize or not the real existence of universals is a question of a worldview. Bentham was a consistent nominalist and empiricist so he considered the

reality of natural law as "nonsense upon stilts [12, 501]." No part of this word combination relates to another. Nature is not compatible with the laws and they, in turn, are not related to the state legislator. Thus, Bentham pondered natural law was related to jurisprudence?

CONCLUSION

It is evident that for Bentham, "*knowledge with regard to pleasure and pain is derived from experience*." Concerning inferential entities, he makes the assumptions that knowledge "*... consists in believing facts conformable to experience – in believing the modes of producing pleasure and avoiding pain* [7, 93]."

While speaking of a certain entity, he tries to answer how to obtain knowledge of it. If it is neither about material or spiritual entities then we are dealing with fictitious entities or fictions. Bentham insists on reducing the names of fictitious entities to the names of real ones, which has been causing criticism against him. However, it must be said that the cause of his intentions lies in the field of jurisprudence.

Bentham considered English law as "unperceivable [13, 243]" due to existence of so-called "judge-made" law with the association of common law, which is based in natural law. In conjunction to the judge's common sense, these circumstances made Bentham recognize his native legal system as completely imperfect.

In conclusion, Bentham's demonstrated view that it is unacceptable to rely in evidence not on the facts that produce knowledge of substances has been thoroughly examined. These were based on opinions that were made in relation to the names of fictitious entities, as this creates a complex labyrinth of concepts that inevitably causes problems in understanding.

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