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## MANDEVILLE ON CORRUPTION AND LAW\*

Mandeville is one of the leading authors involved in the eighteenth-century debate on corruption<sup>1</sup>, even though corruption is not a keyword in his vocabulary: it does not appear in the «Index» of *Fable I*

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<sup>1</sup> Mandeville was at the heart of the corruption debate, especially for his defence of luxury and his provocative subtitle to the Fable «private vices, public benefits». About the debate on virtue, wealth and corruption in eighteenth-century British Enlightenment see J.G.A. Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*, Princeton, Princeton Univ. Pr., 1975; *Wealth and Virtue: the Shaping of Political Economy in the Scottish Enlightenment*, Cambridge, Cambridge Univ. Pr., 1983; S. BURT, *Virtue Transformed: Political Argument in England 1688-1740*, New York, Cambridge Univ. Pr., 1992; S. BURT, *Ideas of Corruption in Eighteenth Century England*, in *Private and Public Corruption*, ed. by W.C. Heffernan & J. Kleinig, Lanham, Rowman & Littlefield Publ., 2004; C.J. BERRY, *The Idea of Commercial Society in the Scottish Enlightenment*, Edinburgh, Edinburgh Univ. Pr., 2013; B. BUCHAN & L. HILL, *An Intellectual History of Political Corruption*, New York, Palgrave MacMillan, 2014. On Mandeville and the corruption debate see M. JACK, *Corruption and Progress. The Eighteenth-Century Debate*, New York, AMS Press, 1989; C.J. BERRY, *The Idea of Luxury. A Conceptual and Historical Investigation*, Cambridge, Cambridge Univ. Pr., 1994; I. HONT, *The Early Enlightenment Debate on Commerce and Luxury*, in *The Cambridge History of Eighteenth-Century Political Thought*, ed. by M. Goldie & R. Wokler, Cambridge, Cambridge Univ. Pr., 2006, pp. 379-418.

and neither in the one of *Fable II*, and it is seldom found in the text<sup>2</sup>. Nonetheless, we can tell two different acceptions in his use of this term. In *Fable I* it refers to «Corruption of Manners», the kind of corruption that rules in various professions, but most of all Mandeville uses it in its *A Vindication of the Book*, an addition to the 1724 edition, to refer to the accusations of corrupting the Nation that he had received. In *Fable II*, the term is used in its meaning of «Corruption of the Heart»<sup>3</sup> or «Corruption of our Nature»<sup>4</sup>, meaning «violence of the Passions» and weakness of reason. The word «corruption» recurs more frequently among the accusations that were moved by his detractors. Francis Hutcheson, for example, proposed five interpretations of the Mandevillean subtitle «private vices, public benefits», all more or less slight variations of the idea that moral corruption could have positive economic effects<sup>5</sup>.

My hypothesis is that Mandeville in *Fable I* still maintains a certain ambiguity on what is meant by the term «corruption»: in some cases it simply seems an equivalent of vice, while in others it identifies the breach of law; in *Fable II* there is a clear-cut distinction between «moral corruption», intended as vice, and «legal corruption», that is crime. If vice can sometimes be useful to society, crime instead is always damaging. In *Letter to Dion*, the last Mandevillean work, published four years after *Fable II*, Mandeville draws a clear distinction between vice and crime:

<sup>2</sup> The first part of the *Fable of the Bees* will be called *Fable I* and the second *Fable II*. The quotations from the *Fable of the Bees* refer to the pages in B. MANDEVILLE, *The Fable of the Bees, or Private Vices, Public Benefits*. With a Commentary Critical, Historical and Explanatory by F.B. Kaye, Oxford, Clarendon Pr., 1924, I-II. See *Fable I*, pp. 7, 360, 384, 406, 412; *Fable II*, pp. 27, 39, 118, 356.

<sup>3</sup> *Fable II*, pp. 39 and 118.

<sup>4</sup> Ivi, p. 356.

<sup>5</sup> F. HUTCHESON, *Reflections upon Laughter, and Remarks upon the Fable of the Bees*, Glasgow, Pr. by Urie, 1750, p. 41, originally appeared as letters on the «Dublin Journal» between 1725 and 1726. See *Fable II*, p. 431: «private vices public benefits, may signify any one of these five distinct propositions: viz. 'Private vices are themselves public benefits': or, 'private vices naturally tend, as the direct and necessary means, to produce public happiness': or, 'private vices by dextrous management of governors may be made to tend to public happiness': or, 'private vices natively and necessarily flow from public happiness': or, lastly, 'private vices will probably flow from public prosperity through the present corruption of men».

Breaches of the Law I have treated in a more serious Manner; and tho' it has been insinuated, that I was an Advocate for all Wickedness and Villany in General, there is no such Thing in the Book. I have said indeed, that we often saw an evident Good spring up from a palpable Evil [...] but as to the Crimes themselves, I have never spoke of them, but with the utmost Detestation, and on all Occasions urg'd the great Necessity of punishing all, that are guilty of them, without Favour or Connivence<sup>6</sup>.

The distinction between vice and crime is one of the most important themes in *Fable II* and it is crucial to understand the meaning of the expression «private vices, public benefits»<sup>7</sup>. In the pages that follow, I will analyse Mandeville's thought in relation to law, crime and punishment. I will address three points: 1) My first point is the analysis of the relationship between law and human nature, law and ethics, law and society. 2) My second point is the analysis of Mandeville's theory of law, about which I will try to answer the following questions: what is the nature of law for Mandeville? What role is law supposed to play? How did law develop historically? 3) My third point regards the theory of punishment in Mandeville's thought.

### 1. *Law, Human Nature, Ethics and Society.*

The analysis of law in Mandeville's thought can be carried out at different levels. At the first one we have the relationship between law and human nature. At this level of analysis, law is designed to amend human nature so that people can live in society: «The principal Laws of all Countries» – Mandeville says – «have the same Tendency; and there is not one, that does not point at some Frailty, Defect, or Unfitness for Society, that Men are naturally subject to»<sup>8</sup>. Law's main function is to keep self-centered and antisocial passions at bay. In order to demonstrate that this thesis is of universal value and therefore relates to the whole of humankind, having its roots in

<sup>6</sup> B. MANDEVILLE, *A Letter to Dion, Occasion'd by his Book call'd Alciphron, or the Minute Philosopher* (1732), with an Introd. by J. Viner, Los Angeles, Augustan Reprint Society, 1953, p. 32 s.

<sup>7</sup> See M. SIMONAZZI, *Mandeville*, Roma, Carocci, 2011, pp. 151-164. On the importance of justice in Mandeville's thought see M. TOLONEN, *Mandeville and Hume anatomists of civil society*, Oxford, SVEC, 2013.

<sup>8</sup> *Fable II*, p. 271.

its anthropological characteristics, Mandeville uses God's law in the form of the Decalogue<sup>9</sup> as an example, and shows how each commandment addresses one «Frailty or Defect in our Nature»<sup>10</sup>.

At the second level we have the relationship between law and ethics regarding the origin of society. It is worth mentioning straight away that in *Fable I* law remains in the background, Mandeville doesn't seem interested in defining its role in the origin of society and his attention is chiefly focused on the relationship between ethics and society. On the contrary, in *Fable II*, Mandeville dedicates most of the «Sixth Dialogue» to the description of nature and to the role of law in relation to the origin of society.

In the *Enquiry into the Origin of Moral Virtue*, Mandeville stated that laws, without any other specification, are the vital spirits of the political body<sup>11</sup>. Nonetheless, at the time when he made such a statement, Mandeville also used to affirm that law is not sufficient to found political obligation («it is impossible by Force alone to make him tractable, and receive the Improvements he is capable of»<sup>12</sup>), but a shared system of values is required to activate such passions as pride and shame:

They thoroughly examin'd all the Strength and Frailties of our Nature, and observing that none were either so savage as not to be charm'd with Praise, or so despicable as patiently to bear Contempt, justly concluded, that Flattery must be the most powerful Argument that could be used to Human Creatures. Making use of this bewitching Engine, they extoll'd the Excellency of our Nature above other Animals, and setting forth with unbounded Praises the Wonders of our Sagacity and Vastness of Understanding, bestow'd a thousand Encomiums on the Rationality of our Souls, by the Help of which we are capable of performing the most noble Achievements. Having by this artful way of Flattery insinuated themselves into the Hearts of Men, they began to instruct them in the Notions of Honour and Shame; representing the one as the worst of all Evils, and the other as the highest Good to which Mortals could aspire<sup>13</sup>.

<sup>9</sup> Ivi, p. 272.

<sup>10</sup> Ivi, p. 278.

<sup>11</sup> Ivi, p. 3: «Laws and Government are to the Political Bodies of Civil Society, what the Vital Spirits and Life it self are to the Natural Bodies of Animated Creatures».

<sup>12</sup> *Fable I*, p. 42.

<sup>13</sup> Ivi, p. 42 s.

According to Mandeville, society can not be based exclusively on fear (which is the passion on which juridical sanctions act), but also on those passions that Arthur O. Lovejoy defined of «approbateness» or the need for approval and praise<sup>14</sup>. As we know, Mandeville described ethics as the invention<sup>15</sup> of skillful politicians which, leveraging on pride and shame, produced behavioral models and harmonised self-centered passions making them sociable. The birth of society was therefore subordinate to the invention of ethics, that is to a kind of knowledge strictly linked to power.

In *Fable II*, instead, Mandeville leaves behind his theory of skillful politicians and elaborates a conjectural theory on the origin and spontaneous evolution of society and of political, cultural, and social institutions. In this theory on the birth of society, Mandeville allocates law a crucial role: the invention of written rules.

Mandeville identifies two possible drives for the origin of society, intended as the passage from family to state. The first is intrinsic in family dynamics and is born of the need to find agreements to regulate power within the family, considering that the principle of physical strength is not one that can provide stability. In fact, the fathers' superior strength is destined to decline, and even if reverence (that is a passion made of love, fear and esteem) may make up for it in the fathers' old age, straight after their death a fratricidal fight would necessarily ensue, and it is exactly to avoid this condition of continuous struggle that a government would have been instituted<sup>16</sup>.

The second drive is more complex, it comes from outside the family and is articulated in three stages, of which the last and most important is the invention of writing that brings with it the possibility

<sup>14</sup> A.O. LOVEJOY, *Reflections on Human Nature*, Baltimore, Johns Hopkins Univ. Pr., 1961. See also L. DICKEY, *Pride, Hypocrisy and Civility in Mandeville's Social and Historical Theory*, «Critical Review», IV, 1990, pp. 387-431; B. GUION, *L'amour-propre bien ménagé: des ruses de la providence à la morale de l'intérêt*, in *Un Siècle de Deux Cents Ans? Le XVIIe et XVIIIe Siècles: Continuités et Discontinuités*, ed. by J. Dagen & P. Roger, Paris, Édit. Desjonquères, 2004, pp. 56-87; M. SIMONAZZI, *Le favole della filosofia. Saggio su Bernard Mandeville*, Milano, FrancoAngeli, 2008, pp. 159-181; M. OTERO KNOTT, *Mandeville on Governability*, «The Journal of Scottish Philosophy», 12, 2014, pp. 19-49.

<sup>15</sup> *Fable I*, p. 51: «imaginary Rewards».

<sup>16</sup> *Fable II*, pp. 199-202. On this subject see TOLONEN, *Mandeville and Hume Anatomists of Civil Society*, pp. 65-81.

of written laws: «Therefore the third and last Step to Society is the Invention of Letters. No Multitudes can live peaceably without Government; no Government can subsist without Laws; and No Laws can be effectual long, unless they are wrote down»<sup>17</sup>.

In *Fable II*, Mandeville is committed to a historical-conjectural reconstruction of the process of the origin of society and attributes to law a logical and historical priority in comparison to ethics, which was not present in *Fable I*. Here, law is considered the pre-requisite that made ethics' development possible, without which self-liking can not be activated. Paulette Carrive, on this regard, wrote: «legality is the basis of freedom of conscience»<sup>18</sup>.

Eventually, at the third level we have the relationship between law and society regarding economy. Since the 1705 apologue, Mandeville allocates law the task to make so that vices could be turned into public benefits. Apart from some exceptions, as in the case of the «Remark G», the main difference between vice and crime regards their social effects: vice can be made useful to society, while crime always tends to be damaging. Law plays the role to contain and limit vice so that it may be socially useful and does not turn into crime: «Vice is beneficial found, When it's by Justice lopt and bound»<sup>19</sup>. Therefore, law's role is that of channelling human passions in a way to make them useful to society: «When I assert, that Vices are inseparable from great and potent Societies, and that it is impossible their Wealth and Grandeur should subsist without, I do not say that the particular Members of them who are guilty of any should [...] not be punish'd for them when they grow into Crimes»<sup>20</sup>.

In issue 64 of «Female Tatler», Mandeville reiterated that «where crimes are duly punish'd, and the Vices are not suffer'd to injure any but those that are guilty of them, they need not to be apprehended»<sup>21</sup>.

Law, therefore, carries out an important function from multiple points of view: 1) to facilitate human sociability; 2) to create the conditions that allow the development of self-liking; 3) to turn

<sup>17</sup> Ivi, p. 269.

<sup>18</sup> P. CARRIVE, *Bernard Mandeville. Passions, Vices, Vertus*, Paris, Vrin, 1980, p. 121.

<sup>19</sup> Fable I, p. 37.

<sup>20</sup> Ivi, p. 10.

<sup>21</sup> B. MANDEVILLE, *By a Society of Ladies. Essays in The Female Tatler*, ed. by M.M. Goldsmith, Bristol, Thoemmes Pr., 1999, p. 107.

private vices in public benefits and so, to make the State strong and thriving.

Mandeville gradually seems to acknowledge the importance of law, as shown, for example, by the fact that in the «Index» to *Fable I* the entry «Law» or «laws» is absent, while in the «Index» to *Fable II* it is one of the longest.

Besides, in the 1723 *Essay on Charity*, Mandeville gives ample space to the subject of crime, the following year he puts forward a legislative draft to regulate brothels, and in 1725 he makes a public intervention on the «British Journal» to criticise the theftboote system by Jonathan Wild and he proposes a detention system reformation which includes the capital punishment rite. Eventually, in 1729, he dedicates to law the best part of the «Sixth Dialogue» in *Fable II*.

Friedrich von Hayek, in his very famous 1966 conference at the British Academy, suggested a very fascinating hypothesis to explain the reasons why, starting from the twenties, Mandeville pays so much attention to law. He sustained that it was exactly law, in its English acception of common law, that represented the model for the «discovery» of the theory of spontaneous evolution of human institutions<sup>22</sup>, and he identified in Matthew Hale a possible source. Hayek writes: «... another probable source of inspiration for Mandeville was the English theorists of the common law, particularly Sir Matthew Hale. [...] in the work of Hale Mandeville could have found much that would have helped him in the speculations about the growth of cultural institutions which increasingly became his central problem»<sup>23</sup>. Matthew Hale, on the other hand, had already been quoted by Kaye in 1924 as one of the few modern authors in whose work the seeds of an evolutionary concept of society were already present<sup>24</sup>. Hale was the author of *The History of the Common*

<sup>22</sup> On spontaneous order see N. BARRY, *The Tradition of Spontaneous Order*, «Literature of Liberty», V, 1982, pp. 7-58; R. HAMOWY, *The Scottish Enlightenment and the Theory of Spontaneous Order*, Carbondale & Edwardsville, Southern Illinois Univ. Pr., 1987.

<sup>23</sup> F.A. HAYEK, *Dr Bernard Mandeville: Lecture on a Master Mind*, «Proceedings of the British Academy», LII, 1967, pp. 125-141: p. 132; repr. in *New Studies in Philosophy, Politics, Economics and the History of Ideas*, London, Routledge, 1978, pp. 249-266: p. 256. A very critical interpretation of Hayek's reading of Mandeville is C. PETSOUHAS, *Hayek's Liberalism and its Origins*, London, Routledge, 2001.

<sup>24</sup> *Fable I*, p. CXII s., n. 1.

*Law of England*, the first published work of its kind, printed after his death in 1713, just a year earlier than the first edition of *Fable I*. He had been one of the first jurists who reacted to the *Dialogue between a Philosopher and a Student of Common Laws of England* (1666, published in 1681) by Hobbes<sup>25</sup>.

We know that Mandeville in the twenties was very interested in the history of law. In the *Modest Defence*, for example, Mandeville demonstrates to know the history of the laws regulating prostitution in medieval and early modern times. As Irwin Primer underlined: «We gradually discover that the speaker is not only attentive to the field of the law throughout but also seems to understand very well how to argue a case before the bar. In this work [*Modest Defence*] and in his next pamphlet (on the frequent executions at Tyburn, 1725) Mandeville attends to matters of law and legal history to a greater degree than he does in any of his other publications»<sup>26</sup>. We also know that Mandeville was very familiar with Hale's work because he quotes a whole passage from *Pleas of the Crown*<sup>27</sup> in *Tyburn's* first chapter<sup>28</sup>. Hale is probably considered by Mandeville the highest authority on the subject of law.

His growing interest in law could therefore be explained by the hypothesis that Mandeville might have found in *common law* that model for the spontaneous development of human institutions capable to support his theory on the development of language, politeness and social and cultural institutions in general<sup>29</sup>. In support

<sup>25</sup> M. HALE, *Reflections by the Lord. Cheife Justice Hale on Mr. Hobbes His Dialogue of the Laws*. This work circulated as a manuscript. He is also the author of the first published history of the common law of England (*A History and Analysis of the Common Law of England*), published in 1713.

<sup>26</sup> I. PRIMER, *Bernard Mandeville's «A Modest Defence of Publick Stews». Prostitution and its Discontents in Early Georgian England*, New York, Palgrave MacMillan, 2006, p. 149.

<sup>27</sup> M. HALE, *Pleas of the Crown. A Methodical Summary of the Principal Matters relating to that Subject*, London, R. Atkyns & E. Atkyns, 1678, p. 130.

<sup>28</sup> See B. MANDEVILLE, *An Enquiry into the Causes of the Frequent Executions at Tyburn*, London, J. Roberts, 1725 [ed. by M.R. Zirker Jr., Los Angeles, The Augustan Reprint Society, 1964], p. 7 (from now on: *Tyburn*).

<sup>29</sup> J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*, Cambridge, Cambridge Univ. Pr., 1957 (reissued with a retrospect 1987); J.W. Tubbs, *The Common Law Mind: Medieval and Early Modern Conceptions*, Baltimore, Johns Hopkins Univ. Pr., 2000; A. Cromartie, *The Idea of Common Law as Custom*, in *The Nature of Customary Law*, ed. by A. Perreau-Saussine & J.B. Murphy, Cambridge,



of this thesis we might draw attention to two of the most famous analogies in *Fable II* where Mandeville explains the idea of spontaneous evolution. These are that of the Knitting-Frame<sup>30</sup> and that of the Clocks<sup>31</sup>, both having in common their reference to law. We can remind that Mandeville in 1714 used the metaphor of the human body to describe the State, and the metaphor of the vital spirits to identify the function of law<sup>32</sup>. In 1729, instead, he resorts to a comparison to machines (be them knitting-frames or clocks). The passage from an organicistic metaphor to a mechanistic one allows Mandeville to highlight law's element of impersonality and

Cambridge Univ. Pr., 2007, pp. 203-227; M. LOBBAN, *A History of the Philosophy of Law in the Common Law World, 1600-1900*, Dordrecht, Springer, 2007; D. LEMMINGS, *Law and Government in England during the Long Eighteenth Century. From Consent to Command*, New York, Palgrave, 2011; J. RUDOLPH, *Common Law and Enlightenment in England, 1689-1750*, Woodbridge, Boydell Pr., 2013.

<sup>30</sup> *Fable II*, p. 322: «Yet I know nothing to which the Laws and establish'd Oeconomy of a well-order'd City may be more justly compared, than the Knitting-frame. The Machine, at first View, is intricate and unintelligible; yet the Effects of it are exact and beautiful; and in what is produced by it, there is a surprizing Regularity: But the Beauty and Exactness in the Manufacture are principally, if not altogether, owing to the Happiness of the Invention, the Contrivance of the Engine. For the greatest Artist at it can furnish us with no better Work, than may be made by almost any Scoundrel after half a Year's Practice».

<sup>31</sup> *Ivi*, p. 322 s.: «Whilst you spoke, I have thought of another, which is better. It is common now, to have Clocks, that are made to play several Tunes with great Exactness: The Study and Labour, as well as Trouble of Disappointments, which, in doing and undoing, such a Contrivance must necessarily have cost from the Beginning to the End, are not to be thought of without Astonishment: There is something analogous to this in the Government of a flourishing City, that has lasted uninterrupted for several Ages: There is no Part of the wholesome Regulations, belonging to it, even the most trifling and minute, about which great Pains and Consideration have not been employ'd, as well as Length of Time; and if you will look into the History and Antiquity of any such City, you will find that the Changes, Repeals, Additions and Amendments, that have been made in and to the Laws and Ordinances by which it is ruled, are in Number prodigious: But that when once they are brought to as much Perfection, as Art and human Wisdom can carry them, the whole Machine may be made to play of itself, with as little Skill, as is required to wind up a Clock; and the Government of a large City, once put into good Order, the Magistrates only following their Noses, will continue to go right for a great while, tho' there was not a wise Man in it: Provided that the Care of Providence was to watch over it in the same manner as it did before».

<sup>32</sup> See *Fable I*, p. 3.

artificiality. Law is not found in nature like the animal spirits, but is an artificial product, the quality of which comes from a gradual process of polishing achieved generation after generation.

## 2. *Law and History.*

Let's now see how Mandeville's reflection on law develops: what kind of law had he in mind? What did he think the nature of law was? What function must it perform? And how did it develop historically? In *Free Thoughts* Mandeville states that «where there is no Law, there is no Transgression»<sup>33</sup> and in *Fable II* that «the Notions of Right and Wrong are acquired»<sup>34</sup>. Mandeville is not a theorist of natural law, for which the source of law is not nature nor reason, but history. He does not wonder which might be the best law or how to identify an idea of justice upon which to forge a rightful law. Mandeville analyses real law, in the way it historically developed, and he tries to identify its origin and mechanism. Mandeville's approach to law is therefore not deontological, but phenomenological. That is, he wonders what law's historical role has been, so that, on the basis of it, one may try to formulate a theory on the best possible philosophy of punishment. But even when he takes up the challenge to propose a law, Mandeville always keeps in mind that any social reform must keep the limits of human nature<sup>35</sup> into consideration: «The best of all, then, not being to be had, let us look out for the next best, and we shall find that, of all possible Means to secure and perpetuate to Nations their Establishment, and whatever they value, there is no better Method than with wise Laws to guard and entrench their Constitution [...] The Publick Administration must always go forward; it is a Ship that can never lie at Anchor»<sup>36</sup>.

<sup>33</sup> B. MANDEVILLE, *Free Thoughts on Religion, the Church and National Happiness* (1720), ed. by I. Primer, New Brunswick-London, Transaction Publ., 2001, p. 171.

<sup>34</sup> *Fable II*, p. 223.

<sup>35</sup> See the case of the duel: M. PELTONEN, *The Duel in Early Modern England. Civility, Politeness and Honour*, Cambridge, Cambridge Univ. Pr., 2003; A. BRANCHI, *Vanity, Virtue and the Duel: the Scottish Response to Mandeville*, «Journal of Scottish Philosophy», XII, 2014, pp. 71-93.

<sup>36</sup> *Fable II*, p. 335.

This is the point: law, in the same way as public administration, «is a Ship that can never lie at Anchor». This metaphor reveals how Mandeville thinks that it is impossible to break the chains of tradition and how the development of law is conceived as a gradual, adaptive process without jolts. Law is a human invention, but it is not an arbitrary one. It is a human creation in respect to the single laws, but, if we consider it as a whole, its author is impersonal, because it is the result of many faceless and nameless people's contributions.

Law's historical development follows the same rules as the development of all the arts, where the empirical-inductive model, rather than the rational-deductive, is prevalent. Mandeville's interest is dedicated not so much to existing laws, but to their development process. Law is therefore a product of man and of history and, as such, subject to all the imperfections, shortcomings and necessary amendments of all things human. To go back once more to the Mandevillean metaphor, law «is a Ship that can never lie at Anchor», that is why the amendments to it must always be gradual, partial, and must keep into consideration customs, traditions and existing laws.

### 3. *Crime and Punishment.*

The last part of my article concerns Mandeville's theory of punishment<sup>37</sup> as exposed in the *Essay on Charity and Charity-Schools*<sup>38</sup> and in the *Tyburn*. In the former, Mandeville dedicates a few pages to the problem of crime in London to show that Charity

<sup>37</sup> See *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. by D. Hay, P. Linebaugh, E. Thompson, Harmondsworth, Penguin, 1975; *Crime in England, 1550-1800*, ed. by J.S. Cockburn, Princeton, Princeton Univ. Pr., 1977; F. MCLYNN, *Crime and Punishment in Eighteenth Century England*, London, Routledge, 1989; P. LINEBAUGH, *The London Hanged. Crime and Civil Society in the Eighteenth Century*, London, Penguin, 1991; M. MORRIS, *The Oxford History of the Prison: The Practice of Punishment in Western Society*, Oxford, Oxford Univ. Pr., 1995; F.M. DI SCIULLO, *Il merito e la frusta: assistenza, disciplina e mobilità sociale nel pensiero politico del Settecento*, Roma, Aracne, 2000; J.M. BEATTIE, *Policing and Punishment in London, 1660-1750. Urban Crime and the Limits of Terror*, Oxford, Oxford Univ. Pr., 2001; R.M. WARD, *Print Culture, Crime and Justice in 18th-Century London*, London, Bloomsbury Academic, 2014.

<sup>38</sup> The essay appears in *Fable I*, ed. 1723.

Schools and, more in general, education for the poor, were not effective tools in crime prevention. In Mandeville's thought the education provided by Charity Schools was not suitable for the children of the poor for three reasons: 1) study and knowledge would have created new needs impossible to satisfy; 2) education for the poor created the expectation of a life-standard that was for them unattainable; 3) education made the poor unsuitable for hard work. Charity Schools therefore, rather than preventing crime, ended up increasing it, making promises that could not be kept.

Mandeville thinks that it's not morals nor rational calculation that prevent man from breaking the law, but passions themselves, such as fear, self-liking or vanity. It is therefore on passions that the penal reformer must act, and the different social contexts of intervention must be kept into account. Mandeville strongly believes that every social class has a predominant passion. The upper social classes are sensitive to shame, because society men who are under constant scrutiny by others, build their sense of identity only through other people's recognition and, for this reason, fear of criticism constitutes a strong deterrent from crime. The lower classes, instead, live at the margins of society and therefore are excluded from social scrutiny, so shame has no impact on them. In that case, the passion to be exploited is fear. In this essay, Mandeville states that the severity and the certainty of punishment are not to be considered cruelty towards criminals, but are the only true form of prevention.

Two years later, Mandeville decided to publish his reflections on crime and punishment in the form of newspaper articles that were collected later in a short pamphlet called *Enquiry into the Causes of the Frequent Executions at Tyburn*. This work is strongly influenced by the fact that Mandeville's intention was to act upon a specific crime, which he considered particularly despicable and was quite common in London: the theftboote system organised by Jonathan Wild. It is remarkable that in a work of this kind dedicated to a reflection on the meaning and role of punishment, Mandeville exclusively deals with one type of crime, which was almost exclusive of the lower classes: theft.

The theory of punishment that underlies the proposal made in the *Tyburn* is in the perspective of prevention, and it is well expressed in the anonymous quotation that appears in the

frontispiece: *Oderunt peccare Mali formidine Poenae*<sup>39</sup> (The wicked shall refrain from sinning only for fear of punishment). According to Mandeville, law's target is not the criminal, as in the *theory of rehabilitation*, nor the victim, as in the *theory of revenge*, and not even justice itself, as in the *theory of retribution*, but it is society. Punishments have a *preventive* function because their role is to safeguard society as a whole and to guarantee happiness for the majority. This is why the individual is just instrumental, and Mandeville can explicitly justify the disproportion between punishment and crime.

Punishment must be exemplary, not balanced or just. Already in the *Enquiry on Charity*, Mandeville seems to acknowledge the most radical consequences of this utilitarian penal theory, in which individual guarantees are sacrificed to the altar of collective security:

It is a mighty Saying, that it is better that five hundred Guilty People should escape, than that one innocent Person should suffer: This Maxim is only true as to Futurity, and in relation to another World; but it is very false in regard to the Temporal Welfare of the Society<sup>40</sup>.

Mandeville states that only «the Temporal Welfare of the Society» can be taken as a guiding principle for a philosophy of punishment. Stricter laws constitute only the first step of Mandeville's proposal, according to which a reformation of the jail system in the direction of a harsher treatment is also required, and the capital punishment must be changed in a way that the criminal is seen to be terrified, so as to scare the spectators. The suffering caused by punishment must be, first of all, psychological. Isolation, sensorial deprivation and hopelessness are preferable to physical torture. As much as Mandeville's punishment philosophy may seem brutal and lacking those humanitarian elements typical of penal enlightenment, in truth it reflected XVIIIth century's sensitivity and widespread convictions.

Sir William Temple, for example, in his *Observations upon the United Provinces of the Netherlands* (1673), noted that the Dutch penal system was effective because the people were: «terrified with

<sup>39</sup> The same quotation is in nr. 64 of «The Female Tatler» (30 Nov. 1709). See MANDEVILLE, *By a Society of Ladies*, p. 103.

<sup>40</sup> *Fable I*, p. 273.

severe executions»<sup>41</sup>; Henry Fielding, well in the XVIII century, echoed Temple's words, sustaining in *An Enquiry into the Causes of the Late Increase of Robbers* (1751), that the reason why the executions in Holland were so unfrequent was that the execution rite had such solemnity, and added: «the terror of the example is the only thing proposed, and one man is sacrificed to the preservation of thousands. If, therefore, the terror of this example is removed (as it certainly is by frequent pardons) the design of the law is rendered totally ineffectual; the lives of the person executed are thrown away, and sacrificed rather to vengeance than to the good of the public»<sup>42</sup>. Francis Hutcheson too, attributed a preventive function to punishment, even though he did not advocate its cruelty and he opposed the «horrid spectacles of torture»<sup>43</sup>.

Even at the entry «Peine» of the *Encyclopédie*, written between 1751 and 1752, one used to read that the aim of punishment was to guarantee society's welfare through exemplary sanctions «inflicted publicly, in the manner most likely to impress the minds of the common people»<sup>44</sup>.

#### 4. Conclusion.

In conclusion, in this article I have tried to show that Mandeville's reflection on corruption changes on a par with the development of

<sup>41</sup> W. TEMPLE, *Observations upon the United Provinces of the Netherlands* (1673), London, Tonson, 1705, p. 130.

<sup>42</sup> See J. HEATH, *Eighteenth Century Penal Theory*, Oxford, Oxford Univ. Pr., 1963, p. 96.

<sup>43</sup> In the fourth book of the *System of Moral Philosophy* (1710-16), Hutcheson writes: «But, on the other hand, horrid spectacles of torture, especially if they are frequently presented, may have a very bad effect upon the minds of spectators. They may harden their hearts, and abate the natural sense of compassion by overstraining it, and make it lose its force». See HEATH, *Eighteenth Century Penal Theory*, p. 88.

<sup>44</sup> See HEATH, *Eighteenth Century Penal Theory*, p. 101 s.: «The main and ultimate purpose of punishments, is to secure the safety and good order of the community. [...] However he tries to deal with the social danger represented by those who already have committed crimes, the sovereign also tries to discourage by intimidating example those who otherwise would be led to imitate them. Hence nothing agrees better with the ultimate purpose of punishments, than that they should be inflicted publicly, in the manner most likely to impress the minds of the common people».

his reflection on law's role. In *Fable II*, Mandeville makes a clear distinction between ethics and law, vice and crime. If vice can be useful, crime is always a problem for society. The question is therefore to have good laws, able to tell vice from crime. So, I have analysed the philosophy of law and the philosophy of punishment in Mandeville's thought. As it turned out, law became increasingly important through time and Mandeville attributed three functions to it: 1) correcting human nature; 2) creating the conditions for the development of morality and therefore of self-liking; 3) turning private vices in public benefits. Besides, I wanted to recall Hayek's hypothesis according to which the reason why law became increasingly important in Mandeville's works is that he might have found in common law the model of spontaneous evolution that he would later have applied to economy, society and man itself. Eventually, I reconstructed the Mandevillean theory of punishment, as it emerges from the *Enquiry on Charity* and from the *Tyburn*. Even though Mandeville was an innovative author under many aspects, concerning his preventive theory of punishment he just reiterated ideas that were widespread in his time. Nonetheless, his interest in the theory of punishment at the beginning of the twenties and his development of a legislative proposal for brothels regulation might be considered a further confirmation of the fact that his reflection on law gained increasing importance in his works.

Law, to mention once again his effective metaphor, is like «a Ship that can never lie at Anchor». Each project of social reformation must always deal with contingent circumstances, keeping in mind frailties and defects of human nature. According to Mandeville, it is vain to chase «a Revolution that in all Human probability will never be brought about»<sup>45</sup>, as it is delusionary to think that we can change human nature. In both cases, it would be just a vain «Eutopia seated in the Brain».

ABSTRACT. – This essay makes a distinction between two different meanings of the word «corruption»: moral corruption and legal corruption. The thesis is that in Mandeville's thought vice can be useful, while crime is always

<sup>45</sup> MANDEVILLE, *Free Thoughts*, p. 197.

damaging. In this perspective, law is fundamental to tell vice from crime. Three points are examined: 1) the relationships between law and human nature, law and ethics, law and society; 2) the analysis of Mandeville's theory of law, in particular its nature and development; 3) the theory of punishment.