

Sketch of the Life and character of Stephen Dumont
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Translated from the Revue Encyclopedique.

[From] *Principles of legislation from the Ms. of Jeremy Bentham;*
bencher of Lincoln's inn
by Etienne Dumont, Boston, Wells and Lilly, 1830: 157-170.

Geneva has just lost one of those citizens who constituted its glory, and who, drawing to this little state the eyes of all Europe, gave to it importance and dignity. M. Stephen Dumont, seized suddenly with inflammation of the bowels, while on a journey of pleasure, died at Milan the 29th of last September, a few hours after the danger had begun to show itself.

M. Dumont, born at Geneva in the month of July, 1759, of a father who had suffered great reverses of fortune, was left from his earliest infancy, with three sisters, to the charge of a mother who had no property, but her talents and great virtues. She formed the character of her son, who loved her, and she lived to a great old age. If from his infancy he had to contend with adversity, from his infancy also he announced that superiority of talents, spirit and intelligence, which enabled him while he followed his classes at college, to repeat to his fellow-students the lessons which he was taking, and to lighten in this manner the sacrifices that his mother was making to procure him a literary education. He was destined to the ecclesiastical career, and was ordained a minister of the Protestant church in 1781. His talent for preaching fixed every eye on him at once. He was only twenty years old-but the recollection is still retained of those sermons preached during the first year of his ministry, when a rich imagination, a style as clear as harmonious, ornamented the effusions of a heart full of sensibility, and a mind always philosophical, even when he was ranging the regions of theology.

But during the youth of M. Dumont, a Genevan could not avoid attaching himself to one of the parties which divided the republic. Professing already, as

he did to the end of his life, the love of all men, respect for their moral and intellectual progress, wishing to shelter them as far as depended on himself from suffering and vice, persuaded that every one has more interest in his own well-being and his own development than any other man can have for him, he belonged from that time to the party of liberty and moral perfectibility, and to this party he remained attached the whole of his life. While very young he united himself by a very tender friendship with the eminent men who directed at Geneva, the party which was denominated there the Representative, or the party professing democratical principles. So when the victory was secured to the opposite one, in the spring of the year 1782, by the armed mediation of France, of Savoy, and of one of the aristocratical cantons, he departed *voluntarily* from a country where liberty appeared in his view to be lost. It has been erroneously asserted that he was exiled. This departure from Geneva was considered by those who triumphed there, as ranging him among the party men; and indeed if this name belongs to those who are immovable in their principles, who never palter with what they believe to be their duty, fifty years' constancy to the same opinions, through the storms which overturned his country and Europe, and which have presented political opinions under so many different points of view, would certainly give to him the most honourable place among the supporters of liberal opinions at Geneva.

But if to the name of a party man the idea is attached either of the arts of intrigue, or the passions which stifle benevolence, no man merited it less. His mind, always conciliating, comprehended all opinions, even those most opposite to his own, and met them at their reasonable point; his heart, which could not hate, preserved no resentment either against those who opposed them or against those who wished to injure him. His policy knew no rules but those of frankness and moderation.

In quitting Geneva, M. Dumont went to Petersburg, where he was appointed pastor of the French reformed church; his mother followed him thither, and his sisters were honourably married there. His talents for the pulpit shone there with a new eclat, and caused his acquaintance to be sought by the eminent men, Russians or strangers, who were at the court of Catharine II. He had remained there but eighteen months, when Lord Lansdowne invited him to

England with the intention of employing him to finish the education of his son. It was in the house of this statesman that he formed intimate connexions with some of the men who have done most honour to Great Britain, with Sir Samuel Romilly among others, the most virtuous as well as the most learned of the orators of that country, of whom Dumont was the chosen friend. This attachment, which contributed so much to the happiness of his life, always made him consider England as his second country. At the same time his curiosity, so active respecting every thing which interested the fate of man, made him from them collect those delicate and just observations on the human heart, and that store of anecdote which rendered his conversation always new and *piquante*.*

Meantime the revolution did not long retain its purity, and as soon as scenes of violence and cruelty began to sully the cause of liberty, Dumont quitted Paris, and returned to England, before the sickness of Mirabeau, who died April 2, 1791. The shock of interests and of passions among men who had been brought up under the discipline of the old monarchy and the church, could not continue without manifesting the deplorable effects of the education of the ancient regime. No fixed principle, either of morality or of benevolence, could be deeply implanted in hearts, in the midst of so much falsehood and meanness. The men who had been formed under absolute kings, and under the priests, were as vicious as those whose places they had taken; and as several replaced a single one, society became the victim of the passions, the vices and crimes of several instead of an individual. Tyranny was multiplied with the number of those in power, and blood was poured out on every side. When the details of this tyranny, which was called the reign of terror, reached Dumont in England, he was overcome with grief. He thought he saw the cause dishonoured, to which he had devoted his life, and without having taken part in any action with which he could reproach himself, without having contributed

* Here follows a passage relating to Mirabeau, published in page 148.

to the diffusion of any principle which he wished to disavow, tormented only by the recollection of his wishes so cruelly deceived, he remained for some years plunged in sadness, which almost seemed to him like remorse.

What contributed the most to draw him from this state of depression, was his increased intimacy with the English lawyer, Jeremy Bentham, whom he had known since 1788. The conversation of this extraordinary man, and subsequently the examination of his manuscripts, introduced him to a new career. M. Dumont had studied with ardor the general theory of legislation, as making a part of political economy, but he had not devoted himself especially to jurisprudence. He had seen abuses of the laws on the continent and in England, but he had not attempted to ascend to the principles of right, and he shrank with a sort of terror before an erudition so vast, so complicated, and often so irrational. It was apparently this sentiment which made him receive with so lively an admiration and a faith so entire, the doctrines of a philosophy which, issuing from a single principle, proceeding always by the same method, with the power of a severe reasoning, established order, regularity and light in chaos. It was the enchanted forest of Tasso, dark, inextricable, and peopled with frightful spectres; suddenly an enchanter cuts for himself straight and regular paths, opens to all the direction to his most secret retreats, and throws over every object a gentle and equal light. The enthusiasm of Dumont for Bentham was kept up without deviation or division, to the end of his life. The English lawyer was for him, written reason, a name that the men of the law have given with less faith to the body of the Roman law. We have sometimes heard him say of what he most admired in other philosophers, "it is convincing, it is truth itself, it is almost *Benthamic*".

The submission of so superior a mind as that of Dumont, and at the same time a mind so inquisitive and independent, to another mind, is a phenomenon which was perhaps never exhibited to the same degree. And the astonishment that it causes is doubled when we observe the singularities of the mind which excited such an admiration. Dumont has himself spoken of the manuscripts which his friend put into his hands as "a first draft", "unfinished manuscripts", "not corrected", "fragments or simple notes" -(Preface to the *Treatise on Punishments*). This was pointing out but a small part of their disadvantages.

But it is from this source that he drew out all the philosophy of Bentham. The public had afterward an occasion to judge of Mr. Bentham's style, when he published himself, of his obscurity, his neologism, his pleasantries at the same time grotesque and learned (6). The pomp with which he sometimes introduces those trivial notions that the English call *truisms*, the silliness of his enumerations, when he applied what he called his *exhaustive* method to distinguish what is incapable of distinction. Thus we find, in a number of the Edinburgh Review which has recently appeared, these words at the end of a refutation of the Utilitarian system of philosophy. "We cannot close without expressing the desire that Mr. Bentham may endeavour to find better editors for his compositions. If M. Dumont had not been an editor of a very different species from some of his successors, Mr. Bentham would never have attained the distinction of giving his name to a sect." -(Edin. Rev. No. 98, p. 299) (7). M. Dumont, judging that the manuscripts of Mr. Bentham would never be published, or if they were in the original form, would produce no impression, succeeded in having them given up to him to do what he wished with them; Bentham "refused at the same time any participation in the work, and declared that he should in no way hold himself responsible for it" (Theory of Punishments, pref. 10). Dumont, then, penetrating to the original ideas, remodelled, made them over again, so far as not only to change entirely the style of the work, but also the argumentation, distribution, sometimes *even the results*—suppressing much, sometimes adding, always making more perfect, he finally produced a system (8) which has powerfully excited thought and reflection all over Europe. It was at first almost universally adopted by those who pretended to carry philosophy into legislation, later and very recently it has been attacked by force and by a sort of agreement in France and England, but even then it has been with that attention and respect which the great promoters of thought must always impose.

The works produced by this singular fusion of two minds into a single one, were published in the following order. 1. Treatise on Civil and Penal Legislation, Paris, 1802, 3. vol. 2d edition, Paris, 1820- Bossange, father and son. 2d. Theory of Rewards and Punishments, London, 1811, 2 vol. 2d and 3d edition, Paris, Hector Bossange. 3d. Tactics of Legislative Assemblies, followed

by a Treatise on Political Sophisms, Geneva, 1816, 2. vol. 4th. Treatise on Judicial Proofs, Paris, 1823, 2 vol. 5th. Of the Organization of the Judiciary and Codification, Paris, 1828, 1 vol.

Numerous manuscripts of Bentham, which have already received the first labour from Dumont, still remained in his hands, and he has disposed of them in favour of one of his nephews, undoubtedly under the persuasion that they in their turn may be brought before the public, and complete this great system. We shall not attempt here, in the small space which is allowed us, to make known this system or the manner in which it differs from those which before and since have been applied to legislation. The name alone of the philosophy of Utility explains every thing that could be said of it in a few words. As the basis of morality, as a moving principle of the actions of men, either taken individually or acting in society, or in prescribing rules in the name of this society, Bentham and Dumont acknowledge only the *search of the greatest good of the greatest number*. They are on the other hand very desirous to separate their system from that of Helvetius, who acknowledges as the moving principle of men's actions, nothing but personal interest, that is, the greatest good of him who is acting. The difference between the two systems is exactly the weak point of the Benthamic doctrine, the point which is at present most vigorously attacked. Every man of good sense must agree that if he compares two systems of morality, two systems of legislation, two systems of religion, the only means of judging one with regard to the other, the only criterion to determine the best, is to discover which of the two tends most certainly and most directly to the good of all. If under the name of good we comprise moral good, perfection, as well as physical good, we shall find no one to contradict this. But while our reason assists us to determine what is the best for the whole, it does not show that the best for all is the best for ourselves. If the case is presented where the interest of the whole is opposed to our personal interest, reason, calculation alone will not lead us to prefer the good of the whole to our own. Nothing in our judgment when unaided is opposed to our preferring our present interest when it is very strong and very passionately desired, to the more extensive future interests which we may perhaps never see, or which we have resolved not to see.

If the system of Bentham can be expressed by the phrase "every one seeks first of all the greatest good of the greatest number" -it is contrary to universal observation; if it is expressed in this phrase, ' every one ought to seek above all the greatest good of the greatest number,' this word ought admits the existence of another principle superior to that of Utility. This is duty, morality, of which the origin and the motive must be sought elsewhere than in the Utilitarian philosophy, elsewhere than in interest (9).

This blank in the system which was, a few months since, pointed out by one of the most devoted friends of M. Dumont, by one of those men who admired him most, (M. Rossi, in his treatise of penal law) could not be even comprehended by M. Dumont, because the principle which he invoked as directing men, the principle of benevolence, was so powerful in his heart, that he could not perceive that there was need of any motive, that there was need of its being made a duty to seek the greatest good of the greatest number, even at the expense of his own. Goodness was in him the nature even of things, and when he was asked for a motive for labouring for the greatest good of others, it seemed to him like asking him to prove the evidence (10). When Geneva recovered her independence in 1814, M. Dumont hastened to return back to his country, and to bring there a fortune acquired by his literary labours. He looked on Geneva as the object of his youthful love, all his hopes were attached to it, he honoured a country which honoured him in return, he aspired to see it become a *pattern Republic*, a state in which all the wisest and most benevolent principles should pass from theory to practice, and in which science should be brought to perfection by taking it from all abstractions. -In the midst of these delightful hopes, he was astonished and hurt by seeing a constitution presented and adopted which had been drawn up without consulting any of those who at Geneva had acquired some reputation by the study of the social science. He represented how informal this plan was, and how dangerous it might become, in an address which he, in common with some other citizens, presented to the provisional government. This step suddenly awakened the aristocratical hatreds which had slumbered for twenty years. They were let loose with that outrageous violence which belonged to the old aristocracies, but which are no longer to be met

with. M. Dumont, who did not understand hatred, who could not admit a bitter sentiment into his heart, felt extreme grief and was on the point of returning to England. A sentiment of dignity alone restrained him, it told him that he ought to face the storm. The suffrages of his fellow-citizens, which placed him in the sovereign and representative council, made it his duty to contend, that he might save as much as possible of the liberties of his country, and this combat was fortunate and glorious. Notwithstanding that explosion of the old prejudice which had so cruelly surprised him, the chiefs even of the aristocratical opinions which he contended against were struck with the clearness and wisdom of his ideas. He was not only placed on the committee to prepare a law for the representative council, but the project which he presented was adopted in its principles as well as its form by this committee, tried by the representative council, for the deliberation of the law itself, and finally adopted November 16, 1814. Thus was realized at least for this important object his desire of making Geneva a model of Republics, for there exists no where in practice a law more wise, more clear, more rational, and which attains more completely its different ends, viz.—to protect the minority in the whole course of debate, to preserve logical order in the discussions, that every question may be decided by an expressed will, and that the assembly may never find itself tied by surprise or by induction to what it has not willed; finally, to express the true wish of the majority, on all the parts and on the whole of the law, in the vote.

These rules, which have now become a part of the Genevan customs, and which are observed in all deliberative bodies, whether political or not, have been equivalent to the most important, the most benevolent reform in the constitution. The representatives of the nation have been placed in a situation to execute with intelligence, clearly, completely and with sufficient conciseness all the business with which a great national council can be charged; and while the authors of the constitution had thought they were giving to it only a nominal sovereignty, the most real sovereignty has been fully exercised by it with as much wisdom and moderation as patriotism. M. Dumont published this law at the end of his *Parliamentary tactics* (11).

The republic had adopted provisionally the French penal code, protesting however against its duration, and earnestly desiring to be delivered from it. In 1817, M. Dumont addressed himself to the first magistrates of Geneva to offer a penal code, almost completed, accompanied with a digested system, to justify all the parts of it; a work borrowed in great part from the manuscripts of Bentham. The proposition was not admitted under this form. It was thought necessary to make this foreign production more rational, by a profound discussion, before it could become a law of the state, and M. Dumont was joined, May 28, 1817, to a committee charged with preparing a penal code. From the first sittings the plan of M. Dumont was adopted, and they had a settled basis for discussion. Meantime, the code borrowed from Bentham, was so different from the common forms of legislation, that Dumont was subjected to difficulties which were constantly arising, in causing it to be adopted by the lawyers. After twenty-five laborious sittings, by a decree of Jan. 12, 1819, the commission appointed from itself a committee of four members to accelerate this work and give it a more uniform character. This committee in April 1821, had had seventy-five sittings of four hours each, when M. Dumont determined to publish the plan, as it had been drawn up by himself. Since then, new labours have given to it other modifications, without the plan having yet been laid before the sovereign council; one of the most ardent wishes of M. Dumont, to give to his country a penal code, worthy of being a model, has always been delayed, and when the fruits of such continued labour will finally be reported to the councils of the republic, they will have the grief of discussing it, without being enlightened in their deliberation by its author.

A more complete success crowned his efforts for the reform of the system of prisons. He had early remarked the serious inconveniences attached to the mixing prisoners of different classes in one prison. His discourses, his writings finally determined the government to form a commission for establishing a penitentiary prison. He reported for this committee March 1, 1822, to the representative council. "Give to the body", said he, in this report, "healthy and pure air, and you will banish contagious disorders; place vicious men in a situation where the causes of evil do not exist, where the virtues become for them the means of happiness, and you will necessarily produce virtues. Man is

not perverse in his natural state, whatever the dark slanderers of human nature may say; and for the young in particular, crimes are often only accidents, the consequence of ignorance and a bad education. It is the wild stock which is necessary to be engrafted, and which may then bear healthy fruit. The circumstances in which it is necessary to place these moral patients to recover them, are a regimen of habitual labour, of temperance, of tranquillity, of instruction. In this situation all is new for them, every thing concurs to produce favourable impressions. No more exciting conversations, no more quarrels, no more passions fed by gaming and spirituous liquors. No privation of what is necessary, no bad treatment which might exasperate them; moderate labour, of which they receive the fruits themselves, instruction to which they attend, at first against their will, but which soon becomes agreeable to them".

What he thus announced was finished under his direction. The penitentiary prison was raised according to the panoptic plan that *he had suggested*, that is to say, *that an invisible inspection is extended over all the prisoners at once* (12). It is the true model of a prison which does honour to Geneva, and which all strangers hasten to visit. The plan of the law for the government of the interior of this prison, which M. Dumont presented in 1824, and which underwent only some slight modifications, is not less worthy to serve as a model to legislators than the prison itself. It has accomplished the design proposed by M. Dumont, and the public vengeance is satisfied in bringing back little by little the guilty to a state which permits them to return again into society.

M. Dumont since that time always continued to take an active and influential part in the labours of legislation. Passions became calm, prejudices were dissipated, the gentleness, moderation and conciliating spirit which were displayed in his character, became always more and more remarkable. The contest had ceased, but it had added still more strength to his opinions and manners. The council always expected a new pleasure when he rose to speak; sometimes he poured a clear light on the principles of legislation, sometimes with a brilliant imagination, gentle or animated, he ennobled the subject of their deliberations, he brought it to the good of all, he animated the details

with a grace altogether peculiar to himself, and he left every one proud of a country which nourished such citizens.

It was thus that he employed a life of seventy years, a life always useful to his country and to humanity, a life accompanied almost constantly with health of body and mind, finally a happy as well as an honourable life. M. Dumont felt it himself to be so, for he began his will by an "act of gratitude toward God for the blessing of a peaceful and free life, which has been principally made happy by the charms of study and the enjoyment of friendship". This will, by which he distributed legacies among all his relations and all his friends with a delicate attention, either in proportion to their wants or valuable from the memory of him who gave them, appeared to his fellow-citizens as the last accents of that voice so dear to them, which comes yet from the tomb to speak to them of his constant affection, to encourage them to do good, and to show them by his example the happy fruits of virtue.