If Bentham had read…

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… Spinoza, possibly the history of utilitarianism, like the history of democracy, would have been very different; possibly he would have grounded his utilitarianism more coherently and formulated a theory of democracy in very similar terms to those put forward by Kelsen.

My paper will be focused mainly on the theory of democracy and parts of the explanation of the principle of the majority as the central element of Bentham’s theory. Starting from this, it analyses the corrections made by Kelsen in his attempt to safeguard it. With this aim, Kelsen seeks to ground the principle of the majority in such a way that it does not degenerate, as in Bentham, into the majority’s empire. Nevertheless, Kelsen’s argumentation, like that of Bentham, contains a contradiction since without openly recognising it; his defence of relativism is based on the establishment of a limit, which necessarily calls it into question. Kelsen admits the defence of every political idea, he even appeals to equal respect for every political ideology, but bases such respect on freedom of expression so that we can deduce that that equal appreciation for all political ideologies will find a limit in the necessary maintenance of that freedom of expression, which necessarily extends to the recognition of rights and public liberties.

These difficulties suggested by Kelsen, but equally by Bentham, are also our difficulties when we ground the legal political order in which we live. The surprising thing is that the ideas of an author like Spinoza are still relevant to resolve this problem; that of the grounding of the state, and they were so from the moment in which he confronted the legal political problems that we can trace back to the beginning of modernity. His presence in modern legal political thought comes from the very start, with Hobbes but against Hobbes, because Spinoza underlines the inadequacy of the central core of Hobbes’ argumentation, in so far as he demands that freedom of thought requires freedom of expression. Since then he does not cease to accompany us, although not openly, as every time that different thinkers come close to justifying the legal political order in one way or another, the shadow of Spinoza can be glimpsed. Spinoza sketches out the modern order, although it is also true that from that moment we try to ignore it. Most great authors, Kant and Hegel for example, curbed his proposals, in so far as they did not develop what Spinoza left in the making. Others did not even read him.