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Campos Boralevi, Bentham and the Oppressed

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Bentham and the Oppressed

by

Lea Campos Boralevi

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To Alberto

Foreword

Bentham has hitherto been one of the most neglected of the eighteenth century philosophers. His name is a household word; he is universally acknowledged to be one of the founders of modern utilitarianism, his body is preserved in a curious mummified form in a little glass cabin at University College, London. But hitherto his Works *have been chiefly known through a notoriously bad collected edition made by a young protégé of his named Bowring — a knight, a general, a Christian (the author indeed of that famous Victorian hymn,* In the Cross of Christ I Glory) *— but not a utilitarian, not ever a scholar. Moreover, Bowring cut out from what he published anything that might offend Victorian sensibilities akin to his own.*

At last University College, London, has started to publish a new collected edition of Bentham's work; and a team of scholars is beginning to give us an image of Bentham distinctly unlike that which emerges from what Bowring published. To this fresh image of Bentham, Lea Campos Boralevi's book based on manuscript material which she herself has brought to light — adds a significant new dimension. She introduces a Bentham who is not only different from Bowring's Bentham, but different, also, from the picture of Bentham to be found in the memoirs of John Stuart Mill, who knew Bentham only when Bentham was a very old man. Mill said that what was wrong with Bentham was that he had had 'neither internal experience nor external' and had lived a quiet eunuch's life on a private income without ever growing up. Dr. Boralevi demonstrates that this picture is entirely false.

She also shows that some of Bentham's supposedly most vulnerable opinions were not his opinions at all. For example, on the central utilitarian principle of the 'greatest happiness of the greatest number', it has been shown that Bentham never believed that the happiness of some could be rightly increased at the expense of the unhappiness of others. The distribution of happiness meant as much to him as the amount of it. He noticed that the intensity of suffering or unhappiness greatly exceeded the magnitude of any positive pleasure or happiness; thus the suffering of one man might well be greater than the accumulated happiness of a multitude. A policy which conferred happiness on a million at the expense of conferring suffering on one would not therefore be acceptable to Benthamite utilitarianism. It is worth noting that Bentham did not altogether care for the name 'utilitarian'; he toyed with other possibilities, such as 'eudaimonologist', which is perhaps quite a good word, and also 'felicist', which is surely a bad one, and then never found a name which really satisfied him.

Another matter on which we have to revise our conceptions is Bentham's attitude to democracy. It has long been supposed that Bentham was converted

to democratic ideas by James Mill in 1809. But Dr. Boralevi shows that Bentham in one paper dated 1790 recommends 'universal admission to all who can read the list of voters'.

Like Hobbes and Bertrand Russel, with both of whom he has much in common, Bentham lived to a great age. He also started early. Bentham went to Westminister School at the age of seven and to Oxford at eleven; he was B.A. at sixteen, and at twenty had already resolved to devote himself to the science of jurisprudence and reform. Apparently what fired his zeal for reforming the law was a book he read at the age of eleven, the memoirs of Mrs. T.C. Phillips, a reformed prostitute, who was ruined by litigation. And Bentham was only 21 when he made a will directing that his body should not be buried but dissected by his friend, Dr. Fordyce, so 'that mankind may reap some small benefit in and by my decease'.

The roots of Bentham's thinking were firmly fixed in the eighteenth century Enlightenment. He owed much to Helvetius and to Beccaria, and it is very fitting that Dr. Boralevi, an Italian like Beccaria, should, so to speak, restore him to that tradition of scepticism and humanitarian hedonism. She shows his attitude to sex to have been wholly non-Victorian: considering sodomy to be rather less reprehensible than celibacy; his attitude to feminism altogether in advance of his most liberal contemporaries, and his views on anti-semitism highly original and worthy of attention.

Bentham could not have wished to have a more thorough and fair-minded exposition of his political and social thinking than that provided by Dr. Boralevi. As he was never buried, he cannot rejoice in his tomb, but the mummified corpse in University College must surely sit more comfortably now that justice is at last being done to his ideas.

Maurice Cranston
London School of Economics

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The greatest part of the research for this book was carried out at the European University of Florence, and led to a doctoral dissertation defended in 1980. The truly international atmosphere and the conspicuous research facilities of this Institution constitute a highly stimulating environment, from which my work has greatly benefited.

The European University Institute also generously supported various trips to University College, London, where the main collection of Bentham's manuscripts is preserved, and where I have received the most friendly and expert assistance from the members of the Bentham Committee, both in decifering Bentham's handwriting and in helping me to make contact with other Bentham scholars.

I wish to express my gratitude particularly to Prof. James H. Burns, former General Editor of *The Collected Works of Jeremy Bentham* — who has followed the development of the present study from the beginning; it owes much to his advice and to his profound knowledge of Bentham.

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nize only but a few of his corrections. What is even less apparent is the tremendous maieutic work he devoted to my first stammering attempts to express my ideas in a 'scientific' language, while also guiding my first steps into the academic world: besides being my official supervisor, Prof. Cranston has been my true *Master*. I am also particularly grateful to him for having accepted to write the Foreword to this book.

Naturally, the responsibility for the ideas and convictions expressed in this work is entirely mine

Ms Claire Gobbi's enthusiastic work for the Bentham Committee, London, her help in all the difficulties, and her kindness in sharing her skill in reading Bentham's handwriting, deserve a special mention here.

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This is the first volume which has been prepared for print using the E.U.I. word-processing facilities: this complex and ungrateful work has been done by Ms Clare Gardiner and Ms Oriole Wilson, under the expert and tireless direction of Ms Brigitte Schwab, E.U.I. Publications Officer, to whom I wish to express my gratitude.

Last but not least, I wish to thank my husband Alberto, to whose intelligent tolerance and affectionate encouragement I owe the completion of the present work.

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1. Introduction

One of the most controversial and stimulating subjects of the debate, which has characterized Bentham studies in the last thirty years, has been that of defining clearly the boundaries between his utilitarian philosophy and classical liberalism, in the political as well as in the economic fields.

Revisionism[1] in Bentham studies has touched particularly on questions concerning the passage from a self-interested, individualistic psychology to a normative concern for the greatest happiness of the greatest number, discussing Bentham's notions of liberty, of the role of the State, of social justice, of 'influence', i.e. briefly, of the relationship between individuals and the State.

The present work aims to make a contribution to this debate, by analysing these themes from a new perspective, that of Bentham's attitude towards the oppressed as a whole, and towards definable groups, and appraising his proposals, general and particular, towards remedying their situation.

It is generally agreed that Bentham exhibits an attitude of generic solidarity towards the oppressed: but what has not so far been brought properly to light and analysed in detail, is how this solidarity is expressed, how far it is extended, and what are the limits and contradictions to be discerned in this attitude, when compared to the rest of Bentham's utilitarian theory. Furthermore, while single aspects of his attitude towards certain categories of oppressed people have to some extent been studied, his general attitude towards *the oppressed as a whole* has never been subject to a rigorous scrutiny.

From the philosophical point of view, the present study is an attempt to throw new light on the internal consistency of Bentham's system, by analysing, on the one hand, the link between the principles on which his attitude towards the different categories of oppressed persons is based and the more general principles of his utilitarianism; on the other hand, by comparing the consistency of these principles with Bentham's practical suggestions to remedy their situation — that is, by testing the coherence between Bentham's theory and the practice he recommends.

From the biographical point of view, this examination of Bentham's attitude towards the oppressed intends to clarify all the difficulties that Bentham meets — as any other philosopher might meet in reconciling his personal likings and dislikings with the imperatives deriving from his general philosophy — and by so doing, it attempts to investigate the relationship between his theory and his personal attitudes and actions.

From the historical point of view, this work seeks to place Bentham's ideas in the context of the political and cultural debate of his time, and to indicate the practical impact of Bentham's attitude towards the oppressed on the development of cultural and political life in Great Britain and other countries.

From the methodological point of view, it tries to demonstrate that such a perspective does more justice to Bentham than any attempt to start from an abstract notion — liberty, individualism — and then to seek Bentham's definition of it. One of the most widespread criticisms of Bentham has in fact been that he is much better at applying his principles to reality than in formulating them theoretically. Plamenatz went so far as to compare Bentham to 'a good mathematician, who has the most confused notions about the philosophy of mathematics and who can perform the most complicated operations without being able to define such notions as "number", "class", and "function" '[2]: not a flattering comparison for any philosopher to receive.

The laudable enterprise initiated by the Bentham Committee, University College, London, to provide scholars with an eventually reliable edition of his unpublished or badly published works has already born fruit. Recent contributions to Bentham studies have benefitted from this work in progress and show us a far more complex figure of Bentham than was once conceivable.[3]

The aim of the present essay is, however, not solely to provide a contribution to the understanding of Bentham's works. As the subjects involved are not simply of interest to Bentham scholars: subjects such as homosexuality, the women's liberation movement, religious minorities, indigence, and principles such as toleration, benevolence, protection of the oppressed, compensatory discrimination, etc., reach far beyond the relatively narrow world of Bentham studies. Bentham's attitude towards these problems, and the principles on which his thinking is based, illuminate not only his own philosophy, but also offer an important contribution to a number of major issues which are still topical today.

The category of oppression may thus provide a useful tool for an inquiry into Bentham's reflections on questions of more general interest, besides enabling us to examine several 'classical' themes in the sphere of Bentham studies from a fresh perspective.

Firstly, it seems interesting to investigate the attitude of a philosopher whose doctrine has often been labelled as 'hedonistic', regarding a condition — that of the oppressed — which is characterized by the absence of happiness (and in some cases by the production of suffering): how does Bentham conceive oppression in relation to his hedonistic philosophy?

Secondly, the category of oppression opens an entirely new path for exploring the extent of Bentham's idea of liberty. Does oppression mean for Bentham only constraint — and therefore absence of liberty in the negative sense, as he officially defines it — or does it also mean absence of a more positive kind of liberty? And, furthermore, is oppression caused not only by the absence of liberty or can it be produced by other factors and therefore relieved without resorting to liberty?

Thirdly, the analysis of Bentham's attitude towards groups of oppressed persons throws new light on his ideas concerning the relationships between individual citizens and the State, introducing a new intermediate entity: what are, and what should be in Bentham's opinion the relationships between the State and these groups, and between individual citizens and these groups?

What are the consequences of the introduction of this intermediate entity on Bentham's so-called 'individualistic' conception of the relationship between the citizen and the State?

Fourthly, with respect to Bentham's lifelong opposition to any kind of Declaration of the Rights of Man, how does he justify the protection of the oppressed or their emancipation? Is the principle of the greatest happiness of the greatest number sufficient to guarantee the protection of minorities; or does he not necessarily invoke other principles?

Fifthly, with regard to the change directed towards the passwords — *liberté, fraternité, égalité* — the passwords of the Enlightenment which are often said to have been created by the bourgeois class for its own advantage, not only to oppose the privileges of higher classes, but also to serve as an instrument with which to oppress the lower ones — what is the position of Bentham, that child of the Englightenment? How did he conceive oppression in relation to these passwords? What was his attitude towards outsiders — 'the different' — who were oppressed by the levelling and uniforming principles of formal equality?[4]

The chapters which follow attempt to answer these questions, by way of a thorough examination of Bentham's writings about the groups which he considered to be oppressed. The selection has been operated on the basis of the representativeness of each group in its own category[5] — which has been preferred to a more descriptive criterion of analysing extensively all the groups which, in Bentham's opinion, are oppressed. The groups which have been excluded from this selection are nevertheless mentioned in the course of this essay, by way of comparison with the more representative ones in each category.

It seems, however, appropriate here to give a more circumstanced explanation for two important exclusions: the 'subject many', who are politically oppressed by the tyranny of the 'ruling few',[6] and children.

The 'subject many' have been excluded, as they neither constitute a precisely definable group, nor an intermediate entity between the citizen and the State: the 'subject many' *are* composed of individual citizens, and the analysis of Bentham's attitude towards them does not affect his individualistic conception of the relationship between single citizens and the State.[7] Such an analysis would furthermore have involved a reassessment of the whole of Bentham's political theory in terms of oppression: a vast undertaking which, although attractive, is beyond the scope of the present work.

The examination of Bentham's attitude towards children has also been excluded, insofar as it would have required a thorough re-consideration of Bentham's ideas on pedagogy. Children do not constitute a well defined 'group', and problems arise from the temporary nature of their oppression.

It should, furthermore, be added that Bentham's attitude towards different groups has been dealt with in the light of the existing literature: subjects which have already been thoroughly studied are only examined here from a critical point of view, with reference to previous studies; subjects which have been hitherto overlooked, or wholly unexplored, are investigated in more analytical and extensive detail.

Bentham's reputation has already suffered enough from passionate 'mixtures' of his misedited writings with commentators' opinions. For this reason, Bentham's own writings are given the greatest space in this work, carefully separated — also from a graphical point of view — from comments and criticisms on them.

An appendix will be found at the end of the present work, with a selection of Bentham's hitherto unpublished manuscripts.

Notes

1 The term 'revisionism' is used here particularly in relation to Halévy's work on Bentham and utilitarianism (E. Halévy, *La formation du radicalisme philosophique*, 3 vols., Paris, 1901—4). Halévy's interpretation has always been — and still is — taken into account by all the participants in this debate, by way of refutation, modification or agreement. See also the excellent article by L.J. Hume, 'Revisionism in Bentham Studies', *The Bentham Newsletter*, 1980, I, pp. 3—20.

2 John Plamenatz, *The English Utilitarians*, London, 1949, p. 50. In truth, Plamenatz also adds: 'If the reader is sometimes astonished by the ease with which Bentham arrives at his first principles, by his confident neglect of difficulties, psychological and philosophical, of which he seems scarcely to be aware, and by the confusions and ambiguities of which he is so often guilty when discussing first principles, he cannot but admire the extraordinary clarity and vigour with which he applies those principles to the most difficult and intricate technical questions'. *Ibid.* p. 59.

3 I refer to the works by Douglas G. Long, *Bentham on Liberty*, Toronto, 1977; James Steintrager, *Bentham*, London, 1977; by Charles F. Bahmueller, *The National Charity Company*, Berkeley/London, 1981; by L.J. Hume, *Bentham and Bureaucracy*, Cambridge, 1982; H.L.A. Hart, *Essays on Bentham*, London, 1982; and Fred Rosen, *Bentham and Democracy*, London, 1983.

4 M. Horkheimer, T.W. Adorno, *Dialektik der Aufklärung, Philosophische Fragmente* (1947); see also H. Mayer, *Aussenseiter*, Frankfurt, 1975.

5 The groups have been selected and divided into several categories, according to the nature of the oppression to which they are subjected. 1) *The Sexual* (Women, Sexual non-conformists); 2) *The Religious* (Jews); 3) *The Political* (Native people of the colonies); 4) *The Social* (The indigent, Slaves); 5) *The Natural*(Animals).

6 'In respect of the sweets of government that which the greatest interest — the happiness of the ruling few requires is — that the quantity of these in their hands be as great as possible'. 'As to the subject many, what their best interest, what their greatest happiness require is — that of its sweets of government the quantity in the hands of the functionaries of government should be as small as possible'. J. Bentham, *Rid Yourselves of Ultramaria*, Bentham's Manuscripts at University College, London, (hereafter referred to as U.C.), Box CLXVII, 214—220.

7 An important contribution to the knowledge of the sources and evolution of Bentham's ideas on this point has recently been made by L.J. Hume, *op.cit.*, cf. particularly pp. 189—195.

2. Women

If there be any difference, it ought to be in favour of the weakest — in favour of the females, who have more wants, fewer means of acquisition, and are less able to make use of the means they have. But the strongest have had all the preference. Why? Because the strongest have made the laws.[1]

These words of Jeremy Bentham could well belong to the English feminist movement of the nineteenth century: that movement which fought for the political vote for women, in particular, and in general for their right to equality with men. Nor has this assertion been arbitrarily extracted from Bentham's work: it comes from one of the many writings which he devoted to women throughout his long and industrious life. An instructive comparison can in fact be made between this assertion, taken from Bentham's *Principles of the Civil Code* (written in the 1780s and first published in French by E. Dumont in 1802), and another one, which can be found in his *Constitutional Code* (written between 1822 and 1830):

If in this respect, there were a difference, the principle of equality would require, that it should be rather in favour of the female than of the male sex: inasmuch there are so many causes of suffering which do not attach upon the male, and do attach upon the female sex: such as pains of gestation, of parturition, labour of nurturition, periodical and casual weaknesses, inferiority in all physical contests with the male sex, and loss of reputation in cases where no such loss attaches upon the male.[2]

Already from this comparison one gets striking evidence of a continuity of thought over fifty or more years, which obliges us to pay more consideration to the place of feminism in the logical structure of Bentham's system, and to Bentham's contribution to the history of feminism. From a logical point of view, if utilitarianism is defined as that theory founded on the principle of the greatest happiness of the greatest number, it necessarily entails calculation of the happiness of that half of the population which is female, in Bentham's words, 'the best half of the human species'.[3]

With perfect consistency and throughout his entire works, Bentham gave particular attention to the condition of women, so that while he never devoted a whole single work to the question, it is possible to reconstruct a thoroughly coherent argument by piecing together from different parts of his works the various references he makes to the female predicament. This is not the only case in which one can discern a logical thread of remarkable consistency in Bentham's works binding together all his thoughts on a certain subject, even if they are expressed in different works, written in different periods of his life. The case of women is particularly interesting because it provides an example in which Bentham's attitude towards an oppressed group of people is rationally

based on, and logically connected with, the principles of his more general philosophy. Furthermore, the interest of Bentham's writings on women is not limited to their consistency with the principle of utilitarianism, or to their contribution (which was far from negligible) to the history of feminism; they are writings of inherent value as a contribution to social science.

Bentham's Censorial Critique of Anti-feministic Prejudices

As legislation and its reform were among his main interests, it is understandable that Bentham was mainly concerned with women as subjects of legislation. His approach to this problem was constantly characterized by his care in analysing it, and a conscious effort to avoid being fascinated by the 'tyranny of the language'.[4] Bentham's critical analytical method is of crucial importance; to that method indeed we may attribute his success in avoiding so many of the commonplace opinions of his time, particularly the more widespread prejudices about women. As J.S. Mill once said, Bentham's analysis was a method: 'of treating wholes by separating them into their parts, abstractions by resolving them into Things, classes and generalities by distinguishing them into the individuals of which they are made up; and breaking every question into pieces before attempting to solve it'.[5]

Bentham thus starts his discussion of women with an examination of the existing laws which regulate their status in society, as well as in the smaller sphere of the family. From this perspective, women appear 'different from men', physically weaker, spiritually more sensible,[6] economically less independent.[7] The situation of women in Bentham's time appeared to most of his contemporary thinkers to be a consequence of these 'differences': women were in a state of 'subjection' — to use the famous term of J.S. Mill. Society was still based on the patriarchal family. Women lived exclusively within and for their families, and were expected to find their fulfillment in their love for their husband and children. Each woman's husband (and her father before him) was the mediator between her and the rest of society: he administered her property, he represented her in politics and in law. Bentham's attitude towards the laws which ratified this situation — as with all laws — is critical and informed by his analytical method: he draws an important distinction between what he calls the *Expositor* and the *Censor*:

> The *Expositor* is principally occupied in stating, or in enquiring after *facts*: the *Censor*, in discussing *reasons*.[8]

This analytical technique enables him to distinguish the *reasons* which are commonly alleged for justifying the existence of a certain law, from the actual *motives* which have led historically to the adoption of that law:[9]

> Add to which, in point of *motives*, that legislators seem all to have been of the male sex, down to the days of Catherine. I speak here of those who frame laws, not of those who touch them with a sceptre.[10]

Bentham discerns the historical origin of this kind of legislation in the patriarchal régime: the patriarchal family is for him the very origin of legislation, because 'there were men and wives before there were legislators'.[11] In the primitive family, power was naturally attributed to the man, as its strongest member. Only he was able to provide the means for its maintenance, and to defend it in case of necessity:

> Laying aside generosity and goodbreeding, which are the tardy and uncertain fruits of long established laws, it is evident that there can be no certain means of deciding it but physical power: which indeed is the very means by which family, as well as other competitions, must have been decided long before such office as that of legislator had existence.[12]

So, when the first legislator was about to dictate the earliest rules in family law,

> Looking round him then, he finds almost every where the male the stronger of the two; and therefore possessing already, by purely physical means, that power which he is thinking of bestowing on one of them by means of law. How then can he do so well as by placing the legal power in the same hands which are beyond comparison the more likely to be in possession of the physical? In this way, few transgressions, and few calls for punishment: in the other way, perpetual transgressions, and perpetual call for punishment. Solon is said to have transferred the same idea to the distribution of state powers. Here then was *generalization*: here was the works of genius. But in the disposal of domestic power, every legislator, without any effort of genius, has been a Solon.[13]

Bentham's irony is directed to the legislator who ratified an already existing situation without testing its rational foundations. Such irony becomes heavy sarcasm when Bentham remarks that this legislation, which was born at a time when physical force was the means by which pre-eminence between men was decided, still applies, although men and society have evolved thanks to the power of knowledge, which has bettered the conditions of life and, above all, of social relations. Furthermore, Bentham notes the reasons for justifying such legislation are different from its actual motives:

> In certain nations, women, whether married or not, have been placed in a state of perpetual wardship: this has been evidently founded on the notion of a decided inferiority in points of intellects on the part of the female sex, analogous to that which is the result of infancy or insanity on the part of the male. This is not the only instance in which tyranny has taken advantage of its own wrong, alleging as a reason for the domination it exercises, an imbecillity, which, as far as it has been real, has been produced by the abuse of that very power which it is brought to justify.[14]

Bentham plays now the role of the *Censor*, who discusses the validity of the alleged reasons for explaining why this legislation still subsists, reasons which are based on women's intellectual inferiority. He has no doubts on this point: the supposed inferiority of women 'in points of intellect' is *not the cause*, but the *consequence* of the legislation which puts and keeps women in such a condition. Following Helvétius, Bentham believed in the fundamental importance of social conditioning, effected through legislation and education. The origin of inequality was therefore to be looked for in prevailing social conditions: 'c'est donc uniquement dans la morale qu'on doit chercher la véritable cause de l'inégalité des esprits'.[15]

Having refuted all kinds of nativism on general theoretical grounds,[16] Bentham's empirical observations on the inequality of conditions between men and women gave no evidence to support the generally held view of the thinkers of his time, that this social inequality was based on a natural inequality. Everywhere he found laws and institutes which, far from being *in favour*, were all to the *prejudice* of the weaker sex. Social inequality was therefore due to a moral *social* cause, not to a *natural* one: in the words of Helvétius: 'l'inégalité des sexes est due à des causes sociales et modifiables, non physiologiques et immuables'.[17]

If, for example, women appear to be less fit for intellectual activities than men, it is by reason of their education, which, since the first years of life, has been entirely devoted to the development of other qualities:

> From their earliest infancy, and even before they are capable of understanding the object of it, one of the most important branches of their education is, to instil into them principles of modesty and reserve.[18]

Even biases can be heavily influenced by social conditioning:

> Her moral biases are also, in certain respects, remarkably different: chastity, modesty, and delicacy, for instance, are prized more than courage in a woman: courage, more than any of those qualities, in a man.[19]

Furthermore, women were excluded from higher education: instruction, even in the higher classes, was extremely superficial and directed to 'typically female activities', such as 'needle work', etc.[20] Women were in other words *kept* (maintained) in a state of intellectual inferiority by existing laws and social practices. Striking evidence for thinking that this was indeed Bentham's conviction is given by one of his unpublished manuscripts. On the 24th of October 1815, when writing the *Table of the Springs of Action*, he entitled a section of his marginalia 'Causes of opposition to the principle of utility by particular classes', of which females are mentioned as constituting a good example:

> 1. The female sex banished from the dominion of utility, by the rod of derision. 2. For the benefit of the ruling few ... the minds of all women are castrated. Pretended ignorance and insincerity forced in them ....[21]

Bentham admits that there are natural differences between the sexes, but not that these are grounds for justifying the oppression of the 'weaker'. This change of perspective, which might appear at first glance to be of little moment, was to prove to be as fertile in the field of the assertion of the rights of women, as in the field of the history of political theory: to place the origin of 'evil' (in this case the oppression of women) in society, which is created by men, instead of placing it in 'human nature', which is created by God, or at least by a generically defined Nature, means that this evil is not inextinguishable and everlasting, but may be removed by *changing* the kind of society in which men live. The revolutionary implications of this 'social theodicy',[22] depend of course on the different way in which society is to be changed: on, that is, whether such change is more or less gradual, or rapid and even violent.

It is their new view of the human condition which makes first Helvétius, and later Bentham, look at the female question with new eyes. Helvéetius was also in fact a feminist, and undoubtedly it was Helvétius who prompted Bentham to give particular attention to the needs and wants of the other sex. Nevertheless, the gratitude and affection Bentham felt for the man who helped to open his eyes to utilitarian philosophy, did not prevent him from directing even against Helvétius the shafts of his minutely critical analysis. He notes with disapproval that 'Helvétius appears to smile with approbation' at the barbarous usage among certain people of rewarding 'the service of their warriors, by the favours of women';[23] but he is also eager to justify his 'master', assuming that 'It was perhaps Montesquieu that led him into this error'. Even so, Bentham, with many qualifications,[24] admired Montesquieu, and considered him and Helvétius to be:

> Philosophers distinguished for their humanity — both of them good husbands and good fathers ... — how could they have forgotten that favours not preceded by an uncontrouled choice, and which the heart perhaps repelled with disgust, afforded the spectacle rather of the degradation of woman than the rewarding a hero?[25]

Bentham proclaims his astonishment that:

> both of them [were] eloquent against slavery, [and therefore] how could they speak in praise of a law which supposes the slavery of the best half of the human species?[26]

The analogy between women and slaves is one which recurs throughout Bentham's writings. There is, for instance, a passage of his *Introduction*, where he compares Aristotle's attitude towards slavery with anti feministic prejudices.[27] Bentham had little regard for classical antiquity. He did not like Aristotle's causal explanations and was generally hostile to him as a symbol of traditional philosophy, which constantly referred to the authority of the Classics. The use of Aristotle as an authority represented a certain attitude, which Bentham himself had defined — inventing one of his many neologisms — as 'ipsedixitism',[28] a thinking based on the principle of authority instead of that of utility. Bentham was so opposed to the principle of authority, that he directed his criticism in particular towards those thinkers whom he considered his masters. Besides Helvétius, he did not spare Adam Smith, in whose *Wealth of Nations* he detected and denounced contradictions, using Smith's own weapons.[29] In Bentham's mind, utility and authority were totally opposed: whereas the principle of utility appealed to the rational element in men, and could therefore make a substantial contribution to the improvement of mankind, the principle of authority clung to the last residues of a 'medieval' mentality, appealing to the obscure and irrational aspects of human nature, which could all be synthesized in prejudice, an 'opinion without judgement' as Voltaire had defined it.[30]

In the above mentioned passage, Bentham compares women and slaves on the ground that they were both oppressed and that their oppression could only be justified by referring to prejudice. The connection between oppression and prejudice is also brought forward in an interesting unpublished manuscript written in 1789, in which Bentham compares women to Negroes, with regard to their right to stand for election:

As to the Negro and the Woman, were they by some strange accident to overcome the body of prejudice which opposes their admission with so much force, there could not be a stronger proof of a degree of merit superior to any that was to be found among whites and among men.[31]

Women in particular are the victims of prejudice, as Bentham points out in another manuscript of the same year:

As to the custom which has prevailed so generally to the disadvantage of the softer sex, it has tyranny for its efficient cause, and prejudice for its sole justification.[32]

Bentham has no doubts: women are oppressed by the 'tyranny of the stronger sex',[33] a term which recurs insistently throughout his writings on this subject.

Equal Consideration

By denouncing the fallacy of the argument which tries to justify the social inequality of women by means of their supposed intellectual inferiority, Bentham has accomplished half of the task of the *Censor*: he has in fact condemned the existing legislation on women, as being based on the 'sandy foundations of fiction' and prejudice, instead of the unfailing self evidence of the principle of utility. But a *Censor* must not only state the existing situation, and criticize it: his main task is to indicate the direction for the reform of the moral world, and consequently for a reform of existing legislation:

To the *Expositor* it belongs to shew what the *Legislator* and his underworkman the *Judge* have done *already*: to the *Censor* it belongs to suggest what the *Legislator ought* to do in the future.[34]

This proposal is inspired by Bentham's theory of social conditioning, which he developed — as we have seen — from Helvétius. The theory served not only to explain the origin of the present situation, but also to change it: existing conditions made people what they were — different conditions could make them different. The society which confronted Bentham's eyes was based on the patriarchal family. In the abundant literature of his time on 'savages' met by travellers during the great geographical discoveries,[35] he could not find any description of a society based on different principles. Apparently he had never heard of 'matriarchy'.[36] Bentham faced a society which was supposed to have always been patriarchal, not only in his own country, but in any other space time ordinate: his great merit consists in the fact that he did not accept this situation as pre ordained; he analysed it critically, condemned it, and made proposals in order to improve it. Certainly, he could not ignore the fact that anti feministic prejudice was of the most deeply rooted kind, and that it was absurd to expect to be able to uproot it immediately and completely: Bentham was a reasonable man, even to the extent of being a pedant.

Gradual reform and not the violence of revolution, was the way Bentham chose as the means to change society, even if that society carried within itself the oppression of women. Bentham was a reformer, even a radical reformer

in the last years of his life, but he was never, nor did he ever wish or claim to be, a revolutionary. This is a position which can be better understood if we recall here an important point of his general philosophy: the relationship between 'is' and 'ought'.[37] It is true that Bentham stresses the 'ought to be', but it is nevertheless true that his 'ought to be' is, and always must be, founded on the 'is'.[38] In other words, the *Censor* should always indicate the way to be followed, but at the same time he should never forget that this way must be based on experience; and experience shows that it is not possible to bring about revolutionary changes by means of legislation, but only gradual reforms. Bentham's proposals are therefore the proposals of a reformer who 'envisaged no millennium and no utopia', as Hart has said,[39] and who never forgot to be concerned with the people living in the period of transition. But what were the areas where Bentham considered change regarding women to be possible? Were these proposals and changes as consistent with the principles of his more general philosophy, as his critique of the existing situation has proved to be?

Bentham's proposals in favour of women can be divided into two distinct categories, both of which may be traced back to two different concepts of equality, and both of which are implied in his utilitarian philosophy. On the one hand the principle of utility, by asserting that mankind is governed by pain and pleasure,[40] demands an original equality of all members of the human race, based on their common psychological structure.[41] This leads to the important consequence that the happiness of any individual has no more value than the equal happiness of another, and that 'everyone should count for one and no more than one': in other words, the principle of utility requires *equal consideration* for any individual in the calculation of the happiness of the greatest number. On the other hand, given actual inequality ('is'), the concept of equality ('ought') put forward by Bentham (who never accepted the *Déclaration des droits de l'homme*), does not entail *equality of treatment.*[42] Thus, Bentham wished both to change existing laws (and in particular the attitude of the legislators), in order to afford equal consideration to the interests of women, and to insert clauses in the existing legislation, in order to give special protection to women.

Under the first category we may therefore count all the proposals in which Bentham pleads for women's interests to be taken into consideration as the interests of autonomous individuals; in this respect, his fundamental purpose is that of *raising woman to the dignity of individual* — with all the positive connotations that this term could have in an England still dominated by the Lockean tradition. Besides reproaching Helvétius for having accepted the 'barbarous' usage of considering women as objects which could be given to deserving warriors, Bentham also condemns the English law 'manent vestigia ruris': the Enlightened Bentham has no hesitation whatsoever in branding it a residue of 'a barbaric age', this law, which treated a daughter in the same way as her father's servant. If she were to be seduced, her father could demand no more satisfaction than that amount of money corresponding to the price of the domestic services lost to him as a result of his daughter's pregnancy.[43]

Bentham not only condemns the concept of the woman as *object*, which he sees as a typical badge of a more primitive stage of society, but also the *semi individual woman* of his time, who did not count as an autonomous individual in society: he speaks with indignation of the Statute Book of the *Pays de Vaud*, in which 'the testimony of two women or girls shall be equal and neither more nor less than equal to that of a man': an enactment which, according to Bentham, is 'more humiliating for the legislator than for the sex which was the object of it'.[44] The same indignation may be perceived by the reader in his unpublished manuscripts belonging to *Rid Yourselves of Ultramaria*, in which, commenting on an article of the Spanish Constitution, dealing with the political representation of the *Cortes*, he notes with disapproval the term of 'souls', for designating the number of men to be represented:

> In their conception have the female half of humankind each of them a soul belonging to it? ... If so it be that in their conception ... in female bodies there are no souls ... then so it is that by those 70,000 souls we are to understand 70,000 male animals of the human species. ... If this were not their conception, for what cause was it, that they went aside from the usual mode of expression, and instead of *hombres*, by which word both sexes would have been embraced, employed the word *almas*?[45]

Bentham is equally opposed to the limited legal personality given to women by English laws of his own time: in this respect, it is worth noting his polemics against the law which excluded evidence of a husband against his wife, and vice versa, before a tribunal court. The reason alleged for this exclusion, was that such evidence would have been the cause of an 'implacable dissension', breaking 'the peace of families'.[46] Bentham considers this to be a 'fictitious argument', because, in reality, this procedural rule must transform the family into a 'nursery of impunishable crimes' in which the husband will be able to commit the most terrible acts in the knowledge that his wife must remain silent. The point which most affects Bentham is the idea on which this law is based: this is the idea of the identity of interest between husband and wife, or rather the supposition that they are only one person:

> The reason that presents itself as more likely to have been the original one, is the grimgribber, nonsensical reason, — that of the identity of the two persons thus connected.[47]

He sees this law as being promulgated on the basis of an analogy with that law which compels the exclusion of the testimony of a party to the cause, for or against himself. For Bentham, in his wish to give an autonomous personality to women, this analogy was clearly false. The law of exclusion admitted one exception: when the supposed identity was shattered, i.e. in the case of maltreatment inflicted on the wife by her husband, or better 'in case of an offence involving a personal injury committed by the husband against the wife'. Bentham is here quick to point out a contradiction in this exception, arguing that:

> In the case, however, of one of the most cruel of all injuries, a wife is deprived of this remedy. In the case of a prosecution for bigamy, the evidence of the first wife has been deemed inadmissible, on the ground that she is the only lawful wife.[48]

In Bentham's mind, however, the goal of giving an autonomous personality to women was to be achieved not only in the negative way — by eliminating those laws which hindered this achievement — but mainly by means of constructive proposals. First of all, the attitude of the legislators themselves must change, and take into consideration the interests of women as well as those of men:

> The interests of the female part of the species claim just as much attention, and not a whit more, on the part of legislator, as those of the male.[49]

Bentham himself gives a good example in this respect when, dealing with the decriminalization of homosexuality,[50] he considers it 'a serious imputation' the possibility that it could 'rob women's interests'.[51] Probably the best evidence of Bentham's concern for the interests of women is to be found in his attitude towards abortion and infanticide, i.e. two subjects which have hitherto been completely ignored by all the critics in favour of, or against, Bentham's feminism. Beccaria had already advocated the extenuation of punishment, when the latter practice served to eliminate the consequences of an illegal connection. Bentham goes beyond Beccaria, claiming the depenalization of infanticide 'in the case of bastardy'. The law which 'consigns the mother to an ignominious death' is prompted, in Bentham's opinion, partly by a 'resemblance to those really mischievous acts which under the name of murder are punished with that same punishment', and partly by 'antipathy towards the mother'. On the contrary, Bentham argues:

> If, in the whole field of sensitive existence, there is a proper object of sympathy, it is the mother — a being who, to the physical agonies of parturition adds the mental agony produced by the immediate prospect of an everlasting infamy. Such is the being to whose cost for no rational cause that can be mentioned sympathy is in every breast changed to antipathy.[52]

Bentham's favourite attitude towards infanticide is neither surprising nor particularly original for that time, though its radicalization is due to his particular concern for women. The evolution of Bentham's attitude towards abortion, however, provides us with further evidence in support of the claim that some of the most important issues of contemporary feminism can be traced back to Bentham's utilitarianism. Abortion was considered with great 'abhorrence' at the time: in his earlier, hitherto unknown writings, Bentham shared the view that it should be made legally prosecutable, as an offence against the population.[53] The adoption of the then current views on the subject, however, did not prevent him from showing, as always, his concern for women: he thinks in fact that the logical exception to such a prohibition would be 'the cases ... where the child bearing threatens to be fatal'.[54] Such exceptions, he grants, 'would be a diminution of the abhorrence of this practice in the general'. This objection is easily answered by Bentham, who says that the final decision should be taken on grounds of utility, i.e. on grounds of judging:

> in which way the loss of happiness to be the greater: whether by the number of births prevented more than would be otherwise, in consequence of such a diminution in the abhorrence of the practice as such liberty might effect, if given: or by the loss of matri-

monial comfort, which must be sustained by such of the females, so conformed [in their pelvis] who might otherwise be able to match themselves, if liberty be withholden. [For these women] there is but this alternative. Abortion or perpetual / sentence to the mortification of celibacy / privation of the sweets of marriage.[55]

It is worth noting that, though still condemning the practice of abortion, as early as 1776, Bentham's concern for the actual problems of women who were unable to sustain their pregnancy is put on the same level as his concern for the whole community. Some years later he dealt with this question again, explaining his position better; in the 1780s, he considered abortion from two different points of view:

1. as an operation dangerous to the health and even the life of the patient. 2. as an act tending to diminish the force of the community.[56]

On the first point Bentham held that:

it does not seem to come within the competency of the Legislator any more than any other medical operation: it is for the patient herself to choose between the risque and the advantage.[57]

On the second point, however, he still considered that such a practice should be legally punished. Bentham's subsequent change of attitude towards abortion is due to this clear distinction between the 'twofold' aspects of the practice. Thus, when he changed his opinion on the population problem, he also advocated the decriminalization of abortion.[58] In this way, Bentham tried to make his writings conform to the principles of his utilitarian philosophy, which required that equal consideration be given to women.

We must now consider the ways in which legislators were to be compelled to pay greater attention to the interests of women.

Proposals for the Emancipation of Women

Bentham believed that women should be provided with two fundamental instruments: education and the vote. First of all, a suitable education had to be given to women, as this was the crucial point of their supposed inferiority:

in the whole of the proposed field of instruction, as marked out in the above mentioned paper, scarcely will there be found a spot, which in itself, custom apart, will not be, in respect of information presented by it, alike useful to both sexes: some parts[59] will even be found *more* useful to females than to males. By an experienced as well as eminently intelligent disciple of Dr.Bell's, it is mentioned as 'a well known fact, *that girls are more docile and attentive than boys*'; and that accordingly, in that part of their school time, which remains after subtraction of that which is applied to occupations appropriated to their sex, the degree of proficiency which, at the end of the year, they have attained, is not inferior to that which, in the whole of that same school time, has, within that same period, been attained by the boys.[60]

Only through a good education can women develop all their potentialities, and thus dispense with the male mediators which children and the insane require

in their relations with society. The 'above mentioned paper' to which Bentham refers is the proposal of a new curriculum of studies, contained in his *Chrestomathia* (1816). It is to a 'chrestomatic' idea that we owe the foundation of University College, still 'one of the greatest institutions for higher secular learning', the first English University which was open to all students, without distinction of class, religion, or sex.[61]

Together with education, the political vote is the other instrumental means by which women may achieve not only a legal and moral autonomous personality, but also the means to increase their political power. For the vote will give women the opportunity of deciding who is elected, and these people will then be obliged to show some concern for women's problems — in order, at least, to gain their vote. In point of principle, there is no reason that Bentham can find for excluding the female sex from universal suffrage, as he affirms in one of his best known writings on the subject:

> On the ground of the greatest happiness principle, the claim of this sex is, if not still better, at least, altogether as good as that of the other. The happiness and interest of a person of the female sex, constitutes as large a portion of the universal happiness and interest, as does that of a person of the male sex. No reason can be assigned, why a person of the one sex, should as such, have less happiness than a person of the other sex. Nor, therefore, whatsoever be the external means of happiness, why a female should have a less portion of those same means. ... If the possession of a share in the constitutive power, be a means of securing such equal share of the external means of happiness, the reason in favour of it, is therefore at least as strong in the case of the female sex, as in the case of the male.[62]

The grounds for speaking of Bentham's feminism *ante literam* are generally his writings in favour of women's enfranchisement. From these writings, i.e. only from his published writings, which were known and quoted in this respect, Bentham's concern for women appears to have become a 'political feminism' only in the 1810s.[63] An unpublished manuscript of 1789, however, shows that Bentham supported women's right to vote at a much earlier stage. In point of principle his argument in this manuscript is perfectly consistent with the much later writings, which are generally known. As early as in 1789, Bentham, in answer to the question: 'Why admit women to the right of suffrage?', demanded:

> Why exclude them? Of the two sexes of which the species is composed how comes all natural right to political benefits to be confined to one?[64]

He then countered the most common reply to this question — the supposed intellectual inferiority of women — in two ways; first by an appeal to experience and history:[65]

> The fact is dubious: but, were it ever so certain, it would be nothing to the purpose, unless in the best endowed of the one sex they were inferior to what they are in the worst endowed of the other.[66]

Secondly, by accepting this supposed intellectual inferiority so as to provide another reason for women's rights:

Suppose the inferiority of faculties: the greater it is, the less their capacity of abusing the power in question. If they belong to the class of idiots, at least they do not to the class of mischievous idiots;[67]

The second objection to which Bentham replies in this manuscript, is that which maintains that women's participation in political activity 'will call them off from the exercise of their domestic duties'. He denies this:

The men have their domestic duties as well as the women: it will not call off the one sex more than the other. It is not more necessary that women should cook the victuals, clean the house and nurse the children than it is that the greater part of the male sex should employ an equal share of their time in the labours of the workshop of the field.[68]

This contention demonstrates an evolution in Bentham's opinion on the subject; an evolution which was taking place in those same years. It seems, in particular, to be a clearer articulation of his thought expressed one year earlier in an *Essai sur la représentation.* In this work he had objected to the common opinion that to give women the right to vote meant to 'distract them from more necessary operations': his objection, however, was written only in the marginalia.[69] Bentham's attitude towards women's enfranchisement underwent some changes, and should therefore be analysed following the chronological order of his writings on this subject.[70] Bentham argued again in favour of women's participation in suffrage in his *Catechism of a Parliamentary Reform*, written in 1809;[71] but the suggestion of admitting women to universal suffrage brought such ridicule on the the plan, that in his later proposals he tended to play down the issue of women's suffrage.[72] He feared that his opponents' scorn for women was also extended to the claim for universal male suffrage. These facts were recorded by Bentham in his observations on Brougham's speech in the House of Commons on the 2nd of June 1818:

On the admission of females Mr. Bentham's plan forbore to lay much stress: because it found no ground for any very determinate assurance, that in that case the result would be materially different: and because no minds could be expected to be at present prepared for it. But it declared that it could find no reasons for exclusion, and that those who in support of it gave a sneer or a laugh for a reason, because they could not find a better, had no objection to the vesting of absolute power in that sex and in a single hand: so that it was not without palpable inconsistency and self condemnation, that the exclusion they put upon this class could be brought forward.[73]

In his Introduction to his *Plan of Parliamentary Reform*, in 1817, Bentham had already noted that:

If anything approaching to a decided opinion — anything of that sort — any attempt towards it — would in this place be altogether premature.[74]

Therefore, although he had just demonstrated the argument in favour of women's participation in the political vote, he dismissed the whole discussion, saying that, for the moment, its only possible use was 'to show in what way the subject is capable of being treated, in respect to principle', instead of 'a *horse* laugh, a sneer, an expression of scorn, or a common place witticism', which were the common attitudes at that time. In his manuscript of 1789,

however, Bentham had also answered the objection based on 'ridicule'. In reply to the claim that:

> The very idea of the interference of women in such matters is ridiculous.

he had said:

> Not so truly so as the idea of excluding them from it. The cause of ridicule resides not in objects but in minds. In itself one thing is not more ridiculous than other. To this or that man any thing is ridiculous which he feels himself disposed to laugh at. To I forget what sovereign of Asia, the idea of government other than that of absolute monarchy was ridiculous to the extreme. The question is whether it is in the power of one person to destroy the rights of another by laughing at them. A pretension of that sort, if it is not ridiculous is something worse.[75]

However, the discussion in this manuscript was concerned with point of principle, whereas the 'scorn and horse laugh', as he reminds us, were the actual reactions of Parliament and of public opinion at the time.[76] In that period Bentham was already deeply involved in the activity of the Radical opposition in Parliament, and therefore his decision to play down the issue of women's right to vote was due to pragmatical reasons. In point of principle, Bentham still kept his lifelong conviction that women ought to be allowed to vote. Even in the *Radical Reform Bill* of 1819, when the question of women had already been abandoned by the Radical group, Bentham still argued, albeit in a footnote:

> ...Nor even would there be any novelty in it [in having women as electors]. In the India House, among the self elected representatives of sixty millions of Hindoos, are females in any number. ... Everywhere have females possessed the whole power of a despot. ... Talk of giving them as here the smallest fraction of a fraction of such power, scorn without reason is all the answer you receive. From custom comes prejudice. No gnat too minute to be strained at by it: no camel too great to be swallowed.[77]

The whole argument will be taken up again several years later in the *Constitutional Code*, where Bentham's thought, and the reasons for this political failure are explained:

> Why exclude the whole female sex from all participation in the constitutive power? Because the prepossession against their admission is at present too general, and too intense, to afford any chance in favour of a proposal for their admission.[78]

Certainly, 'it was not without palpable inconsistency and self condemnation' that such a question of principle was sacrificed to political strategy, as Bentham himself had admitted.[79]

> At the same time, there is no political state that I know of in which, on the occasion of any new constitution being framed, I should think it at present expedient to propose a set of legislative arrangements directed to this end. ... The contest and confusion produced by the proposal of this improvement would entirely engross the public mind, and throw improvement, in all other shapes, to a distance.[80]

As has already been noted, Bentham may therefore be accused of committing two of the 'fallacies' that he had himself condemned elsewhere, i.e. the Procrastinator's Argument and the Snail's pace Argument.[81] In this respect, at

least, there is indeed a gap between Bentham's theory and his practical recommendations. His attitude may well be explained by the attitude of the men of his time, but he appears somehow too yielding in accepting women's exclusion from Parliament, not only as part of the legislative power, but also as visitors, as he did in his *Essay on Political Tactics*:

> Among the English, where females have so little influence in political affairs — where they seek so little to meddle with them — where the two sexes are accustomed to separate for a time, even after familiar repasts, — females are not permitted to be present at the parliamentary debates. ... It has been found that their presence gave a particular turn to the deliberations — that self love played too conspicuous a part — that personalities were more lively — and that too much was sacrificed to vanity and wit.[82]

In the same way he suggests that 'the reciprocal seduction that would ensue in the case of a mixture of sexes in the composition of a legislative or executive body' is a good reason for excluding women from these branches of power. He therefore accepted, or rather was forced to accept, the political reality of his time. Nevertheless, he was not slow to find a gross contradiction in this general attitude:

> In countries in which the sex is not admitted to the smallest share in the constitutive power, it is admitted to the whole of the executive, coupled with the largest share of the legislative, and that without any constitutive power above it.[83]

He goes on to give the examples of England, 'governed by three female monarchs (Elizabeth, Mary, Anne); Russia, four; Austria, one; Sweden, one; etc',[84] and of the Directory of the East India Company, which permitted women to govern over sixty million subjects in British India. He comments on the situation with a phrase taken from the Gospel according to St. Matthew, which he had used several other times before in the course of the same argument: 'Thus, while gnats are strained at, camels are swallowed'.[85]

Bentham's recurring use of a standard phrase from the Gospel, applied with irony to the existing, self contradictory attitude of those nations in which women were denied the right to vote yet allowed to reign, provides further evidence that, at least in principle, he continued consistently to believe in women's right to suffrage throughout all his life. As early as 1789 he had asked:

> But if no sensible inconvenience can be found to arise from the entrusting them with the exclusive power of royalty, what danger can there be in their occupying / possessing / so small a fragment of political power, and that in common with the other sex?[86]

Leaving aside the notable gap which exists objectively between theory and practice, Bentham may be called a father of feminism, in the sense, at least, that he provided it with its ideological weapons. From this point of view, indeed, Bentham's consistency is undeniable. At the end of his life, writing the *Constitutional Code*, he still maintained that women's admission to suffrage, although premature, was the means by which 'some practical good' could be produced, i.e.:

> the affording increased probability of the adoption of legislative arrangements, placing sexual intercourse upon a footing less disadvantageous than the present to the weaker sex.[87]

The 'practical good' for women would be, in other words, that of obtaining if not equal, at least greater consideration by the legislator, which would come closer to the prescriptions of utilitarian philosophy.

Compensatory Discrimination and the Right to be Different

Even if Bentham's reputation as a feminist is generally traced to his writings on women's enfranchisement, his proposals to insert clauses for special protection to be given to women in existing legislation are of no less interest. Such proposals can also be logically derived from Bentham's philosophy, as has already been explained.

Furthermore, most of his proposals for raising women to the dignity of autonomous individuals are, nowadays, of historical interest, as women today have generally obtained enfranchisement and, at least in theory, equal consideration with men. Their value is qualified, however, by the inconsistencies which have been detected in the way in which Bentham applied such principles to reality.

No such inconsistencies are to be found in the second category of Bentham's proposals in favour of women, which are still valuable for the present. Bentham suggests a remarkable number of clauses, which should be inserted in the laws that are concerned with the condition of women, in order to protect them from the abuses of masculine power, which for the moment Bentham thought impossible to overthrow. Whereas his proposals for giving an autonomous personality to women are in some ways deferred to the future, the clauses which would mitigate the effects of legislation in a society in which men hold power were designed for the present, and therefore conceived in a more 'pragmatic' and accomplishable manner. All these proposals are the result of his analysis and observation of reality. He starts with the remark that women are weaker than men, from the physical as well as from the psychological point of view (because of women's greater sensibility).[88] From this analysis, however, he does not proceed to the 'synthesis' and conclusive judgement on women's natural inferiority, which was the common way of thinking at that time. This is all the more surprising when we consider the great value and the fundamental importance that Bentham always attributed to the rational component in human nature. Yet he comes to the conclusion that it is necessary to give women special protection: on the grounds of their physical inferiority; he proposes particularly severe punishment for those who have done violence to women.[89] The reason for the special 'protection to be extended to females' is clearly stated:

> A moral object is again in view: it is proper to inspire them with a most delicate sense of honour; and this object is attained by increasing the guilt of every injury done towards them. Besides, the law ought to inspire men with a disposition of peculiar regard for females, because they are not all beautiful, and beauty does not last for ever; whilst the men have a constant superiority over the women, on account of their superior strength. There may also, perhaps, be a superiority of mental strength, either derived from nature or acquired by exercise.[90]

In the same way, starting from the observation on their greater sensibility, he makes concrete proposals for preserving female dignity and modesty in tribunal courts, when particularly delicate subjects have to be discussed during cases concerning women, who are present as the injured parties or even as the accused: 'In a certain number of cases, the peculiar sensibility of the female sex could be offended during the debate'. In this way the suffering caused by the offence will be increased, rather than remedied. The prevention of such an evil will therefore be one of the judge's responsibilities.[91] From this point of view he attacks the English laws which deprived women of their rights on the ground of their *supposed* intellectual inferiority, while failing to take into consideration their *actual* physical inferiority:

> If there are any points in respect of which their inferiority were questionable, one should think it were the articles of bodily strength and personal courage. The English Common Law in its wisdom has determined otherwise. It calls them equally with the men to take upon them those offices the duties of which consist in apprehending vagrants and quelling riots. From those political rights which may be exercised without labour or hasard it excludes them with unrelenting care.[92]

In the same way he is eager to point out the articles of law in which hypocrisy about this delicacy emerges: as is the case of the punishment of rape. Bentham is against the 'false scruples of modesty' when, on their account, it is generally considered expedient to employ death as a punishment for rape. He suggests:

> Castration, for example, seems the most appropriate punishment in the case of rape; that is to say, the best apt to produce a strong impression on the mind at the moment of temptation. [Death is, on the contrary] less exemplary, and consequently, less efficacious.[93]

Against all hypocritical reserves of decency, Bentham deals also with prostitution. This he considers to be an evil in itself, but its legal prohibition under the positive laws of his time, is however, held to be both useless and extremely harmful: 'There is always a degree of shame attached to the condition', so that 'it is, perhaps, the only condition openly despised by the persons who publicly profess it';[94] thus, there is no need to add the ignominy of legal sanction. Decriminalization of prostitution is therefore proposed by Bentham, not as a good thing, since prostitution is an evil in itself, but only as a remedy for an already negative situation:

> It carries with it its natural punishment — punishment which is already too heavy, when every thing which should lead to commiseration in favour of this unfortunate class has been considered — the victims of social inequality, and always so near to despair.[95]

The most interesting part of Bentham's argument is certainly his sociological analysis of the phenomenon, as always very subtle and well aimed at the refutation of all current commonplaces:

> The condition of courtezans is a condition of dependence and servitude: their resources are always precarious; they are always on the borders of indigence and hunger. Their name connects them with those evils which afflict the imagination. They are justly considered as the causes of those disorders of which they are, at the same time, the victims.[96]

He arrives at the proposal of left handed marriages for sailors or soldiers, i.e. short term marriages, which would protect the woman involved, legitimize her children and save her from the humiliation which would otherwise be attached to her situation. Of course, this is not a rule that Bentham proposes — but a remedy; it shows the degree to which he was concerned with the actual problems of women's condition. This same concern is also present when, designing his Panopitcon, he introduces in its plan special institutions for the care of unwed mothers and illegitimate children.[97]

Another matter on which Bentham demands particular protection for women is divorce, in favour of which he wrote many pages of brilliant and stringent polemics demolishing the most common objections to this practice. In this discussion he champions the institution of divorce, only in the case of marriages which have already broken down *de facto*, i.e. in which the original affection has been replaced by reciprocal hatred. Here, as everywhere, Bentham is concerned with women's protection, affirming that:

> To live under the constant authority of a man that one detests, is already a species of slavery: to be constrained to receive his embraces, is a misery too great to be tolerated even in slavery itself.

The only objection to divorce which he considers as deserving an accurate answer, is that which argues that:

> The dissolubility of marriage will give the stronger of the two parties an inclination to maltreat the feebler, for the purpose of constraining its consent to the divorce.[98]

His answer is clear:

> A single precaution is happily sufficient to diminish the danger: in case of maltreatment, liberty to the party maltreated and not to the other. ... Gross and brutal methods being forbidden, there remains only gentle methods of engaging her to a separation.[99]

The main point, which seems fundamental to an understanding of the kind of logic which underlies all these clauses for the protection of women, is first of all Bentham's *consciousness of the inequality of women's condition* in society. He asks for equal consideration: but equal consideration for different people may — and sometimes for Bentham must — lead to different treatment. These clauses, are, therefore wholly consistent with his goal of raising woman to an equal dignity with that of man, because they are concerned with the real world, in which this goal has not been yet achieved. From this point of view, his proposals — and Bentham's utilitarian theory from which they are derived — are opposed to the principles of formal equality, if the latter entail equality of treatment. The central ideal Bentham keeps constantly in mind and which the principle of utility imposed on him, is a perfect and substantial equality between man and woman. So long as woman has not achieved an autonomous personality, to ask for formal equality for women in *this* society, in which they are in an objective condition of inferiority, would be only a great mistake. Woman is not in the same condition as man — for example:

In point of pecuniary circumstances, according to the customs of perhaps all countries, she is in general less independent.[100]

Bentham therefore thinks that, in the presence of a substantial inequality, to ask for formal equality would be only a trap for women themselves:

Those who, from some vague notion of justice and of generosity, would bestow upon females an absolute equality, would only spread a dangerous snare for them.[101]

Bentham is extraordinarily modern on this point. Today, minorities or, more generally, 'non dominant groups' ask for the right to be different,[102] arguing that formal equality brings a levelling which will always work in favour of the stronger, and against the weaker, the different, 'the oppressed' in general. They denounce the 'mystification' carried out by those who, still today, consider formal equality the highest goal to be achieved. In this perspective, we must not see Bentham's opposition to legal separation as something in contradiction with his favourable attitude towards divorce. Separation 'does not imply the permission to either of the parties to remarry', and here is the danger for women, because in this way:

the injured wife and her tyrant are subjected to the same condition. This apparent equality covers great real inequality. Opinion allows great liberty to the stronger sex, but imposes great restraint upon the weaker one.[103]

The existence of the double standard is also denounced on another occasion:

In all European countries ... this propensity [to venereal enjoyment] which in the male sex is under a considerable degree of restraint, is under an incomparably greater restraint in the female. While each are alike prohibited from partaking of these enjoyments but on the terms of marriage by the fluctuating and inefficacious influence of religion, the censure of the world denies it [to] the female part of the species under the severest penalties, while the male sex is left free.[104]

For the time being, while we should not fail to keep the ideal in mind, we should endeavour, Bentham says, to limit the abuses of men over women as far as possible. Whereas he does not yet see any actual possibility of attaining the political vote for women, because of men's 'immaturity', he nevertheless does envisage the possibility, and the necessity of introducing numerous clauses for the protection of women into the reform of legislation. Thus in marriage, although he does not alter the balance of forces, he introduces the proviso that man is the master, 'saving recourse to justice':

For it is not proper to make the man a tyrant, and to reduce to a state of passive slavery the sex which, by its weakness and its gentleness, has the greatest need of protection.[105]

Bentham's feminism can be shown to be logically consistent with his more general philosophy: a philosophy which is on the same line with the principles underlying the *Déclaration des droits de l'homme*, in asking that women should be given equal consideration; anticipating even today's *avant garde* in asking for what nowadays would be called a 'compensatory discrimination'. For these reasons, Bentham may again be considered a father of feminism, who foresaw

a great work to be done by legislators in the 'yet unexplored' field of the rights of women:

> As in the physical, so in the moral branch of the field of thought and action, parts still remain which may be stated as being as yet unexplored. In the political branch, in that subbranch of the moral, one topic is that which regards the rights and the obligations of one half of the species — the female sex: the rights which it is fit they should possess, the obligations to which it is fit they should be subjected.[106]

The Role of Bentham in the History of Feminism

The case for calling Bentham a father of feminism is not only theoretically based on the feministic implications of his utilitarian philosophy, which compelled him not to pass 'over the problem of women without notice':[107] it is also supported by historical evidence which points to his originality.

It is generally held that the first expression of modern feminism is Mary Wollstonecraft's *Vindication of the Rights of Women*, published in 1792. As has already been pointed out, many quotations used in this chapter are taken from Bentham's *Introduction*. This work was finished and already printed in 1780. Bentham waited until 1789 before having it published regularly however, and only did so then because of the continual insistence of his friends, particularly George Wilson.[108] Bentham's feministic attitude is clearly discernable in his *Traités de Legislation*, first published in French by E. Dumont, who used the manuscripts written by Bentham between 1782 and 1789.[109] One may object that neither the *Introduction* nor the *Traités* are works entirely dedicated to the feministic question and cannot therefore be appropriately compared with Wollstonecraft's *Vindication*. Nevertheless, we have demonstrated that by the 1780s Bentham had already developed his attitude towards the predicament of women. This fact becomes all the more meaningful if we consider that he clearly expressed this attitude in the *Introduction*, a work which he thought of as 'a book of pure mathematics and natural philosophy'.[110] In other words, Bentham meant that in this work he outlined all the theoretical principles on which his philosophy and his works as a reformer were to be founded, and therefore outlined the principles which were to be applied in his other books. It is remarkable that Bentham also included, among these principles, some statements on questions of principle on the problems of women, some twelve years before the *Vindication* appeared in print. The historical problem here is to assess whether the fact that the *Introduction* precedes the *Vindication* by twelve years implies that Bentham's work had influenced later feminist thinking.

To prove this hypothesis, it must first of all be demonstrated that Bentham's views on this subject were well known to his contemporaries. This may be demonstrated by two pieces of evidence: the first is provided by one of his closest disciples John Stuart Mill, and the second by William Thompson, a thinker who can be connected to the world of the philosophical radicals, even if only

by his opposition to it. The event to which both refer is the publication of an *Essay on Government* by James Mill. This was published in 1820, in the supplement to the *Encyclopaedia Britannica* of that year.

After Bentham, James Mill was one of the most outstanding of the philosophical radicals of the period. His *Essay*, advocating universal suffrage, was widely read and was used as political propaganda by the Radicals. It also had a strong influence on the Reform Bill of 1832, with which the English Parliament made a substantial step towards universal suffrage. In his *Essay* James Mill did not see the necessity of giving the political vote to women, in view of the fact that: 'all those individuals whose interests are indisputably included in those of other individuals may be struck off without inconvenience'.[111] A category which he held to include women: 'the interest of almost all of whom is involved either in that of their fathers or in that of their husbands'.[112]

Criticism against James Mill came first of all from the same Radical group, who stressed the inconsistency of this attitude with utilitarian philosophy. They appealed to Bentham not only as a superior authority, but also as an example of the consistency which could and must exist between utilitarianism and a just consideration of the interests of women. John Stuart Mill, in his *Autobiography*, says that he and his friends were absolutely against the exclusion of women from universal suffrage, because they believed that: 'the interest of women is included in that of men exactly as much and no more, as the interest of subjects is included in that of kings; and that every reason which exists for giving the suffrage to anybody, demands that it should not be withheld from women. This was also the general opinion of the younger proselytes: and it is pleasant to be able to say that Mr. Bentham, on this important point, was wholly on our side'.[113]

The strongest reaction, however, was that of William Thompson. He was acquainted with the philosophical radicals, and had also been a guest of Bentham's, in his house at Queen's Square Place, for four months.[114] But Thompson was also under other influences: Owen, and most of all, Anne Wheeler. In reply to James Mill's *Essay*, and particularly to the famous paragraph on women, Thompson wrote an *Appeal of One Half the Human Race, Women, against the Pretension of the Other Half, Men, to Retain them in Political, and Thence in Civil and Domestic Slavery, in Reply to a Paragraph of Mr. Mill's Celebrated 'Article on Government'*, which was published in 1825.[115] In his *Appeal*, after having quoted James Mill's paragraph, Thompson comments: 'Thus cavalierly are dealt with by this philosopher of humanity, the interests of one half of the human species! Not so Mr. Bentham, whose disciple he is: the philosophy of that enlightened and benevolent man, embraces in its grasp every sentient human being, and acknowledges the claim of every rational adult, without distinction of sex or colour, to equal political rights. Is the authority of the disciple above that of the master?'[116]

Undoubtedly, Bentham's attitude towards women, although inconsistent in that he denied the opportuneness of an immediate enfranchisement of women, was seen as feminist in principle by his contemporaries and disciples.[117] Furthermore, Bentham's disagreement with James Mill on this issue is not 'a

myth', nor a misunderstanding by Thompson and John Stuart Mill.[118] Bentham himself expressed his open and clear dissent from James Mill's exclusionist position in a manuscript in which he defined it as:

> a position the object of which is to place all females under the absolute dominion of all males. ... In the ... situation in question, a selfish and tyrannical husband, how eagerly will he be apt to catch at it, and make out of it a pretence for aggravating the already universally existing tyranny of the male sex over the female.[119]

Bentham blamed James Mill not only for offering no *reasons* for the exclusion of women from enfranchisement,[120] but particularly for the *consequences* of his attitude in point of principle. It may be argued that in practice Bentham arrived at the same exclusionist position as James Mill. Nevertheless, in principle, Bentham always defended women's right to vote and his dissent from James Mill's *Essay* is based on principles and on possible consequences, and not on method.[121] Bentham's attitude towards women, however, was not only well known but also quoted as an example by his contemporaries; and it is therefore legitimate to affirm that the mere fact that it was known, is already evidence of its influence, given the great authority which Bentham commanded at that time.[122]

For all these reasons there are good grounds to support the thesis of Bentham's influence over the young Mill's attitude towards the condition of women, particularly during that 'very earliest period when [J.S. Mill] had formed any opinion at all on social or political matters', to which John Stuart Mill refers in the first page of his *Subjection of Women*.[123] It may be questioned whether the young Mill was influenced by his father's more favourable views on women which are to be found in the latter's *History of British India*, though James Mill himself never thought to apply these views to the English case. It is certainly not true, however, that in those early years John Stuart Mill was prompted to feminism by his acquaintance with William Thompson, whom he met in 1825. By April 1824 he had written a strongly polemical article against the 'male chauvinism' of the *Edinburgh Review*.[124] Even if we accept that Thompson influenced Mill's later views, and in particular his *Subjection*, this does not help us to detect the source of inspiration underlying John Stuart Mill's feminism,[125] for this, I believe, may be found in Bentham's works.

In this connection, it would be hard to demonstrate that Bentham had any influence on Mary Wollstonecraft. Mary was after all the first wife of William Godwin who, like Bentham, and independently of him, was influenced by Helvétius.[126] But even if we ignore her altogether brief contact with William Godwin,[127] it seems that Mary Wollstonecraft was endowed with cultural independence, which would seem to rule out the investigation of her possible direct or indirect relationships with Jeremy Bentham. Bentham however showed concern for the condition of women and exerted a fundamental influence on the development of the political and cultural life of nineteenth century England. His writings on women, being part of the doctrinal *corpus* of utilitarianism, contributed greatly to the making of a historical milieu out of which the English feminist movement was to be born. We may therefore be entitled to

speak of Bentham as a father of feminism — if, of course, feminism needs a father.

The Bentham-Child Stereotype

As has already been pointed out, Bentham's writings on women are all concerned with women seen exclusively as subjects of legislation, or future, reformed legislation. On this point it should be added that most Bentham scholars have been disappointed by the lack of references (in Bowring's edition), to concrete women, who might have played a determining role in Jeremy's sentimental life. To this we should add the famous judgement made by John Stuart Mill, who, though he always maintained the greatest respect and admiration for Bentham as a thinker, spoke of his former forerunner as a lucky man who: 'lived from childhood to the age of eighty five in boyish health. He knew no dejection, no heaviness of heart. He never felt life a sore and a weary burthen. He was a boy to the last'.[128]

Given that this was said by John Stuart Mill, we can understand how the stereotype of a man, with an intellectual life as rich as his sentimental life was poor, soon established itself among both his critics and his admirers, and how Leslie Stephen could have written, in his otherwise valuable work, that: 'Miss Fox seems to have been the only woman who inspired Bentham with a sentiment approaching to passion. He wrote occasional letters to the ladies in the tone of elephantine pleasantry natural to one who was all his life both a philosopher and a child';[129] and that, 'It is pleasant to know that Bentham was once in love';[130] but that, 'After his early visit at Bowood, no woman seems to have counted for anything in Bentham's life. He was not only never in love, but looks as if he never talked to any woman except his cook or housemaid.[131]

From these 'facts' Stephen drew the conclusion that 'Bentham was at once the most practical and the most unpractical of men',[132] and in the same way, J.S. Mill concluded that: 'Knowing so little of human feelings, he knew still less of the influences by which those feelings are formed: ... and no one, probably, who in a highly instructed age, ever attempted to give a rule to all human conduct, set out with a more limited conception either of the agencies by which human conduct *is*, or those by which it *should* be, influenced'.[133] This is certainly not a very attractive or 'romantic' image, quite the opposite to that of J.S. Mill himself, who, according to the official hagiography, obtained the finest achievement of his life in his love for Harriet Taylor, an 'all round' woman, passionate mistress as well as intelligent companion in the first feminist battles.[134] Luckily in recent years this over simplified and adamantine stereotype of the 'Bentham child' has been questioned by many critics.[135] It is called into question again by what has emerged from the publication of Jeremy Bentham's correspondence, in the recent scholarly critical edition: for among the letters from the first half of his life there are several sent to Mary Dunkley.

Jeremy fell in love — and his love was reciprocated — with Mary, whom he tenderly referred to as 'Polly', in 1774, and continued this relationship with her for over two years, in spite of the resolute opposition of his father Jeremiah Bentham, who maintained that the young lady was too poor to marry his son.[136] It is certainly not the image of the 'Bentham child', the young man in love, who conscious as he was of opposing his father's will, sought anxiously for a house and a means of subsistence independent of his father's annuity.[137] Neither is Bentham a child who, after long discussions, agrees to yield to his father's will and break off his relationship with Miss Dunkley, and yet, despite this, continues to write and to see her for many months after his formal promise.[138] Alas, we know nothing about the conclusion of this story, because the subsequent letters are missing. It is difficult to understand why the whole story was 'censored' by Bowring, who, although he knew about it,[139] published nothing on this 'love affair' in the biographical section of his edition of Bentham's *Works* (1838 1843).

The second and perhaps decisive blow to the adamantine stereotype of the 'Bentham child' is delivered by an interesting testimony of Bentham's times, *The Private Journal of Aaron Burr.*[140] Aaron Burr came to Europe after having been exiled from the United States for well known but unsuccessful political 'adventures', and was received by Bentham 'with the frankness and affection of an old friend'.[141] From 1808 to 1812 (the years of Burr's European exile), Bentham demonstrated his friendship to Burr in many ways. One of these was to let Burr use his personal residence in Queen's Square Place, as a postal address.[142] As a result, Burr was in close and continuous contact with the utilitarian philosopher, to whose house he went almost uninterruptedly during that period, either officially invited by Bentham, or simply to check whether there was any mail for him.[143] This sincere friendship was only obscured by a slight 'affair' which saw both men involved with a certain Amelia Curran, an Irish artist. No reference has ever been made to the episode by Bentham's biographers.[144]

Amelia was a friend of Burr's and was introduced to Bentham by him in November 1811. Amelia was supposed to paint a portrait of the utilitarian philosopher, and for this reason she dined frequently at Queen's Square Place, sometimes with Bentham alone and sometimes together with Aaron Burr,[145] who continued to see her often.[146] Burr was on such close terms with Bentham, that he asked his advice about a little argument he had had with the woman.[147] Burr then left for a long journey to Germany and Scandinavia, and on his return realized that the friendship between Amelia and Bentham had become closer and more exclusive: '... was hailed in the street by A., who was walking in all the rain with Mr. Dawes, peintre très célèbre. She told me she was to dine at B.'s; so I replied that, for that reason, I would not go, for I should be *de trop*. Then she replied she would not go. So I promised to go there to meet her. After doing some errands, went to J.B.'s. K met me and said there was a note for me at his office: begged me to come to morrow and not to day. And off came I ...'.[148]

Some days later he went to Queen's Square Place to see about his mail as usual. The discovery he made was not at all pleasant: 'Across the park of J.B.'s hoping to find there a letter from Lord Balgray; but there was none. Met Koe, and asked about A.; he said she had been there yesterday. The truth is, she was then there. I saw her walking in the garden, and she and K. had a talk just under the window where I was at work getting something out of my trunks; but she, and the female friend who was with her, went to examine a small house of J.B.'s which is in the garden. The house is now out of repair, but was formerly occupied by his mother. He has offered to fit it up if A. will live in it. Not a word was said to me by any one of his family; have hinted to me this arrangement about the house *au jardin*. But A. is pretty frank with me as yet.'[149]

This shadow in the friendship of Bentham with Burr was cleared up by Bentham himself, only very shortly before Burr's departure to America in March 1812: 'on towards J.B.'s. Called on A. Koe was there. ... He [Bentham] was extremely kind, and after dinner opened his heart, and told me a long story which he ought to have told from day to day as things happened. There is not only a rupture, but a most terrible *eclat*, all of which I could have prevented if I had been in confidence. The story is very long, and you will laugh a great deal when I tell it to you. Took affectionate leave of J. Bentham, who will love me better for this little wandering of the heart, and for the manner in which I have treated the thing'.[150]

So Aaron Burr was able to leave Europe and return to the United States on good terms with the philosopher of Queen's Square Place, who in fact had not behaved very fairly towards him. However Bentham's behaviour in this affair might be judged, one cannot reasonably call it the behaviour of a child, nor of a man 'who had only talked to his cook or housemaid'. Yet this stereotype image of Bentham survives.[151]

It seems that the time has come to view Bentham without these distorting lenses by which his most eminent 'appraisers' view him. Bentham did not see women 'in the abstract', nor is it true that they never 'counted for anything in his life'.[152] Polly Dunkley for example played a determining role in Bentham's *Comment on Commentaries*. As has been pointed out only recently, the discovery of his 'affair' and the 'resulting family crisis made the effective persecution of Bentham's writing as a money getting activity a matter of urgency'.[153] The *Comment* thus became 'the' project on which Bentham constructed his 'marriage scheme'.[154] Later on, the gradual 'disintegration' of his engagement with Miss Dunkley undoubtedly constituted one of the main reasons why the *Comment on Commentaries* was left unfinished, as has been shown.[155] Bentham's attitude towards women was not at all abstract.

Notes

1 Jeremy Bentham, *Principles of the Civil Code, Works*, edited by John Bowring, 11 vols., Edinburgh-London, 1838—1843, I, p. 335.

2 J. Bentham, *Constitutional Code, Works*, IX, p. 108.

[3] J. Bentham, *The Rationale of Reward*, *Works*, II, p. 197.

[4] J. Bentham, *Defence of Usury*, in *Jeremy Bentham's Economic Writings*, ed. by W. Stark, 3 vols., London, 1952—54, I, p. 169.

[5] J.S. Mill, 'Bentham' (1838), republished in *Jeremy Bentham: Ten Critical Essays*, ed. by Bhikhu Parekh, London, 1974, p. 7.

[6] J. Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. by J.H. Burns and H.L.A. Hart, *Collected Works of Jeremy Bentham*, London, 1970, p. 64. (Hereafter referred to as *Introduction*).

[7] *Ibid.*, p. 65.

[8] J. Bentham, *A Fragment on Government* (1776), ed. by J.H. Burns and H.L.A. Hart, *Collected Works*, London, 1977, p. 397.

[9] J. Bentham, *Defence of Usury*, cit., p. 156; cf. also the following chapter on Jews. According to Baumgardt, one of the greatest of Bentham's merits is that of having 'distinguished between the conservative interpretation of actual laws, and the critical analysis of their moral validity' or better 'the distinction between pure actuality and the moral validity of this actuality', David Baumgardt *Bentham and the Ethics of Today*, Princeton, 1952, p. 32.

[10] J. Bentham, *Introduction*, p. 238.

[11] *Ibid.* This and the following passage wholly disprove the charge that Bentham's analysis lacks historical dimension, as stated by T. Ball, 'Utilitarianism, Feminism and the Franchise: James Mill and his Critics', *History of Political Thought*, I, 1980, 1, p. 104.

[12] J. Bentham, *Introduction*, p. 237.

[13] *Ibid.*, p. 238.

[14] *Ibid.*, cit., p. 245.

[15] C.A. Helvétius, *De l'Esprit*, disc. III, ch. XXVII, in *Oeuvres Complètes*, 5 vols., Paris, 1795, II, p. 220.

[16] The many ties that link together utilitarianism and associationism have been studied by Elie Halévy, *La formation du radicalisme philosophique*, 3 vols., Paris, 1901—04, I, pp. 6—8; W.L. Davidson, *The Utilitarians from Bentham to Mill* (1915), London, 1944, pp. 26—28. These ties are already a first refutation of Terence Ball's innatistic view of Bentham: cf. T. Ball, 'Was Bentham a Feminist?', *The Bentham Newsletter*, 1980, no. 4, pp. 27—31, and my answer, in the same journal, entitled 'In Defence of a Myth', pp. 38—41.

[17] C.A. Helvétius, *De l'Esprit*, cit., disc. II. ch. XX, *op. cit.*, I, p. 359.

[18] J. Bentham, *Principles of Penal Law*, *Works*, I, p. 457.

[19] J. Bentham, *Introduction*, p. 64; compare Helvétius, *op. cit.*, I, p. 359: 'Les femmes, par l'éducation qu'on leur donne, doivent acquérir plus de frivolités et de grâces, que de force et justesse dans les idées'.

[20] J. Bentham, *Chrestomathia*, *Works*, VIII, p. 56.

[21] J. Bentham, University College Collection (hereafter referred to as U.C), CLVIII, 118; Madame de Stael is quoted among the exceptions to this rule. For the discovery of this manuscript I am indebted to Professor Amnon Goldworth of San José State University, California.

[22] See E. Cassirer, *The Question of Jean Jacques Rousseau* (1938), edited by P. Gay, London, 1963.

[23] J. Bentham, *The Rationale of Reward*, *Works*, II, p. 197. The incriminated passage is where Helvétius, 'in speaking of the Samnites, among whom the young man declared the most worthy selected whomsoever he pleased for his wife, adds, that this custom was calculated to produce most beneficial effects'.

[24] He considered Montesquieu 'an antiquarian', see *Introduction*, p. 298.

[25] J. Bentham, *The Rationale of Reward*, cit., II, p. 197.
[26] *Ibid.*
[27] J. Bentham, *Introduction*, p. 245. See the following chapter on Slaves.
[28] J. Bentham, U.C., VIII, 10; this term can already be found in Bentham's manuscripts written at the time of the *Introduction*, as Halévy remarks, *op. cit.*, I, p. 299.
[29] See for example Bentham's *Defence of Usury.*, cit., p. 167.
[30] Voltaire, *Dictionnaire philosophique* (1764); cf. also Bentham's quotation from Montaigne: 'They are the result of erroneous conceptions, the effects of universal prejudice, or *long-established habit*, which, as Montaigne says, blunts the acuteness of the judgement'. (*Works*, II, p. 208.)
[31] J. Bentham, U.C. CLXX, 151. This manuscript was pointed out to me and transcribed by Dr. Michael James of La Trobe University, Victoria, to whom I am much indebted.
[32] J. Bentham, U.C., CLXX, 144. I owe this manuscript as well to the courtesy of Dr. M. James.
[33] Cf. U.C., CLXI, 336—337; also CXXXIX, 49: ' ... governed by males interest — interest of the stronger to which that of the weaker is sacrificed', dated 1817—1818.
[34] J. Bentham, *Fragment on Government, op. cit.*, p. 398.
[35] To judge by the many quotations that can be found throughout his works, Bentham appears to have been a diligent reader of this kind of literature.
[36] ' ... either the wife must be slave of the husband, or the husband of the wife. The first supposition has perhaps never been exemplified.', J. Bentham, *Introduction*, p. 254.
[37] Bentham devoted many pages to the relationship between 'is' and 'ought', showing, in this respect, a great consistency, which can be found throughout his works, and at different times in his life. For an accurate analysis of these writings, see the work of M.P. Mack, *op. cit.*
[38] As Baumgardt makes clear: 'The true alternative is, according to Bentham, that between an "ought" which is based on the "is" of unverifiable existing "oughts", or an "ought" which is verifiable by neutral facts, i.e. human feelings, just as the truth of natural laws is verifiable by neutral sense data'. Baumgardt, *op. cit.*, p. 408—409.
[39] H.L.A. Hart, *Essays on Bentham*, Oxford, 1982, pp. 24—25.
[40] J. Bentham, *Introduction*, p. 11: 'Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. ... The *principle of utility* recognises this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law'.
[41] E. Griffin-Collart, *Égalité et Justice dans l'Utilitarisme; Bentham, J.S. Mill, Sidgwick*, Brussels, 1974, pp. 31—32, 115; cf. also H.L.A. Hart, *op. cit.*, pp. 97—98.
[42] *Ibid.*, pp. 115—116; cf. also P. Singer, *Animal Liberation*, London (1975), 1977, p. 22.
[43] J. Bentham, *Principles of Penal Law, Works*, I, p. 373.
[44] J. Bentham, *Treatise on Judicial Evidence* (1825), p. 210.
[45] J. Bentham, U.C., CLXVII, 179. For this manuscript, I am indebted to Claire Gobbi of the Bentham Project, London, who drew it to my attention and transcribed it for me.
[46] J. Bentham, *The Rationale of Judicial Evidence, Works*, VIII, pp. 481—482.
[47] *Ibid.*, p. 485.
[48] J. Bentham, *The Rationale of Judicial Evidence*, cit., p. 483.
[49] U.C., LXXII, 195, published in Louis Crompton, 'Jeremy Bentham's Essay on Paederasty', *Journal of Homosexuality*, III, 1978, p. 398.

[50] See the following chapter on sexual non-conformists.

[51] J. Bentham, U.C., LXXII, 195.

[52] J. Bentham, U.C., LXXIV, 134, published in Ogden's edition of Bentham's, *The Theory of Legislation*, London, 1931, Appendix, p. 487. Of the 'newborn infant' Bentham says that it is the most 'unfit object of sympathy', because, 'if existence continued, it has everything to fear. Of life it can be deprived without any sense of suffering', *ibid.*, p. 135.

[53] J. Bentham, U.C., LXX, 270 (c. 1776).

[54] *Ibid.*, 272.

[55] *Ibid.*, 272.

[56] J. Bentham, U.C., LXXII, 182 (c. 1780).

[57] *Ibid.*

[58] J. Bentham, *Institute of Political Economy*, in *J. Bentham's Economic Writings*, ed. by W. Stark, 3 vols., London, 1952—54, III, p. 362; for the whole text of the quotation and a thorough analysis of the evolution of Bentham's attitude on the problem of population, see the following chapter on sexual non-conformists.

[59] These parts are: '*Domestic Economy* and the care of health, as applied to the more delicate sex, and to both sexes, at the time of life during which they are almost exclusively subject to its care'. J. Bentham, *Chrestomathia*, *Works*, VIII, p. 56.

[60] Occupations appropriate to female sex are needle-work, etc., to which '*middling* classes' will certainly expect that 'some portions of the school-time should be allotted'. *Ibid.*

[61] E. Halévy, *op. cit*, III, pp. 425—426.

[62] J. Bentham, *Constitutional Code*, *Works*, IX, p. 108.

[63] *The Catechism of Parliamentary Reform*, written by Bentham in 1809, but only published eight years later, is the first work in which this issue is made clear. See also Miriam Williford, 'Bentham on the Rights of Women', *Journal of the History of Ideas*, XXXVI, 1975, 1, pp. 167—176.

[64] J. Bentham, U.C., CLXX, 144.

[65] *Ibid.*, 'The result of it [appeal to History] would rather be to exclude the male sex from monarchical power than the female'; for this argument see later on, note 78.

[66] *Ibid.*

[67] *Ibid.*

[68] J. Bentham, U.C., CLXX, 145.

[69] It is simply not true that in this manuscript 'Bentham says that although everyone has an equal desire for happiness, some people — namely minors, the insane, and women — are utterly lacking in the capacity of judging what is, or is not, conducive to their happiness', as Ball affirms in his cited article 'Utilitarianism, etc.', p. 98. On the contrary, Bentham says that: 'A ceux-là [sic] on est généralement convenu d'exclure de la faculté de prononcer en pareille matière toutes les personnes du sexe féminin. Non qu'elles se trouvent dans le cas des mineurs et des insensés, non qu'il se trouvent même naturellement inférieures dans l'espèce de capacité requise, ou même dans un degré encapable de se mesurer à l'autre sexe, mais pour d'autres raisons ou assignées ou assignable'. Among these reasons he mentions 'distraction en conséquence d'autres opérations plus nécessaires', — but objects in marginalia, 'pas plus que les ouvriers travailleurs'. In these marginalia he also points out that other reasons were 'oté par le scrutin', J. Bentham, *Essai sur la représentation*, in Halévy, *op. cit.*, Appendix I, pp. 430; cf. also U.C., CLXX, 115, for marginalia, which have been pointed out to me by Miss Claire Gobbi.

[70] Cf. Lea Campos Boralevi, 'In Defence of a Myth', *op. cit.*, p. 33.

71 J. Bentham, *Plan of Parliamentary Reform* (Catechism),in *Works*, III, p. 541.
72 J. Steintrager, *Bentham*, London, 1977, p. 86; cf. p. 92.
73 *Opinion of the English House of Commons in relation to Mr. Bentham, Works*, IV, pp. 566—569.
74 The *Catechism of Parliamentary Reform* was written in 1809, but published in 1817, with the addition of an Introduction, which was almost eight times the length of the original work, and showed many changes in Bentham's thought. J. Bentham, *Plan of Parliamentary Reform, Works*, III, p. 463.
75 J. Bentham, U.C., CLXX, 145.
76 In a footnote to his *Plan of Parliamentary Reform*, Bentham relates an episode, referring to 'Woodfall's Reports, anno 1797, p. 327', in which Charles Fox said: ' ... I hope gentlemen will not smile if I endeavour to illustrate my position by referring to the example of the other sex. In all the theories and projects of the most absurd speculation, it has never been suggested that it would be advisable to extend the elective suffrage to the female sex ...'., in *Works*, III, p. 463—464.
77 J. Bentham, *Radical Reform Bill, Works*, III, p. 567n.
78 J. Bentham, *Constitutional Code, Works*, IX, p. 108.
79 See *Opinion of the English House of Commons*, cit., IV, pp. 566—569.
80 *Constitutional Code*, cit., p. 109.
81 T. Ball, *op. cit.*, p. 99—100; cf. J. Bentham, *The Book of Fallacies, Works*, II, pp. 432—433.
82 J. Bentham, *Essay on Political Tactics, Works*, II, p. 327. On this point it should be interesting to compare the original manuscripts with Dumont's edition of this work, as William Thompson, of whom we shall speak later, questions the genuineness of the text. The reason for his doubts is Dumont's anti-feminism. Cf. William Thompson, *Appeal of One Half the Human Race, Women, against the Pretension of the Other Half, Men, to retain them in Political, and Thence in Civil and Domestic Slavery, in Reply to a Paragraph of Mr. Mill's Celebrated 'Article on Government'*, London, 1825, pp. VIII—IX.
83 J. Bentham, *Constitutional Code*, IX, p. 108.
84 'In no two male reigns was England as prosperous as in the two female reigns of Elizabeth and Anne', *ibidem*.
85 J. Bentham, *Constitutional Code*, IX, p. 109. The point about the East India Company is also stressed in the *Radical Reform Bill, Works*, III, p. 567; in the *Catechism of a Parliamentary Reform*, III, p. 541; and in the Introduction to the latter, in *Works*, III, p. 463.
86 J. Bentham, U.C., CLXX, 145.
87 J. Bentham, *Constitutional Code*, p. 109.
88 J. Bentham, *Introduction, op. cit.*, p. 64.
89 J. Bentham, *Specimen of a Penal Code, Works*, I, p. 164.
90 *Ibid.*, p. 167.
91 J. Bentham, *Principles of Judicial Procedure, Works*, II, p. 114.
92 U.C., CLXX, 145. As for the manuscript U.C., CLXX, 151, I owe the discovery of this manuscript to the courtesy of Dr. Michael James of La Trobe University.
93 J. Bentham, *Principles of Penal Law*, I, p. 411. Bentham followed Beccaria in condemning the death penalty, but conducted his argument exclusively on utilitarian grounds whereas Beccaria also used some humanitarian reasons. This is one of the cases in which Bentham, consistently, considers death as 'less efficacious'. For castration as punishment for rape see also U.C., LXXII, 206—210.
94 J. Bentham, *Principles of Penal Law*, I. p. 545. On another occasion, in U.C., LXXIII, 195, he defines this condition with no less understanding: 'No sooner is a

woman known to have infringed this prohibition [of having sexual intercourse outside marriage] than either she is secluded from all means of repeating the offence, or upon her escaping from that vigilance she throws herself into that degraded class whom the want of company of their own sex renders unhappy, and the abundance of it on the part of the male sex unprolific'.

95 J. Bentham, *Principles of Penal Law*, I, p. 545.

96 *Ibid.*

97 J. Bentham, U.C., CVII, 100—110; the two institutions were named respectively Sotimion and Nothotrophium. See M. Williford, *op. cit.*, pp. 172—174; see also C.F. Bahmueller, *The National Charity Company*, University of California Press, Berkeley and London, 1981, pp. 16, 150—151.

98 J. Bentham, *Principles of the Civil Code*, I, p. 353. Again, 'Poor Panopitcon', in Bentham's views, might also function as an 'asylumn' for the wife of a tyrannical husband. See Bahmueller, *op. cit.*, p. 170; cf. U.C., CLIIb, 419.

99 *Ibid.*

100 J. Bentham, *Introduction*, p. 65.

101 J. Bentham, *Principles of the Civil Code*, I, p. 355.

102 The right to be different is in fact also claimed by women, who, at least in the Western world, are in a slight majority.

103 J. Bentham, *Principles of the Civil Code, Works*, I, p. 355.

104 J. Bentham, U.C., LXXII, 195 (*Essay on Paederasty*).

105 J. Bentham, *Principles of the Civil Code*, p. 355.

106 J. Bentham, *Constitutional Code*, IX, p. 3 (Preface).

107 J. Bentham, *Plan of Parliamentary Reform* (Introduction), III, p. 463.

108 Wilson feared that the publication of William Paley's *Principles of Moral and Political Philosophy* (1785), might in some way rob Bentham of his claim to originality. For further details on the history of this work, see the Introduction to it, by J.H. Burns and H.L.A. Hart, London, 1970, pp. XXXVII—XLII.

109 Dumont's French edition of the *Traités* was made up of these manuscripts and of some parts of the *Introduction.*

110 J. Bentham, *Introduction*, Preface, p. 5.

111 James Mill, *Essay on Government*, (1820), ed. by C.V. Shields, Indianapolis, 1977, p. 73.

112 *Ibid.*, p. 74. Nevertheless M. Williford points out that we ought to distinguish this position of James Mill from that taken by him in the second book of his *History of British India* (1817), where he takes the status of women in a society as a test of how advanced that society is. See M. Williford, *op. cit.*, p. 175. This point has been subsequently developed by T. Ball, 'Utilitarianism, etc.', *op. cit.*, pp. 92—95.

113 Although all of them considered the *Essay on Government* 'a masterpiece of political wisdom'. J.S. Mill, *Autobiography*, Oxford University Press, London, 1940, pp. 87—88.

114 From October 1822 until February 1823. During this time he met many of Bentham's friends and disciples, and, although he later looked for ideologies different from the Radical one, he always maintained a personal admiration for Jeremy Bentham. Cf. R.K.P. Pankhurst, *William Thompson (1775—1833). Britain's Pioneer Socialist, Feminist, and Cooperator*, London, 1954, pp. 15—17.

115 In his *Appeal*, Thompson went much further than Radical criticism could ever go, because he argued that the slavery of women was only a consequence of the economic system of a society which was based on private property.

116 W. Thompson, *op. cit.*, pp. 9—10. In this connection it is worth noting that reference to Thompson's *Appeal* as evidence in favour of Bentham's feminism has already

been made in a paper delivered by Lea Campos Boralevi to the European Consortium for Political Research Annual Joint Seminar in Grenoble, April 1978, before Ball's articles (1980) and papers (1979) had appeared.

[117] This striking evidence causes serious difficulties for Ball, who is compelled to admit that 'curiously, however, Bentham's antifeminist views passed unnoticed even by feminists', (such as Thompson and J.S. Mill), 'thus contributing to the myth that Bentham was a feminist', T. Ball, 'Utilitarianism, etc.', *op. cit.*, pp. 106—107.

[118] Bowring also pointed out that Bentham considered James Mill's 'abominable opinion' as heresy: in *Works*, X, p. 450.

[119] J. Bentham, U.C., XXXIV, 302—303 (April 1824), published in *Bentham's Political Thought*, ed. by Bhiku Parekh, London, 1973, Appendix B, pp. 311—312.

[120] As Bentham in fact did: 'Reasons for the exclusion none', *ibid.*, p. 311.

[121] According to T. Ball, Bentham's opposition was only methodological and not substantial: see Ball, 'Was Bentham a Feminist?', cit., pp. 25, 47.

[122] Cf. A.V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, MacMillan, London, 1962 (1905), pp. 126—210; cf. David Baumgardt, *op. cit.*, p. 10; and cf. David Roberts, 'Jeremy Bentham and the Victorian Administrative "State" ', in *Jeremy Bentham: Ten Critical Essays, op. cit.*, pp. 187—204.

[123] J.S. Mill, *The Subjection of Women*, London, 1869, p. 1.

[124] J.S. Mill's article is in *Westminister Review*, 1, pp. 525—527, dated April 1824; curiously this is the same date of Bentham's note on James Mill. For further information on this article, see M. Williford, *op. cit.*, pp. 174—175.

[125] Thompson's possible influence on J.S. Mill's later views deals another blow to the already tottering supposition that Harriet Taylor was the main source of inspiration of Mill's feminism. Mill had in any case met Thompson five years before he met Harriet. Cf. H.O. Pappe, *John Stuart Mill and the Harriet Taylor Myth*, Melbourne, 1960.

[126] E. Halévy, *op. cit.*, I, p. 28.

[127] Actually the marriage between the two only lasted a few months. For the influence of Helvétius on M. Wollstonecraft see I Cumming, *Helvétius, his Life and Place in the History of Educational Thought*, London, 1955, p. 157.

[128] J.S. Mill, 'Bentham', in *Dissertation & Discussions*, vol. I, now re-edited in *Jeremy Bentham: Ten Critical Essays, op. cit.*, p. 16.

[129] L. Stephen, *The English Utilitarians*, New York, 1900, 3 vols., I, p. 185.

[130] *Ibid.*, I, p. 186. Caroline Fox was a niece of Lord Shelburne's wife, the same Lord Shelburne who was to become Marquis of Lansdowne. Bentham stayed as a guest at Shelburne's house at Bowood for more than a month, in Autumn 1781: during this period he met Caroline, who was at that time fourteen, and fell in love with her. Stephen writes that 'he made an offer of marriage to Miss Fox in 1805, when ... they had not met for sixteen years'. *Ibid.*, p. 183. A second offer made by Bentham in 1827, received, as always, a kind refusal.

[131] L. Stephen, *op. cit.*, I, p. 233.

[132] *Ibid.*

[133] J.S. Mill, 'Bentham', *op. cit.*, p. 16.

[134] On the subject, see the classical F.A. Hayek, *J.S. Mill and Harriet Taylor*, London, 1951.

[135] See particularly M.P. Mack, *op. cit.*, p. 6 and ff.

[136] J. Bentham, *Correspondence*, vol. I, 1752—1776, ed. by T. Sprigge, *Collected Works*, London, Athlone Press, 1968, p. 190n. Miss Mary Dunkley was introduced to Bentham by Leatitia Lind, sister of John Lind, friend and collaborator.

[137] *Ibid.*, p. 235—236. The 'abstract-minded' philosopher is busy with having some money sent to his sweetheart by his brother Samuel Bentham, when the distance prevented him from doing it personally. *Ibid.*, p. 222.

[138] *Ibid.*, p. 291n. See Jeremiah Bentham's report on the promise made by Jeremy; for the letters which were subsequent to this date (17th January 1776), see pp. 290—293 with letter of the 9th February, p. 298 of 24th February, p. 320 of 7th May, all addressed to his brother Samuel Bentham, asking him to deliver an enclosed letter to Miss Dunkley. Lastly, a letter on 31st December 1776, almost one year after Jeremy's 'promise' to his father, always addressed to his brother, speaks of a letter received from Mary Dunkley, providing evidence that the relationship still continued, and that his friend George Wilson knew of it. (Cf. *ibid.*, p. 369—370).

[139] Sprigge, editor of this volume of correspondence, gives precise information which shows clearly that Bowring knew of this 'love-affair': Bowring in fact left many handwritten notes, among which he copied word for word the pages of Jeremiah Bentham's journal which dealt with this story (*ibid.*, pp. 190, 233, 291).

[140] *The Private Journal of Aaron Burr* had a first edition in 1838 (2 vols.), and a second, according to the original manuscript, in the library of William Bixby, at Rochester, N.Y., 1903 (2 vols.), with introduction and notes.

[141] *The Private Journal of Aaron Burr, op. cit.*, I, p. 4; cf. also the *Correspondence of Aaron Burr and his daughter Theodosia*, ed. by Mark van Doven, New York, 1929, p. 242.

[142] *Correspondence*, cit., p. 258; *Journal*, cit., I, pp. 10—13; II, p. 354.

[143] See for example *Journal*, cit., II, pp. 311,327,340.

[144] The only reference I could find is a small footnote in C.K. Ogden, *Bentham 1832—2032*, London, 1932, p. 90n: 'To Aaron Burr we owe a reference to Bentham's strange relationship with the Irish artist, Amelia Curran'.

[145] Burr's *Journal*, cit., II, p. 249: 'London, November 1811. J.B. vint a 10 heure et nous allames ensemble chez Am. pour le presenter. He behaved so like a savage that Am. is firmly persuaded he is crazy and she has almost made me doubt. ... We went, J.B., Am. and moi chez J.B. faire les arrengements pour le portrait. Convenu de commencer le mardi prochain et de diner chez lui le meme jour'. Burr knew some French words, and took great pleasure in inserting them in his journal. See also *Journal*, cit., II, pp. 254, 274.

[146] *Journal*, II, pp. 255, 280.

[147] *Ibid.*, II, p. 295.

[148] *Ibid.*, II, p. 313. Burr was always afraid that his papers might fall into unfriendly hands, and consequently he used to abbreviate all proper names. In addition to J.B. or B. for Bentham, he uses A., Am., or A.C, for Amelia Curran and K. for Koe, Bentham's private secretary.

[149] *Ibid.*, II, p. 327; see also *ibid.*, p. 340: 'To J.B.'s to get some things; you know that my trunks are there. ... While I was at J.B.'s in came A., whom I thought out of town. We met with the familiarity of old acquaintance. Did not see J.B'.

[150] *Ibid.*, p. 393. March, 1812 (probably the 24th).

[151] In her article entitled 'Bentham on the Rights of Women', M. Williford criticizes Stephen's portrait, but maintains this same stereotype, arguing that, 'Bentham, entertained and corresponded with a number of women throughout his life. But, in spite of these associations, Bentham, the pragmatist *extraordinaire*, viewed women and their rights in the abstract'.

[152] M. Williford, *op. cit.*, p. 168. L. Stephen, *op. cit.*, I, p. 233.

[153] J.H. Burns and H.L.A. Hart, Introduction to Bentham's *A Comment on Commentaries*, and *A Fragment on Government*, *Collected Works*, London, 1977, p. XXVII.

[154] See Bentham's letter to his brother Samuel, 18th May 1775, cited in J.H. Burns and H.L.A. Hart, *op. cit.*, p. XXVII.
[155] *Ibid.*, pp. XXVII—XXVIII.

3. Sexual Non-conformists

Bentham's Auto-censure

Bentham's writings on sexual non-conformity have been almost entirely ignored by Bentham scholars, although the philosopher himself devoted hundreds of pages to the subject. As Bowring omitted all religious writings from Bentham's *Works*, it is hardly surprising that he also suppressed the writings on sexual matters in his edition of 1838-1843.[1] What is more, unlike some of the religious works, which were published separately during the nineteenth century, none of Bentham's writings on sexual non-conformity were published until 1931.[2] Since 1931, however, scholars have paid little or no attention to this aspect of Bentham's work.[3] And yet, these writings are of great interest for a Bentham student, not as a piece of curiosity, but for the many implications of these arguments. The very topical claim for the decriminalization of sexual non-conformity is in fact based on a series of arguments which reveal Bentham's attitude towards morals, religion, penal law, and, last but not least, the population problem. If we use this perspective, the analysis of these manuscripts becomes important for the new light it throws on Bentham's general philosophy when confronting a compromising theme such as sexual non-conformity.

The importance which Bentham attributed to this subject can be inferred not only from the hundreds of pages he devoted to it, but also from the changes which his general philosophy underwent, as a consequence of his afterthoughts on this problem. For example, sex is considered such an important 'spring of action', that, from 1785 on, Bentham decided to add a sixth sense to his previous more orthodox list:

> Any act having for its object the immediate gratification of the sexual appetite may be termed *an act of sexuality*. Till of late years the number of senses had been fixed at five; of late years a sense correspondent to and put in exercise by the act of sexuality has been added to the number.[4]

Bentham wrote about 'sexual eccentricities' many times, in different periods of his life, returning to the subject, revising and making his thoughts more and more clear and articulate, with very few variations, as he did with other problems which affected him particularly. His earliest writings are to be found among fragments in *Non-Conformity*, written between 1770 and 1774, and on *Offences of Impurity*, written about 1780. In 1785 Bentham applied himself to this problem very seriously, producing a chapter of his *Penal Code* entitled *Paederasty* and an *Introduction* to an independent work on 'Nonconformity',

written in French. It was between 1814 and 1818 that Bentham gave final shape to his arguments, producing about 350 folios which can be divided into two parts: first, a chapter of his *Penal Code* written in 1814, which in 1816 was used by Bentham as the basis for his treatise entitled *Sex*;[5] and a second part which belongs to Bentham's unedited writings on religion, entitled *Not Paul but Jesus*, written between 1816 and 1818.

Bentham was still thinking of his *Penal Code*, when he wrote an *Appendix on Sexual Eccentricities* to it between 1824 and 1828.[6]

Bentham just concerned himself with sexual irregularities when working on his *Penal Code*, trying to place them in his Classification of Offences. He seems to have met the same problem with usury, which he had failed to place among his Classes of Offences in his *Introduction to the Principles of Morals and Legislation*, of 1780, i.e. some years before Pitt's intention of lowering the maximum rate of legal interest prompted Bentham to write in defence of usury.[7] The analogy between usury and sexual irregularities is not an arbitrary one: Bentham related the two in a famous passage of a letter to his friend George Wilson in December 1786:

> You know it is an old maxim of mine, that interest, as love and religion, and so many other pretty things, should be free.[8]

But whereas Bentham did not hesitate to have his *Defence of Usury* published — although it drew upon him more unpopularity than glory — he took care to avoid the consequences that the publication of his writings on sex might have on his reputation. In this instance at least, it must be acknowledged that, by suppressing all his writings on the subject, Bowring was merely following Bentham's wishes. Bentham's fears are clearly avowed in the following passages:

> In the present has been found one of those unhappy occasions on which, in his endeavours to render service to his fellow-creatures, a man must expose himself to their reproach. . . . Never did work appear from which in the way of personal advantage and disadvantage, never one from which in the way of reputation, never one from which at the hands of public opinion a man had so much to fear, so little to hope.[9]

> I am ashamed to own that I have often hesitated whether for the sake of the interest of humanity I should expose my personal interest so much to hazard as it must be exposed to by the free discussion of a subject of this nature.[10]

> To other subjects it is expected that you sit down cool: but on this subject if you let it be seen that you have not sat down in a rage you have [given judgement] betrayed yourself at once.[11]

Indeed,

> When a man attempts to search [?] this subject it is with a halter about his neck. On this subject a man may indulge his spleen without control. Cruelty and intolerance, the most odious and most mischievous passions in human nature, screen themselves behind a mask of virtue.[12]

Bentham was afraid of being suspected of a propensity towards these irregularities himself, and particularly towards homosexuality:

There is a kind of punishment annexed to the offence of treating it with any sort of temper, and that one of the most formidable that a man can be suspected to, the punishment of being suspected at least, if not accused, of a propensity to committ it [if he] pleads for the liberty of trying the offence by the principle of utility.[13]

The punishment for sodomy in England at that time was hanging. But more than fearing this charge directly, Bentham shows his concern for the content of his writings in themselves: by these writings he hurled the weight of his arguments against certain religious beliefs which were accepted by and incorporated in the whole of European civilization at that time. As it has been remarked, Bentham's writings are not only 'the earliest scholarly essay on homosexuality presently known to exist in the English language', but also the only ones known before the twentieth century that deal with the subject in relation to law reform.[14] From a biographer's point of view, Bentham's attitude towards these writings throws new light on his personal consistency in embodying 'the deontologist', who should always try to reconcile the personal interests of individuals with the general interest of the 'greatest number':[15] in this case at least, the author of the *Deontology* considered his personal interest first.

Sexual Non-conformities and Homosexuality

What then was the 'explosive' content of these writings, which caused so much anxiety in their author? First of all it should be made clear that by 'sexual non-conformities', Bentham meant all the sexual practices which are condemned by Judaeo-Christian religions, i.e. all the sexual activities which go beyond intercourse between a married couple with the end of procreation. He divides sexual acts into two classes: those regularly exercised, 'i.e. in a manner conformable to rule', and those irregularly exercised, 'i.e. in a manner unconformable to the same rule'. The first class he subdivides into those made *potentially prolific* and those *not potentially prolific*, distinguishing between the effect of sexual intercourse and its object:

The operation has for its *effect* the preservation of the species, but has it for its *object* the production of that effect?[16]

Religions, morals and laws approve only of the acts belonging to the first category of the first class:

Accordingly it has been a question seriously debated whether a man ought to permit himself the partaking of this enjoyment with his wife when from age or any other circumstance there is no hope of children: and it has often been decided in the negative. For the same reason ... for a man to enjoy his wife at unseasonable times in certain systems of laws has[17] been made a capital offence.[18]

Once more, Bentham's analytical method has proved to be fruitful: his definitions and classifications have already centred on the heart of 'commonly assigned opinions'; he is able to set the matter out clearly, and reason effective-

ly, just because — contrary to others — he 'could examine this cause in cold blood'.[19] Indeed, we find that he examines without any prejudice all the sexual acts which are considered to be 'irregularly exercised'. Indeed, as he explains:

> In no other instance other than the act of sexuality has exercise of any act of sensuality been considered as being naturally subjected to any restrictive rule ... other than the two mentioned[20] ones.[21]

Although Bentham dealt in detail with all kinds of these 'irregularities', the one which attracted most of his attention, and to which he devoted the greatest number of pages, was homosexuality (or *Paederasty*, as he calls it). The reason he gave for this preference was that:

> [Paederasty] being that which makes the most figure in the world it will be proper to give that the principal share of our attention. In settling the nature and tendency of this offence we shall for the most part have settled the nature and tendency of all the other offences that come under this disgusting[22] catalogue.[23]

Also, all these irregularities had a property in common, i.e. 'they consist in procuring certain sensations by means of an improper object'.[24] As in all other writings on the subject, Bentham once more betrays his own internal conflict when dealing with paederasty:

> To what class of offences shall we refer these irregularities of the venereal appetite which are styled unnatural? I have been tormenting myself for years to find if possible a sufficient ground for treating them with the severity with which they are treated at this time of day by all European nations: but upon the principle of utility I can find none.[25]

First of all he makes it clear that by paederasty he means sexual intercourse which takes place between two men, and in which 'the partners are both willing'.[26] Again his love for definitions and classifications ensures his escape from the 'confusion' generated by commonplaces. Usury, whose liberty he proclaimed, was intended to be obtained by consent: if the consent was obtained either unfairly, it would coincide with fraud, or, if unfreely, it would coincide with extortion, and therefore be open to prosecution.[27] This point likewise is strongly affirmed by Bentham in the case of sexual irregularities, and particularly in that of homosexuality: the absence of consent would immediately place this act amongst his classified offences, under the heading of 'personal injuries, as a kind of rape'.[28] Bentham is not, however, equally precise about the age of the two willing partners. He occasionally considers paederasty sometimes as an intercourse between an adult male and a youngster — as the word etymologically means — but at other times as between two male adults, as we shall see later on.

Having limited the concept of homosexuality by the fundamental specification of the necessity of consent, Bentham concludes that paederasty is not 'a primary mischief', because it does not produce 'any pain of apprehension', or 'a danger for the community'. Considering paederasty as between two willing partners, the only danger involved would 'consist in the tendency of the example', i.e. 'to dispose others to engage in the same practices'; but as these are not painful, it is not a danger.[29]

As hitherto he has found no reason for punishing it at all, he starts to examine 'the reasons that have been commonly assigned for punishing it',[30] or its 'alleged mischiefs',[31] and to refute them one by one: 'The state of the public mind in England in relation to this subject' is indeed far from the truth, especially because of 'the state of law'; as decency excludes this subject from conversation, 'the cases in which it makes its appearance in the field of conversation are those in which it is dragged into it by the hand of the law'.[32]

Following his 'master' Helvétius, Bentham believed strongly in the pedagogical value of legislation: it was society — through education for children and legislation for adults — that conditioned men's behaviour and beliefs, rather than any innate nature. Hence the great moral responsibility attached to the task of the legislator which is always present in Bentham's writings. Hence also the importance of a critical examination of the existing legislation as a source of common beliefs. It was for this reason that Bentham thought it so important to attack the 'established opinion' among all the writers of English Law, that paederasty is an 'offence against the peace':

> According to the same writers it is doubted whether adultery be not a breach of the peace. It is certain however that whenever a gallant accepts an invitation of another man's wife he does it with force and arms. This needs no comment.[33]

Later on, he will add:

> Towards the noxious class it is comparatively indulgent: for the innoxious it reserves the blasts of its fury.[34]

Among the noxious class, Bentham considers *adultery* and *rape*. At the same time, he is keen to discover the contradiction in the public mind, which does not 'bestow any part of its regard' to the sexual intercourse between two females: 'but what is deficient in the one is amply made up by what is bestowed on the other (i.e. on homosexuality between men)'.[35] Among English jurists a special place is given by Bentham to William Blackstone,[36] who considered paederasty not only 'an offence against peace', but also 'an offence against security'. To him Bentham answers that:

> He does not say whose security, for the law makes no distinction ... between this kind of filthiness when committed with the consent of the patient and the same kind of filthiness when committed against his consent and by violence. It is just as if a man were to make no distinction between concubinage and rape.[37]

Nor does it seem just, although 'ingenious', that paederasty should be considered as an affront to God (or High Treason against God).[38]

Sodom and Gomorrah

Bentham attacks the foundation of any religious condemnation of homosexuality, i.e. the famous Biblical episode of Sodom and Gomorrah, showing an unexpected degree of exegetical skill. His most interesting objections to the common argument — that sodomy has to be punished by fire, because of God's

destruction by fire of the Sodomites — are in fact not his 'laic' ones,[39] but those regarding the interpretation of the Biblical passage. First Bentham reminds us that:

> the miraculous and occasional dispensation of an extraordinary providence affords no fit rule to govern the ordinary and settled institutions of human legislators.[40]

If this were so, such offences as simple fornication, murmuring against authority, etc., should also be punished by the death penalty, and any man could 'kill his son because God commissioned Abraham to kill Isaac'.[41] Secondly, 'among God's own people, the Jews' laws' provide only that 'such offenders shall be "put to death" generally, just as several kinds of incests, etc.' and not burnt.[42] Furthermore, quoting the Biblical text, Bentham says that:

> it is not said that this was the only one nor even the greatest of the offences for which those cities were destroy'd. The offences imputed to them are ... 'wickedness', and 'iniquity', and their conduct opposed to 'righteousness'.
>
> The only offence which is mentioned as having been committed by them on any individual occasion is an offence ... 'of a very different complexion and of a much deeper die' [than sodomy] because it implied 'personal violence, ... and a violation of hospitality, an aggravation of much greater odium ... in a rude than in a civilized state of society'.[43]

Montesquieu's Opinion

Among 'assigned opinions', Bentham includes also those of Voltaire and those of Montesquieu. Montesquieu maintained that: 'Il faudroit le proscrire quand il ne feroit que donner à un sexe les foiblesses de l'autre et préparer à une vieillesse infâme par une jeunesse honteuse.'[44]

This appeared to Bentham one of the most compelling reasons. He in fact tried to find a place for homosexuality among the 'Offences against one's self' — as the chapter is headed.[45] Nevertheless he was not able to find any empirical evidence capable of supporting Montesquieu's statement:

> In Athens and in ancient Rome in the most flourishing period of the history of those capitals, regular intercourse between the sexes was scarcely more common.[46]

After having quoted extensively the cases of Agesilaus, Xenophon, Socrates, Themistocles, Aristides, and, especially, the *Theban band*,[47] Bentham concludes:

> There is scarce a striking character in antiquity, nor one that in other respects men are in use to cite as virtuous, of whom it does not appear by one circumstance or another, that he was infected with this inconceivable propensity.[48]
>
> The Ancient Greeks and Romans, however, are commonly reputed as a much stouter as well as braver people than the stoutest and bravest of any of the modern nations of Europe.[49]

'Montesquieu however seems to make a distinction', writes Bentham; 'he seems to suppose these enervating effects to be exerted principally upon the person who is the patient in such a business'.[50] This distinction is not at all satisfactory for Bentham, as he considers that in such a business the two roles could be interchangeable:

> Between persons of the same age actuated by the same incomprehensible desires would not the parts they took in the business be convertible?[51]

Bentham's comment here is not completely to the point, which clearly turns on an understanding of paederasty in its etymological sense. His way of answering the different charges by considering each time the kind of homosexual relation which fits better to his argument in each particular occasion only serves in the end to weaken the efficacy of his general case. Montesquieu's opinion, however, is not entirely without foundation:

> According to the notions of the antients there was something degrading in the passive part which was not in the active. ... It was making one's self the property of another man, it was playing the woman's part: it was therefore unmanly. ... On the other hand, to take the active part ... was preserving the manly, the commanding character. Accordingly, Solon in his laws prohibits slaves from bearing an active part where the passive is borne by a freeman.[52]

Although considered in some way degrading, there is no evidence which can prove that this particular role is enervating: Bentham, opposing it, brings in the examples of Clodius, Julius Caesar, and Alcibiades.[53] Nor is there any evidence to be found in Aristotle's writings on the subject.[54] Later on, in the 1810s, Bentham tried to explain Montesquieu's mistake:

> Those to whom the patient's part was a sort of profession would naturally study to employ art to ... make themselves look as like the female sex as possible. From the idea of effeminacy to that of enervation the transition is obvious. But all this is nothing but the work of imagination: the analogy is nothing but the name. Neither in painting, nor in speaking in a sugared voice can any cause of weakness nor ill-health be found.[55]

He goes on to assert that even if any enervating tendency should be recognized to this practice, it is not any single act that can have that effect, but only the habit; and if the habit, it must be demonstrated that it enervates more than regular sex, to justify punishing it so severely:

> This enervating tendency, if it is to be taken as a ground for treating the practise in question with a degree of severity which is not bestowed upon the regular way of gratifying the venereal appetite, must be greater in the former case, than in the latter.[56]

This has not been demonstrated yet — says Bentham — either by physiology or by history; and, furthermore:

> What is the appetite from the gratification of which detriment to health does not continually ensue? From the appetite for drink, that to a prodigious amount destruction is continually ensuing to health is matter of notoriety. But for drunkeness, considered apart from any disorders of which it may happen to be productive, what legislator was ever weak enough to employ the form of penal law?[57]

Other sexual irregularities are in Bentham's opinion much more enervating, and yet are not punished by legislators: the most pernicious of all being masturbation.[58]

Voltaire's Opinions and Bentham's Earlier Views on Population

Voltaire's opinions about homosexuality — expressed in his *Dictionnaire Philosophique* under the article 'Amour Socratique' — are discussed by Bentham in the same way, using both logical reasoning and empirical evidence as weapons in the controversy. He refutes Voltaire's suggestion that 'what the antients called love in such case was what we call Platonic, that is, was not love but friendship'. Bentham noted that the Greek example is embarrassing for all those who support prejudices against homosexuality:

> Sometimes they will dissemble and shut their eyes against the fact. Sometimes they will attempt question to it; at others they will attempt to set up a distinction between times of semplicity and virtue, and times of vice and declination: tho' in the times of greatest strength it may be shewn to have been prevalent; and though the times of greatest weakness follow long after its estinguishment.[59]

Against Voltaire's 'shutting his eyes', Bentham points out that 'the Greeks knew the difference between love and friendship as well as we', and supports his point by a long list of quotations from classical sources, which undoubtedly make nonsense of Voltaire's suggestion.[60]

Voltaire's — and not only Voltaire's — other opinion, that this practice would be 'destructeur du genre humain, s'il était général',[61] is taken more seriously and more fully discussed by Bentham. Indeed, in 1780, when first trying to find a place for the 'Offences of Impurity' among his general Classification of Offences, Bentham had actually listed them under the head of 'Offences against the National Interest in general'.[62] One should not forget that, in his younger years, Bentham showed great admiration for Voltaire: he had read his *Lettres Juives*, his *Candide* and other works, and, in 1774, he translated Voltaire's *Taureau Blanc* into English:[63]

> Even M.s de Voltaire, so superior in general to all prejudices ... too great a connoisseur in the sources from where the pleasures are derived. Not to regard this specious species with a physical abhorrence and its practises with a contemptious pity, he is not at the same time too sound a moralist of Politician not to disapprove of the absurdous severity exerted against it by the Laws.[64]

It was therefore under Voltaire's influence that, in 1785, when preparing a first draft of a scheme for a work on sexual non-conformity, Bentham entitled it: *Apologie pour Socrates; Socrates redivivus, ou Essai moral et politique sur l'amour Socratique.*[65]

Moreover, the discussion on population is one of the most interesting — as well as better developed — topics to be found in Bentham's writings on sexual non-conformity, which seem to be the only reliable source for reconstructing his thought about the demographical problem. Among his published works, in

fact, there is no place in which he discusses population with his usual thoroughness — which that problem was certainly deserving at that time.[66] Although having edited some passages in which Bentham clearly related the problem of population to that of sexual irregularities, Stark underestimated the significance of this connection, claiming that: 'The economist need not give them more than a passing glance: Bentham speaks here, not as a social theorist, but as a teacher of morals (or, as some would say with equal justification, as a teacher of immorality)'.[67]

Against Stark's opinion, the examination of Bentham's earlier writings on sexual non-conformity proves most useful for explaining more fully the few passages written about population in his economic works. Furthermore, Bentham's later writings on sexual matters are, to my knowledge, the *only* source from which it is possible to follow the evolution of his attitude towards population after his 'conversion to Malthusianism' in 1802, Bentham having virtually ceased to write on matters of economics by 1804.[68]

The examination of the manuscripts on sexual eccentricities, and particularly on homosexuality, gives us a clear picture of the evolution of Bentham's attitude towards the problem of population. This evolution is easily discernible from the succession of different answers that Betham gives to Voltaire's assertion that the practice of homosexuality, if universalized, would have been destructive for mankind. In the years between 1770 and 1774, the only objection Bentham raised against the idea that homosexuality had a negative influence on population was that empirical evidence proved the contrary: in Bengal (and the East Indies) and in Marseilles — he had been informed by credible authorities — this propensity was practised openly, and yet these two regions were overpopulated.[69] In the 1770s, Bentham considered that the effect of diminishing population was a negative one, and that it had to be denied in order to support the decriminalization of homosexuality: he still calls this effect 'the only property from which its political and consequently moral guilt can be rationally established'.[70] Still in the 1770s, in another fragment, dealing with pros and cons of homosexuality's being punishable by law, Bentham puts 'Problematical detriment to Population' as a point against decriminalization, even though he protests immediately: 'Then, if really detriment to Population', are there not any 'gentler means' to prevent it?[71] Even so at that time a threat to population was considered an important charge by Bentham, who included the 'Offences against Population' among his classification of offences in the *Introduction to the Principles of Morals and Legislation*;[72] they were considered as 'Public Offences', or:

> offences whereof the tendency is to diminish the numbers or impair the political value of the sum total of the members of the community.[73]

He included under this heading 'emigration, suicide, procurement of impotence or barrenness, abortion, improlific coition, celibacy'.[74] He uses this same line in his *Introduction à l'Apologie pour Socrates* in 1785, in which he argues that 'les colonies des Grecs étaient plus nombreuses que le nôtres',[75] and his chapter on *Paederasty* of the same year:

I have already observed that I can find nothing in history to countenance the notion I am examining. On the contrary the country in which the prevalence of this practise is most conspicuous happens to have been remarkable for its populousness.[76]

Even so, Bentham's objections to this prejudice against homosexuality are much better articulated and numerous in his chapter on *Paederasty* considering 'the matter a priori', he observes that homosexual love does not necessarily exclude the 'prolific kind of venery'. Furthermore,

...If we consider the time of gestation in the female sex, we shall find that much less than a hundreth part of the activity a man is capable of exerting in this way is sufficient to produce all the effect that can be produced by so much more. Population therefore cannot suffer till the inclination of the male sex for the female be considerably less than a hundreth part as strong as for their own.[77]

Another point raised by Bentham on this occasion, is his audacious suggestion that from the point of view of population, celibacy ought to be punished more severely than homosexuality:

The proposition which (as will be shewn more fully by and by) is not at all true with respect to paederasty, I mean that were it to prevail universally it would put an end to the human race, is most evidently and striclty true with regard to celibacy. If then merely out of regard to population, it were right that paederasts should be burnt alive,[78] monks ought to be roasted alive by a slow fire.[79]

Besides other more minor objections,[80] Bentham shows himself to be acquainted with some theories about population, arguing that:

If we consult Mr. Hume and Dr. Smith, we shall find that it is not the strength of the inclination of the one sex for the other that is the measure of the numbers of mankind, but the quantity of subsistence they can find or raise upon a given spot.[81]

On the other side, Bentham is afraid of being misunderstood:

No one I hope will take occasion to suppose that from any thing here said I mean to infer the propriety of affording any encouragement to this miserable taste for the sake of population. ... The truth is, the sovereign, if he will but conduct himself with tolerable attention with respect to the happiness of his subjects need never be in any pain about the number of them. ... Nature will do her own work fast enough without his assistance if he will but refrain from giving her disturbance.[82]

In 1785, Bentham still believed in a natural harmony existing between the needs and the number of mankind. He even commented in an ironical way on the 'absurd' idea of regulating population by this means in a footnote to the preceding passage:

I leave anyone to imagine what such a writer as Swift, for instance, might make upon this theme, 'A project for promoting population by the encouragement of paederasty'.[83]

This ironic remark shows better than any long explanation, how different in 1785 Bentham's opinions on population were from those which he was to adopt about twenty years later. The arguments of the chapter on *Paederasty* are repeated in Bentham's *Notes on Population*, written between 1787 and 1793, i.e. between the *Defence of Usury* and the *Manual of Political Economy*:

Nothing ought to be done for the particular purpose of promoting population. ... The quantity of population is not limited by the desire of sexual intercourse, it is limited by the means of subsistence.[84]

Bentham continues his notes in Latin, restating that:

Esto centum congressus procreando sufficientes in anno intra annum potentia prolifica media hominis medii. Sed intra id spatium partus datur non plus quam unicus. ... Reliquia nonaginta novem necesse est ut aut supprimantur aut sine effectu prolifico consumantur. Sed pars ista sterilis, supprimatur an consumatur quid ad fecunditatem refert?[85]

Perhaps it was not 'Bentham's delicacy' — as Stark supposes[86] — but fear that prompted him to write these notes in Latin.[87] We have already shown other evidence of his timidity.

Bentham's optimism about harmony between needs and numbers is to be found in many scattered remarks contained in several economic works, such as a fragment on *Colonies and Navy* (c. 1790),[88] and in *Supply Without Burden* (1795): in the latter, Bentham speaks of the imposition of a 'tax on celibacy' which would be wholly consistent with his writings on sexual non-conformity.[89] As has been shown,[90] by the 1770s Bentham was already looking for some 'gentler means', capable of preventing the diminution of population — gentler than the severe punishments, which were at that time commonly employed for homosexual actions. In 1785 he concluded that a fine could prove to be much more useful:

If population were the only object, the mischief that a rich batchelor did by giving himself up to improlific venery might be amply repaired by obliging him to give a marriage portion to two or three couples who wish for nothing but a subsistence in order to engage in marriage.[91]

Still believing in the doctrine of harmony, Bentham developed his plans for the administration of the poor, which belong to the period 1795—1798.[92] Bentham considered that the economic progress encouraged by his plans, would have been adequate to cope with the growth of population. Only in an extreme case did he allow colonization as a remedy for an excess of population.[93] Only in the hypothetical case of the earth being fully populated, did he visualise a reversal of public policy:

then will the policy of the statesman be directed to the arrestment of population, as now to the increase: and what is now stigmatised as vice will then receive the treatment, if not the name of virtue.[94]

This remark has been differently interpreted by commentators. According to Poynter, Bentham was here referring to birth control,[95] whereas Bahmueller has quite correctly argued in the light of some of these manuscripts on sexual non-conformity, that by 'vice' Bentham meant all kinds of sexual eccentricities,[96] and particularly homosexuality. Bahmueller, however, has failed to support his argument with convincing evidence[97] The main reason why Bentham could not have considered birth control, as such, but only the 'eccentricities of the bed' — as he called them — in 1797, is that at that time the 'popula-

tion problem' was unreal for Bentham. He was still strongly convinced, as was Adam Smith, that population was automatically regulated.[98]

Bentham's Neo-Malthusianism

In *The True Alarm*, in 1801, Bentham betrays some changes in his thinking: at that time in fact he starts to be concerned with the problem of overpopulation, not as a purely hypothetical case, but as an actual possibility, for which emigration might be a remedy:

> If we consider further the rapid encrease of population such as it has been even during the war, if we observe that it would soon, by its natural course, reach the point where it exceeds the means of subsistence which the two isles could produce, it will be recognized that the emigration of men and capital is a real good in the present state of Great Britain.[99]

Apart from that particular situation, Bentham still considered that population increase was in itself desirable, as he wrote in the *Institute of Political Economy*, which he worked on between 1801 and 1804. In this work, Bentham argues that 'security leads to opulence; opulence to populousness'. Increase of population is therefore in itself desirable because it widens the circle over which happiness can be diffused, and also because it strengthens national defence. Nevertheless, Bentham says, it is not a fit object for a deliberate policy; the growth of population is a typical *sponte actum*. The government can, however, prevent an unnecessary decline in population, by fighting disease, accidents, etc.[100] Bentham only speaks favourably of *'agenda'* for the prevention of disease, such as hospitals, poor-houses, and vaccinations, etc., whereas he speaks out against:

> penal laws punishing for what is commonly meant by infanticide, for abortion, for irregularities of all sorts in the venereal appetite. The apprehension of a deficiency of population for want of the regular intercourse between the sexes in the way of marriage is altogether upon a par with an apprehension of the like result from a general disposition in mankind to starve themselves.[101]

Bentham goes on to argue against prejudices which obscure a clear understanding of the effective influence of these modes on population. The important thing to be observed here is, that in the *Institute of Political Economy*, although already very much interested in the relationship between wealth and population, Bentham still held to the view that wealth increased faster than population.[102] It is however undeniable that his views had already moved far from those of Adam Smith, whom he criticizes:

> Of population, nothing is said by Adam Smith. Yet of what use is wealth, but with reference to population?[103]

Ogden's statement that 'Bentham was converted by Malthus in 1802', has been generally accepted.[104] I cannot see on what evidence Ogden was able to sustain such a statement. Certainly, the *Institute*, which Stark himself published,

would seem to contradict it. *The True Alarm*, of 1801, on the other hand, betrays more of a Malthusian character. From all these facts, and from the evidence based on manuscripts, I would conclude that Bentham's 'conversion' to Malthusianism was not an instantaneous event, which can be given in a precise day and year. It seems more correct to speak of a *gradual acceptance of Malthusianism*, which, contrary to Ogden's opinion, was neither acritical nor definitive. I shall Aive reasons for classifying Bentham among those we would nowadays define as Neo-Malthusians.

In 1816, writing his work on *Sex*, and answering the 'alleged mischief' of sexual non-conformity towards population, Bentham repeats that 'it is incapable of having any effect on population'. The novelty of his comment is that he immediately adds that:

> In regard to population its effect, if it had any, would be rather favourable than unfavourable.[105]

He explains that this is because 'Mr. Malthus has opened the eyes of the public':

> Before Mr. Malthus's work had appeared, among the list of duties incumbent upon government that of labouring by active measures for the increase of population found every where a place.[106]

Malthus had shown that 'the population of the country has always been on the increase', and that population, 'of itself always goes on fast enough ... so fast does it go that for its companion it has almost everywhere afflictive indigence; so fast does it go on that by increase, while the aggregate quantity of the population ... / the numbers of mankind of the human species / increases, the sum of happiness is by this very cause rather diminished than increased.'[107]

Bentham clearly demonstrates his knowledge ofMalthus's thesis[108] in the following passage:

> From excess of population flows no small part of the misery: with which, and in a degree proportionable to that of the civilization, the civilized part of the population of the globe and in particular that of the British Empire is affected. By any cause, if any cause there were other than human suffering by which a check could be applied to the effect of this tendency, the balance on the side of happiness would be encreased. Urged by desire, the opposite and corresponding sexes contract their union. ... The average stock of necessaries ... in the shape of food, that can be produced by a married couple, ... not being ... adequate to the maintenance of the average number of children ... a portion more or less considerable of the whole number of these children necessarily die.[109]

Bentham's conclusion here is, however, not Malthusian at all. This is because he is not primarily concerned with population growth, but with abolishing the severe punishments imposed by English law upon homosexuality. For this reason, he still admits the possibility of a non-Malthusian situation, in which population growth would be considered necessary and desirable; and he therefore repeats the argument that:

> If it had any effect unfavourable to population, punishment applied to such practices would not be a proper course for filling up the supposed deficiency.[110]

Bentham was never 'converted' to Malthusianism, if the term 'conversion' implies an uncritical acceptance of Malthus's thesis. On the contrary, his approach to the theories expounded in the *Essay on the Principles of Population* was, from the very beginning, an extremely critical one, eager to point out any inconsistency.

Malthus had argued that: '1. Population is necessarily limited by the means of subsistence. 2. Population invariably increases where the means of subsistence increase, unless prevented by some very powerful and obvious checks'.[111] Among these checks 'which keep down the number to the level of the means of subsistence' he distinguished between preventive checks (voluntarily arising from a rational calculation, and therefore implying the restraint from, or delay of marriage), and positive checks (unavoidable consequences of want and starvation, which shorten the natural duration of human life).[112] In practice, Malthus resolved all positive checks into *misery* and distinguished, among the preventive checks, between *moral restraint* and *vice*.[113] By moral restraint, Malthus meant exactly 'the restraint from marriage which is not followed by irregular gratifications', and by vice, all kind of 'promiscuous intercourse, unnatural passions, violations of the marriage bed, and improper acts to conceal the consequences of irregular connections'.[114]

Whereas the distinction between positive and preventive checks was, in some way, 'objective and empirical', the distinction between the different kinds of preventive checks was 'openly evaluative' — as has been rightly observed — and 'vital to his conclusions on practical affairs'.[115] Given Malthus's definitions, indeed, the only logical conclusion was that moral restraint constituted the only check which ought to be encouraged. Poynter has aptly summarized the whole question by pointing out that it is only because 'the preventive check ... was desirable only in the form of moral restraint, and Malthus's formulation of this virtue was so strict, [that] his pessimism on the future spread of the preventive check followed logically enough'.[116]

Malthus was aware of the moralistic character of his distinction, as may be discerned in an important footnote, which is generally overlooked:

> As the general consequences of vice is misery, and as this consequence is the precise reason why an action is termed vicious, it may appear that the term *misery* alone would be here sufficient, and that it is superfluous to use both. But ... we want it particularly to distinguish those actions, the general tendency of which is to produce misery, and which are therefore prohibited by the commands of the Creator, and the precepts of the moralist, although, in their immediate or individual effects, they may produce exactly the contrary. The gratification of all our passions in its immediate effect is happiness, not misery. ... There may have been some irregular connections with women, which have added to the happiness of both parties, and have injured no one. These individual actions, therefore, cannot come under the head of misery. But they are still evidently vicious, because ... they violate an express precept, founded upon its general tendency to produce misery ...; and no person can doubt the general tendency of an illicit intercourse between the sexes to injure the happiness of society.[117]

Bentham is eager to expose this 'inconsistency' in Malthus's thesis — inconsistency, as it was, at least from his non-religious utilitarian point of view. After having summarized these passages, Bentham adds:

> If population be an evil, then everything that operates towards the diminution of that evil must in so far be a good. ... On the other hand, that in misery evil is to be found in most unhappy abundance, is but too obvious. ... Vice itself is not misery: for the object which the word is employed to designate is an object different from misery; or without a contradiction in terms a different word cannot be employed for the designation of it. Not being itself misery, is it then productive of misery? ... if it be not, nor yet of loss of enjoyment, then it is not in any shape an evil.[118]

Bentham protests that moral restraint is evil, as in itself is any constraint: it would be a good only if it could preserve people from a more than equivalent mass of evil.[119] The remarkable — if ironic — conclusion to which Bentham comes, is that 'Vice then is the one thing to be encouraged. Moral Restraint the thing to be discouraged'.[120] In this context, Bentham pleads for the decriminalization of infanticide.[121] If all these eccentricities were not punished as they are by English laws:

> How prodigious is the amount of misery which might be saved in the world. Of this misery under the Greek and Roman laws and customs no small portion was doubtless saved.[122]

In 1818, writing *Not Paul but Jesus*, Bentham takes up this argument again, and develops it more fully with sharper irony. He refers to the author of the *Essay* as the 'Reverend dr. Malthus' and explains that 'vice' is the term used by Malthus for designating any unprolific gratification of the sexual appetite: he notes that the 'Reverend Gentleman' could not escape from designating it 'by some condemnatory name', and that 'by no other sort of name could this check be designated by a divine'.[123] Malthus uses the method of reasoning typical of asceticism. Against this, Bentham asserts:

> Under the system of utility ... it [vice] will be regarded at every rate not as an evil but as a good, in whatsoever degree it may operate ... with relation to the decrease of indigence. ... And that the unprolific gratification may save some one from prolific, and so from adding to the disease of indigence.[124]

From this Bentham can triumphantly conclude that, in so far as sexual nonconformity has any effect on population, it is only a beneficial one:

> Population checked by the eccentric mode, good would be produced: to the evil of over-population it would *pro tanto* be a remedy.[125]

This position was coherently maintained by Bentham in his later writings on the subject. In 1825, in his fourth version of an Appendix to a *Penal Code*, entitled *Sexual Eccentricities*, after having divided sexual eccentricities into four classes (*error temporis, error loci, error sexus, error species*), dealing with the third one, he explains:

> In the case of the *error sexus* the appetite for vengeance has for its real cause the wound to blind antipathy. Till of late years it had a more valuable cause, fear of damage to population. ... Since the publication of Mr. Malthus the apprehension of the public

has begun to take a contrary direction. Over population not under population is now seen to be the great cause. Yet of his three antidotes[126] to this evil, what he calls *vice* is one. By it he means any thing or at least he includes improlific gratification of the sexual appetite. But in so far as the practice is free from wrong to third person, virtue rather than vice should be the appellation of a practice by which, in so far as it operates in population, supposing it to operate in population, it would rank among those restrictions of which he recommends the use. But Mr. Malthus belongs to that profession by which the use of reason is abjured, to which acknowledgement of error is rendered impossible.[127]

Only when one knows the terms of Bentham's polemics against Malthus's thesis is it possible to resolve an apparent contradiction, pointed out by Stark. In a footnote, accepting Ogden's opinion 'that Bentham was definitely converted by Malthus in 1802', Stark nevertheless qualifies this by quoting the following passage in *Scotch Reform*, in which 'Bentham speaks somewhat disparagingly of Malthus's "inflexibility" and "bitter remedy" ':[128]

So redundant is the population of the Inner House found to be, when once any principle of reason or experience comes to be applied to it — so large the proportion of the mass that runs into *scoriae*, when once put into this test — so raging the disease, so urgent the pressure, that even Mr. Malthus, with his inflexibility, and his bitter remedy, might find himself at a loss to cope with it.[129]

No contradiction will be found in Bentham's argument if we bear in mind the critical approach he always adopted towards Malthus's theories, and in particular the criticisms he raised against the 'bitter remedy' of moral restraint, proposed by Malthus as the sole worthy check to the increase of population. But, to all this, Stark says, 'the economist need not give (...) more than a "passing glance" '.[130]

Male Homosexuality and Women

The only reason for punishing paederasty which Bentham considers 'more serious' is that it could:

produce in the male sex an indifference to the female, and thereby defraud the latter of their rights.[131]

The long list of objections by which Bentham answers this allegation shows once more his consistent concern for the interests of women.[132] He goes on to point out that the robbing of women of male attention would only be likely to occur in a very small community, with absolute sexual liberty (like Otaheite), where:

any effort of this kind [venereal] that was exerted by a male upon a male would be so much lost to the community of females.

In this case indeed, according to the 'felicific calculus', paederasty could be justified only,

upon this absurd and improbable supposition — that the male sex were gainers by such a perversion to a greater amount than the female sex were losers.

This, however, does not occur in any European country.[133] Therefore, Bentham concludes, 'as long as things are upon this footing (...) the women can be no sufferers for the want of solicitation of the part of the men'. And, incidentally, empirical evidence shows that this is not true even for Otaheite, where 'no restraint is laid on the gratification of the amorous appetite', not even on the gratification of that particular appetite.[134] Nor does it seem to Bentham that the influence of females upon men has ever been lessened by paederasty. The case of the Amazons is not considered as a counter-evidence to Bentham's examples; this would be an evident mystification, as:

> It was not by any such notions that the fables concerning the Amazons were produced. It was by the experienced tyranny of the male sex, not by any insensibility to their value in the character of instruments applicable to the gratification of sexual appetite, that in the picture given the separation owed its rise.[135]

Bentham adds:

> My wonder is how any man who is at all acquainted with the most amiable part of the species should ever entertain any serious apprehensions of their yielding the ascendent to such unworthy rivals.[136]

It is evident that Bentham's idea of homosexuality is here wholly equivalent to paederasty in its etymological sense, i.e., love of boys. For Bentham moreover, paederasty implied a 'transient relationship' which does not change the normal life of a man. He argues that 'this propensity does not exclude the regular taste', and therefore it is not prejudicial to marriage, as he tries to demonstrate by quoting many examples taken from history:[137]

> Let us be unjust to no man: not even to a paederast. In all antiquity there is not a single instance of an author nor scarce an explicit account of any other man who was addicted exclusively to this taste. Even in modern times the real womenhaters are to be found not so much among paederasts, as among monks and catholic priests.[138]

For all the examples and all the considerations given to this subject, 'it does not seem likely' to Bentham that the prevalence of this taste could ever rise to any considerable degree; but even in this case, 'the most considerable part of the motives to marriage would remain entire'.[139] Again, Bentham's argument moves here from a general homosexual relationship, to paederasty in its etymological sense — as he himself explains[140] — and is weakened to a considerable degree:

> All the documents we have from the antients relative to this matter ... agree in this, that it is only for a very few years of his life that a male continues an object of desire even to those in whom the infection of this taste is at the strongest. ... The objects of this kind of sensuality would therefore come only in the place of common prostitutes; they could never even to a person of this depraved taste answer the purposes of a virtuous woman. ... What kept a man from marriage was not the preferring boys to women but the preferring the convenience of a transient connection to the expense and hazard of a lasting one.[141]

And indeed, 'When free from all restraint (...) the choice was between paederasty and fornication, not between paederasty and marriage'.[142] For this rea-

son, such a connection is not only harmless to marriage, but sometimes even better for wives:

> Supposing the degree of infidelity in both cases to be equal, there seems reason to think that a woman would not be so much hurt by an infidelity of this sort as by an infidelity into which her husband had been betrayed by a person of her own sex. ... It is indeed a general observation that in all cases of rivalry the jealousy is the greater the nearer in all respects the condition of the rival is to your own.[143]

He admits that paederasty nowadays may sometimes exclude 'the regular appetite', but this, he claims, is due only to 'the severity with which it is now treated'. Here Bentham provides a striking example of sociological analysis of oppression:

> If we may so call it, the persecution they meet with from all quarters, whether deservedly or not, has the effect in this instance — which persecution has and must have more or less in all instances — the effect of rendering those persons who are the objects of it more attached than they would otherwise be to the practise it proscribes. It renders them the more attached to one another, sympathy of itself having a powerful tendency, independent of all other motives, to attach a man to his own companion in misfortune. This sympathy has at the same time a powerful tendency to beget a proportionable antipathy even towards all such persons as appear to be involuntary, much more to such as appear to be the voluntary, authors of such misfortune. ... It would therefore be rather singular if under the present system of manners these outcasts of society should be altogether so well disposed towards women as in antient times when they were left unmolested.[144]

Bentham himself is aware that this analysis does not apply only to homosexuals, citing examples of other persecuted groups:

> The Helotes had no great regard, as we may suppose, for the Lacedaemonians; Negroes, we may suppose, have not now any violent affection for Negro-drivers; the Russian boors for the Boyards that are their masters; native Peruvians for Spaniards; Hallashores [?] for Bramins, Bice and Chehterees; thieves for justices and hangmen; nor insolvent debtors for bum-bailiffs.[145]

This passage shows that our method of considering Bentham's attitude towards the oppressed as a whole is at least not arbitrary.

Causes of Oppression

Having refuted all the motives which have been put forward for justifying the most severe punishments of homosexuality, Bentham tries to bring to light the true reasons that prompted this kind of discriminatory legislation. Here we find one of the *leit-motivs* of Bentham's writings on the oppressed: when facing the reality of an oppressed group, Bentham attempts to discover the origins of oppression. As it has been shown in the case of women, and as will be demonstrated for all the other categories of oppressed people, Bentham is never satisfied by the commonly 'alleged reasons' for such oppression. In other words, these alleged reasons do not stand up to Bentham's close scrutiny: in

the case of the 'tyranny' exercised upon women, their intellectual inferiority is inadequately proved, since what seems to be an inferiority results from the poor education that they have received and the conditions in which they are kept, rather than from any more fundamental deficiency. In the case of sexual non-conformity, and of male homosexuality in particular (which is the most severely punished), none of the alleged reasons provides, in Bentham's view, a satisfactory justification for the severity of the laws by which it is punished.

In the same way, it can be shown for the following categories of oppressed people, that this way of proceeding is wholly consistent with the ideals of utilitarian philosophy, which holds that the first and highest goal is 'maximizing the happiness of the greatest number'. To exclude a certain category from this 'number' must be a decision based on very serious reasons and calculations. To decide not only *not* to maximize the happiness of a group — such as women — but also, in the case of homosexuals, to maximize their unhappiness through punishment, must require even more serious justification. Bentham's attitude towards this category of oppressed people is thus perfectly consistent with the rest of his utilitarian philosophy:

> It may be a matter of curious speculation to the Philosopher to consider, how it should have happened that this ... in particular should have met with such hard measure from Legislations, beyond what its influence upon the happiness of Society, ... appear to make it deserve. How it is that when we hear of the Hottentot who never makes his meal [?] of Horse flesh till it has served him for a saddle, all that we say of him is that he is a nasty fellow; when we are told of a man in whom the amorous appetite has taken this direction, the cry is 'To the Gibbet' or 'To the Stake'.[146]

It is also remarkable that this *leit-motiv*, so consistent with his more general theory, remained unchanged throughout all his writings on sexual non-conformity: from his very early writings up to his last, he adhered steadfastly to the strong conviction that the reasons given for justifying the severity of law against sexual irregularities were not its actual causes.[147]

The true origin of the legislation which prosecutes homosexuality, says Bentham, is not to be looked for in any of the 'alleged mischiefs' discussed above, but only on the ground of antipathy.[148] Giving clearer expression to his thought, Bentham argues that the disposition to punish sexual non-conformity 'seems to have had no other ground than the antipathy', arising from the following circumstances, which are styled by the philosopher as 'Ill-principled and unostensible causes'.[149] Bentham elaborated seven basic reasons to account for the powerful disposition to punish sexual non-conformity. These were: 1) The physical antipathy to the offence; 2) Asceticism and philosophical pride; 3) Religion; 4) Hatred of Pleasure and Horror of Singularity; 5) Precautionary defence against the imputation when well-grounded; 6) Desire of praise on the score of virtue; and 7) Confusion between moral and physical impurity.

The Physical Antipathy to the Offence

The act is to the highest degree odious and disgusting, ... not to the man who does it, for he does it only because it gives him pleasure, but to one who thinks [?] of it. [But] he has the same reason for doing it that I have for avoiding it. A man loves carrion ... much good may it do to him. But what is it to me so long as I can indulge myself with fresh meat? But such reasoning, however just, few persons have calmness to attend to. ... From a man's possessing a thorough aversion to a practice himself, the transition is but too natural to his wishing to see all others punished who give into it. ... Look the world over, we shall find that differences in point of taste and opinion are grounds of animosity as frequent and as violent as any opposition in point of interest. ...

To disagree with our taste [and] to oppose our opinions is to wound our sympathetic feelings and to affront our pride.[150]

At this point, Bentham's line of argument comes to a very interesting comparison between intolerance in matters of taste and in matters of opinion: the mechanism is seen as being the same. Heresy is compared to homosexuality, and the causes for their both being subject to violent and prejudicial antipathy are seen as analogous. The analogy of this mechanism is pointed out by Bentham on many different occasions. He argues that if the propensity to punish was to be admitted as a sufficient ground for punishing:

we should be forced to admit the propriety of applying punishment ... to any offence for instance which the government should find a pleasure in comprising under the name of heresy. I see not, I must confess, how a Protestant, or any person who should be looking upon this ground as a sufficient ground for burning paederasts, could with consistency condemn the Spaniards for burning Moors or the Portuguese for burning Jews.[151]

As he later explained more extensively:

The Spanish *auto da fé*, in which, under the name of heretics, men used to be burnt alive, is to every Englishman an object of abhorrence. Yet in a subject of infinitely less importance, for a difference not in opinion, but merely in taste, with no other difference than that between hanging and burning, will the same men with indefensible satisfaction behold the same punishment inflicted on a fellow-countryman in every other respect void of offence.[152]

There is no difference between the two, as:

no paederast can be more odious to a person of unpolluted taste than a Moor is to a Spaniard or a Jew to an orthodox Portuguese.[153]

The 'difference in taste' is in fact explained by Bentham as a difference which makes 'to the one the appetite in one mode just as natural, just as unavoidable, as to the other the same appetite in the other mode'.[154] He gives the example of James I, 'who conceived a violent antipathy against (...) Anabaptists on account of their differing from him in regard to certain speculative points of religion'.

The same king happened to have an antipathy to the use of tobacco. But as the circumstances of the times did not afford the same facility for burning tobacco-smokers as for burning Anabaptists, he was forced to content himself with writing a flaming book against it.[155]

The analogy between heresy and homosexuality is based also on the fact that they are both 'imaginary crimes':

> What distinguishes a real from an imaginary crime, is precisely this, that with regard to the 1.st all observations that can be introduced to palliate it, being either false in point of fact, or inconclusive in point of reason, admit in general of a ready and at the worst of a satisfactory reply.[156]

Such is the case, for example, of 'Rape or Robbery'; 'on the contrary, in the case of the latter, where that persuasion has no other foundation than prejudice', the discussion becomes very dangerous and calls down on its author 'invective and exclamation'.[157] It is not by chance that the passage quoted above is taken from Bentham's manuscript on sexual non-conformity, and that, in his *Theory of Legislation*, Bentham had listed heresy among 'imaginary offences'.[158] But whereas the discussion on heresy seemed to have reached a rational point for Bentham, at least in Protestant countries, this was not yet the case with homosexuality, for which punishment was still based on *physical antipathy*. If this physical antipathy should ever become a general rule, it would cause the destruction of mankind. The gratification of physical antipathy, not of irregular sexual appetites, was dangerous for the human race. By a clever manoeuvre, the charge against sexual eccentricity is turned by Bentham against those same people who would condemn and punish it:

> The man who, on the ground of the odiousness of the practice, ... calls for punishment to be inflicted on those by whom the unpleasant emotion is produced, sets up a principle of which, if adopted, nothing less than extirpation of the human race would be the result. That without any other ground the bare existence of the affection of hatred should afford a sufficient justification for the gratification of it — did any notion more atrocious than this, or more universally destructive, ever gain entrance into the human breast?[159]

This argument seemed particularly efficacious to Bentham, who propounded it again and again:

> You like oysters: I do not: therefore you ought to be killed, and I ought to do my utmost to have you killed. In a Protestant country at any rate no such logic as this has as yet been heard.[160]

Antipathy is, together with sympathy, recognized as a spring of action by Bentham, although not reliable enough to found a whole system of legislation upon it. All the more negative is Bentham in his judgement, if such antipathy, grounded on prejudice, is taken as the only reason for legislation — which should on the contrary be founded only on rationally ascertained utilitarian considerations:

> If the propensity to punish were admitted in this or any case as a sufficient ground for punishing, one should never know where to stop. Upon monarchical principles, the Sovereign would be in the right to punish any man he did not like; upon popular principles, every man, or at least the majority of each community, would be in the right to punish every man upon no better reason.[161]

Religion

Antipathy and philosophical pride are reinforced by religion:

... seconded by pride and blind antipathy, what is called religion has now for about 18 centuries, exerted itself in the endeavour ... to convert the crop of sweets into a crop of bitterness ... as to substitute positive suffering to positive enjoyment. For the establishment of evil in both these shapes[162] the pretence has been the acquisition of the favour / sympathy / ... of an Almighty being, who, by a self-contradicting proposition is at the source styled benevolent: and not simply benevolent but supremely benevolent.[163]

This appeared an important contradiction in religious belief to Bentham, who came back to this point frequently.

For it is God's pleasure that in the present life we should give up all manner of pleasure ... which is the sure sign and earnest of the pleasure he will take in bestowing on us all imaginable happiness hereafter; that is, in a life of the futurity of which he has given no other proofs than these.[164]

And elsewhere:

The same person who ... would represent the Almighty as desiring that without equivalent a man should forgo pleasure ... would probably not endure that to that same being any such epithet as malevolent should be applied. ... It is easy to see that in imputing to the Almighty a desire to see men forgo pleasure ... this determination will be much stronger in the case when the pleasure is attached to any irregular operation of the sexual ... appetite.[165]

According to the ideas of 'these moralists and these religionists':

pleasures ... are never allowed for their own sake, but for the sake of something else. ... Eating and drinking by good luck are necessary for the preservation of the individual: therefore ... they are tolerated. But if you eat or drink otherwise than or beyond what is thus necessary, ... for the sake of pleasure, says the philosopher 'It is shameful'; says the religionist 'It is sinful'.[166]

The same can be said for sex:

The gratification of the venereal appetite is also by good luck necessary to the preservation of the species: therefore it is tolerated ... but not as a good, but as a lesser evil. It may be asked indeed, if pleasure is not a good, what is life good for, and what is the purpose of preserving it? But the most obvious and immediate consequences of a proposition may become invisible when a screen has been set before by the prejudices of false philosophy or the terrors of a false religion.[167]

It followed, in the case in which the gratification of the venereal appetite is not accompanied by a contribution to the preservation of the species, 'then the cause of tolerance has no place'.[168] Religion has exerted an influence which is considered by Bentham to be a kind of tyranny: 'no tyrant has as yet stood forth' and prohibited or commanded so many 'extravagances' as it has been done in the name of religion:

By the physical appetite of the tyrant has the standard been fixed: from that standard every other appetite has been regarded as an aberration: and for the crime of aberration the penalty is death.[169]

This passage reminds one of an attitude that we have already noted with respect to women: oppression has for its opposite 'tyranny' in Bentham's terminology. Therefore his interest and attention are especially devoted to analysing the way in which this tyranny is exerted. As always, legislation has a fundamental role: the tyrant sets up laws and rules which favour him or his group, and puts up obstacles to, or punishes his rivals or his enemies. But religion and ascetic philosophy are not only responsible for generating the antipathy towards the acts of sexual non-conformity, which, in themselves, could not produce mischievous effects. The fact is that asceticism implies 'love of reputation, the desire of becoming to men in general an object of admiration', and religion implies 'love of amity, of the amity of an Almighty being, the desire of ingratiating himself with that same being'. Thus, 'after producing antipathy towards the obnoxious act', religion and asceticism transfer this from the act itself to its agents. Bentham explains this phenomenon by a remark which is based on psychological observation:

> for reccommending oneself to any person's favour no method more effectual can be found than to take and treat as his enemies all that person's enemies ... when that person is the Almighty himself, he being infinite, such ought to be our love, such consequently our hatred for his enemies. ... Thus, we have an antipathy — an antipathy towards the person — naturally produced and wound up to the highest pitch.[170]

Bentham's attack on the tyranny of religion, however, is not at all generic; on the contrary he distinguishes between the different attitudes adopted by different religions towards this question. The ancient Greek religion did not condemn such practices:

> It was among the Jews and in the days of Moses that religion ... for the first time attached itself to this ground. In the breast of Moses the sentiment of antipathy found an object and an exciting cause in every sort of irregularity belonging to this class. ... In the head of tyranny, at the nod of caprice, physical impurities were converted into moral ones. Under Moses, as under Bramah, the list of impurities thus created out of physical impurities or out of nothing was a labyrinth without an end.[171]

Again, analysing the tyranny of religion, Bentham tries to show the way in which it is exerted:

> The more extensive and ... the more indefinite the system of penal law, the more transgressions on the part of the subject many ... the more fear ... the more power in the hands of the ruling few. When the people are in a shivering fit, the physician of their souls is absolute.[172]

Although Mosaic Laws represent the historical origin of the present attitude, Bentham's interest is particularly concerned with Christianity, whose doctrine is thoroughly examined with respect to this subject. There is indeed an interesting — and hitherto overlooked — connection between Bentham's writings on religion and those on sexual non-conformity. There is important evidence to support this interpretation.

First of all there is the huge amount of unpublished manuscripts, entitled *Not Paul but Jesus*, which should have been the continuation of the homonymous work edited by Francis Place and published in 1817. The published work

deals with the historical events of the lives of Paul and Jesus, whereas the unpublished part is a discussion on the doctrinal diversities between the two. In the latter part of the work, indeed, the differences between the doctrines of Paul and Jesus are measured by their different attitudes towards this problem.[173] Many of the most interesting passages on sexual non-conformity are thus to be found among the unpublished chapters of *Not Paul but Jesus.*

Secondly, among the manuscripts on *Sex*, written between 1814 and 1816, we find two folios entitled *Sex* and subheaded *Not Paul but Jesus.*[174] This suggests not only that there is a common source to be found in Bentham's way of associating ideas about religion and sex. It seems that the first intimation, the first inspiration for a work on the differences between the doctrines of Jesus and St. Paul, came to Bentham when he was dealing with sexual non-conformity: and indeed, in the 'General Idea of the Work', *Not Paul but Jesus* is actually proposed as a title for a work on sex.[175] It is important here to note that Bentham was strongly convinced that the Christian condemnation of sexual irregularities was due to Paul's and not to Jesus's doctrine:

> On the whole field in which Moses legislates with such peremptory asperity, Jesus is altogether silent. ... Jesus has in the field of sexual irregularity preserved an uninterrupted silence. Jesus was one person, Paul was another. The religion of Jesus was one thing, the religion of Paul another; where Jesus had been silent, Paul was vehement.[176]

> Asceticism is not Christianity but Paulism.[177]

Hatred of Pleasure

The combination of religion and asceticism is therefore said by Bentham to have caused a hatred of pleasure, with consequences that are not 'less disastrous'. It has been witnessed by other 'authorities':

> It is an observation of Helvétius and, I believe, of Mr. Voltaire's, that if a person were born with a particular source of enjoyment, in addition to the five or six senses we have at present, he would be hunted out of the world as a monster not fit to live[178]

To the hatred of pleasure in fact, Bentham adds also the *Horror of Singularity*:

> In persons of weak minds, anything which is unusual and at the same time physically disgustful is apt to excite the passion of hate. Hatred when once excited naturally seeks its gratification in the tormenting or destruction of the object that excited it.[179]

One should not forget that Bentham had listed *Hatred* among the primary sources of crimes, in his *Theory of Legislation*;[180] besides sexual non-conformists, Bentham brings the example of 'the killing of toads and spiders', 'innocent animals who are punished in this way for the crime of being ugly', and that of hermaphrodites.[181]

Desire of Praise on the Score of Virtue

This fifth point discussed by Bentham is a consequence of the preceding ones: 'Occasions are not altogether wanting in which, without any expense in the

article of self-denial, the praise of virtue is found capable of being acquired', such as, for example, by manifesting one's hatred for any vice. Indeed,

> Paying for virtue the fair price, a man would have to keep in a state of subjection every inordinate appetite; ... obtaining it at no other price than that of joining in the torrent of unprovoked invective (he has to impose no such restraint).[182]

This meets also the 'opportunity of affording gratification to the *passion of antipathy*, without danger of punishment (...): in a word, without self-denial in any shape':

> A man may show himself virtuous with little self-denial and severe with little danger in the condemnation of propensities which are not his own.[183]

In this way, Bentham makes a strong attack, although not as explicit as elsewhere, on the theory of asceticism: 'moralists and religionists' enjoy such a success among the public in exciting its antipathy towards sexual non-conformity, not because of the cogency of their reason, but only because they point to an easy way of satisfying everyone's desire for praise, without demanding self-denial. These are the very reasons, the 'unostensible causes' of the severity which characterizes punishment of sexual non-conformity: again Bentham demonstrates a consummate skill in turning an argument in his favour. Man is shown to be moved — as always, and in spite of appearances — by the principle of utility, in obtaining praise without self-denial.

Confusion between Moral and Physical Impurity

Bentham considers that this cause, which he examines repeatedly, has the most mischievous consequences. At this point he digresses at length on the theory of language, being, as always, very attentive to any linguistic aspects of the subject with which he is dealing, and particularly so when the subject is the origin of a prejudice. In his opinion, prejudice is cultivated by the 'fictitious' usage of words. Here his attention is directed to the term 'impurity', as 'from the word impurity has flowed a mass of misery'.[184] Misery is derived not so much from *physical* impurity, as from the confusion arising on this subject, that has transformed it into *moral* impurity:

> To the state of the body belong bodily purity or impurity; to the state of the mind belong mental, otherwise called moral purity or impurity; ... but when from impurity in the body the mind is deemed impure ... then comes the practical error and the practical misery its results. ... Filth is in the body, therefore guilt, sin, wickedness is in the mind: here comes the false logic, here comes the wandering of imagination,[185] the pernicious error. When covered with dirt of a consumable nature by being exposed to fire, substances of an inconsumable nature are purified. Error is now mounted upon error.[186]

Bentham continues to explain the internal logic of this error:

> By being exposed to the fire some bodies that have been covered with filth are purified; it is desirable that whatsoever has been rendered impure should be purified; ... therefore from the impurity in question by the exposure of the whole body in question

to the fire, the soul that belongs to it will be purified. Upon the strength of this logic, undefinable is the multitude of innoxious individuals, whose bodies have been consigned to the excruciating and devouring flame.[187]

Bentham's passion for the theory of language prompts a further linguistic analysis of the terms 'natural' and 'unnatural'. This critique is particularly important, because it marks a turning point in Bentham's attitude towards the whole question. In 1785, in his Essay on *Paederasty*, he had pointed out that, contrary to all prejudices which created great alarms regarding the dangers derived from sexual non-conformity, he did not believe it possible that 'it should ever get to such a height as that the interest of the female part of the species should be materially affected by it'. At this point, however, he argues:

> Could we for a moment suppose this to be the case (that the unnatural propensity should ever get the better of the regular and natural one), I would wish it to be considered what meaning a man would have to annex to the expression, ... and the epithet of unnatural. ... All the difference would be that the one was both natural and necessary whereas the other was natural but not necessary. If the mere circumstance of its not being necessary were sufficient to warrant the terming it unnatural it might as well be said that the taste a man has for music is unnatural.[188]

Bentham's polemic is here directed not only against current moral and religious beliefs, but also against his 'master' Beccaria. As we have already seen in the case of women, Bentham is particularly eager to stress the points where his thought differs from that of his masters and inspirers. Beccaria had spoken out against the severity of the punishment bestowed upon paederasty, and tried to understand this phenomenon by explaining its origins, but he nevertheless condemned it, on the ground that it be 'an activity useless to humanity', and in which:

> tutto il vigore della natura, che si sviluppa, si consuma inutilmente per l'umanità, anzi ne anticipa la vecchiaia.[189]

Besides the already refuted argument of noxiousness — Beccaria used a utilitarian argument, and one which is promptly overturned by Bentham. On the other hand, Beccaria did not use the term 'unnatural', which is Bentham's main target at this point:

> The truth is that by the epithet *unnatural* ... the only matter of which it affords any indication ... is the existence of a sentiment of disapprobation, accompanied with passion ...: a degree of passion by which ... he endeavours by the use thus made of this inflammatory word ... for the purpose of inducing [the others] to join with him in producing pain in the breast of him by whom the passion has been excited.

'Unnatural' is therefore not an objective term, neutrally attributed to an inclination, but an evaluative term, which raises passions:

> By the use of words which have no precise meaning beyond an expression of the state of the affection of him by whom they are employed ..., words such as *profligacy, abomination*, and so forth, men work themselves up into a state of passion from which all rational consideration is excluded.[190]

These considerations had a direct effect on Bentham's own way of writing on the subject, without being fascinated by the 'tyranny of the language'.[191] From 1785 onwards in fact, we see that he tries to use an increasingly neutral terminology. He thus passes from the use of terms such as 'inconceivable propensity', 'filthiness', 'incomprehensible desires', 'miserable taste', 'perversion', etc., to more descriptive terms, such as 'unprolific appetite', 'innoxious eccentricities of the sexual appetite', etc.

I do not agree with Crompton's interpretation that this change in Bentham's terminology can be connected with the evolution of his thought with respect to the problem of population.[192] The terminological evolution can be traced directly to Bentham's linguistic philosophy. Here, as in many other instances, analysis allows him to see through the screen of prejudice; prejudice being always covered by a 'linguistic curtain', as he puts it in his *Theory of Fiction*. His change of terminology is in fact already perceptible in his writings from 1785 onwards, long before he changed his views on population.

A Utilitarian Re-examination

Having challenged all the 'alleged reasons' for punishing homosexuality and other sexual irregularities, and revealed the real, 'unostensible' causes of the persecution to which 'paederasts' in particular are subjected, Bentham comes finally to examine the whole question from a purely utilitarian point of view. A system of legislation based on the principle of utility — such as Bentham tried to institute by writing, among other things, a new *Penal Code* — had to judge each question from this point of view. The argument of decency is not valid, for, as Bentham argues:

> In the Physician the attention / regard / due to decency is acknowledged to be bounded by utility; there is no less reason why it should be so in the Statesman.[193]

We must note that Bentham's writings on sexual non-conformity were all originally conceived as a chapter, and later as an Appendix of his *Penal Code*, even if in the 1810s the material for it grew so much that it suggested to Bentham the idea of writing an independent treatise on the subject.[194]

To put all sexual irregularities to the utilitarian test is to examine their 'tendency to subtract anything from the aggregate sum of human happiness',[195] and also to examine their possible tendency to augment the general amount of happiness, of individuals as well as of the whole community. It means weighing the pros and cons of granting them a total liberty. Once again Bentham stresses the responsibility of the legislator towards mankind, for:

> If a judge does injustice, it is to one man; if a Legislator, it is to a million.[196]

Bentham makes a series of long lists of these pros and cons, with several variations covering the different periods when he wrote on the subject.[197] Among others, he listed the *Supposed Advantages deriving from this Punishment*;[198]

Real Mischief from the Punishment and Restraint applied in these same cases;[199] *Beneficial Tendencies of Certain of These Modes.*[200]

Having discussed thoroughly the abolition of the punishment of paederasty, Bentham does not add much to explain the same attitude towards other kinds of sexual irregularities. Perhaps because they all meet with a lesser degree of antipathy and fury in condemnation, and because they are generally punished less heavily. Such is the case of the *error sexus* in the female case,[201] and of the *error species.*[202] Some more words were added by Bentham on the condemnation of *error loci* not combined with *error sexus*, in which 'English Judicial Law has outstretched Jewish Law':[203]

> If there be one idea more ridiculous than another, it is that of a legislator who, when a man and a woman are agreed about a business of this sort, thrusts himself in between them, examining situations, regulating times and prescribing modes and postures. The grave physician who, as soon as he saw Governor Sancho take a fancy to a dish, ordered it away is the model, though but an imperfect one, of such a legislator.[204]

For all these reasons Bentham proposes an 'all comprehensive liberty', answering immediately to several possible objections.[205] From the philosophical point of view, the most interesting objection is certainly that which states the loss of gratification of antipathy, and the mortification caused by the 'punishment being suspended'.[206] Bentham's answer to this objection is interesting, in that he expresses the conviction that the pain of the loss of gratification may be reduced by demonstrating the groundlessness of antipathy itself:

> The antipathy in question ... may therefore be assuaged and reduced to such a measure as to be no longer painful, only in bringing to view the considerations which shew it to be ill-grounded.[207]

No objection has been considered valid, and Bentham goes on to give us a list of the benefits that could result from his proposal for an 'all comprehensive liberty'.

Advantages of Proposed Liberty

1) Benefit to morality in general, viz. to genuine morality by the exclusion of false and spurious morality;

2) Increase in the sum of happiness derived from: a) The bringing within each man's reach a greater quantity of pleasure (...) than (...) would otherwise be possible, b) The removing of the obstacles which error and prejudice have hitherto, with such fatal success, opposed to his making use of those pleasures which have been lying within his reach;

3) Prevention of other offences — the gratification of this 'innoxious appetite' preventing from searching gratification in 'really noxious ways'.

The list of advantages deriving from the proposed liberty, however, though substantial, is not very long, because Bentham thought that:

> When on any alleged grounds whatever a man in power attaches prohibition to any practice, it belongs to him to show cause why he has done so.[208]

This is exactly the same attitude that Bentham showed towards the question of women's admission to universal suffrage:

> If a man who calls for the right of suffrage to be given to any one human being, calls for its being refused to any other human being, it lies upon him to give a particular reason for such a refusal.[209]

In Bentham's opinion, the exclusion of any number of people from the possibility of enjoying an advantage and therefore of augmenting their happiness, must always be justified on a utilitarian ground. It is evident that such justification was all the more necessary in the case of punishment, which not only restrained enjoyment, but caused direct pain:

> Punishment [is] in no case justifiable without proof of the demand for punishment; the proof lies upon him by whom punishment is proposed and advocated.[210]

Bentham can therefore conclude, triumphantly:

> By the removal of that cloud of prejudice by which this part of the field of morals has to this time been obscured, what calculation shall comprehend the mass of pleasure that may be brought into existence, the value of the service that may be rendered to mankind, in a word, the mass of good that may be done?[211]

On the basis of utilitarian reasoning, ignoring antipathy and prejudice, Bentham proposes a complete liberty in the field of sexual behaviour — given that the irregular practices do not harm anyone, and are committed with the free consent of the parties involved. His attitude towards this question is totally consistent with his more general philosophy, which is applied here to a '*burning* question' of his times and ours.

Biographical Notes

Bentham's writings on sex must come as a surprise to anyone who is acquainted with the existing literature on Bentham. Apart from the more analytical sections in which he uses his lists and classifications, most of these writings are set forth in a very lively, often witty style — although this wit is largely absent from the later ones — which in some way resembles that of the oft quoted Voltaire:

> Different men will have different opinions, but, for my own part, I must confess I can not bring myself to entertain so mean an opinion of the charms of the better part of the species or of the taste of the other as to suppose it can ever be necessary to send a man to make love with a halter about his neck.[212]

The image that emerges from these writings is very far from the stereotyped one, provided by Bentham biographers, disciples, and friends: instead of a rather boring old man, as profound in philosophical knowledge as he is childish in feelings, lacking any experience in life, the man who emerges from these (and other) manuscripts that I have consulted for this work could have sat in the most urbane and sophisticated intellectual *salons* of his time. Far from

the dull stereotype, Bentham would have sparkled in these *salons*, being learned and profound enough to obtain consideration, yet dealing with subjects close enough to everyday experience so as to captivate his audience. Here is an example of his conversation:

> [Lord Coke] The same purist, very well read in the Rolls of Parliament, but very ill read in the great Book of Human Nature, informs us upon the authority of these Rolls that this vice [paederasty] was brought into England by the Lombards .... So strong is the madness for etymologyzing both for words and names .... Not but that it may be, that those who set on foot the petition which he quotes, had seen it practised by some Lombards. The good people of this Nation, like the good people of any other nation are ready enough to complaint [?] the neighbours, and particularly those who stood lowest in their affections, with the authorship of any custom or appearance which they find indecorous [?] .... Thus a certain disease which everyone knows now to have been imported by Columbus and Spaniards from America, has made almost the tour of Europe for its birth we give it to our rival nation.[213]

In the case of English Marine Law, which punishes homosexuals 'with death, without mercy', his comment is:

> Of all the offences of which a man in the maritime service can be guilty, burning a fleet, betraying it to the enemy and so forth, this is the only one which it was thought proper to exclude from mercy. The safety of the fleet and of the Empire were in the eyes of the legislator objects of inferior account in comparison with the preservation of a sailor's chastity.[214]

The contrast between Bentham as he is revealed for example, in his letters about Miss Dunkley, his friendship with Aaron Burr, his writings about sexual non-conformity, and the stereotyped Bentham so often described in the literature on him, is astonishing. Such a striking contrast might have been produced by a schizophrenic personality — as Bentham's clearly was not; or by a great hypocrite or a great actor — which Bentham was not either. The explanation would seem to reside not in Bentham's personality, but in the work of his biographers, starting with J.S. Mill's profile of him.[215] In this connection it is worth noting that almost eighty years ago,Halévy affirmed that: 'Dumont tones down Bentham's style; in Bentham's manuscripts we can immediately recognise the school at which he learned to write in French so easily; it is easy to recognise the child who read the *Candide* at the age of ten, and translated the *Taureau Blanc* at twenty-five; the reader of the *Esprit des Loix* and the *Essai sur les Mœurs.* ... See also the kind of philosophical tale, with Adonai, Adam and the Angel Gabriel as its characters, which Bentham pretends to have borrowed from a recently discovered fragment of the Talmud, and which he places under the *Rubrique générale: Droit* of his *Code Civil.* Dumont suppresses it; this was not altogether unjustifiable, for the tale is pretty bad. But the page has a Voltairian flavour which dates the work, and makes one regret the suppression after all'.[216]

As has been shown here, Bentham had indeed his own sentimental life, with its joys and dramas, as most common mortals have. Bentham was not a 'child', if by childishness we mean the candid ignorance of all the passions which move human behaviour. Bentham knew, studied, and was all his life moved by a full

range of such passions, from the love of honour and reputation to the most unusual — he would say 'eccentric' — sexual desires.

Besides suggesting the need for a re-examination of Jeremy Bentham's personality, his writings on sexual non-conformity merit the greatest attention for the new evidence they provide on many crucial questions of his philosophy,[217] and for the new light they shed on several hitherto misunderstood aspects of his thought. Among the latter, are Bentham's attitudes towards colonisation and poor relief — which are discussed below — and a 'somewhat mysterious aspect of Bentham's work on Blackstone'.[218] Referring to Bowring's 'Memoir of Bentham', Burns and Hart speculate about a work entitled 'Castrations to the Comment on Commentaries', supposedly an unpublished chapter of Bentham's published work *A Comment on Commentaries.* According to Bowring, the volume which evolved from this chapter was 'a bitter animadversion on Blackstone, principally on account of his defence of Jewish law'.[219] Burns and Hart, explaining the difficulties of tracing this work in Bentham's papers[220] rightly connect it with some manuscripts to be found in Box LXXIV of University College, London, which contain an important part of Bentham's unpublished writings on sexual matters. These manuscripts — written in the same period as the *Comment* — are entitled 'Castrations to Mr. B's / ... / by the Daemon of Socrates', and constitute a preface to a work on homosexuality. The connection between the attack on Blackstone and homosexuality does not depend merely upon 'coincidental recurrence of the terms "Castrations" ', as the editors cautiously warn us.[221] As Burns and Hart have rightly suggested, and as has been proved by the evidence provided in this chapter, Blackstone was indeed one of the main targets of Bentham's writings on sexual non-conformity.

It is clear that the incomplete 'Alternative Draft of Chapter I.3, on Divine Law', published by these editors as 'Appendix C' to Bentham's *Comment on Commentaries,*[222] fits perfectly with the arguments used by Bentham for contrasting 'Divine Law' — and particularly 'Jewish Law' — as a source of authority in matters relating to sexual non-conformity. The absurdity of taking Divine Law — another 'fictitious' term for 'Natural Law' — as a higher authority than positive law, is demonstrated by Bentham with a lot of examples taken from the Bible. One of them, as we have already seen, is about the possibility of punishing such offences as simple fornication and murmuring against authority by the death penalty.[223] The argument of Sodom and Gomorrah could well have constituted the two missing pages in the manuscript published as 'Appendix C', thus logically continuing with the long satirical list of 'biblical laws' which has been published.[224] As to 'Castrations to Mr. B's (...) by the Daemon of Socrates', the evidence provided in this chapter suggests that the whole title might read 'Castrations to Mr. Blackstone's *Commentaries* by the Daemon of Socrates'.[225] Only seven folio pages later in the same Box LXXIV, we find a first draft of a scheme for a work entitled *Apologie pour Socrates, Socrates redivivus, ou Essai moral et politique sur l'amour Socratique.*[226] As it has already been pointed out, Bentham conceived this work under Voltaire's influence, in 1785. Blackstone, however, was still one of Bentham's prime targets, and it is

highly probable that the latter added his earlier fragments addressed against Blackstone as a preface to the newly projected work on the same subject, as Bentham often used to do.

Furthermore, Bentham's attitude towards religion and the growth of population is certainly illuminated by what is contained in these writings. It has already been observed that Bentham's ideas on population and on religion were known by his most intimate friends. Besides Francis Place himself, they were known to Richard Carlile (the author of *Every Woman's Book: or, What is Love?*, published in 1825), to the young J.S. Mill and to Wooler.[227] In this connection, an interesting and hitherto unexploited source is *the Private Journal of Aaron Burr*, which has already proved useful for revealing some unknown aspects of Bentham's private life. Burr's testimony is highly interesting in this respect. In January 1812 he writes: 'At Q.S.P.,[228] which you know, is J. Bentham's; paid Mrs. S., and pillaged you of three pairs of beautiful stockings, which I intended to give to the three Godwins. ... J. Bentham had asked me to dine, which refused; but while there we had a great dispute about the affair of Sodom and Gomorrah, and the cause for which they were burned; the particulars of which I will relate, but can't now write. There being no Bible at hand to settle the question, we parted, each with his own opinion. At Godwin's I consulted him, who, you know, or perhaps do not know, was bred a priest. He turned to the passage, and really there is ground for the strange opinion of J. Bentham'.[229]

From this testimony we know that Bentham did not keep his ideas so secret as one would believe, from reading about the fears which accompany each of his writings on sexual non-conformity. Burr knew not only Bentham's ideas on Sodom and Gomorrah, as Bentham informed him as early as in November 1808, when he was still newly acquainted with the American friend:

> Evening with Bentham; conversed of tatooing, and how to be made useful; of infanticide; of crimes against Nature, etc. etc.[230]

It may be thus argued that Bentham's 'eccentric' views were known not only by his most intimate friends; besides Godwin and Burr, Willian Haley's innuendos are particularly important. Himes has in fact shown that, in his magazine the *Bull Dog*, Haley attacked Place and Carlile, arguing that behind their writings and even the works of agitators, lay Bentham's mind and pen.[231] All the evidence, however, seems to confirm his cautious attitude, as witness the famous letter he wrote to Place in 1831: 'Dear Good Boy ... I asked him [Prentice] why he called you a bad man; his answer was because of the pains you had taken to disseminate your anti-over-population (I should have said your over-population-stopping) expedient. The case is, he is juggical.[232] ... I observed to him that ... if every man were to quarrel with every man whose opinions did not on every point whatsoever, with his, the earth would not be long burdened with the human race. As to the point in question, I took care not to let him know how my opinion stood; the fat would have been all in the fire, unless I succeeded in converting him, for which there was no time; all I gave him to understand on the score of religion as to my own sentiments was,

that I was for universal toleration and on one or two occasions I quoted scripture'.[233]

Certainly Place was being more consistently utilitarian — in the sense intended in Bentham's later works, especially in the *Deontology* — than Bentham himself, when he asserted that: 'The author is perfectly aware that he has exhibited views and proposed remedies which will with some persons expose him to censure; but he is also aware of the utility of thus exposing himself'.[234]

Bentham's attitude towards these writings and the opportunity of having them published has not always, however, been so consistently cautious. Here we should take into consideration a curious document, written by Bentham in 1831, the same year as the letter to Place quoted above. In this manuscript, Bentham appears particularly struck with intimations of mortality, when transcribing his last thoughts on suicide and sex:

> By having written what follows I have relieved my mind from ... an anxiety ... My fear was — lest by dying — ... my fellow men ... should be deprived of the happiness which it is my hope thereby to give them.[235]

Can it be that the philosopher was relieved by the mere fact of having written on these subjects; for we can find no specific instructions for having this material published after his death, as has been found in the case of his religious writings?[236]

It might also be suggested that Bentham's mind was relieved by the awareness that his ideas were known and diffused by his younger disciples: but such a hypothesis would entail a thorough reconsideration of the relationships between Bentham and the radical group, particularly of his relationship with its younger and more extreme representatives.[237] According to this hypothesis, the latter would have constituted a kind of political *avant-garde* that received support from Bentham himself. Seen in this perspective, the apparent inconsistencies in Bentham's attitude towards these writings might be resolved in concluding that Bentham solved the dilemma posed by the threat to his personal safety and reputation on the one hand, and the happiness of mankind on the other, by having his ideas made known to the world by his younger disciples.

Notes

1 In the whole Bowring edition of Bentham's *Works*, only very few and scattered references to this subject can be found. Cf. I, p. 175; II, p. 9n; II, p. 254—255; I, p. 541; cf. *Theory of Legislation*, cit. p. 151.

2 In 1931 C.K. Odgen included 17 pages of excerpts entitled 'Offences against Taste' in his journal *Psyche, A Quarterly Review of Psychology in Relation to: Education, Psycho-analysis, Industry, Religion, Social and Personal Relationships, Aesthetics, Psychical Research*, etc., ed. by C.K. Ogden, XI, 3, 1930—31, pp. 7—24 (Ogden's introduction on pp. 2—3); he considered them so important as to reproduce them twice during the following year, in his edition of Bentham's *Theory of Legislation*, London, 1931, (as an Appendix, entitled 'Bentham on Sex', pp. 473—497); excerpts

from this same text were then inserted by Ogden in his *Jeremy Bentham 1832—2032*, 'Psyche Miniature Series', London, 1932 (Appendix, 8. 'Offences against Taste', pp. 94—105).

3 The only exceptions are Louis Crompton who edited 'Jeremy Bentham's Essay on "Paederasty" ' in *Journal of Homosexuality*, III, 1978, pp. 383—405, and IV, 1978, pp. 91—107; and C.F.Bahmueller, who has interpreted some of these manuscripts in his recent work *The National Charity Company*, cit., pp. 90—98.

4 J. Bentham, 'Offences against Taste', in 'Bentham on Sex' Appendix to his *Theory of Legislation*, ed. by Ogden, hereafter called 'Offences', p. 476. Already in his *Introduction to the Principles of Morals and Legislation* of 1780, and in all his subsequent writings, Bentham had devoted much attention to sex as a source of motives for action, first of all because it afforded pleasure.

5 I do not agree with Ogden, who considered that the chapter of 1814, and the treatise on *Sex* were 'two separate works'; the treatise of 1816 is only an enlargement of the preceding chapter, and does not make sense without the earlier parts.

6 Jeremy Bentham, Mss. U.C., LXXIII, 90—100 (*Penal Law — Non conformity*), Paederasty, 1770—1774; LXXIV a, 1—25 (*Penal Law — Non conformity*), 1774; LXXII, 68—69 (*Offences of Impurity, Penal Code*), 1780; LXXII, 187—205. *Penal Code*, Chapter on *Paederasty*), 1785; LXXIV a, 26—34 (*Nonconformité, Penal Law, Introduction*), 1785; LXXIV a, 35—222 (partly belonging to *Penal Code*, Chapter *Sexual* of 1814, and partly to an independent work headed *Sex*, of 1816); LXVIII, 10—18 (*Penal Code), Appendix on Sexual Eccentricities*), 1824 to 1828; CLXI a, 1—19 (*Sextus*), 1817, and CLXI b, 270—323, 411—430, 444-507, 339—340. This list incorporates and surpasses Crompthn's (*op.cit.*, p. 383).
Of all this material the only sections that have been published so far are the chapter on *Paederasty* (from U.C., LXXII, 187—205, edited almost entirely by Crompton), and the 17 pages of excerpts (out of 187 folios in U.C., LXXIV, 35—222) taken by Ogden from the chapter of the *Penal Code* of 1814 and from the treatise on *Sex* of 1816, besides some quotations published in Bahmueller's already mentioned work. It is worth noting that Bentham's manuscripts at University College, London, are mainly constituted by numbered folios. Each folio is generally composed of four pages (two rectos and two versos), so that 100 folios from this collection are more or less equivalent to 350—400 pages.

7 For further details on this point see the following chapter on Jews.

8 J. Bentham, *Correspondence*, vol. III (1781—1788), ed. by T.R. Christie, *The Collected Works*, London, 1971, p. 518.

9 'Offences', p. 474.

10 J. Bentham, Essay on 'Paederasty', ed. by L.Crompton, *op.cit.*, hereafter called 'Paederasty', p. 385, U.C., LXXII, 188.

11 *Ibid.*, pp. 384—85; see also U.C., LXXIV, 4: 'A hundred times have I shuddered at the apprehension of the perils I was exposing myself [to in encountering the opinions that are in possession of men's minds on subject] as often have I resolved to turn aside from a road full of precipices. I have trembled at the thoughts of indignation that must be raised against the Apologist of a Crime that has been looked upon by many and those excellent men, as one among the blackest under Heaven'.

12 *Ibid.*, p. 385, U.C., LXXII, 188.

13 *Ibid.*, U.C., LXXII, 188.

14 L. Crompton, *op.cit.*, p. 383.

15 The deontologist should teach 'the harmony and co-incidence of duty and self-interest, virtue and felicity, prudence and benevolence', J. Bentham, *Deontology; or, the Science of Morality*, ed. by J. Bowring, 2 vols., London, 1834, I, p. 1.

[16] 'Offences', p. 477.

[17] Bentham is here thinking of Mosaic Laws of 'Purity of Marriage', which forbid sexual intercourse during women's 'impure' period. Cf. also U.C., LXVIII, 13.

[18] 'Paederasty', p. 96, U.C., LXXII, 202. This is one of the cases in which Bentham, trying to classify scientifically sexual irregularities, speaks of 'error temporis'. Cf. U.C., LXVIII, 13.

[19] J. Bentham, U.C., LXXII, 188 (not transcribed by Crompton).

[20] The two mentioned rules being the rule of probity, by which injury to third persons is interdicted, and the rule of individual prudence by which excess is interdicted, i.e. in the case in which pain might result greater than the corresponding pleasure. 'Offences', p. 476.
This point is better articulated some years later, when Bentham says that the only two possible limitations are Effective Benevolence and Self-Regarding Prudence. Cf. U.C., LXVIII, 11.

[21] 'Offences', p. 476.

[22] As I shall explain further on, the language used by Bentham when referring to sexual irregularities was openly evaluative (in the negative sense) in his early writings, and became more neutral in the later ones.

[23] 'Paederasty', p. 390, U.C., LXXII, 191.

[24] The list given here by Bentham reads as follows: '1. Of the proper species but at an improper time: for instance, after death. 2. Of an object of the proper species and sex, and at a proper time, but in an improper part. 3. Of an object of the proper species but the wrong sex. This is distinguished from the rest by the name of paederasty. 4. Of a wrong species. 5. In procuring this sensation by one's self without the help of any other sensitive object'.('Paederasty', pp. 389—390, U.C., LXXII, 191). Later on he synthesizes this classification, styling the different irregularities as: '1. error temporis 2. error loci 3. error sexus 4. error species 5. error numeri'. See U.C., LXVIII, 12 and 13.

[25] 'Paederasty', p. 389.

[26] *Ibid.*, p. 390.

[27] J. Bentham, *Introduction to the Principles of Morals and Legislation, op. cit.*, p. 231n. See the chapter on Jews.

[28] 'Paederasty', p. 390.

[29] *Ibid.*, p. 390; cf. a more systematic list of all possible mischiefs deriving from this practice in 'Offences', p. 477.

[30] 'Paederasty', p. 390.

[31] 'Offences', p. 486.

[32] *Ibid.*, p. 478.

[33] 'Paederasty', p. 391, U.C., LXXII, 191.

[34] 'Offences', p. 478.

[35] *Ibid.*, cf. also 'Paederasty', p. 100, U.C., LXXII, 204: 'Where women contrive to procure themselves the sensation by means of women, the ordinary course of nature is as much departed from as when the like abomination is practised by men with men. The former offence however is not as generally punished as the latter. It appears to have been punished in France but the law knows nothing of it in England'. (*Code Pénal*, Tit. 35, p. 238, J.B.) Cf. also U.C., LXVIII, 14: 'If moral turpitude had any thing to do in the matter, turpitude in the case of this error should be the same in one sex as in the other. But in this case no physical turpitude . . .: physical antipathy remains unwounded'.

[36] Blackstone's *Commentaries on the Laws of England* (1765) were Bentham's target, throughout all his life, but especially during what has been called significantly

'the Blackstone "campaign" of 1774—1776'; during these years Bentham wrote *A Comment on the Commentaries* and *A Fragment on Government*; see Introduction to the two works by J.H. Burns and H.L.A. Hart, *The Collected Works of Jeremy Bentham*, London, 1977, p. XXVIII. For further details on Bentham and Blackstone, see *ibid.*, pp. XIX—LI.

37 'Paederasty', p. 391, U.C., LXXII, 191.

38 Bentham quotes, among others, Judge Fortescue, Chancellor of England (cf. *Fortescue's Reports*) who explains that it is an affront to God because it is 'a direct affront to the Author of Nature and insolent expression of contempt of his wisdom, condemning the provision made by him and defying both it and him'. *Ibid.*, p. 103, U.C., LXXII, 187.

39 'If God according to supposition has punished any practise, it was either on account of the mischievousness of the practise to society or on some other account. If the practise be of the number of those which are prejudicial to society, it will be already to be punished on that ground. ... If it be for any other reason ... this can be no reason at all for punishing it. If then God punished it, it was for a reason which men cannot know.' 'Paederasty', p. 104, U.C., LXXII, 187.

40 *Ibid.*, p. 105, U.C., LXXII, 188.

41 Besides the famous episode of Abraham and Isaac, Bentham's Biblical references are to *Numbers*, ch. 16; 2 *Kings*, ch. 2.

42 At this point Bentham objects also that 'In this particular respect the Canaanites in question could not be more culpable than the ancient Greeks in that which is deemed the most virtuous period of their history. Yet it appears not that this punishment was ever inflicted by heaven for such a cause upon the antient Greeks'. 'Paederasty', p. 105.

43 *Ibid.*, 105—106. This point was already raised by Bentham as early as the 1770s, although it was not so well articulated at this stage: 'Two cities were burnt with fire from heaven for it — that's more than we are told ... that is an affair as different from this as Rape from Fornication'. U.C., LXXIII, 100.

44 'Paederasty', p. 391. Cf. Montesquieu, *Esprit des Loix* (B.XII, ch. VI), in *Oeuvres*, ed. by Roger Callois, 2 vols., Paris, 1949—51, vol. II, p. 437. Montesquieu however observed: 'Il est singulier que, parmi nous, trois crimes: la magie, l'hérésie et le crime contre nature, dont on pouvoit prouver, du premier, qu'il n'existe pas; du second, qu'il est susceptible d'une infinité de distinctions, interprétations, limitations; du troisième, qu'il est très souvent obscur, aient été tous trois punis de la peine du feu'.

45 'This, if it be true in fact, is a reason of a very different complexion from any of the preceding and it is on the ground of this reason as being the most plausible one that I have ranked the offence under its present head. As far as it is true in fact, the act ought to be regarded in the first place as coming within the list of offences against one's self, of offences of imprudence: in the next place, as an offence against the state, an offence the tendency of which is to diminish the public force.' ('Paederasty', p. 391, U.C., LXXII, 191).

46 *Ibid.*, p. 392, U.C., LXXII, 192.

47 Bentham here gives an enormous quantity of references to classical sources. For example, on Xenophon he quotes from his *Anabasis*, L. V, ch. 8, v. 367, p. 117, hunc amor laudatum, p. 716, also 724, 722; L.7, ch. 4, p. 409. Cf. U.C., LXXIII, 96.

48 'Paederasty', p. 392. '...Tho' in the times of greatest strength it may be shewn to have been prevalent', U.C., LXXIII, 94.

49 'They appear to have been stouter at least in a very considerable degree than the French in whom this propensity is not very common and still more than the Scotch

in whom it is still less common, and this although the climate even of Greece was a great deal warmer and in that respect more enervating than that of modern Scotland', 'Paederasty', p. 394, U.C., LXXII, 193. Bentham is here challenging Montesquieu's opinion using his same weapons.

50 'Offences', p. 488—489.

51 'Paederasty', p. 394. However, even if this effect were true, 'if in any degree enervation be the consequence, it is only on the part of the agent that it can have place', 'Offences', p. 488.

52 'Paederasty', p. 395. As always, Bentham is very eager to quote a great many references from classical sources, as a support to his argumentation. Cf. also 'Offences', p. 496.

53 *Ibid.*

54 'Paederasty', p. 395—96. See the whole passage quoted in the chapter on slaves.

55 'Offences', p. 489.

56 'Paederasty', p. 392, U.C., LXXII, 191—192. Later on, Bentham articulated this argument in a more utilitarian manner, by using his 'felicific calculus': 'Supposing evil to be the result, is the sum of that evil in such quantity and value as to be preponderant over the good derived from that same source?' And, 'If yes, is the net balance of such an amount as to justify the employing against it the force of penal law in general and in particular penal laws of such extreme rigour as those which, in the British Empire in particular, have been in use to be employed against it?' 'Offences', p. 488.

57 *Ibid.* Bentham evidently could not imagine that, a century after his death, the U.S.A. were to answer his rhetorical question with their famous 'prohibition'.

58 'When enervation, corruption, death were the fruits of this appetite, of what species, according to the ancients, was the tree that bore them? It was the solitary tree, the *upas*' ('Offences', p. 488). In his French *Introduction* of 1785, Bentham had already written extensively on the 'Consequences mauvaises de la masturbation', basing his statements on the current literature of his time. Cf. U.C., LXXIV, 34. In his Essay on *Paederasty* of the same year, he explained that 'the fact is certain. Physicians are all agreed about it' ... and about the fact 'that this is not an infrequent cause of indifference in each of the sexes to the other, and in the male sex it often ends in impotence. It is not only more mischievous to each person than any of those other impurities, but it appears everywhere to be much more frequent'. And yet, contrary to the others, it is not punished, 'because no punishment could ever have any effect' as 'it can always be committed without any danger ... of a discovery' ('Paederasty', p. 102, U.C., LXXII, 204—205).

59 Bentham, U.C., LXXIII, 94.

60 The examples brought are, besides Agesilaus and Xenophon, 'Themistocles, Aristides, Epaminondus, Alcibiades, Alexander', and, among the Romans, 'the Antonies, the Clodius's, the pisos, the Gabinius's of the age, Cicero' ('Paederasty', p. 393). He also observes that 'if the Gods amused themselves in this way' (Apollo with Hyacinthus, Hercules with Hylas, the father of Gods with Ganymede), 'it was neither an odious nor an unfrequent thing for mortal men to do so. The Gods we make, it has been well and often said, we make always after our own image'. Bentham, U.C., LXXIII, 393—94.

61 Voltaire, *Dictionnaire philosophique* (1764), article on 'Amour Socratique'. Voltaire was already quoted by Bentham in a fragment on non-conformity written between 1770 and 1774; U.C., LXXIII, 92; subsequently, it was thoroughly discussed in 'Paederasty', 396, U.C., LXXII, 194.

[62] Together with gaming, idleness, prodigality, disaffection, luxury. U.C., LXXII, 68—69.

[63] J. Bentham, *Works*, X, pp. 11, 83.

[64] U.C., LXXIII, 95.

[65] U.C., LXXIV, 26. Also U.C., LXXIV, 26: for the use of Socrates as a symbol of sexual liberty among French libertines, cf. G. Benrekassa, 'L'article "jouissance" et l'idéologie érotique de Diderot', *Dix-huitième Siècle*, 12, 1980, pp. 138—145.

[66] Besides some very short and scattered passages in the *Works* of 1838—43, i.e. some passages in the *Introduction to the Principles of Morals and Legislation*, pp. 196, 201 and 236 and in *Works*, III, p. 203, III, p. 52, IX, p. 443,III, p. 170, III, pp. 72—75, there is a small addition made in Stark's edition of *Bentham's Economic Writings*, 3 vols., London, 1952—54.

[67] Stark, *Ibid.* I, p. 57. Bahmueller's cited work appears to be the first which gives due attention to this connection, at pp. 90—98.

[68] See W. Stark, *op. cit.*, III, p. 47; M.P. Mack, *op. cit.*, p. 239; cf. Lea Campos Boralevi, *Etica ed economia nel pensiero di J.Bentham* (Tesi di laurea), Trieste, 1976, p. 216.

[69] 'Nonc. — *Influence on Population.* — I have been informed by credible authority that in Bengal the boys will invite / call out to / one another to it openly in the streets. — ... Bengal after China is one of the most populous countries in the world. I have also been informed from / by / good authority that at Marseilles it is as common (and both are very common) of an evening to see persons of the same sex thus (amorously) associated as of the different sexes. It is ... clear that France, and that part of France in particular, yields not for population to Great Britian.' U.C., LXXIII, 97.

[70] U.C., LXXIII, 92.

[71] U.C., LXXIII, 99.

[72] J. Bentham, *Introduction to the Principles of Morals and Legislation, op. cit.*, p. 196.

[73] *Ibid.*, p. 201.

[74] J. Bentham, *Introduction to the Principles of Morals and Legislation, op. cit.*, p. 263. This same classification can also be found in his work entitled *A General View of a Complete Code of Laws*, (*Works*, cit., III, p. 170.) where he refers to 'Offences against Population: emigration, sucide, prevention of births' but adds immediately: 'The influence of these things upon population has at all times been nearly imperceptible; the amount of population having, in nearly all circumstances, be found to correspond with the means of subsistence'.

[75] U.C., LXXIV, 26.

[76] 'Paederasty', p. 396—397, U.C., LXXII, 194—195.

[77] Bentham goes on asking, 'Is there the least probability that [this] should ever be the case? ... Before this can happen the nature of the human composition must receive a total change and that propensity which is commonly regarded as the only one of the two that is natural must have become an unnatural one', 'Paederasty', p.396.

[78] Although in England it was hanging, in France and Latin Europe in the eighteenth century the penalty for sodomy was burning.

[79] 'Paederasty', p. 397. Bentham's irony is always directed more towards the Catholic doctrine and religious orders, than to any other religion. He goes on in fact saying that: 'If a paederast, according to the monkish canonist Bermondus, destroys the whole human race, Bermondus destroyed it I don't know how many thousands times over. The crime of Bermondus is I don't know how many times worse than paederasty'. (*Ibid*). Later on, in the same chapter, he will quote Bermondus's opinion that sod-

omy is worse than murder, 'for a murderer destroys but one man whereas a Sodomite puts to death "every man that lives" ', commenting that 'this, he assures us, is God's way of taking the account. If this be the case it must be confessed that God's arithmetic is a little different from man's arithmetic'. ('Paederasty', p. 104, U.C., LXXII, 187.)

80 Such as a long explanation of how prolific and unprolific appetites compensate each other, with the example of prostitutes: 'women who submit to promiscuous embraces are almost universally unprolific' and therefore homosexual love is not always opposed to a heterosexual prolific relationship, etc.;'Paederasty', p. 397, U.C., LXXII, 194.

81 *Ibid.*, p. 396.

82 *Ibid.*, pp. 397—98, U.C., LXXII, 195.

83 *Ibid.*, p. 398. Bentham refers to Swift's work entitled: A Modest Proposal for preventing The Children of Poor People from being a Burthen to their Parents, of The Country, and for making them Beneficial to the Public *(1729)*

84 *Notes on Population*, in Stark, (ed.) *op. cit.*, I, p. 272 (U.C., XVII, 58).

85 *Ibid.*, 272—273.

86 Stark, (ed.) *op. cit.*, I, p. 57.

87 As we have already seen for example at U.C., LXXII, 68—69.

88 In Stark, (ed.) *op. cit.*, I, p. 216

89 *Ibid.*, I, p. 295.

90 U.C., LXXIII, 99, cit.

91 'Paederasty', p. 107, U.C., LXXII, 189.

92 J.R. Poynter, *Society and Pauperism*, London, 1969, p. 123

93 U.C., CLI, 108.

94 U.C., CLIV b, 534—5.

95 Poynter, *op. cit.*, p. 123

96 Bahmueller, *op. cit.*, pp. 95 and 98.

97 Cf. Poynter's review of Bahmueller's work in *The Bentham Newsletter*, No. 6, 1982, p. 38.

98 A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) (B. I, ch VIII), ed by R.H. Campbell, A.S. Skinner, and W.B. Todd, 2 vols, Oxford, 1976, vol. I, p. 97: 'Every species of animals naturally multiplies in proportion to the means of their subsistence, and no species can ever multiply beyond it'. Cf. also (B. I, ch. XI, p. I), p. 162.

99 *The True Alarm*, in Stark, *op. cit.*, III, p. 68.

100 *Ibid.*, pp. 39, 44. Cf. J. Bentham, *Institute, loc. cit.*, III, pp. 310, 318, 361—363, 376.

101 *Ibid.*, p. 362.

102 *Ibid.*, p. 376.

103 *Ibid.*, p. 361. Cf. *Manual of Political Economy*, in *Works*, cit., III, p. 72.

104 Stark, *op. cit.*, I, p. 57; Poynter, *op. cit.*, p. 142; cf. Ogden, *op. cit.*, pp. 474, 519.

105 U.C., LXXIV, 129.

106 *Ibid.*, 123.

107 *Ibid.*, 124.

108 In his well documented book, Bahmueller suggests that Bentham also knew Townsend's theories. I could find no clear reference to Townsend in the manuscripts I consulted, whereas I found frequent references to Malthus's work. Malthus could well be 'the Reverend friend' that Bahmueller is so keen to identify in Townsend. See Bahmueller, *op. cit.*, p. 95

109 U.C., LXXIV, 131—132.

[110] *Ibid.*, 'Offences', p. 487.

[111] T.R. Malthus, *An Essay on the Principles of Population or a View of its Past and Present Effects on Human Happiness, with an Inquiry into our Prospects Respecting the Future Removal or Mitigation of the Evils which it occasions*, London, (1798), second edition 1803, (Book I, Ch. II) p. 16.

[112] *Ibid.*, pp. 9—11.

[113] *Ibid.*, pp. 11—12; in the first edition of the *Essay* (1798), Malthus only included misery and vice in this list; he introduced moral restraint in the list of checks only in 1803.

[114] *Ibid.*; in a footnote, Malthus explains that by moral restraint he meant 'a restraint from marriage from prudential motives, with a conduct strictly moral during the period of this restraint'.

[115] Poynter, *op. cit.*, p. 146.

[116] *Ibid.*, pp. 148—150.

[117] T.R. Malthus, *Essay*, ed. cit., p. 12n.

[118] U.C., LXXIV, 126—127.

[119] *Ibid.*, 128.

[120] *Ibid.*

[121] *Ibid.*, 134—135. Cf. 'Offences', 487, U.C., LXXIV, 132. The point about infanticide is logically made when speaking of population; this connection is not so clear as early as in the 1770s, when, dealing with non-conformity, Bentham wrote a fragment on Child-Murder, and the prejudices that surround it. At that time, the only logical connection might have been, that both sexual non-conformity and child-murder are subject to prejudice, and not to a clear judgement based on the principle of utility. Cf. U.C., LXXIII, p. 98.

[122] U.C., LXXIV, 133; cf. 'Offences', 487.

[123] U.C., CLXI, 281.

[124] *Ibid.*, 282.

[125] *Ibid.*, 280.

[126] i.e. moral restraint, vice and misery.

[127] U.C., LXVIII, 14.

[128] Stark, *op. cit.*, I, p. 57n; also Halévy, *op. cit.*, II, p. 351, apparently did not understand this passage ('Quant à Bentham, il est encore un malthusien sans le savoir'). Poynter seems to be the only one that guessed the meaning of this passage, as I shall argue more extensively in my chapter on the indigent; cf. Poynter, *op. cit.*, p. 143.

[129] J. Bentham, *Letters on Scotch Reform* 1808, *Works*, cit., V, p. 21; also the period in which it was written corresponds to the time of his writings on sexual non-conformity.

[130] Stark, *op.cit.*, I, p. 57.

[131] 'Paederasty', p. 398, U.C., LXXII, 195.

[132] *Ibid.*

[133] 'In these countries this [sexual] propensity, which in the male sex is under a considerable degree of restraint, is under an incomparably greater restraint in the female. ... This being the case, it appears the contribution which the male part of the species are willing as well as able to bestow is beyond all comparison greater than what the female part are permitted to receive. ... It appears then that if the female sex are losers by the prevalence of this practise, it can only be on this supposition — that the force with which it tends to divert men from entering into connection with the other sex is greater than the force with which the censure of the world tends to prevent those connections by its operation on the women.' *Ibid.*, pp. 398—399; cf. U.C. LXXII, 195. Quoted in the chapter on women.

[134] *Ibid.*, p. 402.

[135] 'Offences', p. 489.

[136] 'Paederasty', p. 402.

[137] As in the cases of the poets Martial, Horace, Virgil; he also quotes Pilati, *Traité des Loix Civiles*, ch. du marriage; 'Paederasty', p. 401. In addition, Bentham observes that such prejudice had at least one advantage, that it served as a medium of exculpation in processes for homosexuality; on this basis the defendant used to collect as much evidence to demonstrate the propensity of the man accused towards women. Bentham considered this medium of exculpation to be 'fallacious'. *Ibid.*, p. 404.

[138] *Ibid.*, p. 403.

[139] The motive for marriage being: '1) the desire of having children, ... 2) of forming alliances between families, 3) the convenience of having a domestic companion whose company will continue to be agreeable throughout life, 4) the convenience of gratifying the appetite in question at any time when the want occurs and without the expense and trouble of concealing it or the danger of a discovery'. 'Paederasty', p. 400, U.C., LXXII, 196. Bentham considers the case of paederasty as similar to that of sexual irregularities committed with animals: but animals of different species than the human are not seen as possible rivals. Cf. 'Offences', p. 489.

[140] 'Among the Greeks it was called *Paederastia*, the love of boys, not *Andrerastia*, the love of men. Among the Romans the act was called Paedicare, because the object of it was a boy. There was a particular name for those who had passed the short period beyond which no man hoped to be an object of desire to his own sex. They were called *exoleti*.' 'Paederasty', pp. 400—401.

[141] *Ibid.*, p. 400; cf. *ibid.*, p. 405, U.C., LXXII, 197—198.

[142] 'Offences', p. 490; cf examples of Socrates brought by Bentham *ibid.*, p. 491.

[143] 'Paederasty', p. 404—405. As always, Bentham tries to connect the particular example he is examining, with a more general rule. The passage in fact goes on: 'It is on the same principle that in matters of religion Jansenists and Molinists are often apt to be more averse to one another than either to Protestants; Methodists and regular Church of England men than either are to Presbyterians; Protestants and Catholics than either are to Jews; and in general Schismatics in any church than either are to Heretics or to persons of a different religion'.

[144] *Ibid.*, p. 403, U.C., LXXII, 197.

[145] *Ibid.*

[146] J. Bentham, U.C., LXXIII, 94.

[147] U.C., LXXIII, 90.

[148] As late as 1825, he was still of the same opinion: 'In the case of the *error sexus* the appetite for vengeance has for its real cause the wound to blind antipathy'. U.C., LXVIII, 14.

[149] 'Offences', p. 480.

[150] 'Paederasty', p. 94, U.C., LXXII, 201; cf. also U.C., LXXIII, 100.

[151] 'Paederasty', pp. 97—98, U.C., LXXII, 202—203.

[152] 'Offences', p. 493.

[153] 'Paederasty', p. 98.

[154] 'Offences', p. 493.

[155] The book Bentham refers to was called *A Counterblaste to Tobacco*, London, 1604. [I am grateful to Mr. Edward P. de Chaney for this reference]. 'The same king, ... reckons this practise among the few offences which no Sovereign ever ought to pardon. This must needs seem rather extraordinary to those who have a notion that a pardon in this case is what he himself, had he been a subject, might have stood in

need of'. 'Paederasty', p. 95. The example of James I recurs several times in Bentham's writings on the subject, and is taken as an example of 'Precautionary defence against the imputation when well grounded'. (See below)

156 U.C., LXXIII, 92. Antipathy towards homosexuality is based only on prejudice: see 'Paederasty', 97, U.C., LXXII, 202.

157 *Ibid.*, 92, U.C., LXXII, 199.

158 Cf. Ogden, Introduction to Bentham's *Theory of Legislation*, cit., p. XXIII; cf. J. Bentham, *Theory of Legislation*, *op. cit.*, p. 52, 322. Witchcraft is considered an imaginary evil as is heresy. Legal prosecution of witchcraft is compared to that of sexual irregularities in U.C., CLXVIII, 14.

159 'Offences', pp. 479—480.

160 U.C., LXVIII, 12.

161 'Paederasty', p. 97. See also: '*Non amo te Sabidi* (Martial, I, 32) may be quite enough when all the question only is whether one shall see Sabidius or not see him: but when the question is whether Sabidius shall be burnt alive or let alone the reasons which a man should give for burning him alive may be expected to be of a cast somewhat more substantial'. 'Paederasty', p. 103, U.C., LXXII, 187.

162 The two shapes are the two crops of sweets deriving from sex and eating and drinking.

163 U.C., LXVIII, 10.

164 'Paederasty', pp. 95—96, U.C., LXXII, 201.

165 'Offences', p. 480—481.

166 'Paederasty', p. 96.

167 *Ibid.*, p. 96.

168 'Offences', pp. 481: 'the transition from the idea of physical to that of moral antipathy is the more ready when the idea of pleasure, ... is connected with that of the act by which the antipathy is excited. Philosophical pride ... has hitherto employed itself with effect in setting people a-quarrelling with whatever is pleasurable even to themselves, and envy will always be disposing them to quarrel with what appears to be pleasurable to others. ... It is not the pain that angers them but the pleasure'.

169 U.C., LXVIII, 12—13; see Appendix.

170 'Offences', pp. 480—481.

171 *Ibid.*, pp. 496—497.

172 *Ibid.*, p. 497.

173 Cf. James Steintrager, 'Morality and Beliefs: the Origin and Purpose of Bentham's Writings on Religion', *The Mill Newsletter*, VI, 1971, p. 6. Steintrager apparently has been the only one to have given some attention to this connection.

174 U.C., LXXIV, 164—171 (March—May 1816).

175 '*Sextus: General Idea of a work having for one of its objects the Defence of the Principle of Utility, so far as it concerns the liberty of taste, against the conjunct hostility of the principle of asceticism and the principle of antipathy; and for its proposed title, proposed on the ground of expected popularity or at least protection against popular rage "Not Paul but Jesus"* '. U.C., CLXI, 1—19. Certainly philological analysis of Bentham's works, in their origin and development, is not the aim of the present work. This is, however, just one piece of evidence of the potential fecundity of a thorough analysis of these hitherto virtually unexplored writings.

176 'Offences', p. 198.

177 U.C., LXVIII, 10. Such a position of criticism towards Christianity can already be found in U.C., LXXIII, 100.

178 'Paederasty', p. 97, U.C., LXXII, 202.

179 *Ibid.*, p. 106, U.C., LXXII, 189.

[180] Together with incontinence and rapacity: J. Bentham, *Theory of Legislation*, cit., pp. 55—56, 468.

[181] 'Paederastry', p. 106.

[182] 'Offences', pp.484—485.

[183] U.C., LXXII, 188, not published by Crompton.

[184] 'Offences', p. 482. See also 'Paederasty', p. 103, U.C., LXXII, 187.

[185] 'In the formation of the penal code it seems not altogether easy to say which of two powers — *reason* and *imagination* — has had the greatest share.' ('Offences', p. 482).

[186] *Ibid.*, pp. 482—483.

[187] To this point Bentham makes two objections: 1. that 'even in a physical sense impurity is but relative ... that which is most disgusting to one is to another most delicious', and 2. 'For impurity of what kind whatsoever, ... the proper remedy is purification, not destruction', i.e. water would be better than fire. Cf. *Ibid.*, pp. 483—484.

[188] 'Paederasty', p. 402, U.C., LXXII, 197.

[189] U.C., LXXII, 200. The passage, quoted in Italian in Bentham's Ms. (and translated into English by Crompton, p.93), begins: 'L'Attica Venere ... prende la sua forza non tanto dalla sazietà dei piaceri, quanto da quella educazione che comincia per render gli uomini inutili a se stessi per farli utili ad altri, in quelle case, dove si condensa l'ardente gioventù, dove essendovi un argine insormontabile ad ogni altro commercio, tutto il vigore ...', etc. Cf. Cesare Beccaria, *Dei delitti e delle pene*, Facsimile dell'ed. originale di Livorno, 1764, ed. by L. Firpo, Torino, 1965, p. 80.

[190] 'Offences', pp. 479—480.

[191] J.Bentham, *Defence of Usury, op. cit.*, p. 169.

[192] L. Crompton, *op. cit.*, p. 385.

[193] U.C., LXXII, 188, not published by Crompton.

[194] In 1785 Bentham had already considered the idea of an independent treatise on sex. Nevertheless in 1825 Bentham is again writing an Appendix to the Penal Code.

[195] 'Offences', p. 486.

[196] U.C., LXXII, 188, not published by Crompton.

[197] For several of these lists see particularly U.C., LXXIV, but references to this balance of pros and cons, listed in this way, although not always with the same instances, are to be found in all of Bentham's writings on sexual non-conformity; see below.

[198] These advantages were: 1. Pleasure resulting from the gratification of the antipathy by the view of the suffering of the punished; 2. Elimination of the pain of antipathy in the breasts of those who entertain it (Cf. 'Paederasty', p. 97); 3. Punishment, however, not an incentive to this practice, as 'in former times, when it was not punished, it prevailed to a very great degree'. (*Ibid.*, p. 98).

[199] *Punishment* belonging to: 1. legal or political sanction: therefore legal punishment, suffered justly (U.C., LXXIII, 99); 2. popular sanction: therefore infamy for the man accused, and for his wife; therefore the punishment of, and not homosexuality in itself, is detrimental to marriage and to wives; ('Paederasty', p. 404); 3. religious sanction: fear of hell torment; 4. political sanction inflicted on the innocent; i.e. punishment suffered unjustly, in consequence of false evidence; or better, as for such kind of intercourse between two willing men — contrary to the cases of rape — there are no proofs whatsoever; and the charge therefore can be made without proof, and without the danger of being disproved. On this ground the prosecution of homosexuality is compared to witchcraft; 5. false accusation as a source and instrument of extortion; 6. *Fear* of punishment and infamy in the breasts of delinquents — thence self-banishment; 7. *Fear* of punishment and infamy in the breasts of non-delinquents; 8. Loss of the gratification through fear of punishment — loss of en-

joyment; 9. Pain produced by the sense of restraint, from the violence of the restraint; besides that, antipathy in itself is already a punishment, without having recourse to the political magistrate; 10. Hatred against women encouraged by the severity of the punishment — as it has been explained by examining the mechanism of oppression.

200 1. Addition to the mass of pleasure; 2. Prevention of the injury liable to be done to health by solitary gratification; 3. Paederasty free from the dangers which accompany fornication for women, i.e. loss of reputation, abortion, infanticide, prostitution; 4. Diminution of the amount of female prostitution; 5. Diminishing the mortification experienced by a wife, in case of a successful rival of her own sex.

201 Homosexuality between women was not punished in England at that time, as already pointed out. Cf. 'Paederasty', p. 100, U.C., LXXII, 204, etc.

202 Such as intercourse with beasts or with 'statues': cf. Crompton, p. 101, and especially U.C., LXVIII, 15—16.

203 U.C., LXVIII, 14 and 13; cf. also 'Paederasty', p. 100—101.

204 *Ibid.*

205 Among these objections, there were: 1. Danger of diminution of sympathy on the part of one sex towards the other (v. *supra*); 2. Danger of the seduction of pupils by preceptors; 3. Danger of annoyance to the eyes and ears of third persons in the character of lovers of decency. For Bentham's answers, see 'Offences', pp. 494—495. The answer is that lovers of decency will not be disturbed 'more than they are at present by [the appetites] of the more usual form of it'. *Ibid.*

206 U.C., LXXIII, 99.

207 'Paederasty', p. 97, U.C., LXXII, 202.

208 'Offences', p. 494.

209 J. Bentham, *Constitutional Code*, IX, p. 107.

210 'Offences', p. 494.

211 *Ibid.*, p. 496.

212 'Paederasty', p. 103, U.C., LXXII, 187; cf. *Ibid.*, p. 398, U.C., LXXII, 195. Cf. also U.C., LXXII 189, also quoted in Bahmueller, *op. cit.*, 239.

213 U.C., LXXIII, 91.

214 'Paederasty', p. 106, U.C., LXXII, 188.

215 According to Ogden, J.S. Mill suffered from some psychological complex. For 'anyone who had James Mill for father might well have exhibited a form of Jehovah-complex in which Bentham, too, would naturally figure'. C.K. Ogden, 'Forensic Orthology', *Psyche*, 1928, VIII, p. 15. William Thomas's recent book on *The Philosophic Radicals*, Oxford, 1979, is not useful in this respect, as it also gives a stereotyped image of Bentham (cf. *ibid.*, pp. 15—45).

216 Halévy also mentions Bentham's 'discussion of the question whether a father has the right to castrate his own children; the digressions on polyandry and polygamy', all suppressed by Dumont. Cf. Halévy, *op. cit.*, I, p. 376—377 (Appendix), and at pp. 520—521 of the English edition.

217 See the Conclusion of the present work.

218 J.H. Burns and H.L.A. Hart, (eds.) Introduction to J. Bentham *A Comment on the Commentaries and a Fragment on Government, Collected Works*, London, 1977, p. XXXIII.

219 Bowring's Memoirs, in J. Bentham, *Works*, cit., X, p. 82.

220 'Bowring evidently had in his possession a body of manuscript material which cannot now be found in either of the main collections of Bentham's papers', see Burns and Hart, *op. cit.*, p. XXXIV.

221 *Ibid.*, p. XXXV.

[222] *Ibid.*, pp. 296—301.

[223] 'Paederasty', p. 105, U.C., LXXII, 188.

[224] Cf. 'Appendix C', in Burns and Hart (eds.), *op. cit.*, pp. 298—299. Cf. 'Paederasty', pp. 105—106: cf. U.C. LXXXII, 100 (dated 1770—1774).

[225] Rather than the title hypothesized by Burns and Hart : 'Castrations to Mr. Bentham's [...] by the Daemon of Socrates'; cf. Burns and Hart, *op. cit.*, p. XXXV.

[226] U.C., LXXXIV, 26 — 'Castrations' are U.C. LXXIV, 15—17.

[227] Cf. Graham Wallas, *The Life of Francis Place, 1771—1854*, London (1898), 1918, pp. 84, 469; see also Hime's 'Jeremy Bentham and the Genesis of English Neo-Malthusianism', *Economic History* (A Supplement to the *Economic Journal*), vol. III, 1936, pp. 271—273.

[228] Queen's Square Place was Bentham's address; *The Private Journal of Aaron Burr* is a collection of letters that Burr did not send immediately to his daughter Theodosia Burr (as are those that can be found in Burr's *Correspondence*): for this reason, imagining to write to his daughter, he is always very reticent about any kind of love affair, etc.

[229] *The Private Journal of Aaron Burr, op. cit.*, 5—6 January 1812, vol. II, p. 286.

[230] *Ibid.*, vol. I, p. 10 (13 November 1808).

[231] Haley's angry attacks sounded like this: [to Carlile] 'but for your having been pushed forward as a tool by Place and old Jerry, I could not have condescended to have wasted a penful of ink upon you' and, further on, 'Carlile's writings ... have been done by Mr. Spongean Place, ... and others, by Jeremiah Bentham', etc., cited in Hime *op. cit.*, pp. 274—275.

[232] 'Juggical' is one of Bentham's words for 'Catholic'.

[233] Letter of J.B. to Place, 21 April 1831. In G. Wallas, *op. cit.*, pp. 81—82. Cf. also Halévy, *op.cit.*, III, p. 442.

[234] Place's Introduction to his *Illustrations and Proofs*, London 1822, p. 12.

[235] The fragments is entitled 'J.B.'s Instruction for Living Happily or Not At All', and has been published by M.P. Mack, *op. cit.*, p. 213, from British Museum's Add. Mss. 33551, pp. 327—328.

[236] See U.C., CLXI, Folder 4: 'Would probably be prosecuted, if published to-day', and furthermore: 'To be published not till afterwards'. Steintrager cites Box CLV, 23—38 forABentham's hopes that his unpublished material on religion would appear after his death. ('Morality and Belief', cit., p. 15).

[237] This is certainly a too far-reaching task to make any effort to carry it out here. Some suggestions on Bentham's influence on and collaboration with Francis Place are however put forward in the following chapter on The Indigent.

4. Jews

Bentham's Defence of Usury

In his characteristically Voltairian campaign against all kinds of 'fictions' and prejudices, Bentham went beyond and indeed against Voltaire, in speaking many times in favour, or better, in defence of Jews, as an oppressed minority who are victims of popular prejudices.

Of all the many passages on this subject to be found in Bentham's writings, the most comprehensive treatment of antisemitic prejudice is that contained in the *Defence of Usury*. This was his first and best known work in Economics, a science — or rather an 'art-and-science' in Bentham's terms — that found its logical place among his interests, as a reformer concerned with welfare.[1] Despite its provocative title,[2] the *Defence of Usury* was not actually a defence of usury or of usurers, but a polemical pamphlet against the laws which fixed a maximum rate of interest.[3] Bentham considered these laws to be a useless form of interference by the legislator with the free market; he tried to show not merely the inconsistency of such laws with *laissez-faire* theory,[4] but to demonstrate their ineffectiveness.

As we have already seen in the cases of heresy and homosexuality, the origin of Bentham's thoughts on the most diverse types of problem is often to be found in his juridical writings. But this does not mean that Bentham's importance is restricted to the legal field:[5] on the contrary, he developed his juridical reflexions by extending his interests — and therefore his writings — to a surprisingly vast range of subjects. His writings on usury are an instance of this. As early as 1780, writing in his *Introduction to the Principles of Morals and Legislation*, Bentham assigned no place to usury in his table of 'Classes of Offences', except in the case when usury involved fraud or extortion:

> Usury, which, if it must be an offence, is an offence committed with consent, that is, with the consent of the party supposed to be injured, cannot merit a place in the catalogue of offences, unless the consent were either unfairly obtained or unfreely: in the first case, it coincides with defraudment; in the other, with extortion.[6]

Some six years later, hearing about Pitt's intention of lowering the maximum rate of legal interest, Bentham developed his argument more fully, providing in the *Defence of Usury* a critical analysis of the existing laws:

> It is one thing, to find reasons why it is *fit* a law *should* have been made: it is another to find the reasons why it *was* made: in other words, it is one thing to justify a law: it is another thing to account for its existence.[7]

From this remark he proceeds to a discussion of the religious, philosophic-historical, and literary-social grounds for the rise of the inveterate aversion to free trade of money. At the philosophical level, Bentham names Aristotle as one of the 'authorities' mainly responsible for the defamation of usury, citing Aristotle's well-known maxim that 'all money is in its nature barren'.[8]

Bentham turns from the influence of Aristotle to consider the influence of dramatic literature (no less a paramount force in the generation of fictions):

> I question whether, among all the instances in which a borrower and a lender of money have been brought together upon the stage, from the days of Thespis to the present, there ever was one, in which the former was not recommended to favour in some shape or other, either to admiration, or to love, or to pity, or to all three; and the other, the man of thrift, consigned to infamy.[9]

Actually Bentham makes here a very subtle psychological analysis of the reasons for which lenders are so hated, and suggests that literature simply interprets a general feeling. For:

> Those who have the resolution to sacrifice the present to future, are natural objects of envy to those who have sacrificed the future to the present. The children who have eaten their cake are the natural enemies of the children who have theirs.[10]

However, it is in the religious field, and particularly in the Christian condemnation of this activity, that Bentham finds perhaps the main source of prejudice against money lending:

> To lend money at interest, is to get money, or at least to try to get it: of course it was a bad thing to lend money upon such terms. The better the terms, the worse it was to lend upon them: but it was bad to lend upon any terms, by which any thing could be got. What made it much the worse was, that it was acting like a Jew: for though all Christians at first were Jews, and continued to do as Jews did, after they had become Christians, yet, in process of time, it came to be discovered, that the distance between the mother and the daughter church could not be too wide.[11]

Bentham's analysis of anti-Semitic prejudice here is highly interesting. Today it is generally agreed by historians that the Christian prohibition of money lending in the Middle Ages created one of the few forms of revenue which were permitted to the Jews (who, for example, were not allowed to own land) and at the same time served as the origin and the pretext for the persecution of Jews. The fact to which I want to draw attention is that, at the end of the eighteenth century, Bentham came to much the same conclusion.

> By degrees, as old conceits gave place to new, nature so far prevailed, that the objections to getting money in general, were pretty well over-ruled: but still this Jewish way of getting it, was too odious to be endured. Christians were too intent upon plaguing Jews, to listen to the suggestion of doing as Jews did, even though money were to be got by it. Indeed the easier method, and a method pretty much in vogue, was, to let the Jews get the money any how they could and then squeeze it out of them as it was wanted.[12]

The *Defence of Usury* enjoyed great and lasting success: the *Monthly Review* spoke of it in a highly commendatory way; it was praised by Thomas Reid as well as by Mirabeau. By 1790 a second edition was printed; it was translated into French, Spanish, and Italian, and there were many American editions.

Historians agree that it directly influenced some legislative decisions in various American states, and in the Irish Parliament.[13] Sixty years later J.S. Mill considered it still the best work in this field, a 'triumphant onslaught' on the restrictions imposed on the money market.[14] On the other hand, Bentham was considered by conservative critics to exercise a harmful influence, so that: 'if the name of Bentham, during the nineteenth century sounded abomination to the ears of the severe moralists, this was due to a certain extent to the *Defence of Usury* and to its defence of the most absolute liberty in money market.'[15] Though the name of Bentham thus remained bound to the defence of the free market and to *laissez-faire* theories, particularly in the interpretations of liberal historians,[16] it is difficult to assess the influence of the circulation of the *Defence of Usury* on public attitudes to the Jewish question. Interestingly enough, Mirabeau, who had praised Bentham's work, also exhibited a favourable attitude towards Jews, and shared the opinion that the faults of the Jews were those of their circumstances.[17] Mirabeau, however, had come independently to these conclusions, as afterthoughts of his trips to Holland, England, and Prussia (from 1784 to 1786); the result was a book, entitled *Sur Moses Mendelssohn, sur la réforme politique des Juifs*, which was published in London in 1787.[18] It should also be remembered that Mirabeau was one of the main proponents of the bills which emancipated the Jews of France which were passed by the *Assemblée* between 1790 and 1791.

Religious Toleration

Though the *Defence of Usury* is the most famous, it was not the only work in which Bentham wrote in defence of the Jews. He considered them to be a persecuted religious minority, and his writings on them express his concern, as is also shown in the letter to George Wilson,[19] already quoted. He considered all religious creeds 'fictitious', but nevertheless he respected religion as a means of persuading people to abstain from harmful behaviour: the 'religious sanction', as he calls it, is a very effective restraint for the people who fear eternal damnation.[20] He considered therefore the offences against religion as Public Offences, or offences against the State.[21]

But, contrary to what was accepted by other sceptical champions of religious institutions as instrument for cultivating good behaviour, Bentham did not admit the right of the State to enforce conformity. On the contrary, he put religious minorities under special protection from hostile persons or groups and thought that offences against religious minorities should be made legally punishable. In his *Introduction*, in the above-mentioned catalogue of offences, he inserted transgressions against minorities under the heading 'Semi-Public Offences of mere delinquency'.[22] The passage reads as follows:

6. By menacement: as by incendiary letters, and tumultuous assemblies: by newspapers or hand-bills, denouncing vengeance against persons of particular denominations: for example: against Jews, Catholics, Protestants, Scotchmen, Gascons, Catalonians, etc.[23]

In his *Principles of the Civil Code*, he dealt with this same subject:

I refer to this head those vexations exercised upon a sect, upon a party, upon a class of men, under the vague pretence of some political offence, in such manner that the imposition of the confiscation is pretended to be employed as a punishment, when in truth the crime is only a pretence for the imposition of the confiscation.[24] History presents many examples of such robberies. The Jews have often been the object of them: they were too rich not to be always culpable.[25]

Bentham did not consider the Jews only as the historical people of the Bible, as most thinkers of his age did, but saw them as a religious minority; as such, the Jews had to be tolerated in their religious practices as much as other religious 'sects' such as Catholics and Quakers. Moreover, the legislator had to take into account their existence, and not try to escape the problem by ignoring it, as some procedures in the English Law suggested. Bentham describes, for example, the procedure of English Courts for imposing the oath upon all witnesses 'as a security for the trustworthiness of testimony':

An officer of the court, having put into the hands of the witness a book containing the Christian scriptures ... addresses himself to the witness, and says to him as follows ....[26]

Bentham did not actually believe in the oath as a means for assuring the trustworthiness of the witnesses and dedicated many pages to this question in his *Rationale of Judicial Evidence*.[27] He also wrote a whole essay on this subject, *Swear Not At All*.[28] One of the practical problems with which he was concerned was the validity of such a kind of oath for a Jew, or for adherents of other religions:

A Jew's oath, what shall it be? Must the hat be *off* or *on*? and if *on*, what shall in law be deemed and taken to be a hat? and the book, what must it be? and in what language? Jew or Christian, what it is that shall be kissed? what if, instead of the book, it be the thumb that receives the salutes? what if, to a Book of the Song of Solomon, by *astutia* or *laches* of the clerk, those of Rochester be found to have been substituted? With such an instrument could a man commit perjury?[29]

Bentham was also concerned with the practical and financial problems which could affect a religious minority. He thought that each of its members ought to support his own 'church':

But if there exists a great diversity of worship and religion, and the legislator is not fettered by an anterior establishment or particular considerations, it will be more conformable to liberty and equality to apply the contributions of each religious community to the support of their own church.[30]

This kind of concern is present in Bentham's *View of the Hard-Labour Bill*, one of his first works, published as early as 1778. Explaining his ideas on penal communities — which later on were to become the plans of his famous *Panopticon* — he expresses his belief that religion might be useful to improve the

'good behaviour' of prisoners. In the chapter entitled 'Making provisions for communicating to these societies the benefits of religion', he immediately points out the difficulties connected with the tolerance of other religions, which he nevertheless considered necessary:

> Jews and Catholics would be the worst off: Jews, with their continual domestic ceremonies, and Catholics, with their numerous sacraments .... As to Jews, I must confess, I can see no feasible way of making, in each labour-house, the provisions requisite for satisfying all their various scruples. As it happens, there seems reason (I do not know whether to say to hope, but at any rate) to believe, that of such of them as are likely to become inhabitants of these houses, there are not many on whom these scruples would sit heavy.[31]

Notwithstanding these observations, full of common sense, he considers the possibility of a separate institution for Jews seriously:

> The only expedient I can think of for the indulgence of these people is, to have one labour-house for all the convicts of this persuasion throughout the kingdom. In such case, it would be but reasonable that the whole community of Jews should be at the expense of this establishment, including the charges of conveyance. They might then have their own *rabbis* and their own cooks and butchers.[32]

Already from these passages it can be seen how Bentham's ideas on religious minorities were far from considering only their 'right to be equal'. He refused any appeal to the abstract doctrine of equality of men, the argument favoured by other champions of the cause of the Jewish minority, such as Mirabeau. Bentham had no patience with such assertions as the *Déclaration des droits de l'homme*, which claimed that 'all citizens ... are equally admissible to all dignities, public places, and employment, according to their capacity, etc.'[33] Even though Bentham is willing to say of this clause that it is:

> one of the few clauses, not to say the only one, which does not seem liable to very serious objection; there is nothing to object to it in its general spirit meaning.[34]

In practice — which is the context with which Bentham is here concerned — he sees this principle as absurd and emptied of authentic meaning:

> There may be cases when some sorts of incapacitation in regard to office seem called for by the purpose which operated as the final cause in the institution of the office. It seems hardly decent or consistent, for example, to allow to a Jew the faculty of presenting to a Christian benefice with cure of souls.[35]

Proclamation of *formal equality* does not serve the interests of the oppressed, who suffer from an *actual* disadvantage. For him Jews were not an abstract hypothesis, but an existing community with concrete problems.

Another indication of this attitude is to be found in the many historical sources cited by Bentham, which show that he had studied the history of anti-Semitic persecutions in England. Indeed, when speaking of the principle of the greatest happiness of the greatest number, which should be the guide for each legislator and each government, he complains that:

> False in every country, ... it is in a more pre-eminent degree false as applied to English practice. ... Into no man's conception does it ever appear to enter that the securing

the maximum of happiness to the good people of England was the motive, or so much among the motives, which brought Duke William upon a visit to King Harold; that it was a regard either for the purity of the Jewish faith, or the symmetry of Jewish mouths, that rendered one of his royal successors so alert in rendering the functions of a dentist to one of his Hebrew subjects.[36]

Bowring, the editor, explains in a note that 'this was an allusion to King John who, according to Matthew Paris (p. 192), demanded 10,000 marks of a Jew, and directed one of his teeth to be drawn daily, till he should comply'.[37] Another interesting anecdote quoted by Bentham is given as an example of false information being used by prejudiced Christians to liquidate Jews:

Certain Jews, travelling towards a seaport, met with a Christian, and asked him the way to it. He pointed along the shore, to a path which he knew would soon be covered by the tide: they struck into it, and were drowned. To the christianity of Lord Coke, by whom the stratagem is reported, it affords matter of exultation. 'Thus perished' says he 'these infidel Jews.'[38]

The comment by Bentham is that:

Misconception is worse than no conception: false information is worse than none. Had the communicative Christian held his peace, the infidels might have escaped.[39]

Bentham betrays his scorn for Coke when he quotes this reference to Jews as 'infidels'.[40] On another occasion he points out that:

... though the Jews are not themselves Christians, they are not, on that account, in the less degree proper object of Christian charity.[41]

This point is very important for a correct understanding of Bentham's attitude towards Jews, as well as towards other religious minorities. Christians are condemned for lacking benevolence towards Jews, while claiming a duty of 'charity'. The appeal to benevolence is in fact central to Bentham's plea for the toleration of Jews:

The less an injured party is capable of defending himself, the stronger ought to be the natural sentiment of compassion. The law of honour, coming to the support of this instinct of pity, makes it an imperious duty to be tender with the feeble, and to spare those who cannot resist. The first index of a dangerous character, is *oppression of the weak*.[42]

Religious intolerance is the source of many evils, and therefore must be avoided as far as possible. It causes the oppression of the weak and thus their suffering; religious disputes furthermore may damage the security of the State. Far from proposing a Hobbesian solution with an established religion, [43] Bentham advocated religious toleration, and indicated 'the cultivation of benevolence' as a means by which all these evils could be limited. Benevolence is the remedy for religious intolerance which splits nations, as he writes:

There exist some principles of antipathy, which are sometimes interwoven with the political constitutions of states, which it is difficult to extirpate. Such are religious enmities, which excite their partisans to hate and persecute each other .... To render them benevolent, it is necessary to relieve them from fear and oppression.

He goes on to assert:

> The destruction of those prejudices which render men enemies, is one of the greatest services which can be rendered to morality.[44]

On this basis Bentham sets up an instructive comparison between Mungo Parks and Voltaire, pointing out the different influences exercised by their works:

> Mungo Parks in his African travels, has represented the blacks in a most interesting point of view; their simplicity, the strength of their domestic affections, the picture of their innocent manners, has increased the public interest in their favour.[45]

Voltaire is seen as having an altogether different impact: 'Satirists — he says — weaken this sentiment.' Voltaire, 'the great prophet of modern anticlerical anti-semitism',[46] is seen by Bentham as a man without benevolence:

> When anyone has read Voltaire, does he feel disposed to favour the Jews? Had he possessed more benevolence with respect to them, by exposing the degradation in which they are held, he would have explained the less favourable points of their character, and have exhibited the remedy by the side of the disease.[47]

It could be said of Bentham himself that, while upholding benevolence — which allowed him to look at them without prejudices — he did not exhibit sympathy towards Jews.

Bentham's Personal Attitude Towards the Jews

It is certainly difficult to see the origin of Bentham's attitude on the Jewish question. Baumgardt invites comparison with two of Bentham's utilitarian predecessors, David Hartley and Daines Barrington. Hartley, according to Baumgardt, was not only sympathetic to the people of the Holy Scripture, but also to Zionism, as 'the restoration of the Jews to Palestine'.[48] Such an attitude is far removed from Bentham's, who concentrated rather on the juridical status of Jews as an oppressed minority. There are no grounds for saying that Barrington had any influence on Bentham on this subject. Baumgardt stresses Barrington's 'human' line more than utilitarianism. Barrington militated for the abolition of the 'shameful prejudices' against the 'defenceless' and the 'most extraordinary' people of the Jews.[49] Bentham did not share Barrington's warm sympathy for Jews: indeed, there is no evidence of such an attitude in any of his writings. His feelings when treating this question, are feelings of pity, sometimes of indignation; but even in his most inflamed declarations in defence of the Jews against all the persecutions to which they were subjected there is no shadow of sympathy. There is no trace of philo-Semitism in Bentham.

Corroborating evidence for this conclusion is to be found in a source completely unexplored in this connection, that is Bentham's correspondence with his father and brother, during his journey to Russia in 1786. This correspondence is very instructive, because from the letters that he wrote to his relatives, we can reconstruct almost completely not only the main events of his journey,

but his reactions to all the places he saw, the persons he met, the impressions received, etc. — it is a kind of 'Journal de Voyage'. In his almost daily reports, Bentham mentions his contacts with Polish Jews, who seemed to possess a kind of monopoly of the horses and inns, in the areas he visited:

> From one side of the Polish Ukraine to the other not a Christian horse ever stirs without a Jew-Broker to give him motion. ... From Chekanofka even unto Bohopol, a space of not less than 144 miles, not an Inn have I entered that has been in any other hands than those of the race of Israel: a people by inbred filthyness the worst qualified, and by religious scruples, one should think the least disposed, to engage in such a business.[50]

The fact is that in eighteenth century Europe there were two million Jews, of whom over half lived in Poland. Inevitably Bentham was struck by the much higher percentage of Jews who inhabited that country, which together with the fact that the Jewish population was particularly or exclusively engaged in trade and in 'services', and that he, as a traveller, saw only one aspect of the country, gave him the impression of a nation where Jews constituted a kind of 'monopoly'.

What must have struck Bentham even more strongly, was the great difference between Polish Jews and the Jews he had known or met in England. Besides the great gap which separated the state of economic development of Poland and England in the eighteenth century, there was also a remarkable difference between the social conditions of the Jews in the two countries. The Polish Jews lived in a society which retained feudal characteristics, while the Sephardic[51] Jews who lived mainly in Amsterdam, London, Bordeaux, and Leghorn, had long been in contact with international trade, and were cultivated in the arts, letters, and medicine. They did not keep up any kind of relationship with Polish Jews, whom they considered very backward.[52] This backwardness struck Bentham as well. He wrote a kind of Philippic against Polish Jews, full of all the comonplaces that he elsewhere condemned:

> ... enlightened by experience and familiarized with vicarious punishment, I am now satisfied that the sufferings of the forefathers were no more than a just retribution for those which the children have inflicted on me. *Qui fit Maecenas*, that in all Poland a man can not get a rag to cover him, nor a piece of black bread to eat, nor a beast to carry him, nor a hog-stie to lay his head in, but he must have a Jew to help him to it? — O but they *have* a head! — 'Yes' replied I, 'but it is a lousy one' —.
>
> If such is the superiority of Jewish heads, what are native Polish ones! I have a theory less disgraceful to the body of the nation. These interlopers form the *tiers etat*, standing in the gap between a people of Lords and a people of slaves, in a country not inviting enough to allure better capitalists.[53]

This last part of Bentham's outburst is the most interesting, because he tries to rationalize his anger into a valid piece of sociological analysis. The Jews in fact had found a living-space and a role in Poland, where a feudalistic structure gave them the opportunity of occupying the place of the 'bourgeoisie', which did not yet exist there. It is worth noting that Bentham here provides an analysis which not only answers the requirements of the most up-to-date socio-economic science, but uses also for the first time (at least in English) the term 'capitalist'.[54]

The reader must ask what were the terrible 'sufferings' inflicted on Bentham by Polish Jews? First of all he was upset by the dirt: at Venitz finding 'a miracle — a Jew Inn tolerably clean', he considers its 'floor not much dirtier than the dirtiest one could find in England'.[55] Another example of Bentham's impressions on this subject:

House tolerably clean: all the utensils remarkably so. The mistress of the house a very good looking woman's 2 sisters pretty girls, the eldest beautiful: and what is much more extraordinary clean: her hands as delicate as if she had not been used to work. A brother a comely lad: in another dress I should hardly have suspected him of Judaism certainly not the girls: the whole family fine flesh and blood not inferior to English.[56]

The second 'suffering' was proximity to Jews, which he had to endure because the Inn was so small or because he was staying in a private house:

No separate room, nor any place to lodge my bed at a distance from other people's straw, I chose cold as a less evil than filth, and slept in my Kibitki.[57]

No separate room, soldiers, Nobleman, I and mine; joined in a snoring concert with a numerous Jew-family.[58]

When this does not happen, he notes it promptly in his letter-journal:

Found 2 rooms ready warmed at the Jew Inn, happily separated by a passage from the apartments of the family.[59]

Bentham's third 'suffering' was the food, which he did not like:

At this place a pair of delicate hands perfectly clean, and of a beautiful ... a kind of Macaroni, afforded me the first occasion I had yet met with of viewing Jewish provisions without disgust.[60]

Since these 'terrible' experiences bring him into such close contact with the Jewish people, he at least begins to learn something about their customs and history:

Provision of Wax-Candle ... I am beholden to the Jew Religion for some yellow wax in a thick roll. The number of pieces of this wax serves with them to mark the number of holydays.[61]

Another time he entered and slept in the private house of a Rabbi, and was very impressed by the quantity of books he found there:

Books in the (glazed bookcases) not fewer than 250 or 300 Vols. mostly thin folios — all Hebrew. The owner a Rabbi keeps a hardware shop with the articles painted on his window shutter. One of the books he showed me was Euclid's Elements: another on Astronomy contained a MS diagram which he said was of his own drawing.[62]

In the same way he listens to the story of a 'pogrom' told by one of his guests,[63] and acquires more knowledge of Jewish laws on the Sabbath[64] and on food.[65] It was altogether an interesting experience for Bentham, notwithstanding his 'sufferings'.

The importance of these letters, from our point of view, lies in the fact that most of them were privately written a few months later than the *Defence of Usury*,[66] in which Bentham had spoken out with force against anti-Jewish prejudices, from which he himself appeared not to be completely immune. Yet,

after this direct and prolonged contact with different kinds of Polish Jews, which he clearly found unpleasant, Bentham did not change his attitude towards Jews as an oppressed minority, at least not in his published works.

Given this striking difference between his private papers and his official writings, we should look with greater admiration upon his defence of the oppressed Jews, precisely because he showed himself able to overcome his personal prejudices and dislike of them, in order to arrive at a more rational level of thought and to speak up for people he personally did not favour.

The gap existing between Bentham's personal antipathy and his public utterances in favour of the Jews provides us with a first element of similarity to Montesquieu's attitude, which was neither uncritical nor sympathetic, but strictly tolerant. Montesquieu's cultural relativism — rather than Hartley's and Barrington's influences — can perhaps be considered the source of Bentham's attitude towards the Jews, although Bentham himself never quoted Montesquieu in this respect. It might well be argued that the simple fact that Bentham was opposed to Voltaire's anti-Semitism,[67] and strongly believed in the fundamental importance of social conditioning, could suggest that we might by rights add the name of Bentham to the 'whole host of names ... all of whom counter-attacked Voltaire in the name of Montesquieu'.[68] This is not just an abstract hypothesis, for in Montesquieu's *Esprit des Lois* we find set out many ideas and historical facts which were subsequently taken up by Bentham, e.g. the idea of attributing the origin of most of Jewish customs to Aristotle's philosophy and to Christian intolerance, as well as the allusion to King John: 'La philosophie d'Aristote ayant été portée en Occident ... des scolastiques s'en infatuèrent, et prirent de ce philosophie bien des explications sur le prêt à intérêt ... ils le condamnèrent indistinctement et dans tous les cas. ... Le commerce passa à une nation pour lors couverte d'infamie, et bientôt il ne fu plus distingué des usures les plus affreuses, des monopoles, de la levée des subsides et de tous les moyens malhonnêtes d'acquérir de l'argent. Les Juifs, enrichis par leurs exactions, étoient pillés par le princes avec la même tyrannie: chose qui consoloit les peuples, et ne les soulageoit pas. Ce qui se passa en Angleterre donnera une idée de ce qu'on fit dans les autres pays. Le roi Jean ayant fait emprissoner les Juifs pour avoir leur bien, il y en eut peu qui n'eussent au moins quelque oeil crevé: ce roi faisoit ainsi sa chambre de justice. Un d'eux, à qui on arracha sept dents, une chaque jour, donna dix mille marcs d'argent à la huitième.'[69]

Montesquieu seems to have also directly influenced Bentham's appeal to Christian charity in the oppressors of the Jews. Such a plea for Christian charity Montesquieu attributes to a Jew who was to be burnt in Lisbon: 'Nous vous conjurons, non pas par le Dieu puissant que nous servons, vous et nous, mais par le Christ que vous nous dites avoir pris la condition humaine pour vous proposer des exemples que vous pouissiez suivre; nous vous conjurons d'agir avec nous comme il agiroit lui-même s'il étoit encore sur la terre. Vous voulez que nous soyons chrétiens, et vous ne voulez pas l'être.'[70]

Montesquieu's influence on Bentham in this respect is further confirmed by the similarity between their personal attitudes towards the Jews. Montesquieu's

unpublished papers also show a striking difference between his private and official opinions on the Jews.[71]

In Bentham's case there is an interesting piece of evidence to be found among his unpublished manuscripts, which shows the young Jeremy, as early as in the 1770's, both disliking Jews and yet firmly believing in the principles of religious toleration. In a fragment on *Toleration*, dealing with several 'sects' of dissenters, such as Moravians, Quakers, etc, he mentions Jews in most ungracious terms and then pleads for their freedom:

> So be of that singular unsociable race of men, who fatten upon the fruits of others labour, but who never made anything themselves .... In this country I would defend the liberties which every one of them enjoys, as I would my own.[72]

Utility, the greatest happiness of the greatest number, and the security of the state, were the principles on which Bentham built his religious toleration, in perfect consistency with his conviction that legislation ought not to be built on the 'quicksand' of fictions or of feelings, such as his personal dislike for the Jews. The structure of such a building was strong enough to sustain the weight of Bentham's opposition to the Declaration of the Rights of Man, without undermining — at least in this case — the consistency of his philosophical system.

Notes

1 W. Stark, Introduction to *Jeremy Bentham's Economic Writings*, ed. by W. Stark, 3 vols., Allen and Unwin, London, 1952—54, I, p. 12. For Bentham's particular approach to Political Economy see the following chapter on Native People of the Colonies.

2 The whole title was: *Defence of Usury, showing the impolicy of the present legal restraints on the terms of pecuniary bargains; in letters to a friend, etc. etc.*, London, 1787.

3 See W.L. Davidson, *Political Thought in England. The Utilitarians from Bentham to J.S. Mill*, Oxford University Press, London, (1915), 1944, pp. 83—84.

4 But he did it as well, in denouncing the contradictions of Adam Smith, who had accepted this interference in his *Wealth of Nations* (1776). Cf. *Defence of Usury*, in *J.B.'s Economic Writings*, cit., p. 167.

5 As, for example, F.C. Montague seems to suppose; cf. his Introduction to Jeremy Bentham's *Fragment on Government*, London (1891), 1951, p. 33. This is another commonplace to be found in many works on Bentham.

6 J. Bentham, *Introduction*, cit., p. 231n.

7 J. Bentham, *Defence of Usury*, cit., I, p. 156. For Bentham's censorial critique of existing legislation, see the chapter on women.

8 *Ibid.*, p. 158; cf. Aristotle, *Politics*, I, 10, 1258b, ed. by H. Rackharm, London (1932), 1972, p. 51: 'For money was brought into existence for the purpose of exchange, but interest increases the amount of the money itself (interest is money born from money); consequently, this form of the business of getting wealth is of all forms the most contrary to nature.'

9 J. Bentham, *Defence*, p. 161.

10 *Ibid.*, p. 159.

[11] J. Bentham, *Defence*, pp. 157—58.

[12] *Ibid.*, p. 158.

[13] For further information on the success of this work see W. Stark, *op. cit.*, I, pp. 26—33 and E. Halévy, *op. cit.*, I, pp. 207 and 347.

[14] J.S. Mill, *Principles of Political Economy* (1848), ed. by W. Bladen and J.M. Robson, *Collected Works of J.S. Mill*, Toronto-London, 1965, vol. III, p. 923 (B. X, ch. X, 2): 'This restriction, though approved by Adam Smith, has been condemned by all enlightened persons since the triumphant onslaught made upon it by Bentham in his "Letters on Usury"; which may still be referred to as the best extant writing on the subject.'

[15] W. Stark, *op. cit.*, p. 31.

[16] Cf. especially A.V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, London (1905), 1962, pp. 44, 147; E. Halvey, *op. cit.*, I, pp. 196, 20—24; L. Stephen, *op. cit.*, I, pp. 307—318; for the refutation of this stereotyped interpretation, see J. Viner, 'Bentham and J.S. Mill: the Utilitarian Background', *The American Economic Review*, 1949, XXXIX, p. 369, J.B. Brebner, 'Laissez Faire and State Intervention in Nineteenth-Century Britain', *Journal of Economic History*, Suppl. VIII, 1948, pp. 59—73, J. Steintrager, *Bentham*, London, 1977, pp. 65—66, and Lea Campos, *Etica ed Economia nel pensiero di Jeremy Bentham* (Tesi di Laurea), Trieste, 1976, pp. 97—126 and 157—89.

[17] In his *Monarchie Prussienne* (III, pp. 453—464), which appeared in London in 1788, he defended the Jews against the charge of usury, and used the image of the Jews of Berlin to prove that the Jews can indeed be remade by freedom.

[18] In this book Mirabeau asserted that 'the Jew is more of a man than he is a Jew';- for Mirabeau's attitude on this point see A. Hertzberg, *The French Enlightenment and the Jews*, New York (1968), 1970, pp. 293—294, 359—360.

[19] J. Bentham, *Correspondence*, vol. III, cit., p. 518. For the text of this letter, see the chapter on sexual non-conformists.

[20] J. Bentham, *Introduction, op. cit.*, pp. 35—36.

[21] J. Bentham, *Introduction*, pp. 201—202. Public offences are defined as 'on account of the distant mischief which they threaten to bring upon an unassignable indefinite multitude of the whole number of individuals, of which the community is composed'. *Ibid.*, pp. 189—190.

[22] *Ibid.*, p. 225. Semi-public offences are defined as acts 'detrimental to persons who cannot be individually assigned, and the circle within which it appears that they may be found, is either of less extent than that which comprizes the whole community, or not'. Bentham gives the examples of neighbourhood, or class of persons, etc. *Ibid.*, p. 189.

[23] J. Bentham, *Introduction*, p. 225n. On the following page Bentham also considers the case of offences, not of mere delinquency, but against reputation, such as defamation, and he gives an example of a semi-public offence against reputation: 'Calumniation and vilification of particular denominations of persons; such as Jews, Catholics, etc.' *Ibid.*, p. 226n.

[24] This way of reasoning has a remarkable resemblance to another passage of his, concerning men's tyranny over women, in *Introduction, op. cit.*, p. 245.

[25] J. Bentham, *Principles of the Civil Code, Works*, I, p. 320.

[26] J. Bentham, *Rationale of Judicial Evidence, Works*, VI, p. 323.

[27] This work was edited in 1827 by John Stuart Mill.

[28] *Swear Not At All* (or antichristianity of the ceremony of an oath), *Works*, V, pp. 202—223.

[29] J. Bentham, *Swear Not At All, op. cit.*, V, p. 202.

30 J. Bentham, *The Theory of Legislation, op. cit.*, London, 1931, p. 134.
31 J. Bentham, *A View of the Hard Labour Bill, Works*, IV, p. 24.
32 *ibid.*
33 J. Bentham, *Anarchical Fallacies, Works*, II, p. 508.
34 *Ibid.*, p. 509.
35 *Ibid.*
36 J. Bentham, *Rationale of Judicial Evidence, op. cit.*, VII, p. 196.
37 J. Bentham, *Rationale of Judicial Evidence*, note of the Editor.
38 *Ibid.*, VII, p.276. This is the footnote added by the Editor: 'The facts, as reported in the 2d Inst. 506—508, are shortly these: — Edward the First, in consideration of a fifteenth granted to him by the Parliament, consented the passing of the 18 Ed. I, which forbade any Jew to make usury upon any lands, rents, or other things. The consequence was, that more than 15,000 Jews left the kingdom. The richest of them embarked with their treasures in a large ship, and when they had got beyond Queensborough, the master and some of the sailors agreed to destroy their passengers by a stratagem. They cast anchor in a place, where the ship at the ebb was left on the dry sands. The master then enticed the Jews to walk with him, for their recreation, and when he perceived the tide coming in, he stole away from them, and got back to the ship in safety. The tide overtook the Jews, and as all help was refused to them, they were drowned. The master and his confederates were indicted for murder, convicted, and hanged. At the end of the case, Coke says, "And hereby it appeareth that Divine unction did follow these cruel Jews, wicked and wretched men; for the debts of cruelty are seldom unpaid." The case is also referred in 3 Inst. 50. — *Ed.*'
39 J. Bentham, *Rationale of Judicial Evidence*, p. 276.
40 A term which he never uses himself in any of his writings on Jews, except in another ironical passage about the Christian Church.
41 J. Bentham, 'Memoirs', *Works*, X, p. 592.
42 J. Bentham, *Theory of Legislation, op. cit.*, p. 258.
43 *Catechism Examined*, published in 1818; see also L.J. Hume *op. cit.*, pp. 186—189.
44 J. Bentham, *Principles of Penal Law, Works*, I, p. 562 (Cultivation of Benevolence); cf. his *Theory of Legislation, op. cit.*, p. 430 ('Men must be freed from fear and oppression, before they can be taught to love each other').
45 J. Bentham, *Principles of Penal Law, Works*, I, p. 562.
46 Léon Poliakov, *Histoire de l'Antisemitisme, 4 vols., Paris, 1955—1977, vol. III, De Voltaire à Wagner*, 1968, p. 85, and pp. 103—117, see also A. Hertzberg, *op. cit.*, pp. 280—308.
47 J. Bentham, *Principles of Penal Law*, cit., p. 562 *Theory of Legislation*, p. 430.
48 See D. Hartley, *Observations on Man, His Frame, His Duty, and His Expectations*, ch. IV, sec. II; cf. Baumgardt, *op. cit.*, p. 51.
49 Daines Barrington, *Observations upon the Statutes, etc.* (1766), pp. 89, 180; quoted in Baumgardt, *op. cit.*, p. 41.
50 J. Bentham, *Correspondence*, cit., vol. III, 1780—1788, ed. by I.R. Christie, The Athlone Press, London, 1971; Letter to Jeremiah Bentham, 6/7 January — 10/21 February 1786, p. 454.
51 I.e. The Jews of Spanish or Portuguese origin, who had been expelled from their original countries and had settled in different parts of Western Europe, adopting its culture and customs.
52 Léon Poliakov, *op. cit.*, pp. 18—20.
53 J. Bentham, *Correspondence, op. cit.*, p. 454.

[54] There is a philological note by the editor, explaining that the earliest instance of the use of the word 'capitalist' to be noticed in the O.E.D. is by Arthur Young in 1792. (An earlier instance could be found in a Russian official document of 1764.). It is interesting to note the use of this term by Bentham as early as in 1786. See *ibid.*, pp. 454—455, note 20.

[55] *Diary of Bentham's Journey*, 11 December 1787, *Correspondence* cit., p. 606.

[56] *Diary of Bentham's Journey*, 12 December 1787, p. 607.

[57] *Ibid.*, 11 December, p. 606.

[58] *Ibid.*, 12 December, p. 608. See also 'No separate rooms; pigged, as usual, Jews and Gentiles together', 13 December, p. 608.

[59] *Ibid.*, 10 December 1787, pp. 605—606.

[60] *Diary of Bentham's Journey*, 13 December 1787, p. 609. See also 'Here I met with some small fish which would I believe have been good, had not they been boiled to mummy in a Jew Pipkin', *ibid.*, p. 607.

[61] *Ibid.*, p. 608.

[62] *Ibid.*, 9 December 1787, p. 604.

[63] *Ibid.*, p. 607.

[64] *Ibid.*, 14 December 1787, pp. 609—610.

[65] *Ibid.*, p. 607.

[66] All but the first quoted, which precedes the publication of the *Defence of Usury* by some months, and appears even fuller of prejudices.

[67] 'In his own time Voltaire's work encouraged anti-Semitism; it was a major obstacle to the freedom of the Jews. For the next century he provided the fundamentals of the rhetoric of secular anti-Semitism. These two considerations create a large presumption that Voltaire himself was an anti-Semite, but this question is really not important', A. Hertzberg, *op. cit.*, p. 286.

[68] 'The enemies of the Jews thus quoted Voltaire to prove that not merely their religion but their essential and lasting character was evil', A. Hertzberg, *op. cit.*, p. 290.

[69] Montesquieu, *L'Esprit des Lois* (1748), *Oeuvres Complètes*, ed. by R. Caillois, 2 vols., Paris, 1949—51, vol. II, p. 639 (B. XXI, ch. XX, 'Comment le commerce se fit jour en Europe à travers la barbarie'). On the Christian condemnation, Montesquieu comments; 'Par là, le commerce, qui n'etoit que la profession des gens vils, devint encore celle des malhonnêtes gens: car toutes les fois que l'on défend une chose naturellement permise ou nécessaire, on ne fait que rendre malhonnêtes gens ceux qui la font' (*Ibid.*). Cf. Bentham's *Defence of Usury, op. cit.*, pp. 157—159.

[70] Montesquieu, *op. cit.*, p. 747 (B. XXV, ch. XIII, 'Très humble remontrance aux inquisiteurs d'Espagne et de Portugal').

[71] See A. Hertzberg, *op. cit.*, p. 275.

[72] J. Bentham, U.C., LXXIII, 24.

5. The Indigent

Poverty and its relief were bound to be crucial problems for an English philosopher of the eighteenth century whose aim was 'to maximize the happiness' and therefore also the material welfare of society. Although Bentham had written about the problems of temporary stagnation and the relief of the 'manufacturers out of employment' in his *Commonplace Book* in 1776,[1] he only began to be interested in a comprehensive system for poor relief in the 1790's. In this period he started to think of an organized poor relief capable of giving assistance to those who really needed it, not solely in times of great famine and not on the caprice of each parish.

In trying to find a solution to the problem of poverty, Bentham entered one of the most lively debates of his time: a time when poverty was still relieved on the basis of the Elizabethan Statutes and of the Law of Settlement of 1662 — both of which had become wholly inadequate for the dramatic situation faced by the poor during the rapid population increase and the social consequences of the Industrial Revolution, which included urbanization.

The outbreak of the war with revolutionary France made the question even more urgent, together with the fear that the contagion of Jacobin ideas might spread through the English countryside. Bentham was under these kind of pressures when, in the 1790's, he started to write on this question in the light of the principles of his philosophy. Bentham, in other words, provided a reformulation of the Poor Laws in utilitarian terms, transforming an out-of-date system into a potentially efficient legislative instrument, which influenced the development of indigence-relief in the following century.

The influence that Bentham's ideas on the relief of poverty exercised over the subsequent British approaches to this problem called forth a reexamination of the philosophical foundations on which his attitude was based.[2] Bentham's re-formulation of Poor Laws was drawn directly from his more general philosophy, which rested on the principle of the greatest happiness of the greatest number. Since the poor constituted at that time the great majority of people, their happiness could not be overlooked. But the principle of the greatest happiness is not sufficent in order to understand Bentham's attitude towards poverty. We must turn therefore to the 'four subsidiary ends' of legislation which Bentham himself added to this first and more general principle, as its important specifications: they were security, subsistence, abundance and equality.

> All the functions of law [Bentham said] may be referred to these four heads: To provide subsistence; to produce abundance; to favour equality; to maintain security.[3]

As these subordinate ends 'approach each other at different points, and mingle together', 'it is necessary to find some means of deciding the pre-eminence' of

one as opposed to another: priority is given to security and subsistence, while the other two are 'manifestly of inferior importance'.[4] Among the many reasons given for this pre-eminence Bentham affirms that subsistence, abundance and equality may be considered in relation to a single moment of present time; but security implies a given extension of future time in respect to all that good which it embraces. Furthermore, he claims that, without security, equality could not last a day; without subsistence, abundance could not exist at all. The relationship between security and equality, in particular, is not only 'important for his theory of poverty':[5] in truth, this relationship is the very heart of Bentham's social philosophy. The principle of utility cannot in itself set the limits of the natural tendency to equalization that it would seem to imply: in utilitarian terms, 'the closer the distribution of wealth approached equality', writes Bentham, 'the greater the sum of happiness; a poor man would gain more from the transfer than a rich man would lose'.[6] In this sense, the principle of the greatest happiness of the greatest number could lead to a 'communist' theory of property — as, in the theory developed by Godwin, it did.[7]

In Bentham's theory it did not, because Bentham added these 'subordinate ends' to the general principle of utility, and did so in a clearly hierarchical order. If we look at the question from this point of view, Bentham's lifting the '*subsidiary* end' of security to the very top of this hierarchy is of *fundamental* importance: this very specification would in itself be sufficient for placing Bentham's utilitarianism in the area — if not of 'possessive individualism'[8] certainly in that of 'possessive utilitarianism'.[9] These terms should, however, not mislead the reader: for Bentham did not believe in any natural right to property. The right to property for him was created by positive law, and therefore subjected to the principle of utility. Bentham's concept of the right to property implied that it could sometimes be sacrificed for a superior utility, as in the case of the government disallowing the right to property in the defence of the country. In the case of the conflict between the end of security and that of equality however, Bentham had no doubts:

> When security and equality are in conflict, it will not do to hesitate a moment. Equality must yield. The first is the foundation of life; subsistence, abundance, happiness, everything depends upon it. ... The establishment of perfect equality is a chimera; all we can do is to diminish inequality.[10]

He gave some explanations for his preference, such as:

1) the matter of abundance in the hands of the rich was not sufficient to provide more than a negligible increase in the happiness of the poor if distributed among them;

2) inequality and luxury formed a barrier to famine, by ensuring a reserve of wealth;

3) without some assurance that property will be protected, people would make little or no effort to create new wealth. Security, especially of property, is what distinguishes the civilized state from the savage; without security, there could be no effective industry, no sure subsistence, no abundance. The desire for equality is a desire for a return to savagery;

4) inequality must not be reduced by disturbing property because this might 'overturn the whole social order'.[11] Equality is opposed to productive activity, indeed to all legal order, and the aspiration for equality would destroy commercial society.

Bentham was obliged to explain his preference for security in terms of utility, because in principle he had refused any theory of a natural right to security, as it can be found, for example in Hobbes; but none of these explanations can completely eliminate the feeling — unavoidable I presume, in the reader of these pages — that Bentham's eagerness for explanations veils his need to justify an axiomatically predetermined hierarchy.

Bentham however did not dismiss the question so easily, and came back to it from time to time, mitigating the conflict between security and equality by means of the concepts of history and progress. He concluded that it was desirable to have property widely distributed in a society, with an even gradation from affluence to poverty, rather than a small very rich class and a large number of poor. For Bentham, the progress of the arts and of manufacture in a rural society tended to produce such a distribution: in this way, the poor participate in the advantages of civilized society,[12] which depends for its own security on the security of property; so the poor come to 'profit indirectly from security of property as well'.[13] Smith's influence upon Bentham is remarkably strong within this line of argument, which can be seen by a comparison with the famous passage from the *Wealth of Nations*: 'and yet it may be true, perhaps, that the accomodation of a European prince does not always so much exceed that of an industrious and frugal peasant as the accomodation of the latter exceeds that of many an African king, the absolute master of the lives and liberties of ten thousand naked savages.'[14]

In his *Theory of Legislation*, Bentham says:

> It is worthy of remark that, in a nation prosperous in its agriculture, its manufactures, and its commerce, there is a continual progress towards equality. ... Thus we may conclude that *Security*, while preserving its place as the supreme principle, leads indirectly to *Equality*; while equality, if taken as the basis of the social arrangement, will destroy both itself and security at the same time.[15]

These words are at least one piece of evidence against all the charges of 'lack of historical dimension' that have been made so frequently against Bentham.[16]

The relief of poverty is one of the main fields in which Bentham tried, by offering a practical solution, to mediate between the conflicting claims of security and equality. Only in this light is it possible to understand the full importance of Bentham's distinction between *poverty* and *indigence*:

> Poverty is the state of everyone who, in order to obtain *subsistence*, is forced to have recourse to *labour*. Indigence is the state of him who, being destitute of property, ... is at the same time, either, *unable to labour*, or unable, even *for* labour, to procure the supply of which he happens thus to be in want.[17]

As always, it is Bentham's analytical method that helps him to define with great precision the terms and limits of the problem with which he is dealing, and serves to explain the reasons for his attitude towards it. The importance of this

distinction has been stressed by several commentators. If poverty, thus defined, was the natural, the unchangeable lot of man, it could not be remedied. Indigence alone was to be pitied and relieved.[18]

> This aspect of society [indigence] is the saddest of all. It presents that long catalogue of evils which end in indigence, and consequently in death, under its most terrible forms. This is the centre towards which inertia alone, that force which acts without relaxation, makes the lot of every mortal gravitate. Not to be drawn into the abyss, it is necessary to mount up by a continual effort; and we see by our side the most diligent and the most virtuous sometimes slipping by one false step, and sometimes thrown headlong by inevitable reverses.[19]

For Bentham, then, to concentrate on the relief of indigence, and not that of poverty, was perfectly in line with his principle of utility, since it entailed no attack on security or any excessive inplementing of equality, as Rosenblum has pointed out.[20] All of Bentham's writings on poor relief move along this line:

> It seems to me ... that we may lay it down as a general principle that the legislator ought to establish a regular contribution for the wants of indigence, it being understood that those only are to be regarded as indigent who are in want of what is absolutely necessary. From this definition of the indigent, it follows that their title as indigent is stronger than the title of the proprietor of superfluities as proprietor. For the pain of death, which would presently fall upon the starving poor, would be always a more serious evil than the pain of disappointment which falls upon the rich when a portion of this superfluity is taken from him.[21]

Most of his projects, starting from the Panopticon, and ending with the agricultural communes for the south of England, as well as his Industry Houses, Bentham designed specifically for 'those who were, for whatever reason, unable to maintain subsistence by themselves'.[22] Bentham states clearly the central reasons for this kind of relief:

> A man in the need of the means of subsistence is pushed by the most irresistible motives to commit all the offences by which he can supply his wants. Where this stimulus exists it is useless to combat it by fear of punishment. There are few punishments which can be greater than starvation; and making allowance for uncertainty and distance, there are none which can appear so great. The only sure means of protection against the effects of indigence, consists in furnishing necessaries to those who are in need of them.[23]

The relief of the poor is therefore not based upon pity, nor on a 'moral duty', nor on their right to relief: it is based only on utility, maintaining public tranquillity and security, which entailed in turn the utility of keeping the indigent quiet. In this light the relief of indigence was conceived in such a way that it did not imperil security; on the contrary, it furthered it. In perfect consistency with the principles of his philosophy. Bentham spoke out clearly in favour of a system of poor relief run 'by law', i.e. by a national authority. Just as the defence of the country was not to be left to single persons, but organized by law; so the community needed to be defended from the possible injuries that might be done by masses of desperate and starving people. In the historical context this was no imaginary danger, particularly if we remember that the condition

of the 'indigent' deteriorated markedly in the very years in which Bentham was writing his proposals for the administration of poor relief.

Charity and Utility

Entering the debate between abolitionists and non-abolitionists on the subject of the Poor Laws, Bentham succeeded in putting himself above both parties, in favour of a *new system of Poor Laws*. The crucial point, which makes his system so different from those competing alternatives, is his principle that poor relief must be based on a *central* administration. This principle is not, as most Bentham scholars claim, only a logical derivation from the 'subsidiary end' of security.[24] The idea of administering the poor relief by law is a logical derivation from his utilitarian philosophy which puts him in oposition to philosophies based on the 'principle of sympathy'. This derivation is so strikingly evident, that it is curious to find that it has been given so little attention by the many participants in the debate of Bentham's ideas on poverty. And yet benevolence and sympathy are recurring concepts in all his writings on poverty.[25]

The relationship between utility and benevolence had already been explained in Bentham's *Introduction to the Principles of Morals and Legislation*: benevolence, like sympathy, is an important motive which should be taken into account in a moral theory as well as in a legal one. On the other hand, benevolence and sympathy are 'sentiments' or [as he sometimes says] 'dispositions' due to personal inclinations, that cannot be objects of quantification, or of a general law. In this sense they are not opposed to the principle of utility, as for example, the principle of aceticism is:[26] they are only less suitable to be taken into consideration for a scientific theory — of the kind Bentham thought he was building with utilitarianism — which was to be the basis for the reform of the moral world. The principle of sympathy, within which Bentham includes all moral theories based on sentiment, and also others,[27] is defined as:

> that principle which approves or disapproves of certain actions, not on account of their tending to augment the happiness [as the principle of utility does] nor yet on account of their tending to diminish the happiness of the party whose interest is in question [as the principle of asceticism, opposed to that of utility, does] but merely because a man finds himself disposed to approve or disapprove of them: holding up that approbation or disapprobation as a sufficent reason for itself, and disclaiming the necessity of looking out for any extrinsic ground.[28]

Bentham was looking for an 'objective criterion' of judgement, that had to be external to the person involved in the moral or political judgement:

> What one expects to find in a principle is something that points out some external consideration, as a means of warranting and guiding the internal sentiments of approbation and disapprobation.

On the contrary, this principle of sympathy,

does neither more nor less than hold up each of those sentiments as a ground and standard for itself.[29]

The principle of sympathy is in other words subject to the inclination of the moment:

It ought rather to have been styled, more extensively, the principle of *caprice*.[30]

Therefore the principle of sympathy can sometimes coincide with that of utility, and sometimes not:

It is far yet, however, from being a constant ground ... it is most apt to err on the side of severity.[On the other hand] ... it is not, however, by any means unexampled for this principle to err on the side of lenity.[31]

The same can be said for benevolence: for the dictates of benevolence as well, 'may be conformable to those of utility':

What makes those [the dictates] of private benevolence conformable upon the whole to the principle of utility, is, that in general they stand unopposed by those of public: if they are repugnant to them, it is only by accident.

But Bentham was perfectly aware of the fact that:

when the dictates of benevolence, as respecting the interests of a certain set of persons, are repugnant to the dictates of the same motive, as respecting the more important interests of another set of persons, the former dictates, it is evident, are repealed, as it were, by the latter.

Therefore he contemplates the case when:

a partial benevolence may govern the action, without entering into any direct competition with the more extensive benevolence, which would forbid it; because the interests of the less numerous assemblage of persons may be present to a mans's mind, at a time when those of the more numerous are either not present, or, if present, make no impression.[32]

In this case the motive of sympathy (and benevolence) will act (upon him) with more or less effect, according to the *bias* of (his) sensibility.[33]

Bentham is in fact not interested in denying the existence of sympathy (or benevolence) as a motive; he is rather concerned with the social implications of taking 'caprice' as a criterion:

Whether a moral sentiment can be originally conceived from any other source than a view of utility, is one question: whether upon examination and reflection it can, in point of fact, be actually persisted in and justified on any other ground, by a person reflecting within himself, is another: whether in point of right it can properly be justified on any other ground, by a person addressing himself to the community, is a third. The two first are questions of speculation: it matters not, comparatively speaking, how they are decided. The last is a question of practice; the decision of it is of as much importance as that of any can be.[34]

Applying these principles to the case of the parishes and the poor, we shall see that, first of all, the benevolence of parishes could be 'partial' and restrict itself to a 'certain set' of poor people, without relieving all those who were in need of it. In the second place, basing the whole system of relief on the benevolence

of parishes could cause great inequality in treatment, since it depended on the greater or lesser sensibility of the parish as to it's capacity to listen to the imperatives of benevolence when dealing with the poor entrusted to it.

This is the theoretical foundation of Bentham's attitude towards the relief of indigence; it was too important for the security of the State to be allowed to become ineffective. A working system of poor relief could not be based only upon the benevolence of the parishes 'because benevolence was capricious'.[35]

If, as we have seen, Bentham's social philosophy demands the relief of the indigent, it demands also that this relief ought not to be left to anything so unreliable, unstable and unpredictable as private charity. This is the main reason why Bentham was able to challenge so effectively the principles on which Poor Laws had been based until that time, i.e. on the uncontrolled authority of Local Government, together with the private charity of the parishes. For Bentham, private charity could not replace in any way the public system of relief: *voluntary contributions* are in fact characterized by 'uncertainty' and 'inequality of the burden':

> This supply for the wants of the poor is levied entirely at the expense of the more humane and the more virtuous, often without any proportion to their means; while the avaricious calumniate the poor, to cover their refusal with a varnish of system and of reason. Such an arrangement is a favour granted to selfishness, and a punishment to humanity, that first of virtues.[36]

From this point of view, even the old English Poor Laws, with all their faults, were better than private charity alone:

> In spite of the inconveniences of the English system it cannot be suddenly abandoned; otherwise half the poor would perish before the necessary habits of benevolence and frugality had taken root.[37]

Nevertheless Bentham did not want to abolish private charity, nor to deny its merits. Bentham succeeded in putting himself above the two main parties in the debate on the abolition of Poor Laws by introducing the principles of his philosophy. Opposing the tendency to consider public relief as a mere supplement to private, 'Bentham reversed the preference and offered a place for private charity in his public plan', a detail observed by Poynter.[38] What has not been hitherto noticed, is that Bentham left the same place to charity in his plan for poor relief, as that left to sympathy in his moral theory: charitable institutions are listed by Bentham among the means by which the legislator can 'give new force to the sentiment of benevolence'; but — Bentham warns, in the same paragraph — the legislator must also 'regulate its application according to the principle of utility', and 'repress vagaries of benevolence'.[39]

This is the rational foundation of Bentham's claim for a centralised administrative authority which could run the indigent relief on a nation-wide scale. It is also the rational foundation of the Poor Law Act of 1834.[40] Bentham's own proposal for putting this principle into practice was to set up a 'National Charity Company' that could run the management of poor relief. It was to be based on the contract system, which developed the 'Duty and Interest Junction Principle',[41] together with that of inspectability:

> This is the only shape which genuine and *efficient* humanity can take. . . . Every system of management which has disinterestedness, pretended or real, for its foundation, is rotten at the root, susceptible of a momentary prosperity at the outset, but sure to perish in the long run. That principle of action is most to be depended upon, whose influence is most powerful, most constant, most uniform, most lasting, and most general among mankind. Personal interest is that principle: a system of economy built on any other foundation is built upon a quicksand.[42]

In this perspective, Himmelfarb's remark that, 'Bentham did not at all envisage the kind of central board administering a single system and policy of relief such as was provided for by the act of 1834',[43] is wholly misleading. Bentham himself changed his mind in his last years, proposing to transform his projected 'National Charity Company' into an Indigence Relief Ministry.[44] This occurred because he changed his views on the possibility of setting up an efficient system of state administration, with the aim of promoting the greatest happiness of the greatest number.[45] The crucial point here in discussion, is not the kind of central administration which was to run the management of the poor, but Bentham's proposing this administrative centralization to replace the tradition of the old Poor Laws which had enforced local administration of poor relief.[46] Nor is it correct, in my opinion, to suggest — as Himmelfarb does — that 'Bentham's primary concern was with "management"; the "pauper" occupied a secondary, adjectival position'.[47]

It is simply a mistake to look for evidence of humanity and pity in writings which were to serve as a technical guide for legislation, and had therefore to be based exclusively on utility. To measure his humanity from these writings may be the best means of provoking the reader's emotional rejection of Bentham's suggestions, but it is certainly not the best way to obtain a better understanding of his philosophy.[48] Bentham's proposals for the administration of the indigent, if they sometimes appeal to humanity,[49] never *rely* on humane sentiment as a stable ground for rendering this administration efficient and effective, for any system of management based on disinterestedness 'is built on quicksand'.[50] Bentham himself was perfectly aware of the fact that his personal concern or pity for the condition of the indigent would not lead to an efficient system of relief, as he says:

> I am fighting some of my best and most respected friends. I know it but too well. . . . I am fighting myself likewise. What has been said of Dr Johnson on the subject of infidelity, may not be inapplicable to myself on the ground of false humanity. The stronger my propensity to give way to it, the more strenuous my efforts to subdue it.[51]

Bentham seemed indeed convinced that his proposals for the managment of the indigent constituted a felicitous way of reconciling the seemingly opposing principles of personal interest and of benevolence. The relief of the indigent, which was necessary to the security of the state as well as giving expression to any feeling of humanity towards these starving people, ought to be run on the principle of economic self-interest; 'Charity is the *end*, economy but the *means*', as Bentham triumphantly wrote in his *Pauper Management Improved*.[52]

Bentham's proposals for poor relief should be considered in the correct historical perspective: he had to face not the objections of our contemporary

commentators in favour of the liberty and dignity of the poor, but the objections of his contemporary fellowmen against the opportunity of relieving the indigent at all. He had to show his contemporaries that indigence relief was indeed necessary, that it did not impoverish the country [but on the contrary, thanks to good management, it could enrich it] and that it did not encourage the idleness of the remaining poor. In the same way the principle of 'less-eligibility'[53] — which required that the conditions of the indigent in workhouses, or in other similar insitutions, had to be lower than those of the working poor not relieved is not based on any 'inhumanity',[54] but again on utility, or better on a realistic consideration of the situation, approached on the basis of his more general philosophy. Many charges addressed against Bentham's proposals for the administration of the indigent lose ground, unless one invokes some important values cherished by his critics, but wholly absent in Bentham's proposals, such as the respect for the poor's liberty and dignity.[55]

One cannot understand Bentham's attitude to the indigent without considering the question of oppression, and his attitude towards other categories of oppressed people. For Bentham undoubtedly considered the indigent as oppressed. This oppression was not due — as in Marx's later analysis — to the tyranny exercised upon them by the property-owning classes. For Bentham, the indigent were oppressed, simply by 'the tyranny of want'.[56] Bentham's plans and proposals in this field concentrated on the best way for eliminating this tyranny, i.e. on the best way for relieving their indigence. While it is true that Bentham's proposals entailed several infringements of the liberty and dignity of the indigent, such as obliging them to stay in workhouses and wear a badge,[57] his conception of the indigent as oppressed was based on their lack of subsistence, not their want of liberty or dignity. He was well aware of the restrictions on personal liberty involved in his proposals, but thought — as Roberts has aptly remarked — that 'these losses in liberty were more than offset by the gain that his paupers would receive when they became free from want'.[58]

> If security against everything that savours of tyranny be liberty, liberty, in the instance of this hitherto luckless class of human beings can scarcely ever have existed in anything near so perfect a shape .... But liberty, in a favourite sense of it, means *lawless power*: in this sense there will not only be no liberty, but in plain truth there will be none.[59]

This point is of paramount importance for understanding Bentham's own position. He considered the Panopticon, Industry Houses, etc to be the best possible *practical* solution for certain individuals — such as the indigent and those who, for whatever reason, were unable to sustain themselves. The great care Bentham takes to show the advantages produced by his Plans for the Administration of the Indigent is the best refutation to all those commentators who indicate that the Panopticon is Bentham's *ideal* — i.e. absolutely good society.[60] On the contrary, he thought that his Plans were a *remedy* to an evil — i.e. starvation — affecting a part of the society, and not a *good* in itself. He always considered the goodness of his Plans in relative terms. For this reason he compared the pros and cons offered by his Plans with the pros and cons of the situation which the indigent would have faced without his proposed relief.

Evidence that Bentham thought of his Plans as a remedy for an evil, and thus as a relief from tyranny, is to be found by way of comparison with Bentham's attitude towards another category of oppressed people, i.e. women. Bentham in fact believed that the wife of a tyrannical husband might find 'asylum' in his Panopticon. But — as Bentham said and as Bahmueller has remarked also — she would have had to be seriously mistreated to exchange 'matrimonial comforts', home and family for 'celibacy under inspection — in company of her own sex only, and not of her own choice'.[61] Prostitutes were listed as well among the inhabitants of these Industry Houses; again, in the case of prostitutes, Bentham thought that the best solution was the decriminalization of this oppressed category: but, as public opinion and legislation of his time were not yet mature for such an innovation, Bentham thought that his Industry Houses were for the moment the best solution, both for society and for the prostitutes themselves (particularly the old and sick).[62]

Sexual non-conformity — a subject which has already been dealt with in this work — also provides a useful example to aid in the understanding of Bentham's point of view, as well as to reconcile apparently inexplicable contradictions in his writings. Some stimulating hints in this direction can be found in Bahmueller's cautiousness on this point, clearly manifested in his cited work. Bahmueller's own suggestion that 'Panopticon was a version of Benthamite society writ small'[63] — a matter which at the end he cautiously leaves unsettled — is ammended by an interesting observation in a footnote: he wonders how can this suggestion, or more extreme ones,[64] 'square' with Bentham's writings on sexual non-conformity, given the coercive climate of sexual repression revealed in Bentham's projects for the Panopticon Poor Houses.[65] Furthermore, it should be asked how can Bentham's supposed 'Ascetic Paulinism'[66] which, according to Bahmueller, characterises life in the Panopticon fit in with Bentham's claim for an absolute sexual liberty and, particularly, with his proposals in favour of early marriage between Panopticon inmates?[67]

Any convincing answer to such questions has first of all to consider the distinction between Bentham's *principles* and the practical proposals by which he tried to *apply* these principles to reality.[68] In order to understand the problems entailed in the application of these principles, we have to think, first, of the recipients of these practical projects, and, secondly, to the circumstances in which these principles were to be applied. Absolute sexual liberty for example, is undoubtedly one of Bentham's utilitarian principles. But its recipients were adult, self-conscious individuals, who were the best judges of their own interests without any legislator's intervention. The free consent of such people to acts of sexual non-conformity — was of fundamental importance for supporting the decriminalization of these acts.

Such conditions were certainly not met by the inhabitants of the Panopticon[69] who, for different reasons, were certainly not the best judges of their own interests, which in fact had to be looked after by Panopticon Administrators. The indigent, in particular, who were under the constant threat of starvation and therefore disposed to all sorts of crimes, were certainly among the least apt to enjoy properly such absolute sexual liberty. The circumstances in

which the Panopticon Plans were presented — i.e. the debate on the abolition of Poor Laws — have already been explained here, furthermore if 'one whiff' of Bentham's writings on sexual eccentricities reached the public of his time, Bentham 'could abandon all hope for the approval of either Panopticon Poor House or Panopticon prison.'[70] On the contrary, early marriage, while affording sexual pleasure, did not go against the state of public opinion on this matter.

Bentham's logics can sometimes appear obscure to those critics who are mainly concerned with judging Bentham's ideas on poverty from an external point of view, either moral or historical [were his proposals progressive?[71]] and who invoke ideological standards which were not Bentham's own. Instead, looking from a more 'internal' point of view, and measuring the consistency of his proposals for the management of the indigent against the principles of his more general philosophy, it has been shown here that Bentham's thinking on the subject of the indigent is one case in which he succeeds in reconciling some of the contradictions of his social philosophy.

As we have stated at the beginning of this chapter, it is true that Bentham's 'position on the relief of poverty' is not '*the* position of Utilitarian philosophy',[72] but it is at least debatable whether it is legitimate to conclude — as has been done — that 'the National Charity Company ... was Bentham's own idiosyncratic[73] application of his philosophy, not the voice of Utilitarianism itself .... It is perverse to imagine as good a society whose weakest members are stripped of the most basic civil liberties ....'[74] The fact remains, that, however 'perverse' Bentham's proposals might have been, they were Utilitarian.

Bentham and Malthus

In his work on *Society and Pauperism* Poynter discusses the perfectly valid question of why all Bentham's writings on indigence virtually ceased by 1798: 'Did Bentham abandon his plan in later years? ... Why were his writings on pauperism almost entirely restricted to the years 1795—98? Why did he hold aloof in the great post-war debate on the subject? Why was the Plan not reprinted after 1812? Most puzzling of all, why was it not mentioned in the discussion of indigence in the *Theory of Legislation* of 1802, or the *Constitutional Code* of 1830?'[75]

Bentham's writings on population throw a new light on the whole question. As I have already pointed out, Bentham's critical adherence to Malthusianism has to be understood in the sense that after 1800, he accepted Malthus's view that overpopulation was the major problem to be faced, but did not accept that the 'bitter remedy proposed by the Reverend Gentleman' — i.e. moral restraint — was the only possible solution capable of preventing the evils of overpopulation.[76]

The fact that all of Bentham's criticism of Malthus's moralistic views are to be found among his hitherto overlooked writings on sexual non-conformity gives a first answer to Poynter's questions. Bentham did not dare to publish anything referring to his Neo-Malthusian solution to overpopulation, because that solution entailed complete sexual liberty, i.e. not only birth control — as Poynter and Himes understood it[77] — but also the decriminalization of homosexuality and of all kinds of sexual eccentricities, which form part of Bentham's long lists of 'unprolific appetites'. The reason why Bentham could not give public utterance to his criticism of Malthus's views becomes all the more clear if we consider that Bentham's arguments could not be successfully sustained without at the same time making clear his more general attitude towards sexual non-conformity and particularly towards homosexuality. If we think of the great scandal raised by Place's work *Illustrations and Proofs*,[78] in which, criticizing Malthus's advocacy of moral restraint, he recommended nothing more than birth control in married couples — very far from the complete sexual liberty advocated by Bentham — we can certainly, if not justify Bentham's caution, at least recognize that his fears were not wholly dependent on his 'personal idiosyncrasy'.[79]

For Poynter the main problem is to assess whether Bentham's 'conversion' to Malthusianism extended to Poor Law matters,[80] because Malthus, in his *Essay on the Principle of Population*, had used the argument of overpopulation for attacking the whole system of Poor Laws and, in principle, the poor's right to relief.

Malthus had argued that, on the one hand Poor Laws were insufficient to raise the general standard of subsistence among the poor:[81] 'Their [the poor-laws of England] first obvious tendency is to increase population without increasing the food for its support.'[82] On the other hand, Malthus affirmed, the system of Poor Laws weakened the sentiments of fear and prudence which could encourage the poor to adopt the preventative check of moral restraint: 'Fortunately for England a spirit of independence still remains among the peasantry. The poor-laws are strongly calculated to eradicate this spirit. ... Hard as it may appear in individual instances, dependent poverty ought to be held disgraceful. Such a stimulus seems to be absolutely necessary to promote the happiness of the great mass of mankind.'[83]

Poynter has already remarked that 'Bentham's nostalgia for the Pauper Plan in 1830 suggests that he never repudiated it', and that 'all the references to indigence in later works show that Bentham was still in favour of a Poor Law'.[84] The examination of Bentham's writings on sexual non-conformity dealing with Malthus's ideas adds a new decisive argument to Poynter's assumption based on a short passage which rightly suggested to him — that 'Malthus's practical conclusions were not acceptable to Bentham'.[85]

First of all there is now compelling evidence which proves, beyond a doubt, that Malthus's practical conclusions were not accepted by Bentham. Furthermore, the way in which Bentham articulated his criticism of Malthus, shows that the former was acutely aware that such practical conclusions were not

drawn directly from the objective analysis of the problem of population, but from an openly normative element introduced by the 'Reverend Gentleman'.

This gives strong reasons for supposing that Bentham must have been able to distinguish Malthus's objective analysis from his morally predetermined attitude, even in relation to the poor.[86] As Poynter writes, Malthus's attack on the Poor Laws 'did not all follow closely from the principle of population': his argument could indeed, 'only be saved by further assumptions: that the very existence of a system of poor relief so weakened the spur to industry among free labourers that their labour was less productive than it would otherwise have been, and that they were induced to marry with less care for the future.'[87]

To Poynter's remark one should also add the consideration that nothing could be more antithetical than Malthus's and Bentham's attitudes towards poor relief. Thus Malthus's plea for the abolition of public relief was partly argued in terms of giving more opportunity to 'the sweetness and light' of private charity, which would have distinguished between deserving and non-deserving paupers, according to the personal choices of charitable people, because, as Malthus put it, 'every man has the right to do what he will with his own'. In this way, poor relief was left to 'this kind of despotic power' which is 'essential to voluntary charity' and this allowed for the selection of the deserving poor, whilst preventing anyone from having too great a confidence in the charitable, and therefore augmenting the poor's laboriousness.[88]

Bentham's ideas on poor relief were as much opposed to Malthus's abolitionist proposals, as was 'the principle of utility', in his words, opposed to 'the principles of asceticism and sympathy'. There are very good reasons therefore for believing that Bentham would have criticized Malthus's arguments for the abolition of Poor Laws, as he had criticized Malthus's looking to moral restraint as the only remedy to the evils of overpopulation. For example, how could moral restraint, i.e. delayed marriage, be accepted by Bentham, since he considered the possibility of early marriages, afforded to the paupers without any economic bar, as one of the great advantages of his own Poor Plan?

Certainly, Bentham would have adjusted his Pauper Plan to his new views on population, as he had done with his argument on sexual eccentricities.[89] Probably he would no longer have conceived the whole Plan as a means for increasing population, but would have stressed the improvement that his Plan was calculated to produce in the conditions of the already existing poor, and, of course, of the whole nation.

Clearly the decriminalization of 'unprolific appetites' would have saved the whole Pauper Plan, providing a reasonable check to overpopulation and avoiding Malthus's pessimistic previsions on the disastrous consequences of the relief of poverty. But how could Bentham publish a 'revised edition' of his Pauper Plan,[90] including his criticism of Malthus, without exposing himself to the scandal that his opinions on sexual liberty would certainly have raised? There are good reasons for believing that this is the main reason for Bentham's silence on practical proposals for the administration of the poor after 1800, and for his confining himself to matters of principle in his *Constitutional Code*, in which he still advocated the public relief of poverty as necessary.[91]

Bentham and Place

Whereas it seems that Bentham himself did not write anything applying his Neo-Malthusian position to the question of Poor Laws, there are many good reasons for suggesting that he had at least some part in Place's cited *Illustrations and Proofs*. Francis Place was introduced to Bentham by James Mill in 1812. In 1817 Place started his activity as Bentham's disciple, when he stayed two months at Ford Abbey, editing *Not Paul but Jesus*, and choosing the less compromising parts for publication, though this fact was never mentioned by Place in any of his letters or diaries.[92] There is no doubt that Place also read the part that he left unpublished [as it remains], in which Bentham's objections to Malthus's 'bitter remedy' were expounded. He also edited or helped to edit Bentham's *Fallacies, Plan of Parliamentary Reform*, and *Chrestomathia*. From 1819 on, Place managed most of Bentham's minor business matters, as one can see from the notes and letters they exchanged during this period. The correspondence between the two is indeed mainly constituted of notes handed over 'as would be expected from the fact that they lived within two minutes' walk of each other and met constantly'.[93]

Two years after Bentham's death Place wrote of him as: 'my twenty years' friend, my good master from whom I learned I know not how much, as it spread in so many directions. He was my constant, excellent, venerable preceptor, of whom I think every day of my life, whose death I continually lament, whose memory I revere, and whose absence I deplore.'[94]

I wish to suggest here that this close friendship also led to Bentham's collaboration in Places's *Illustrations and Proofs*.[95] The first argument in support of this hypothesis is that Places's objections to Malthus's ideas on population are manifestly the same as Bentham's, particularly where the Poor Laws are concerned. In his *Essay*, Malthus had argued that no man has 'a right to subsistence, when his labour will not fairly purchase it'.[96] For Malthus, 'this is the law of nature' which no other law can reverse.

Places's refutation of this principle — of fundamental importance in the economy of his work — sounds strangely familiar to a Bentham student: 'These assertions of Mr. Malthus are all of them assumptions, founded on a vague notion of *right*. A man, he says, has no *right to exist*, if another man cannot or will not employ him in some kind of labour. This, he says, is the *law of nature*, which our laws attempt to reverse, — and this *law of nature* is, he tells us the *law of God*. ... No such *right* as Mr. Malthus speaks of, was ever instituted by nature ... and it is by compacts and conventions among men, that *right* has any existence in the sense Mr. Malthus uses the word.'[97]

It is not correct to summarize Place's argument by saying that he opposed Malthus by advocating the poor's right to relief — as it is generally done. He only advocated the *opportunity* of relief for the poor, attacking Malthus because the latter had preferred the *law of nature* — as a superior authority to the right created by human laws (appealing to the laws of nature against a right created by the two hundred year old Poor Laws).

Though Place signed this work, Bentham could well have written a passage such as the following: 'A man in possession of the good things of this life has a *right, a right created by law*, to keep what he has from others, if he choose so to do; but take away this *legal right* as Mr. Malthus has done, and substitute his *law of nature*, and the whole is at once resolved into a question of brute force, and the one has as much *right* to take as the other to withhold; and in a case of possession on the one side, and starvation on the other, to kill the possessor, to obtain the means of subsistence, if by other means he cannot obtain it.'[98]

It is with a remarkable, unsuspected philosophical skill that Place overturns Malthus's pessimistic views by using Malthus's words and arguments and bringing them to a logical consistency. Place discovers the *locus* in which Malthus had 'candidly confessed' that: 'It is not in the nature of things, that any permanent general improvement in the condition of the poor can be effected without an increase in the preventive check.'[99]

Place goes straight on to the heart of Malthus's inconsistency: 'Mr. Malthus seems to shrink from discussing the propriety of preventing conception, not so much it may be supposed from the abhorrence which he or any reasonable man can have to the practice, as from the possible fear of encountering the prejudices of others, has, towards the close of his work, resolved all his remedies into one, the efficacy of which he has all along doubted, and on which he seems afraid to rely.'[100]

Francis Place on the contrary, spoke out clearly in favour of 'preventives', which in his view were not constituted exclusively by moral restraint, but by practical devices and adequate information being given to the poor on the consequences of overpopulation and on the means they could use to prevent its evils: 'If, above all, it were once clearly understood, that it was not disreputable for married persons to avail themselves of such precautionary means as would, without being injurious to health, or destructive of female delicacy, prevent conception, a sufficient check might at once be given to the increase of population beyond the means of subsistence; vice and misery, to a prodigious extent, might be removed from society, and the object of Mr. Malthus, Mr. Godwin, and of every philanthropic person, be promoted, by the increase of comfort, of intelligence, and of moral conduct, in the mass of population.'[101]

In this way, Place overcame Malthus's pessimism which was mainly due to his relying on the inefficacy of moral restraint over the natural instinct of sexual desire. Place opened new prospects of a better world to the poor who would adopt birth control: 'There appears, upon a view of the whole case, no just cause for despair, but much for hope, that moral restraint will increase, and that such physical means of prevention will be adopted, as prudence may point out and reason may sanction, etc.'[102]

On the other hand, Place avoided Malthus's abolitionist position, arguing that the abolition of the Poor Laws would not decrease population, and 'would reduce the whole of the working people to a state of absolute misery'.[103] The Poor Laws should become a further source of relief for the poor whose condi-

tion was to improve progressively by means of the preventive checks, i.e. information and birth control.[104]

Besides this central argument, there are several other passages in Places's works which resemble or repeat Bentham's thinking. The most striking examples may be derived from the passages in which Place speaks out against the notion 'that Penal Acts of Parliament were the only remedy for every evil, real or imaginary',[105] or when he passionately advocates the cause of distributing information to the poor, for which it should be enough to take 'a hundredth, perhaps a thousandth of the pains' which are taken 'to teach [them] dogmas' instead of 'these truths'.[106]

Place had certainly read the unpublished part of Bentham's *Not Paul but Jesus*. Evidence of his having absorbed Bentham's ideas and arguments can be seen in a passage such as the following: 'It is "childish" to shrink from proposing or developing any means, however repugnant they may at first appear to be; our only care should be, that we do not in removing one evil introduce another of greater magnitude.'[107]

Or, more significantly, a page later: 'I should be extremely sorry to say any thing which could either directly or remotely be construed unfavourably to the cause of virtue; but *I certainly cannot think that the vices which relate to the sex are the only vices which are to be considered in a moral question, or that they are even the greatest and most degrading to the human character.*'[108] Benthamite ideas recur when Place analyzes the social origins of prostitution and when he argues that his proposed preventive checks would diminish the evils of prostitution.[109]

Bentham agreed with Place's conclusions, as we know from his famous letter already mentioned, in which the former clearly proclaimed himself to share Place's views on birth control, without daring to express them to Prentice.[110] My point here is, however, to suggest that Bentham would not merely have agreed with the arguments of *Illustrations and Proofs*, but that he directly suggested and perhaps personally wrote some of them for his friend and disciple. This hypothesis becomes more plausible if we consider the remarkable philosophical skill that can be found in some passages of this work, and if we remember that, apart from a great mass of articles, letters and pamphlets, *Illustrations and Proofs* is the only complete work ever written by Place.

A powerful piece of evidence in support of this hypothesis is given by a letter, written by Place to Charles MacLaren, editor of the *Scotsman*, on 25 November 1830. In this letter, alluding to his 'little book on the Principle of Population', Place asserts: 'I did this with the concurrence of friends who were themselves afraid to encounter the certain obloquy of such allusions. It brought much on me, but this individually was of no importance. Satisfied there was no other way by which the too rapid increase of population could be stayed, I not only with my eyes open made the allusion, but in every correspondence with the working people, in every conversation with deputations ... I have always endeavoured to explain the principles of population and wages, and have pointed out the remedy in the physical checks' [birth control devices].[111]

There can be no doubt that Bentham was among these cautious friends. It is not my intention to overestimate Bentham's influence, or to argue that Bentham's influence was determining for Place's whole work.[112] Still less am I trying to show that the whole of *Illustrations and Proofs* should be ascribed to Bentham's mind or pen: undeniably this is not the style of the old Bentham. Bentham never showed such passionate concern for, or such a deep knowledge of, the psychology of the poor. Furthermore, Bentham seemed more deeply concerned with the oppression exercised on homosexuals by laws and public opinion, than with the oppression exercised on a poor married couple by the needs of their offspring.[113]

Illustrations and Proofs is without a doubt Place's work. The evidence produced here, however, suggests that Bentham collaborated in the writing of it.

Such a hypothesis leads to another, complementary answer to Poynter's questions about Bentham's silence on the subject of Poor Laws after 1800. It could be argued that Bentham only remained officially aloof in the debate on the subject, for the reasons already mentioned, while at the same time helping his disciples to adopt in public those positions he did not think suitable to take upon himself, providing them with practical, moral and intellectual aid.

Notes

1 J. Bentham, *Works*, X, p. 85.

2 The extent and limits of Bentham's influence have been the subject of a very lively debate, in which an attempt has been made to qualify Dicey's famous statement that 'the period in England from about 1825 till the death of J.S. Mill in 1873 could be called simply the period of Benthamism', A.V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, London, (1905), 1962, pp. 126—210; 496; 259ff. For some of the most important contributions to this debate see O. MacDonagh, 'The Nineteenth Century Revolution in Government: A Reappraisal', *Historical Journal*, I, 1958, pp. 52—67; D. Roberts, 'Jeremy Bentham and the Victorian Administrative State', *Victorian Studies*, March, 1959; H. Parris, 'The Nineteenth Century Revolution in Government: A Reappraisal Reappraised', *Historical Journal*, III, 1960; J. Hart, 'Nineteeth-Century Social Reform. A Tory Interpretation of History', *Past and Present*, XXXI, 1965; L.J. Hume, 'Jeremy Bentham and the Nineteenth Century Revolution in Government', *Historical Journal*, X, 4, 1967. The relief of poverty is however a field in which Bentham's influence had proved to be the strongest: all the above mentioned authors, although not all agreeing on the direct derivation of the subsequent Poor Laws from Bentham's thought, do agree on and will accept that there are at least some points of resemblance between the two. See also Lea Campos Boralevi, 'Jeremy Bentham and the Relief of Poverty', in *Aspects of Poverty in Early Modern Europe*, ed. by Th. Riis, Klett Cotta, Stuttgart, 1981, pp. 287—302.

3 J. Bentham, *The Theory of Legislation, op. cit.*, p. 96. The Theory of Legislation — a widely diffused text — is used here as a main reference for Bentham's thoughts on poverty and indigence, as its contents are fundamentally equivalent to those of

Bentham's original manuscripts on this subject. A thorough, although passionately critical account of these manuscripts can be found in C.F. Bahmueller's, *The National Charity Company*, (1981) already cited. (For the reliability of the *Theory* on this subject cf. Bahmueller, cit, p. 19)

4 *Ibid.*, p. 98.

5 J.R. Poynter, *Society and Pauperism*, London, 1969, p. 117.

6 J. Bentham *Theory of Legislation, op. cit.* , p. 105.

7 W. Godwin, *Inquiry Concerning Political Justice, and its Influence on Modern Morals and Happiness* (1793), ed. by J. Kramnic, London, 1976, p. 694 Ch. VIII, Book VII. Cf. E. Griffin-Collart, *Egalité et Justice dans l'Utilitarisme, Bentham, J.S. Mill*, Sidgwick, Bruxelles, 1974, p.50: 'Fondant, comme Bentham la morale et la politique sur le principe d'utilité Godwin arrive cependant à préconiser un ordre social radicalement différent, essentielment égalitaire.' Cf. Halévy, *op. cit.*, II, p. 98; (English ed., p. 205): 'To him who accepts the principle of utility, however, the aim of civil law which is logically most important, is not security but subsistence.'

8 C.B. Macpherson, *Political Theory of Possessive Individualism; Hobbes to Locke*, Oxford, 1962, p. 270.

9 This term appears more correct than that used by Macpherson, first of all because utilitarianism does not always and necessarily mean individualism; secondly in order to distinguish it from more egalitarian utilitarianism, such as that of Godwin. Cf. E Griffin-Collart, *op. cit.*, p. 94:

10 J. Bentham, *Theory of Legislation*, cit., p. 120.

11 *Ibid.*, p. 118.

12 'Thus the laws, in creating riches, are the benefactors of those who remain in the poverty of nature. All participate more or less in the pleasures, the advantages and the resources of civilized society'(J. Bentham, *Theory of Legislation*, cit., p. 114).

13 N.L. Rosenblum, *Bentham's Theory of the Modern State*, Harvard University Press, 1978, p. 48. For a thorough analysis of Bentham's subsidiary ends, see the works by Rosenblum, *op. cit.*, pp. 47—53 and Poynter, *op. cit.*, pp. 117—120.

14 A. Smith, *An enquiry into the Nature and Causes of the Wealth of Nations* (1776), ed. R. H. Campbell and A. S. Skinner, Oxford, Clarendon Press, (Book I, Ch. I), p. 24. Steintrager had already noted this resemblance (cf. *op. cit.*, p. 77, n. 46). In the above quoted edition of the *Wealth of Nations*, a footnote reconnects this passage with one by B. Mandeville, *The Fable of the Bees* (1714), ed. by F. B. Kayes, 2 vols., Oxford, 1924, I, pp. 169 and 181; but actually the main authority who had first written a similar passage is Locke, in his *II Treatise on Civil Government* (ch. V, sec. 41).

15 J. Bentham, *Theory of Legislation, op. cit.*, p. 123. Another means considered by Bentham for mitigating this conflict was the regulation of inheritance in favour of equality, *i.e.* the establishment of death duties. See the following chapter on slaves.

16 The most famous is that by Marx, in his *Das Kapital* (Book I, ch. XXII, par.5); such criticism has, however, some foundation; cf. F.C. Montague, Introduction to Bentham's *Fragments on Government*, London, (1891), 1951 pp. 42—48.

17 J. Bentham, *Essays on the Poor Laws* (1796), U.C., CLIII, 21.

18 Poynter, *op. cit.*, p. 119.

19 J. Bentham *Theory of Legislation, op. cit.*, p. 127—128.

20 Rosenblum, commenting on this distinction, has pointed out that: 'utility ... makes a distinction between indigence, which is lack of subsistence, and poverty, which is always relative to abundance. ... This distinction served to guarantee subsistence and to oppose the aspiration to absolute equality.'N. L. Rosenblum, *op. cit.*, pp. 49—50.

21 J. Bentham, *op. cit.*, p. 132.

[22] J. Steintrager, *Bentham*, London, 1977, p. 70; W. Roberts, however, has recently stressed the fact that the independent poor would be helped indirectly by the addition to the national wealth provided by his projects of workhouses for the indigent; see W. Roberts's 'Bentham's Poor Proposals', *The Bentham Newsletter*, 1979, III, pp. 29 and 38—39.

[23] J. Bentham, *Theory of Legislation*, cit., p. 384—385.

[24] See the cited works by Poynter, Rosenblum, Griffin-Collart.

[25] Bahmueller's work has the merit of having noticed this relationship, thanks to his close examination of Bentham's manuscripts on the subject. He has not, however, linked these manuscripts with Bentham's more theoretical writings on benevolence.

[26] J. Bentham, *An Introduction to the Principles of Morals and Legislation*, cit., pp. 17—21.

[27] Under this heading he puts the philosophies of Shaftesbury, Hutcheson, Hume, Beattie, Price, Clark, Woolaston, and all the theories on the Law of Nature. *Ibid.*, pp. 26—27.

[28] J. Bentham, *Introduction, op. cit.*, p. 25.

[29] *Ibid*

[30] *Ibid.*, p. 21n, footnote dated January 1789.

[31] J. Bentham, *Introduction*, cit., pp. 29 and 31.

[32] *Ibid.*, p. 117.

[33] J. Bentham, *Introduction*, cit., pp. 284—285.

[34] *Ibid.*, p. 28n.

[35] This is the same argument used by Bentham against 'The principle of sympathy'. Cf. also Poynter, *op. cit.*, p. 124.

[36] J. Bentham, *Theory of Legislation*, cit., p. 130.

[37] *Ibid.*, p. 386. On the other hand one should not forget that Bentham was as much opposed to the concept of a 'natural right to assistance', as he was to the abolition of Poor Law. Cf. his *Anarchical Fallacies*, where he warns that such a misconception would 'give to the indigent class the most false and dangerous ideas' and 'put arms in their hands against all proprietors' (*Works*, II, pp. 533—34).

[38] Poynter, *op. cit.*, p.124.

[39] J. Bentham, *Ttheory of Legislation*, pp. 431.

[40] Whether Bentham's ideas had a more of less determining influence on the Poor Law Act of 1834, is still an object of debate among historians. They all agree, however, in accepting the fact that the most qualifying principles of this Act were without any doubt Benthamite, i.e. the administrative centralization, the abolition of outdoor relief (as a consequence of the limitation of the relief to the indigent), the principle of less-eligibility, etc. (See my cited article 'Jeremy Bentham and the Relief of Poverty', pp. 296—299). However the Act was passed mainly due to the indefatigable work of Edwin Chadwick. Chadwick, who was a friend and disciple in Bentham's last years, also edited the hitherto unpublished *Observations on the Poor Bill*, written by Bentham in 1797. Cf. S.E. Finer, *The Life and Times of Sir Edwin Chadwick*, London, 1952, pp. 34—35.

[41] L.J. Hume, *Bentham and Bureaucracy, op. cit.*, pp. 4, 40, 216—217.

[42] J. Bentham, *Pauper Management Inproved, Works*, cit., VIII, pp. 380—81.

[43] G. Himmelfarb, 'Bentham's Utopia: The National Charity Company', *Journal of British Studies*, X, 1970—71, p. 122n.

[44] J. Bentham, *Constitutional Code, Works*, cit., IX, p. 13 Cf. L.J. Hume, *Bentham and Bureaucracy, op. cit.*, pp. 127—128, 138—139 and 223.

[45] Himmelfarb, herself, quotes from a very significant passage on this subject, where Bentham anticipates, to some extent, the possibility of a governmental ad-

ministration: 'Were the institution to wait for its establishment, another century or even half century, it is possible that by that time the discipline of Government might have made such a progress, and to such a degree outgrown its present habitual disease of relaxation as that the business might be carried on in Government account instead of Company account.' J. Bentham, U.C., CLI, p. 308. Cf also J. Bentham, *Pauper Management, Works*, VIII, p. 369: 'The management of the concerns of the poor, throughout South Britain, to be vested in one authority, and the expense charged upon *one* fund.'

[46] J. Redlich and F.W. Hirst, *The History of Local Government in England*, London (1903), 1972, pp. 110—113: 'The creation of a central authority with control over the local administration', overturned completely the old English tradition of the autonomy of Local Government. Indeed, the strongest attacks against the Poor Law Act of 1834 came from the 'constitutional romanticists', such as Cobbett, who, referring back to the Anglo-Saxon period, 'denounced Bentham's ideas of centralization, as an attack against the very heart of English constitutions — i.e. against the principle of absolute local autonomy'. (*Ibid.*, p. 159.)

[47] G. Himmelfarb, *op. cit.*, p. 87; Himmelfarb's opinion is shared by C.F. Bahmueller, *op. cit.*

[48] For a less passionate and more thorough analysis of Bentham's ideas on state administration and on the importance of 'management' in such contexts, see the excellent work by L.J. Hume, *Bentham and Bureaucracy*, already cited.

[49] Many times, in his works on pauper management, Bentham expressed the belief that the existence of an unrelieved indigent population would be incompatible with humanity. See especially U.C., CLIIa, pp. 18, 61, 225, 8—24. Furthermore, Roberts has recently stressed the humanitarian element present as a fundamental motive in Bentham's attitude towards the poor. Roberts, *op. cit.*, pp. 31, 36—39, 41.

[50] J. Bentham, *Pauper Management Improved, Works*, VIII, p. 380.

[51] J. Bentham, U.C., CLIIa, 188.

[52] J. Bentham, *Pauper Management Improved*, cit., p. 430.

[53] W. Roberts affirms that it is more correct to speak of a principle of 'not more eligibility', see *op. cit.*, pp. 30, 35—38. For a discussion of this argument see C.F. Bahmueller, *op. cit.*, pp. 89, 207, 215—216.

[54] Bahmueller's passionate assertion that 'one wonders how anyone with even the slightest sympathy for the poor could be other than horrified by Bentham's plan' (*op. cit.*, p. 211) is contradicted by cooler and more explanatory sentences such as: 'Between harshness and humanity, in this case Bentham sat squarely in the middle upon the rock of "economy" '. (*op. cit.*, p. 209)

[55] P. Himmelfarb, *op. cit.*, pp. 97—102 and C.F. Bahmueller, *op. cit.*, pp. 114, 210—214.

[56] The term 'tyranny of want' which I find very appropriate, is W. Robert's; Bentham speaks, in truth, of the 'security against want' afforded by his plan. (see W. Roberts, *op. cit.*, p. 42.)

[57] J. Bentham, *Pauper Management Improved*, cit. VIII, p. 389.

[58] W. Roberts, *op. cit.*, p. 41. Bahmueller himself grants that the main benefit of Bentham's scheme would be that 'The poor *[the whole class of the poor, not the indigent alone!* (Author's note)] would enjoy the secure expectation that under no circumstances would they be abandoned to starvation'. (*op. cit.*, p. 209)

[59] J. Bentham, *Pauper Management Improved*, cit., *Works*, VIII, p. 436. cf. *Ibid.*, pp. 430 and 432. For Bentham's conception of liberty see the Conclusion of the present work.

[60] For Bentham's use of the term 'Utopia' for indicating his Industry Houses, see the Conclusions of the present work.

[61] J. Bentham, U.C. CLIIb, 419, quoted in Bahmueller, *op. cit.*, p. 170.

[62] J. Bentham, U.C., CLI, 162—165, quoted in Bahmueller, *op. cit.*, p. 157.

[63] C. Bahmueller, *op. cit.*, pp. 110—111.

[64] Like that of Sheldon Wolin's *Politics and Vision*, Boston, 1960, p. 348.

[65] C. Bahmueller, *op. cit.*, pp. 242—243.

[66] *Ibid.*, pp. 87, 166ff. The charge of 'Paulinism' sounds odd and somewhat unjust when directed against the author of *Not Paul, but Jesus*, particularly when by Paulinism Bahmueller means Bentham's views on idleness, for which it is not logical to go back till Paul of Tarsus, (Cf. also J.R. Poynter, review of Bahmueller's work, *The Bentham Newsletter*, 6, 1982, p. 37.)

[67] J. Bentham, *Works*, cit., VIII, p. 437 (Cf. Bahmueller, *op. cit.*, pp. 171—174.)

[68] For this distinction see L.J. Hume's, cited book, p. 12 and the Conclusion of the present work.

[69] Besides criminals in Panopticon prisons, the indigent, prostitutes, beggars, the insane, infant paupers, etc. in Panopticon Poor Houses.

[70] Cf. Bahmueller, *op. cit.*, pp. 171—174 — Bahmueller also offers other convincing explanations, without considering the question of destinatories.

[71] G. Himmelfarb, *op. cit.*, p. 117; Bahmueller, *op. cit.*, p. 213. For a critique of this approach see J.R. Poynter's cited review of Bahmueller's work in *The Bentham Newsletter*, N.6, 1982, pp. 35—40 and cf. the author's cited article 'Jeremy Bentham and the Relief of Poverty.', pp. 296—299.

[72] C.F. Bahmueller, *op.cit.*, p. 11 — This seems indeed the main preoccupation of Bahmueller's passionate book.

[73] For the relationship between Bentham's 'idiosyncratic' love for detail and the more general principles of his philosophy, see the illuminating work by H.L.A. Hart, *Essays on Bentham, op. cit.*, pp. 4—7 which explains 'Bentham's extraordinary combination of a fly's eye for detail, with an eagle's eye for illuminating generalizations' using, by way of example, just the work *Pauper Management Improved.*

[74] C.F. Bahmueller, *op. cit.*, pp. 212—213

[75] J.R. Poynter, *op. cit.*, p. 142.

[76] Cf. the chapter on sexual non-conformists for the evaluative character of Malthus's definition of 'vice' and of his choice of moral restraint as the only remedy for over-population.

[77] Poynter, *op. cit.*, p. 123; N. Himes, 'Jeremy Bentham and the Genesis of Neo-Malthusianism', *Economic History*, III, 1936, pp. 267—268.

[78] F. Place, *Illustrations and Proofs of the Principle of Population*, London, 1822 (facsimile edition by N.E. Himes, London, 1930), p. XII—XIII; cf. the letter by Bentham to Place, cited in the chapter on sexual non-conformists, which is commented on by by G. Wallas: *The Life of Francis Place, op. cit.*, p. 169n; 'The rest of the inner circle of the Benthamites seems to have shared Place's opinions, though he alone faced the public scandal'; cf. E. Halévy, *op. cit.*, III, pp. 99, 412: 'En 1834, la "Society for the Promotion of Useful Knowledge", à tendances ultra-libérales, refuse le concours de Place en raison de son néo-malthusianisme'.

[79] J. Steintrager, 'Morality and Belief: the Origin and Purpose of Bentham's Writings on Religion', *Mill Newsletter*, VI, 1971, p. 8.

[80] Poynter, *op. cit.*, p. 143.

[81] T.R. Malthus, *An Essay on the Principle of Population*, London (1798), 1878, 6th ed. (B. III, ch. V), p. 295: 'No possible sacrifices of the rich, particularly in money, could for any time prevent the recurrence of distress among the lower members of

society, whoever they were. ... I cannot by means of money raise the condition of a poor man, and enable him to live much better than he did before without proportionably depressing others in the same class.' Cf. *ibid.*, pp. 295—302.

[82] T.R. Malthus, *op. cit.* (B. III, ch. VI), p. 303. He adds 'A poor man may marry with little or no prospect of being able to support a family without parish assistance. They may be said therefore to create the poor which they maintain.'

[83] *Ibid.*

[84] Poynter, *op. cit.*, pp. 142—143, and C.F. Bahmueller, *op. cit.*, pp. 216—217.

[85] *Ibid.*, p. 143 The passage referred to is in Bentham's *Letters on Scotch Reform*, *Works*, V, p. 21 and is entirely quoted in the chapter on sexual non-conformists.

[86] As also Bahmueller has pointed out 'Bentham never did an extended, complete, and fully reasoned reply to the challenge to any sort of Poor Law which was made by the haunting portrait of a world starving through over-population.' (*op. Cit.*, p. 91). This appears to be in contrast with Bahmueller's introductory assertion that 'The historical placement of Bentham's Poor Law reform is that it was in part an attempt to deal with the foreseen population crisis without succumbing to demands that public poor relief be abolished.' (*op. cit.*, p. 3).

[87] Poynter, *op. cit.*, pp. 153—154.

[88] T.R. Malthus, *op. cit.*, pp. 442—444: ' ... voluntary and active charity which makes itself acquainted with the objects it relieves; which seems to feel and to be proud of the bond that unites the rich with the poor; which enter into their houses, ...'. ... 'Every man has a right to do what he will with his own, and cannot in justice be called upon to render a reason why he gives in the one case and abstains from it in the other. This kind of despotic power, essential to voluntary charity, gives the greatest facility to the selection of worthy objects of relief without being accompanied by any ill consequences; and has further a most beneficial effect from the degree of uncertainty which must necessarily be attached to it.'

[89] In his early writings Bentham used to deny any possible influence of paederasty on population, particularly denying that homosexuality could diminish population; in his later 'Malthusian' writings, Bentham continued to deny any effect, but argued that 'if it had any, it would be favourable': the diminution of population, supposedly caused by the practise of homosexuality, became an argument in favour, and not against, the advocated sexual liberty. Cf. the chapter on sexual non-conformists.

[90] The only 'revision' of which we have evidence is the omission of the final section, encouraging population growth, in the 1812 edition of *Pauper Management Improved*. See G. Himmelfarb, *op. cit.*, p. 120.

[91] J. Bentham, *Constitutional Code*, *Works*, IX, p. 13. Of course, the reasons suggested by Poynter (that Bentham hated working over old material, and that he distinguished carefully between general principles, and particular plans, the *Constitutional Code* being a work of general principles) become a logical complement to the present hypothesis. These reasons are however insufficient for explaining why Bentham did not take a position in the debate which developed between Godwin, Malthus (and later Place), with whose ideas Bentham was certainly and directly acquainted.

[92] Cf. Place's copy of *Not Paul but Jesus* given to him by Bentham on 29 September, 1823. On the frontispiece Place has personally written: 'The matter of this book was put together by me at Mr. Bentham's request in the months of August and September 1817 — during my residence with him at Ford Abbey Devonshire', in the Bentham Collection, University College, London; cf. also G. Wallas, *The Life of F. Place*, cit., p. 84n: 'The whole Utilitarian circle for obvious reasons kept that side of their work rather quiet.'

[93] G. Wallas, *op. cit.*, p. 81.

[94] Place to Harrison, May 2, 1834, quoted in Wallas, *op. cit.*, p. 92.

[95] The whole title being: *Illustrations and Proofs of the Principle of Population: including an Examination of the Proposed Remedies of Mr. Malthus, and a Reply to the Objections of Mr. Godwin and others.* London, 1822.

[96] T.R. Malthus, *op. cit.* (B. IV, ch. VIII), p. 446: 'The laws of nature say with St. Paul "If a man will not work, neither shall he eat".' Cf. *Ibid.* (B. IV, ch. VI), p. 422.

[97] F. Place; *Illustrations*, cit., pp. 136—138.

[98] *Ibid.*, p. 138.

[99] *Ibid.*, p. 173. Place continues by saying: 'Nothing can be more true than the concluding clause of the sentence quoted, and we need give ourselves no further trouble to discuss the propriety or cruelty either of infanticide, or excluding children from parish aid ... both he [Malthus] and Mr. Godwin have declared that the true remedy can alone be found in preventives.' Place is referring here to the solutions proposed respectively by Godwin and Malthus.

[100] *Ibid.*, p. 173. Cf. The important footnote in Malthus's work quoted in the chapter on sexual non-conformists (*Essay, ed. cit.*, p. 12n).

[101] F. Place, *op. cit.*, p. 165.

[102] *Ibid.*, p. 179, ' ... and the supply of labour be thus constantly kept below the demand for labour, and the amount of the population be always such as the means of comfortable subsistence can be provided for.'

[103] F. Place, *op. cit.*, p. 144.

[104] *Ibid.*, pp. 164—166, 174—176.

[105] *Ibid.*, introduction, p. XIV; Place is here referring to Scarlett's 'Bill to ammend the Laws relating to the Poor of England', which proposed the abolition of Poor Laws, along the same lines as Malthus's *Essay.*

[106] F. Place, *op. cit.*, p. 165.

[107] F. Place, *op. cit.*, p. 174. Place, with remarkable polemical ability, uses Malthusian terms for his own cause: Malthus in fact had affirmed that: 'Their [those who were in favour of Poor Laws] benevolence to the poor must be either childish play or hypocrisy'; Malthus, *op. cit.* (B. IV, ch. IV), p. 408.

[108] *Ibid.*, p. 175. An instructive comparison can be made with Bentham's early fragments on sexual non-conformity, i.e. U.C., LXXIV, p. 34: ' ... il sera demonstré ... que le mot, *corruption des mœurs, à cet égard*, n'est qu'une invention des moines, que de jouir des toutes les sortes du plaisir de l'amour n'a aucun influence sur la probité du caracter moral et qu'elle ne rende pas les hommes genereux avares, des courageux timides, des gens d'esprit imbecilles, etc.'

[109] F. Place, *op. cit.*, p. 177—179.

[110] Letter of J.B. to F. Place, April 24, 1831, cited in the chapter on sexual non-conformists.

[111] Place to Charles MacLaren, London, 25 Nov. 1830, in F. Place's *Illustrations and Proofs*, ed. by N.E. Himes, cit., p. 311.

[112] Place was also influenced by Godwin and Franklin, whose works he had read. Cf. G. Wallas, *op. cit.*, and particularly N.E. Himes, 'B. Franklin on Population: a Re-examination with Special Reference to the Influence of Franklin on F. Place', *Economic History*, 1937, pp. 388—398.

[113] Place's experience had involved him personally in such problems: he was father of fifteen children, of whom five died in childhood: he wrote to Ensor (author of *An Inquiry Concerning the Population of Nations*, etc., London, 1818) of 'moral

restraint, which has served so well in the instances of you and I — and Mill and Wakefield — mustering among us no less I believe than 36 children ... rare fellows we to teach moral restraint'; in F. Place, *op. cit.*, p. 10 (editor's introduction).

6. Native People of the Colonies

Bentham's attitude towards colonies has been considered one of the most problematic areas in Bentham studies. Despite several attempts to refute the widespread commonplace about Bentham's unqualified support for the emancipation of colonies,[1] the whole question has not yet been clearly assessed.

Donald Winch's work, which is the most thorough analysis on the subject that has hitherto appeared, points out the ambivalence and the inconsistencies of Bentham's attitude towards colonies and follows its evolution through several 'phases'. In the first 'Anti-Imperialistic' phase, which occurred in the 1790s, Bentham developed, according to Winch, a favourable attitude towards the emancipation of colonies as a consequence of his economic theories which — as Winch remarks, following Halévy and Stark's previous analyses[2] — made Bentham believe in the principle of 'no more trade than capital'. In this period Bentham wrote *Emancipate Your Colonies!*,[3] which is undoubtedly his best known work on colonies, and the basis of his reputation as an 'anti-imperialist' and of the widely held belief that he remained so for his whole life.[4] In the same period he also wrote a proposed *Preface* to the second edition of his *Defence of Usury*, and the fragment entitled *Colonies and Navy*; 'emancipation of colonies' was also one of the six main points of his 'Plan for Universal Peace'.[5]

The second phase analyzed by Winch corresponds to Bentham's writings between 1800 and 1804, when colonization is seen as a possible solution for excess of capital, and, particularly, of population. According to Winch, writings such as the *Institute of Political Economy, The True Alarm, Defence of a Maximum*[6] show Bentham indulging in patriotic sentiments, which sometimes become 'paternalism' *tout-court*, in correspondence with his so called 'Fabian retreat'.[7]

The third phase distinguished by Winch is defined as a 'Return to Anti-Imperialism?'. This is said to have taken place between 1818 and 1830, when Bentham wrote *Rid Yourselves of Ultramaria*, addressed to Spain, in favour of the emancipation of its overseas possessions, and published the old but refurbished *Emancipate Your Colonies!*, and spoke out in favour of Canada's independence.[8]

Winch's analysis ends with the story of Bentham's adhering to Wakefield's project for the colonization of South Australia — which, together with some other contradictory *nuances* to be found within the preceding phases, leaves the reader wholly disoriented and puzzled by Bentham's 'ambivalence' — as Winch euphemistically names it.[9]

Even greater confusion will be added if we consider another phase, wholly ignored by Winch and earlier than what he calls the 'early anti-imperialistic' phase. In 1775—1776 Bentham collaborated in three works written by his friend John Lind against the pretensions of the Anglo-Americans, who claimed independence from their mother country.[10] Finally, the reader puzzled by such 'inconsistencies' will be further baffled to learn that Bentham believed constantly, throughout his whole life, in the utility of keeping India under British government, or better under the East India Company.

Winch's undeniable merit resides in the fact that he refutes the claim to be found in most of the literature on Bentham that he was a lifelong consistent anti-imperialist. Winch, however, fails to provide a feasible explanation for these inconsistencies, so that, after his enumeration, one is left with the impression that 'Bentham spent most of his life in the process of revising and occasionally contradicting positions he had reached earlier.'[11] The reasons for this failure are to be found in Winch's method, which fails to take into account Bentham's point of view on the questions as a whole. In the first place it should be remembered that Bentham did not treat the problem of colonies and colonization as a single problem as we would today, but rather as two distinct problems: English, Spanish, and French colonies in America; Penal Colonies in Australia; and British India, all constituted different problems, towards which Bentham's attitudes changed in relation to his personal convictions and to particular circumstances. Whereas the relation between his personal convictions and his attitude towards colonies has already been given some attention, the second point seems to have been hitherto wholly overlooked. It will be argued here that the relationship between such an attitude and changing circumstances is the only key factor able to provide a logical explanation for the 'inconsistencies' mentioned above, and that the relationship between Bentham's personal beliefs on political and economic matters affords only complementary — though very useful — information on the genesis of these apparent contradictions.

The Evolution of Bentham's Political Thought

We must however first consider the influence of Bentham's political convictions on his attitude towards colonies. This has been analyzed by Winch only in order to explain Bentham's second and third phases (i.e. that of 'Patriotism and Paternalism' and that of 'Return to Anti-Imperialism?'). On the contrary the first anti-imperialistic phase is seen mainly as a result of Bentham's economic principles.[12] The political perspective can indeed help to throw new light also on other periods in the development of Bentham's opinions on colonies; such as, for example, the evolution of his attitude towards Anglo-American colonies.

Collaborating on Lind's *Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain*,[13] Bentham expressed his opposition to the arguments

used by the Anglo-American rebels, who claimed that there could not be taxation without representation and contested the validity of the Acts issued on this subject by the British Parliament. Bentham collaborated in Lind's defence of such Acts, because he was convinced of the fundamental fallacy of such arguments, for they were all based on a 'fictitious' concept of rights and of property. In Bentham's — as well as in Lind's— opinion, property was not a natural right, but was created by law, and taxation was therefore not a gracious gift authorized by the property-owner's consent, but a duty which could be requested by the same sovereign authority which bestowed the right to such property and guaranteed its security.[14] Thus the main argument of the Anglo-American colonists was demolished from its ideological foundations, and the legitimacy of the Acts of the British Parliament, which levied taxes in the Anglo-American colonies, reaffirmed.

Undoubtedly, Bentham's negative attitude towards Anglo-American colonies was strongly influenced by his lifelong aversion — 'idiosyncrasy' might be suggested as the most appropriate term — to the 'abstract' principles enunciated in Price's *Civil Liberty*[15] and in the American Declaration of the Rights of Man.[16] But such an aversion, however strong, did not determine his change of attitude towards the Anglo-Americans, nor his enthusiasm for the United States of America, especially in his later years. This change of attitude has to be looked for instead, mainly in the transition from his original toryism to radicalism. In other words, Bentham later came to think that the greatest happiness of the greatest number was served better if the 'governing few' were prevented from pursuing their own sinister interests by submitting them to the strict control of the people. Bentham started to look at the United States of America with different eyes, because they embodied the best example of a well-functioning representative democracy. The relationship between Bentham and America is a very subtle and complex matter, as it has been shown.[17] The newly federated states of America in turn played an important role in dampening Bentham's fear of democracy and in propelling him on the way to radicalism.

From the point of view of Bentham's attitude towards colonies, it is worth noting that the line of continuity is to be found in his lifelong opposition to any sort of Declaration of Human Rights. In his later years, Bentham indeed considered the U.S.A. to be a utilitarian utopia, *despite* its Declaration of Rights.[18] He thought that the many positive aspects of American life overwhelmed the negative effects of the Declaration. There is no doubt that even in his later, more radical years, Bentham would have opposed any claim to independence —even coming from the U.S. — when based exclusively on the 'fallacies' of the Declaration of Rights, instead of being founded on the principle of utility.

Although he started to be concerned with such problems only ten years after he had collaborated on Lind's works, in general Bentham dealt later with the question of colonies, not from the point of view of legitimacy, but mainly from that of expediency, measuring the advantage both parties had in maintaining — or ending — the colonial link. Indeed the whole book entitled *Remarks on*

the Principal Acts of the Thirteenth Parliament is devoted mainly to the legitimacy of the proceeding of the British Parliament in relation to British Law, and against those who contested it. Bentham himself explained in his later years that in 1776, he had only seen the bad argument used for American independence and neglected 'the only good one, viz. the impossibility of good government at such a distance, and the advantage of separation to the interests of both parties'.[19]

Besides Bentham's earliest attitude to the subject of colonies, the political perspective helps to explain also the so-called 'early anti-imperialistic phase', which is usually only directly connected to Bentham's first reflexions[20] on economics.

It should be remembered here that Bentham went through a first period of qualified favour for the French Revolution, which only later turned into an overt and angry opposition. In the years between 1788 and 1793, he expressed many views in relation to France which were to be taken up again and elaborated in his radical phase in relation to England and to all countries in general.[21] In the same period he also devoted himself to political economy, following critically his 'master' Adam Smith.

All these factors —which cannot be considered separately — produced the pamphlet *Emancipate Your Colonies!, addressed to the National Convention of France*, written by Bentham in 1792—93, and taken again into consideration by him after the transition to radicalism. In the 1820s he often attached a copy of this pamphlet to his Spanish or Hispano—American correspondence,[22] and finally had it published in 1830. The whole *Rid Yourselves of Ultramaria*, written by Bentham between 1818 and 1822,[23] may be considered as an enlarged re-edition of *Emancipate Your Colonies!*, with the important addition of the theory of sinister interests.[24]

To sum up, the 'Patriotic-Paternalistic' and the 'Return to Anti-Imperialism?' phases can be explained respectively, by Bentham's 'Fabian retreat' and by his transition to radicalism.[25]

Bentham's Approach to Political Economy

Though the political perspective throws new light on the development of Bentham's different attitudes to this subject, it does not provide however a sufficiently convincing explanation for all these 'phases', and, particularly, not for some *nuances* existing within each phase. For example, Bentham's adherence to Wakefield's project for colonizing Australia remains inexplicable if we do not give due attention to his opinions on economics. From the economic point of view, Bentham was not only guided by the principle of 'no more trade than capital' and by Smith's or Say's theories, as most Bentham scholars have claimed, for these theories do not help to explain his change of attitude towards colonies and, particularly, towards colonization.The turning-point in Bentham's change of opinion on the opportuneness of colonization is to be

looked for in the change in his opinion on matters of population — a subject hitherto overlooked by all critics of Bentham's economic thought.

As has already been shown,[26] in the years around 1800 Bentham became aware of the dangers of overpopulation, and started to look for possible solutions to the problems caused by population growth. Colonization, he thought, could be a remedy. In his earlier economic writings, he affirmed that as a consequence of the principle 'no more trade than capital' colonies constituted a 'drain' of capital to the mother country, because its capital was not determined by the extent of its markets.[27] At that time he did not conceive of the possibility of saturation, either in capital or in population, and therefore warmly favoured internal colonization, opposing it to any kind of colonization abroad, which — he then believed — could only further impoverish the nation.[28] There is an interesting piece of evidence on Bentham's attitude towards colonization during those early years to be found among his writings on Poor Laws. It shows that, as early as in 1797, Bentham had envisaged the possibility of over-population (although at that time he considered this to be only a remote possibility) and had indicated colonization as a possible remedy, together with a complete overturning of sexual morality. In his *Plan for Pauper Management*, Bentham predicted that the large population of indigent saved from starvation would not press upon subsistence, because the Plan itself encouraged agriculture; looking to the time when England was cultivated like a garden and fully peopled, Bentham added:

> This plan is not a plan for a day — it looks onwards to the very end of earthly time .... Sooner or later the yet vacant lands in the country will have been filled with culture and population. At that remote but surely not ideal period the Company will have turned its thoughts to colonisation: and the rising strength of these its hives, will by art, as in other hives by nature, have been educated for swarming. [Planned colonisation would be much better than if] performed without appropriate preparation and only under pressure of distress.[29]

No wonder therefore that in 1801—1804, when already considering seriously the threat of overpopulation, Bentham came to look at colonization as a possible remedy for it, and to weigh the pros and cons of colonialism in such a situation. In his *Institute of Political Economy*, after enumerating all the disadvantages which the mother country would derive from keeping colonies, he asserts that 'the only gain, if any' at present would be the enjoyment of exotic goods. The balance changes, however, if we take the future into consideration:

> Nevertheless, taking futurity into the scale, the well-being of mankind appears to have been promoted upon the whole by the establishment of colonies. Taking Britain for example, at the rate at which population has been encreasing for this last century, long before the conclusion of the present century, the population would have extended beyond the utmost number for which the soil would be capable of affording sustenance: long before which period a great diminution of relative opulence, a severe sense of general poverty and distress, would necessarily have taken place.[30]

That this position does not contradict the principle of 'no more trade than capital' enunciated in his more general works on colonies, but is simply an adaption of such a principle to the particular cases of overpopulation and excess of capital, is stressed by Bentham himself in his *Defence of a Maximum.* In this work he balances the negative aspects of colonialism under normal conditions against the positive ones in such particular cases:

> Thus stands the account, so long as the land suffices for its inhabitants in prospect as well as in existence, and so long as emigration, whether of hand or capital, is a loss. But when efflux in both ways is become a relief — efflux of hands and mouths by mitigating scarcity, efflux of capital by mitigating the income tax imposed by capitalists upon capitalists as capital accumulates, and the rate of interest, and income obtainable for the use of it, is borne down — in this already impending, if yet scarcely so much as imagined, state of things, colonies, though still a drain, are notwithstanding, and even because they are a drain, a relief.[31]

These same ideas were to be expressed by James Mill, in his article on 'Colony' in 1820.[32] It is in the light of this reasoning that we should understand Bentham's later adherence to Wakefield's project for colonizing Australia, which was based on these same considerations.[33]

From this point of view, new light can be thrown on one of Bentham's well known, and hitherto obscure passages on over-population, colonization, pauper management, and birth control. In this passage entitled 'Axioms psychological, applicable to subsistence',[34] after having described the sufferings of the indigent, Bentham expresses the Malthusian view, that their relief — necessary for the sake of security — will augment the dangers of over-population, enabling the indigent to reproduce themselves and augmenting also the 'defalcation' from security of property which will be necessary to master this fluid situation. A first solution is colonization, which will also cost in terms of loss of property, by forced contribution given to the government for the purpose of colonization, as in the case of domestic relief of indigence. Colonization, however, is only a temporary solution:

> sooner or later ... the whole surface of the habitable globe cannot but be fully peopled, in such sort, that from no one spot to any other could human creatures be transplanted in a living and about to live state.[35]

The conclusion is Neo-Malthusian, although not explicitly uttered:

> Human benevolence can, therefore, hardly be better employed than in a quiet solution of these difficulties, and in the reconciliation of a provision for the otherwise perishing indigent, with this continual tendency to an increase in the demand for such provision.[36]

Benevolence, which looks after the interests of the whole of mankind, should solve this apparently unsolvable problem, combining the necessity of relieving the already existing indigent, with the necessity of preventing an excessive increase of this class: birth control, on the one hand, and Poor Laws, on the other, is the way in which benevolence can and should be employed for the greatest happiness of the greatest number, in Bentham's as well as in Francis Place's opinion.

Difficulties in finding a line of continuity in Bentham's thought arise when we introduce several disturbing elements into this otherwise rather simple framework. How then should we regard his passionate defence of the interests of the native people of the French and English colonies in Canada, and, in particular, of the Spanish colonies in 'Ultramaria', who were in his opinion oppressed by the government of their mother country? These ideas were expressed in the same 'phase' in which he spoke in favour of colonization? These difficulties are increased by the fact that the only two works which Bentham devoted wholly to the subject of colonies were both anti-imperialistic.[37] The contradiction which seems to be inherent in Bentham's thought vanishes if we cease to examine it with the eyes of a contemporary economist, and try to understand Bentham's own point of view; for Bentham never was — nor did he ever want to be — an economic theorist. He never wrote a Treatise on the Science of Economics, but only a *Manual of Political Economy*, as he explains at the very beginning of this work:

> The design of this work is different from that of his [Smith's]. ... His object was the science: my object is the art. By him the art is touched upon incidentally only and piecemeal, and as it were without intending it, in treating of the science: ... by me the science is considered only as a means to an end. ... The great object, the great *desideratum*, is to know what ought and what ought not to be done by government. It is in this view, and in this view only, that the knowledge of what is done and takes place without the interference of government can be of any practical use.[38]

Winch himself has remarked on the difference in approach between Smith's and Bentham's works, as a 'perceptible change of atmosphere', which explains Bentham's more 'dogmatic discussion', compared with Smith's 'subtle distinctions' concerning the implications of the principle 'no more trade than capital' — something already pointed out by Halévy and Stark.[39] This difference in approach is useful not only for understanding this point, but will also facilitate a correct analysis of how Bentham looked at the whole subject of colonies and of political economy. Although there are among Bentham's writings several remarkable contributions to economic theory,[40] Bentham always considered the problems of political economy from the political point of view, or rather from the pragmatical point of view. As we have seen, he was interested in the problems of economic policy, rather than in theories of political economy. It might be objected that the solution of the former needs to be based on an understanding of the latter. But this was not Bentham's opinion, for, he always based his proposals of economic policy on the principle of utility, i.e. on whatever doctrine of political economy he considered to be closest to that principle in each particular case. This is in fact the way in which he defines political economy:

> Political economy, considered as an art exercisible by those who have the government of a nation in their hands, is the art of directing the national industry to the purposes to which it may be directed with the greatest advantage.[41]

He later elaborated this concept, pointing out that:

> The object of the present work [*Institute of Political Economy*] is to enquire what is the most suitable course for the sovereign of a country to pursue on each occasion,

within the field [of the art of government in matters of political economy] ... it endeavours to compass what in every government ought to be ... the end or object aimed at — viz. the maximum of happiness ... .[42]

Political economy, as Bentham saw it, was part of the art of government and was therefore to be guided by the principle of utility, and more precisely by the four subsidiary utilitarian ends: subsistence, security, abundance, and equality.[43] This approach is — as Hutchison has already observed — 'diametrically opposite' to that of Smith, and later of Ricardo.[44] While Smith 'starts from the fundamental beneficence of the free-market mechanism and then traces around this the framework of State activity necessary to maintain, and at exceptional points correct or supplement, this mechanism', Bentham first defines the four overriding ends of economic policy[45] — subject only to the supreme end of maximum happiness — and then indicates what kind of State intervention is best adjusted to them. Only by adopting this criterion is it possible to understand the apparently irreconcilable contradictions which any economic theorist will discover in Behtham's attitude towards several of the most important themes of political economy — for example, the whole question of *laissez-faire*.[46]

This leads us to consider the role which different circumstances played in determining Bentham's different attitudes towards one problem — or at least towards what is today considered to be one problem. To the modern mind colonies and colonization, though clearly different, belong nevertheless to a single set of concepts, but to Bentham's mind they constituted two distinct entities.[47] Colonization of uncultivated land, at home as well as abroad, was seen by Bentham as an *action*, or rather as a counter-action to be undertaken in the near or remote future, as a remedy to an 'excess of labour or capital'. Colonies, on the other hand, were a reality already in existence, a *de facto* situation, which involved different people, the colonists who had settled in those distant lands, and their native inhabitants. Whereas, for Bentham, colonization constituted only an economic problem, colonies generated a series of problems, conditioned by their own political and socio-historical situations:

> What has been said to the disadvantage of other colonies, applies not by any immediate and necessary reference beyond the original policy of founding them. But though it might have been better for this country that such of them as were planted by this country, they had never been planted — ... it would be by no means a necessary consequence that they ought any of them now to be abandoned. The inhabitants and proprietors of land in those countries have acquired a sort of right for the protection of this country: a right which few of them I suppose would be willing to part with, even for the moonshine path of independence.[48]

The issue of oppression, or better, the consideration of the interests of 'the oppressed' can throw a Benthamite light on the whole question: a line of continuity in Bentham's attitude towards colonies can be found only if we keep in mind that he never considered *the* question of colonies, but took into consideration the interests of the Spanish inhabitants of Ultramaria, of the English and French inhabitants of Canada, of the Indian inhabitants of India, weighing their oppression (or the advantages they could obtain from colonial govern-

ment) against the economic or political advantages (or disadvantages) of the inhabitants of their respective mother countries. Each case had its own problems, according to *circumstances* and to the people involved, and each had to be solved not in the name of abstract principles, but on the 'solid foundation' of the principle of utility.

The Influence of Time and Place

Whereas scholars have, to some extent, demonstrated how Bentham's attitude towards colonies changed in relation to his personal convictions on points of politics or economics, i.e. in relation to 'subjective' factors, no one hitherto seems to have considered how Bentham's attitude on this subject changed, in relation to 'objective' factors, or what he would have called 'The Influence of Time and Place',[49] that is in relation to the climate, and to the more or less advanced state of society in the colonies and in the mother country. Viewed from this perspective, the modern terms 'imperialistic' or 'anti-imperialistic' when used to describe Bentham's attitude towards colonies, lose all significance. This does not mean that Bentham did not hold any consistent opinion on colonies, and that his 'ambivalence' is only 'evidence of the private workings of his mind'.[50] He held a lifelong conviction that, in principle, the maintenance of colonies was not advantageous, because it cost too much to the mother country in terms of economic expenses and, in most cases, to the colonists themselves in terms of oppression. Colonies were therefore to be emancipated for the reciprocal utility of both parties involved (but particularly for the mother country), as well as for the improvement of 'international pacification'.

This was Bentham's general theory on colonies, in which the different circumstances characterizing each colony constituted what we would nowadays call its 'variables'. The result was that, in the case of advanced societies, that is of the French, English, and Spanish colonies in America, he reiterated his original conviction and spoke out in favour of their immediate emancipation. Bentham's principle however was not 'emancipation of colonies' but — or at least he believed it to be — 'the greatest happiness of the greatest number'. Concluding his work *Emancipate Your Colonies!* he thus addressed the National Convention of France:

> You will, I say, give up your colonies — because you have no right to govern them,[51] because they had rather not be governed by you, because it is against their interest to be governed by you, because you get nothing by governing them, because you cannot keep them, because the expense of trying to keep them would be ruinous, because your constitution would suffer by your keeping them, because your principles forbid your keeping them, and because you would do good to all the world by parting with them.[52]

Almost thirty years later Bentham re-affirmed these same ideas with respect to Spanish America with only one important addition. In a 'Preface or Addendum' to *Rid Yourselves of Ultramaria* he explained that:

When thirty years ago, I wrote in the form of a Letter the small tract intituled *Emancipate Your Colonies*, in the fond hope of use to the French nation by whom I had been adopted, I viewed the cause of the misrule in a very inadequate point of view in comparison to that in which twenty years ago I came to view it. Error in judgement was the only cause that at that time had presented itself to my view: the primarily efficient cause sinister interest, not having been looked for — this true root of misrule, prominent as it had been to so many others — not having been looked out for in the field of constitutional law had not presented itself to me.[53]

Here Bentham thoroughly analyzed the role of 'functionaries'. If in fact keeping Ultramarian colonies was neither in the interest of Spain nor of the Creoles — or at least of their greatest number — why did this dominion continue, and who had an interest in continuing it, but these functionaries, for their own sinister interests?[54] Besides these sinister interests, the other new element in this work is Bentham's analysis of the implications of the new Spanish Constitution. The liberal principles enunciated in it clashed with the kind of despotic government that the Spanish were obliged to keep in Ultramaria, denying adequate representation and any possibility of excercising even subordinate legislation, etc.[55] He adds that the very existence of despotic government in Ultramaria was in itself a threat to the establishment of liberal habits in the mother country:

By planting in those ... regions with or without original design, a necessary despotism, the reimportation of which into your peninsula would of all your imports from there be the most assured.[56]

With respect to the Spanish colonies in America, circumstances served to reinforce Bentham's original theory. In other cases however local circumstances constituted the variables which turned the scale completely. Overpopulation, with respect to the mother country constituted one of such variables. In the case of overpopulation in fact, the 'drain' of labour would become a 'relief' to the over-populated country — as we have already seen.[57] Still in his *Constitutional Code*, Bentham considered:

whether, ... for relief against excess of population, at any time, ... the non-adult or junior portion of the relief-requiring class — the orphan class in particular — may, by appropriate preparatory education and instruction, be employed with advantage, in the way of colonization.[58]

Bentham was, however, always more in favour of colonization than he was in the maintenance of existing colonies. Colonization, particularly of almost uninhabited or uncultivated land, such as in Australia, need not entail the oppression of any long-established community of people. In the future, they could always obtain independence.[59] Overpopulation then, decisively turned the scale. Colonization, on the one hand, was a relief to the mother country; on the other hand, the possible sufferings resulting to the colonists from the oppression of a distant government, were undoubtedly less than the certain sufferings (unemployment, starvation, etc.) they would have met remaining in the over-populated mother country.

The issue of oppression and the 'felicific calculus' which determined the quantities of happiness, are in fact the only perspective from which it is possible to reconstruct a line of continuity in Bentham's attitude towards colonies, which can be maintained even in these cases where, from the political or economic point of view, his position would appear to be contradictory. Take for example, the case of the penal colony in New South Wales, which caused so many difficulties to Winch in his effort to locate Bentham's attitude within a framework of economic thought. The penal colony of New South Wales constituted in fact a case of colonization of uncultivated and uninhabited land. The great majority of its settlers, however, were penal convicts who had been carried there for punishment. Taking into consideration the interests of the mother country, Bentham thought that the maintenance of such a colony would prove as disadvantageous as always, first of all because the variable of overpopulation was not present in Great Britain yet, and secondly because of the quality of these 'colonists'. Benthams pragmatic approach to the whole question is once more confirmed by his own words:

> Colonies in general yield no advantage to the mother country, ... The particular colony here in question yields no advantage to the mother country .... The proposition relative to the unprofitableness of *colonies in general* is one thing: the proposition relative to the particular profitableness of this *particular colony*, is quite a different thing. The first may be consigned to the chapter of romance, by the admirers of *arithmetic and its calculations*: the other will remain as firm, as impregnable, as ever.[60]

Nevertheless in weighing up all the pros and cons, Bentham later came to observe that the export of capital to colonies was undertaken 'freely, by individual persons choosing to give that distant employment to their respective capitals, instead of employing them at home'.[61]

What turned the scale decisively, however, was the consideration of the interests of the colonists themselves. He compared their situation to that of criminals kept in domestic prisons, as they would have been, had they not been conveyed to New South Wales. First of all he pointed out that the whole system of transportation did not respect the decisions of the legislator:

> [because of] the system of transportation to New South Wales, the punishment thus inflicted is liable to be attended with various species of aggravation, making so much clear addition to the punishment pronounced by the legislator. ... The punishment of transportation ... under the system in question is, in point of fact, frequently converted into capital punishment.[62]

Besides transportation, the conditions of the penal colony were so bad that there could be no doubt that convicts suffered less in domestic prisons. The comparison made the New South Wales colony appear even more disadvantageous, when it was compared with the penal system proposed by Bentham, i.e. with his famous Panopticon.[63] From a general political point of view, then, such a settlement was a mistake because its 'embryo stock' was mainly constituted by 'a set of men of stigmatized character and dissolute habits of life', whereas sound colonization required 'sobriety, industry, fortitude, intelligence'.[64] For all these reasons, Bentham could oppose the penal colony of

New South Wales, without contradicting his general opinion on colonies. It would,indeed, be more correct to say that his opinion on New South Wales had much more to do with circumstances and with his own convictions on penal law, than with any general theory about colonies in themselves.

The category of oppression is also the only means by which to understand Bentham's attitude towards British India, which remained unchanged throughout his whole life, and which does not fit into any of Winch's 'phases'. As Halévy has stressed, Bentham 'was always obsessed' by the idea of legislating for India.[65] As early as 1780 we find him preparing an 'Indian Code' with the following, rather immodest, 'exordium':

> Worshippers of Christ, followers of Mahomet, children of Brama, read and attend.[66]

In this unpublished manuscript, Bentham speaks of the historical dominion of the English over India, of English superiority, of the necessity for the Indians to obey laws, and of the advantages to be had in doing so. In a few words, we can already see the main ideas which would constitute his lifelong attitude towards British India. India was, for Bentham, a continual challenge to the assumption that the principles of his utilitarian doctrine were universally applicable. In May 1793 he wrote to Dundas, who was at that time President of the Board of Control, offering his services 'as a sort of Indian Solon':[67]

> Something in the way of legislation may be deemed wanting for Hindostan. Diverted of all local prejudices, but not the less sensible of their force, and of the necessity of respecting them, I could with the same facility turn my hand to the concerns of that distant country, as to those of the parish in which I live.[68]

Some ten years earlier he had written an *Essay on the Influence of Place and Time on Legislation*, whose main aim was to analyze the way in which his system of law should be modified in order to adapt it to the realities of Bengal.[69] At the same time, Bentham firmly believed that for the Indians, British rule was the lesser evil. In other words, he always justified British rule over India as the best solution in the interests of its inhabitants. Striking evidence of this attitude is to be found in his *Emancipate Your Colonies!*, which is always spoken of as the *Manifesto* of Bentham's 'anti-imperialism'. As early as 1793, i.e. 15 years before he first met James Mill,[70] Bentham gave a 'sociological' justification to the East India Company's rule over India, carefully distinguishing between one colony and another, according to the *people* who inhabited them:

> A word is enough for your *East India* possessions. Affections apart, which are as yet unknown, whatever applies to the West Indies, applies to the East with double force. The islands present no difficulty: the population there is French: they are ripe for self-government. There remains the continent: ... Would the tree of liberty grow there, if planted? Would the declaration of rights translate into *Shanscrit*? Would *Bramin, Chetree, Bice, Sooder*, and *Hallachore* meet on equal ground? If not, you may find some difficulty in giving them to themselves. You may find yourselves reduced by mere necessity to what we should call here a practical plan. If it is determined they must have masters, you will then look out for the least bad ones that could take them: and after all that we have heard, I question whether you would find any less bad than our English company.[71]

No political or economic theory can provide a convincing explanation for the existence of such a paragraph in the text of *Emancipate Your Colonies!*,[72] unless due consideration is given to Bentham's concern for the 'objective circumstances', i.e. for the different interests of different people in different stages of social development. The paragraph quoted is contained in a work for which Bentham is considered to be a dogmatic disciple of Adam Smith, carrying the economic principles of the master to extreme conclusions. But the striking fact is that Adam Smith had attacked with vehemence the East India Company, which embodied the expression of the hated 'mercantile system'.[73]

The issue of *oppression* — rather than any economic principle — again proves of fundamental importance for throwing new light on Bentham's otherwise inexplicable way of reasoning. For Bentham thought that not all nations were equally advanced. The people of India were particularly backward, not because they were inferior by nature, but because of their legislation and, particularly, because of their religion, which kept them from realizing the principle of utility and from achieving the greatest happiness of the greatest number. British governors, who came from a more advanced nation, could lead them on the way to welfare and progress, by enforcing a utilitarian legislation. He believed that the possible oppression which might be exercised by such governors, was incomparably less than the oppression that the Indian people would otherwise have to suffer from the tyranny of their religion, laws, and local Maharajahs. For these reasons Bentham consistently believed that the advantages to be derived from the British government in India outweighed the possible damages suffered by Indians under colonial rule. Nevertheless still convinced that the maintenance of colonies was rather a burden than a profit for the mother country — he advocated the relative autonomy of local Government on the model of the East India Company, as a way to mitigate its negative consequences. This, he believed, would reduce the expenses to the mother country and attenuate the damages caused by a distant government.

The hypothetical challenge of applying utilitarian legislation to such a different country became concrete when the Mills entered India House and when William Bentinck — a close friend in the circle of George Grote — was appointed Governor-General.[74] No wonder that, at the end of his life Bentham prophesied that:

> Mill will be the living executive — I shall be the dead legislative of British India.[75]

In truth, Bentham exercised a powerful although indirect influence on India, as has been fully recognized,[76] if only through the two Mills[77] and through the Indian penal code which, as it was drafted by Macaulay and by Charles Hay Cameron, was entirely Benthamite.[78]

The main point here is that, if we consider his attention to 'circumstances' Bentham's policy for India does not contradict his views on French and Spanish colonies overseas, nor his awareness of the danger of a despotic colonial government. In his radical years, he argued that one of the disadvantages of keeping colonies was that the despotic government that was necessarily kept in colonial possessions could endanger the cause of democracy in Europe.[79]

This was true for French, English, and Spanish colonies mainly inhabited by colonists of European origin, who lived according to the laws of an advanced society. For these people democracy, as well as emancipation from the mother country, was the best way of ensuring the greatest happiness of the greatest number. But this was not true for the backward Indians, 'not ripe for self-government', and in need of an enlightened despotism to lead them on their way towards civilization and progress. Furthermore, a despotic government ruling Indians could not endanger the cause of democracy in the more advanced societies in Europe. These same views were to be expressed several years later by James Mill, who always considered that the governor-generalship was the best rule for India, which, given its low state of society, could only be governed as a despotate.[80]

The importance of oppression as a key-concept in Bentham's attitude towards colonies is further confirmed by what he says about Egypt, which he considered to be on more or less the same level of backwardness as India:

> It would be to Egypt an advantage beyond all price, to be under the government of Britain — that is, under a government of universal and perpetual security, or even under the government of France, that is, under a government exempt from cruelty, softened and adorned with every branch of intellectual cultivation, a government in which security and tranquillity would at any rate predominate, ... — rather than under a government by which the very idea of security is banished ..., a government rivetted to a religion of which incurable barbarity and ignorance seem to be inseparable features.[81]

Only from this point of view is it possible to understand the 'cryptic'[82] postscript attached to *Emancipate* in 1829:

> As a citizen of Great Britain and Ireland, he is thereby confirmed in the same opinions ... But, as a citizen of the British Empire, including the sixty millions ... in British India ... not to speak of the contiguous Empire of China — his opinions and consequent wishes are the *reverse*.[83]

No esoteric interpretation is needed here, but only a just comprehension of Bentham's reasoning. Before 1800, he had considered the whole question only from the point of view of the interests of the mother country, as opposed to those of the colonists of European descent and civilization. In 1829 Bentham thought of the British Empire as a whole, including therefore the interests of what we would nowadays call underdeveloped countries, and this turned the scale in favour of British colonial rule.

If these were the interests of the Indian people, what then were the interests of the English Imperial? What was the cost of this 'burden' of civilization which they had undertaken to spread all over the world? Bentham apparently never provided a satisfactory answer to this question. Macaulay's brother-in-law, Charles Trevelyan, had this to say on the subject: 'The existing connection between two such distant countries as England and India, cannot, in the nature of things, be permanent: no effort of policy can prevent the natives from ultimately regaining their independence. But there are two ways of arriving at this point. One of these is through the medium of revolution; the other, through that of reform. ... The only means at our disposal for preventing the

one and securing the other class of result is, to set the natives on a process of European improvement .... The natives will not raise against us; ... the national activity will be fully and harmlessly employed in acquiring and diffusing European knowledge, and in naturalising European institutions. ... The change will thus be peaceably and gradually effected ... the natives will have independence, after first learning how to make good use of it. ... A strict commercial union between the first manufacturing and the first producing country in the world, would be a solid foundation of strength and prosperity to our whole nation. ... Trained by us to happiness and independence, and endowed with our learning and political institutions, India will remain the proudest monument of British benevolence. ...'[84]

Although Bentham could not envisage such a development in India, he foresaw it in Australia, which, as it was mainly inhabited by European colonists, would soon obtain independence. He wrote in the postcript to *Emancipate*:

> In regard to Australia, it is in his eyes preponderantly probable that, long before this century is at an end, the settlements in that vast and distant country will, all of them, have emancipated themselves, changing the government from a dependency on the English monarchy, into a representative democracy.[85]

It is true, as Winch has pointed out, that the radical group did not have an unequivocal attitude towards the Empire. But this ambivalence is not due to the inconsistencies to be found in 'the private workings' of Bentham's mind,[86] for there is no such inconsistency. There is indeed a line of continuity in Bentham's attitude towards colonies which derives from the steadfast application of the principle of utility, through the continuous calculation of the pros and cons of each situation, considering the interests of the people involved, by measuring and comparing the different kinds and quantities of oppression, sufferings, etc. Such a calculation might on one occasion reinforce his conviction that colonies were not advantageous in themselves, or, on another, contradict it with evidence provided by other factors, which might make him decide in favour of 'imperialism'. 'Contradictions', 'ambivalence', etc. — in a word, confusion — are to be found not in Bentham's mind, but in the attitude of his twentieth-century critics, who have applied the contemporary language of 'imperialism' and 'anti-imperialism' to Bentham's theory of 'empire': the gross category of 'imperialism' has prevented them from understanding Bentham's distinction between European settlements overseas, and native dependencies of European governments, i.e. two separate senses of the word 'colony'. The ambivalence of the radical group towards the Empire is due, therefore, not to any inconsistencies in Bentham's thought, but to the fact that his utilitarianism did not entail an *a-priori* principle, valid for all colonial situations. In other words, in the case of colonies, the calculation based on empirical evidence which implied also political, juridical, and socio-historical elements, prevailed over any kind of pre-determined economic principle. Bentham was certainly not a doctrinaire on questions of economics,[87] much less could he be so on the problems of colonies and colonization, for these appeared to him to possess a very complex reality, which could not be contained by any theory of political economy.

The origin of the 'ambivalence' of the radical group is therefore to be looked for not in the vagaries of Bentham's mind, but in his particular approach to economics, which cannot be understood if we reduce it to a mere deduction from the principles to be found in any Treatise of Political Economy.

It might be observed that such an approach is highly subjective. For example in the case of British India, it might be objected that the whole calculation which brings Bentham to the judgement that British rule is the best solution in the interests of the Indians themselves, is based on the assumptions that a) Indians are a backward people, oppressed by their own religion, laws, and governors, and that b) such oppression will be relieved by enforcing English legislation. Such criticism, however, applies to a broader area of thought, and involves the foundations of utilitarianism itself, the criterion by which the happiness of the greatest number is determined and the means chosen for achieving it. It is worth noting in this connection that this same criticism about India was made by Ricardo, whose approach and ideas, in points of economics, were very distant, if not opposite, to those of Bentham:[88] 'In the Government of so distant a country as India, connected with us by very peculiar ties, there must be the greatest difficulty in securing it against misrule. The people of England, who are governors, have an interest opposed to that of the people of India, who are the governed, in the same manner as the interest of a despotic sovereign is opposed to that of his people. ... Are we to fix our eyes steadily on the end, the happiness of the governed, and pursue it at the expense of those principles which all men are agreed in calling virtuous? ... The difficulty of the doctrine of expediency or utility is to know how to balance one object of utility against another — there being no standard in nature, it must vary with the tastes, the passions and the habits of mankind.'[89]

Certainly if Ricardo expressed his perplexities about such an approach, there should be little wonder that any economist of today should be puzzled by it. Bentham's logic did not coincide with that of the economic theory of his time, nor with that of today. Bentham's logic, at least in the case of colonies and colonization, was strictly utilitarian.

Notes

1 The commonplace about Bentham's anti-imperialism is repeated by Baumgardt (op. cit., pp. 3 and 159), Atkinson, *Jeremy Bentham: His Life and Work*, London, 1970 (1905), pp. 106—108, 171; Stark, Introduction to *J.Bentham's Economic Writings*, cit., I, p. 36 and ff. For its refutation see particularly Donald Winch, *Classical Political Economy and Colonies*, London, 1965, pp. 25—39.

2 D. Winch, *op. cit.*, pp. 27—31, and cf. with Halévy, *op. cit.*, I, pp. 208—212 and Stark, *op. cit.*, I, pp. 36—38 and ff.

3 *Emancipate Your Colonies!, addressed to the National Convention of France, Anno 1793. Shewing the Uselessness and Mischievousness of Distant Dependencies to an European State, Works*, IV, pp. 417—418. This pamphlet was printed in 1793 but circulated only privately until 1830 when it was eventually published.

[4] A similar story is that of his *Defence of Usury*, another work composed under the strong influence of Adam Smith, when Bentham had just started to write on economics. To the fact that the *Defence of Usury* was his best known work in this field we owe the stereotype of a Bentham who was an ardent supporter of laissez-faire, and who brought Smith's principles to their most extreme conclusion.

[5] For the development of his thought on this subject see his *Proposed Preface to the Second Edition* of his *Defence of Usury*, in *J.B.'s Economic Writings*, cit.,I, p. 194; his fragment on *Colonies and Navy* (1790), *ibid.*, pp. 211—218 and cf. *Principles of International Law* (1786—1789), *Works*, II, pp. 548—549, 'Plan for an universal and perpetual peace.'

[6] These works were all written by Bentham between 1800 and 1804; see Stark's introduction to the *Economic Writings*, cit., III, pp. 7—48.

[7] D. Winch, *op. cit.*, pp. 31—36; Winch refers to Mack's book on Bentham, in which the term 'Fabian retreat' is used for defining the period between Bentham's enthusiasm for the French Revolution and his conversion — or better 'return', in Mack's interpretation — to radicalism. Cf. M.P. Mack, *op. cit.*, pp. 438—41. For a refutation of Mack's theory, see J.R. Dinwiddy, 'Bentham's Transition to Radicalism', *Journal of the History of Ideas*, XXXVI, 1975, pp. 683—700.

[8] Bentham's manuscripts on the subject are dated 1818 ('Emancipation Spanish') and 1820—1822 ('Rid Yourselves of Ultramaria: Being the advice of Jeremy Bentham as given in a series of Letters to the Spanish people'), 'Ultramaria' being Bentham's own term, taken from the Spanish *Ultramar*, i.e. overseas colonies. Bentham's 'Canada Petition' was written in 1827. (U.C., VIII, pp. 137—9.)

[9] Winch, *op. cit.*, pp. 25—26; for Australia, see Bentham's manuscript entitled 'Colonization Society Proposal, being a Proposal for the formation of a Joint Stock Company by the name of the Colonization Company on an entirely new principle intituled the vicinity-maximizing or dispersion-preventing principle', written in 1831. (U.C., VIII, pp. 149—191.)

[10] Lind's three works in defence of the British government's policy were:*Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain* (1775); *Three Letters to Dr. Price Containing Remarks on His Observations on the Nature of Civil Liberty* (1776): *Answer to the Declaration of Independence of the American Congress* (1776). For a detailed reconstruction of Bentham's collaboration with Lind, see H.L.A. Hart, 'Bentham and the United States of America', *Journal of Law and Economics*, XIX, 1976, pp. 547—567; cf. also J.H. Burn's and Hart's Introduction to Bentham's *A Comment on the Commentaries*, etc., cit., pp. XXIV—XXXVIII and XLI—XLVII.

[11] Winch, *op. cit.*, p. 25.

[12] Winch, *op. cit.*, pp. 34—36 and 29—31.

[13] The whole title reads *Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain, by the Author of Letters concerning the Present State of Poland; vol. I, Containing Remarks on the Acts relating to the Colonies, with A Plan of Reconciliation*, London, 1775. Bentham claimed authorship of 'The design to Lind's book on the Colonies; he would have set his signature blindfold to anything I had written'. (*Works*, X, p. 54.) Besides the design (at pp. XIV—XVI), which distinguishes carefully between 'point of right', 'point of fact', and 'merits of the proceedings of the last parliament', the whole work is full of Bentham's thought — as Hart remarks in his cited article (Hart, *op. cit.*, p. 550). Cf. also J. Bentham, X, p. 62—63.

[14] See *Remarks on the Principal Acts*, etc., cit., pp. 55—72, ch. entitled 'Definition of property; To pay a tax is not to give up part of our property. Taxes are not gifts. Representation and taxation not inseparable.' For a lucid discussion on the principles involved in this work, see H.L.A. Hart, *op. cit.*, pp. 549—553.

[15] Richard Price, *Observations on the Nature of Civil Liberty, The Principles of Government, and the Justice and Policy of the War with America*, 1776; cf. Lind's cited work, *Three Letters*, etc. 'On Bentham, Price had a profoundly irritating effect', Hart, *op. cit.*, p. 553.

[16] Lind's *Answer to the Declaration*, etc. contains some anticipations of Bentham's criticism of the doctrine of natural rights, which will be fully developed in his *Anarchical Fallacies* (*Works*, pp. 489—534), written against the French Revolutionaries: cf. J.H. Burns, 'Bentham and the French Revolution', *Transactions of the Royal Hist. Society*, 1966, XVI, pp. 95—114. For Bentham's further criticism of the American Declaration in this period see also his *Introduction to the Principles of Morals and Legislation*, cit., pp. 309—310.

[17] See the excellent article by H.L.A. Hart, *op. cit.*, now reprinted in Hart, *Essays on Bentham*, Oxford, 1982, pp. 53—78.

[18] C.K. Ogden, 'Forensic Orthology', *Psyche*, 1928, p. 10: 'Bentham's admiration of American institutions was equalled only by his distrust of any Constitution which involved the fiction of "Rights".'

[19] J. Bentham, *Works*, X, pp. 1, 57, 63.

[20] The anti-colonial writings of these years are seen as a direct consequence of the development of the principle: ' no more trade than capital', by the cited works of Winch, Stark, Halévy; cf. also T.W. Hutchison, 'Bentham as an Economist', *The Economic Journal*, 1956, pp. 288—306.

[21] J.H. Burns, *op. cit.*, pp. 98—111; cf. Bentham's *Essay on Representation, Essay on Political Tactics, Draught of a New Plan for the Organisation of the Judicial Establishment*, all designed for France. See particularly the first of these works, where Bentham gives the first theorization of representative democracy, although limited to France. See also Hart, *op. cit.*, pp. 558 and 560n. It should be further remembered that in 1792 Bentham was made an honorary citizen of France, together with Paine, Priestley, Mackintosh, and Wilberforce.

[22] He sent a copy of it to Rivadavia in 1820 (*Works*, X, pp. 513—515); he also intended to append a copy of *Emancipate* to his pamphlets later collected under the title *Panopticon versus New South Wales*, written in 1802—3.

[23] See note no. 9. The manuscripts of *Rid Yourselves* are mainly to be found in U.C., Boxes VIII, CLXVII, CLXXII. I am deeply indebted to Claire Gobbi, of the Bentham Project, London, for allowing me to use her transcripts of this work.

[24] D. Winch, *op. cit.*, pp. 36—37. The theory of sinister interest applied to the case of colonies, insofar as the maintenance of colonial possessions brought advantage only to the ruling few, in the mother country, as well as in the colonies. See also L.J. Hume, *Bentham and Bureaucracy*, cit., pp. 191—192.

[25] D. Winch, *op. cit.*, pp. 34—36. For a criticism of the term 'Fabian retreat' see Burns, *op. cit.*, pp. 110—111.

[26] See the chapter on sexual non-conformists.

[27] J. Bentham, *Colonies and Navy*, cit., I, p. 213; it was the quantity of capital owned by a country which determined its trade, not the extent of its market.

[28] For internal colonization see C.F. Bahmueller, *op. cit.*, p. 122.

[29] J. Bentham, U.C., CLI, 108, 'Population and Colonization'; for the implications on sexual morality see the chapter on Sexual Non-Conformists.

[30] J. Bentham, *Institute of Political Economy* (1801—1804), in *J.B.'s Economic Writings*, cit., III, p. 355.

[31] J. Bentham, *Defence of a Maximum*, (1801), in *J.B.'s Economic Writings*, cit., III, pp. 301—2. This is the best refutation of Bahmueller's statement that 'the problem of overpopulation left Bentham's attitude towards colonies somewhat ambiguous', *op. cit.*, p. 93.

[32] James Mill in his article on 'Colony' in the *Encyclopaedia Britannica* said that emigration to the colonies was, with certain reservations, the best remedy which could be provisionally conceived for an excess of population. See *ibid.*, p. 13.

[33] As Winch has pointed out, both Bentham and Wakefield 'advocate colonization as a means of correcting imbalance in the economy of the mother country ... both advocate colonization as a means of providing an outlet for surplus population and capital' D. Winch, *op. cit*, p. 129.

[34] This passage was already published by Bowring (*Pannomial Fragments, Works*, III, p. 227) and was reprinted in Stark's edition of *Bentham's Economic Writings*, cit., I, pp. 109—111. In 1969 Poynter still defined it as 'gloomy remarks on population'. *op. cit.*, pp. 124, 143; but cf. now Bahmueller, *op. cit.*, pp. 95, 98.

[35] *Bentham's Economic Writings*, cit., I, p. 111

[36] *Ibid.*

[37] I.e.*Emancipate Your Colonies!* and *Rid Yourselves of Ultramaria*; which means in other words, that Bentham gave some importance to his anti-colonialism.

[38] J. Bentham, *Manual of Political Economy* (1793—95), in *Economic Writings*, cit., I, p. 224; cf. *Institute of Political Economy* (1801—4), III, pp. 321—322 and 318: 'Political economy is at once a science and an art. The value of the science has for its efficient cause and measure its subserviency to the art. — To Adam Smith, the science alone has been the direct and constant object in view: The art the collateral and occasional one.' The whole title of the *Institute* reads, significantly: *Method and Leading Features of an Institute of Political Economy (including Finance) Considered not only as a Science but as an Art.(Ibid.*, p. 305.)

[39] D. Winch, *op. cit.*, p. 29. Cf. Halévy, *op. cit.*, I, pp. 209—212; Stark, *op. cit.*, I, pp. 36ff.

[40] Particularly on monetary questions and on a first idea of marginal utility.

[41] J. Bentham, *Manual of Political Economy*, cit., I, p. 223.

[42] J. Bentham *Institute of Political Economy*, cit., III, p. 307.

[43] *Ibid.* See also Lea Campos, *Etica ed Economia nel pensiero di Jeremy Bentham* (Tesi di laurea), Trieste, 1976, pp. 72—96, 157—189.

[44] T.W. Hutchison, *op. cit.*, p. 303.

[45] Cf. Bentham's *Manual* cit., I, p. 226.

[46] See L.J.Hume, *op. cit.*, pp. 93—95 and Lea Campos, *op. cit.*, pp. 97—188.

[47] Also Bahmueller, in his recent works, does not differentiate between colonies and colonization and therefore speaks of 'Bentham's ambiguity on the colonial question'. See C.F. Bahmueller, *op. cit.*, pp. 53, 93—94, 238.

[48] J. Bentham, U.C., CXVIa, 111, 'Panopticon versus New South Wales', quoted in Winch, *op. cit.*, p. 36.

[49] See his Essay thus entitled, *Works*, I, pp. 169—194. For the exact title of the Essay see C.F. Bahmueller, *op. cit.*, p. 220n.

[50] D. Winch, *op. cit.*, p. 25.

[51] Bentham uses here for rhetorical purposes, the 'fictitious' vocabulary of the Declaration of Rights, in order to show its inconsistency with continuing to keep French colonies. This same method will be used thirty years later — but less rhetorically showing the inconsistency of the new Spanish Constitution with the maintenance of colonies in Ultramaria.

[52] J. Benthamh *Emancipate Your Colonies!, Works*, cit., IV, p. 417.

[53] J. Bentham, *Rid Yourselves of Ultramaria*, U.C., VIII, 129—130, 'Preface or Addendum'; 1822 April 8 — 1823 December 5.

[54] *Ibid.*, U.C., CLXXII, 214—220, Letter 2, 1822 March 25—26, 'Interests'.

[55] U.C., CLXVII, 48—50, Letter 5, 1822 March 30, 'Ultramarian submission why impossible.'

[56] U.C., VIII, 121.

[57] J. Bentham, *Defence of a Maximum*, cit., III, p. 302.

[58] J. Bentham, *Constitutional Code, Works*, cit., IX, p. 443. In the same work Bentham expresses his belief that, in normal conditions, 'distant dependencies' are not advantageous to the mother country from the economic point of view. Cf. *ibid.*, IX, p. 32. Cf. also U.C. CXXVIII, 325—326, quoted by L.J. Hume, *op. cit*, p. 185.

[59] J. Bentham, Postscript to *Emancipate*, cit., IV, p. 418.

[60] J. Bentham, *Panopticon versus New South Wales, Works*, cit., IV, p. 206.

[61] U.C., CXVIa, 106, quoted in Winch, *op. cit.*, p. 36; this appears as an answer to Bentham's doubts, expressed earlier in his *Principles of Penal Law*, where he had affirmed that 'the arithmetic of those who risk their own property, is very different from that of those who speculate at the expense of the public', arguing that not 'a single clerk in Manchester or Liverpool' would have undertaken such an enterprise. *Principles of Penal Law, Works*, I, p. 496.

[62] J. Bentham, *Principles of Penal Law, Works*, I, p. 496: Bentham quotes here the figures, according to which 'in a period of eight years and a half (1787—1795), of 5196 embarked, 522 perished in the course of the voyage'; such high mortality Bentham argues — is caused only by negligence, for 'Captain Cook went round the world, and returned without the loss of a single man.' *Ibid.*

[63] The whole title of the work is in fact *Panopticon versus New South Wales* or *the Panopticon Penitentiary System and the Penal Colonization System, Compared*, 1802.

[64] J. Bentham, *Principles of Penal Law*, cit., p. 497: Bentham contrasts the New South Wales colony with the example of America: 'the founders of the most successful colonies have consisted of a set of benevolent and pacific *Quakers* ... of poor and honest labourers accustomed to frugal and industrious habits.'

[65] E. Halévy*op. cit.*, II, p. 338.

[66] J. Bentham, U.C., CLXIX, 97, entitled 'Indian Code — Exordium ' in a folder marked 'Legislaturientes epistulae', written between 1774 and 1784.

[67] See Eric Stokes, *The English Utilitarians and India*, Oxford, 1959, p. 51.

[68] J. Bentham, Letter to Dundas, May 20, 1793; *Works*, X, p. 292.

[69] 'The problem as it stands at present is this: the best possible laws for England being established in England; required, the variations which it would be necessary to make in those of any other given country in order to render them the best possible law with reference to that other country .... To draw up in a perfect manner a statement of the difference between the laws that would be best for Bengal would require ... a complete code of Laws for England accompanied with a collection of all the laws for Bengal which would require to be different from those which are for England .... The impracticability of this plan is such as need to be insisted upon: I would venture to lay down the following propositions: first, that the English law is, ... of such nature as to be bad everywhere; second, but that it would not only be but appear worse in Bengal than in England; third, that a system might be devised which, while it would be better for Bengal, would also be better for England.' J. Bentham, *Of the Influence of Time and Place in Matters of Legislation, Works*, I, pp. 171 ff.; see Halévy, *op. cit.*, I, pp. 118—19, 375: for its original title, see C.F. Bahmueller, *op. cit.*, p. 220.

[70] Bentham in fact first met James Mill in 1808; see Halévy, *op. cit.*, II, pp. 184, 196, etc.

71 J. Bentham, *Emancipate Your Colonies! Works*, IV, p. 417.

72 Bentham's views about India are in fact clearly exposed in the text itself, and not only in the Postscript of 1829, as one could believe reading Ghosh's article (Suresh Chandra Ghosh, 'The Utilitarians of Dalhousie and the Material Improvement of India', *Modern Asian Studies*, 1977, XI, p. 561).

73 A. Smith, *An Inquiry into the Nature and Cause of the Wealth of Nations*, cit., particularly B. IV, ch. VII, p. 111.

74 E. Stokes *op. cit.*, p. 51. Stokes clarifies the well known anecdote about Bentinck's words, at the dinner given at Grote's house, before leaving for India: 'I am going to British India, but I shall not be Governor-General. It is you that will be Governor-General.' Stokes argues that these words were addressed to James Mill, and not to Bentham, whom he never met personally. *Ibid.*, p. 51n.

75 J. Bentham, *Works*, X, p. 490, 450.

76 E. Stokes, *op. cit.*, pp. 50—80; Suresh Chandra Ghosh, *op. cit.*, pp. 559—572.

77 Bentham's influence on James Mill's opinion about India is beyond doubt. Besides the close resemblance which can be detected by comparing many passages present in Mill's *History of British India* (cf. Halévy, *op. cit.*, II, p. 338) and in Bentham's works, it is clear that Bentham exercised a direct influence on Mill's whole attitude towards India: in other words, it was Bentham who influenced James Mill's double belief that Benthamite principles of legislation could be applied universally and that India occupied a low position on the scale of civilization and progress. The purport of Bentham's influence on both the Mills is of course given by the important offices they held in the East India Company, from 1819 to 1858, which offered them the opportunity to apply their ideas to reality. Cf also Guido Abbattista, *James Mill e il problema indiano*, Milano, 1979, pp. 200ff.

78 The new Indian penal code was enforced in 1850. 'Had Bentham done nothing more, than point out the way in which the law of England could best be applied to the needs of India, he would have rendered a distinguished service to his country and to mankind', F.C. Montague, Introduction to Bentham's *Fragments on Government*, London, (1891) 1951, p. 56. Besides the two Mills and Macaulay, there were also other men who played an important role in Indian history that were Benthamite, for example, Edward Strachey, Alexander Ross, as well as Dalhousie and Bentinck. Cf. Stokes's work.

79 U.C., VIII, 121, *Rid Yourselves of Ultramaria.*

80 E. Stokes, *op. cit.*, pp. 53—54; 64—65; S.C. Ghosh, *op. cit.*, p. 561.

81 J. Bentham, *Institute of Political Economy*, cit., III, p. 356. Striking evidence of Bentham's point of view on the whole question is to be found in his *Rid Yourselves.* In an unpublished manuscript, he suggested to the Spanish to conquer Barbary, rather than reconquer a rebellious Utlramaria: 'Conquests in neighbouring Africa would be less pernicious, more feasible, more profitable.' He stressed however: 'What I am now submitting to you — mind I do not absolutely recommend to you. But for conveying giving a correct conception of evil in any shape comparison of it with an evil of less magnitude may be not without use.' In comparison, keeping Barbary — or even Morocco — would cost less, because of the smaller distance and because keeping 'garrisons' costed less there. See U.C., CLXVIII, pp. 198—199 and cf. U.C., CLXVII, p. 251 (1821—22).

82 D. Winch, *op. cit.*, p. 38.

83 J. Bentham, *Emancipate*, cit., IV, p. 418.

84 Charles E. Trevelyan, *The Education of the People of India*, pp. 192—5; see E. Stokes, *op. cit.*, pp. 46—47. This appears indeed as the best solution to such a question, at least from a utilitarian point of view: it takes into consideration the interests

of both parties involved, and combines interest and benevolence, or, 'True utility'. On the contrary, in the case of Spanish Ultramaria, Bentham thought that the only way of reconciling the interests of both parties was relinquishment. U.C., VIII, pp. 93—98.

[85] The paragraph begins with 'So likewise (as for India and China), regard being had to the colonization of Australia; especially if the account given of the intended settlement on the Swan River ... be correct.' J. Bentham, Postscript to *Emancipate, op. cit.*, IV, p. 418. About Bentham's prophecies on the same subject, cf. his prediction that many Spanish colonies in Ultramaria, after independence, would choose the Spanish Constitution as a model but without monarchy. See M. Williford, *op. cit.*, p. 66.

[86] D. Winch, *op. cit.*, pp. 25—26.

[87] E. Griffin-Collart, *Egalité et Justice dans l'Utilitarisme, Bentham, J.S. Mill, Sidgwick*, Bruxelles, 1974, pp. 72—79.

[88] See for example W. Stark, *op. cit.*, III, pp. 17, 21—22, and cf. T.W. Hutchison, *op. cit.*, pp. 291, 297—9, 302—6.

[89] D. Ricardo, *Works*, ed. by P. Sraffa, 10 vols., Cambridge, 1951, VII, pp. 239—242; cf. Winch, *op. cit.*, p. 161.

7. Slaves

Since Bentham dedicated so much time, energy and ink to the cause of groups not thought of at the time as being oppressed (women and homosexuals, especially) how much more would one expect to find on the question of slavery, an institution which had already been condemned by many outstanding thinkers before Bentham? Not only had poets like Thomson and Defoe written against the horrors of slavery and the slave-trade,[1] but philosophers like Montesquieu and Voltaire, whose works Bentham had certainly read, had spoken out against its theoretical foundations. Even Locke, who justified slavery, argued in his *Two Treatises on Government*, that 'a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to anyone, nor put himself under the absolute, arbitrary power of another, to take his life away, when he pleases. ... he that cannot take away his own life, cannot give another power over it.'[2]

Rousseau said that the loss of liberty was equivalent to 'renouncing the quality of being human';[3] and, before him, Montesquieu had employed all his irony against the commonplaces by which slavery was justified: 'Si j'avois à soutenir le droit que nous avons eu de rendre les nègres esclaves, voici ce que je dirois: Les peuples d'Europe ayant exterminé ceux de l'Amèrique, ils ont dû mettre en esclavage ceux de l'Afrique,pour s'en servir à défricher tant de terres ... On ne peut se mettre dans l'idée que Dieu, qui est un être très sage, ait mis une âme, surtout une âme bonne, dans un corps tout noir ... Il est impossible que nous soupposions que ces gens-là soient des hommes: parce que, si nous le soupposions des hommes, on commenceroit à croire que nous ne sommes pas nous-même chretiens.'[4]

Voltaire condemned slavery in *Candide*, and again in the *Essai sur les mœurs et l'esprit des nations*, where he observed that Negroes and inhabitants of the New World are not treated like human creatures: 'Nous leur disons qu'ils sont hommes comme nous, qu'ils sont rachetés du sang d'un Dieu mort pour eux, et ensuite on les fait travailler comme des bêtes de somme.'[5]

If we think of the great fight against the slave-trade and against slavery which has been described as 'the first large-scale campaign in British history to mobilize public opinion in favour of a benevolent cause'[6] and if we think of the huge amount of literature[7] prompted by it in Bentham's lifetime, we might expect to find a substantial contribution from our utilitarian philosopher.

The fact is that, contrary to all these expectations, Bentham's published or unpublished writings on this subject betray only inconsistency. It is simply not true — as Klingberg asserts — that 'This masterly English reformer seldom

wrote anything during his long life without making some comments adverse to slavery'.[8]

On the contrary, the evidence to be found in his writings is exiguous in quantity and unsatisfactory in content. This is all the more evident, if we contrast what he said about slavery with the way in which he dealt with matters he really had at heart, about which he had thought repeatedly and on which he had developed his arguments more clearly and analytically. It might be suggested that Bentham did not like to associate himself with any great popular campaign: such an interpretation cannot be sustained if, firstly, we remember his contribution to other great debates of the time; debates in which Bentham joined vigorously with one side, such as the case of the Poor Laws, of women's suffrage, or of overseas colonies: secondly, although nowadays it might appear differently, to have been an opponent of slavery in Bentham's times, and especially before 1800, did not imply that one was a time-server.

In any case, slavery was not one of Bentham's major themes. I shall try to explain that this is so, because he did not feel at ease when dealing with this subject.[9] Certainly, his attitude to this question is quite different from that displayed towards other groups of oppressed people. In some ways it appears closer to his attitude towards the poor — though it does not have the same consistency — than that towards women or homosexuals. In his consideration of slavery, as of poverty, Bentham is guided by those elements in his social philosophy, which are not simply derived from the principle of utility.

As has already been argued in the chapter on 'The Indigent', the heart of Bentham's social philosophy is to be looked for in his hierarchical determination of the four aims of any state — with security always given priority over equality — rather than in the all too vague principle of the greatest happiness of the greatest number.[10] Security meant, of course, also security of property. Slaves were property. Attacking slavery therefore meant also attacking property, whose security was the most important aim of any political society. Hence Bentham's uneasiness in dealing with this subject and hence, in my opinion, the relatively few references to the question to be found among his writings.

In principle, any oppression is inimical to the greatest happiness of the greatest number. Bentham's attitude towards the several groups of oppressed people hitherto discussed, has therefore proved to be perfectly consistent with his utilitarianism. The only inconsistencies that have been noticed hitherto, have always been derived from questions external to his philosophy. For example in the case of women there was the politico-strategical opportunism of playing down the issue of women's suffrage; in the case of homosexuals, there was Bentham's fears for his personal safety and reputation; and in the case of the Jews, Bentham's personal dislikes. In all these cases the source of inconsistency can be traced to something extraneous to his philosophy. The case of slavery is interesting insofar as it provides an example of an internal conflict in Bentham's utilitarianism itself, i.e. of a clash between the principle of the greatest happiness of the greatest number and the priority assigned to security as the most important aim of any State, as I shall try to demonstrate by examining his writings on this subject more clearly

Slavery in Bentham's Introduction

There can be no doubt that Bentham considered slaves to be a category of people whose oppression was commonly justified by prejudice. From this point of view he connected the condition of slaves with that of women, of homosexuals and of animals. As I have already mentioned,[11] Bentham connected women and slaves when commenting on the 'state of perpetual wardship' in which women were placed in certain nations:

> This is not the only instance in which tyranny has taken advantage of its own wrong .... Aristotle, fascinated by the prejudice of the times, divides mankind into two distinct species, that of freemen, and that of slaves. Certain men were born to be slaves, and ought to be slaves. — Why? Because they are so.[12]

Bentham's hostility to Aristotle, and especially to the authority attributed to him by philosophical tradition, finds here a new expression in following the arguments employed with respect to women, usury, and homosexuals. Dealing with homosexuals Bentham directly attacked the common belief — supported also by Montesquieu — that homosexual practices were enervating for the passive partner, and used Aristotle to disprove it more fully:

> Aristotle, the inquisitive and observing Aristotle, whose physiological disquisitions are looked upon as some of the best of his works, Aristotle, who if there had been anything in this notion had every opportunity and inducement to notice and confirm it, gives no intimation/information of any such thing. On the contrary he sits down very soberly to distribute the male half of the species under two classes: /the/ one class having a natural propensity, he says, to bear a passive part in such a business, as the other have to take an active part.[13] This observation it must be confessed is not much more satisfactory than that other of the same philosopher when he speaks of two sorts of men — the one born to be masters, the other to be slaves.[14]

The last and not least interesting analogy between different categories of the oppressed, is made by Bentham *à propos* of animals. From the following passage one might infer — and I shall argue in the next chapter — that the great philanthropic philosopher was more concerned with the fate of animals than he ever was with that of slaves:

> ... But is there any reason why we should be suffered to torment them [animals]? Not any that I can see. ... The day has been, I grieve to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, has been treated by the law exactly upon the same footing, as, in England for example, the inferior races of animals are still. ... The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor.[15] It may come one day to be recognised, that the number of legs, the villosity of the skin, or the termination of the *os sacrum* are reasons equally insufficient for abandoning a sensitive being to the same fate? ... the question is not, Can they *reason* nor, Can they *talk* but, Can they *suffer*?[16]

This passage is highly interesting because it offers a kind of *résumé* of Bentham's attitude towards slavery throughout the whole *Introduction to the Principles of Morals and Legislation.* First of all, it stresses the suffering of tormented animals, rather than that of slaves.[17] Secondly, it shows clearly that — at

least in the *Introduction* — Bentham considered slavery in some way as a question which had already been settled, which belonged to the past and which did not greatly affect the modern or civilized world, or affected it only to a very small and largely irrelevant degree. This attitude is all the more strange, if we consider that the law which forbade the slave-trade in English colonies was only passed in 1806 — i.e. 26 years after the *Introduction* had been written — and that the *Emancipation Act*, which abolished slavery definitively,[18] was issued only in 1833 — i.e. one year after Bentham's death — and that throughout this period, in the United States and in the British West Indies, slavery, far from being a settled matter, was a burning and controversial question on which rivers of ink were flowing on both sides. Yet Bentham, especially in the *Introduction*, but occasionally in other works, seemed to think of slavery as belonging to a past world. Aristotle's quotations and Bentham's polemics against the Greek philosopher have already given this impression, which is then confirmed by several passages, such as:

> Among the first Romans, indeed, the wife herself was the property of her husband; the child, of his father, the servant, of his master. In the civilized nations of modern times, the two first kinds of property are altogether at an end: and the last, unhappily not yet at an end, but however verging, it is to be hoped, towards extinction. The husband's property, is now the company of his wife; the father's guardianship and service of his child; the master's the service of his servant.[19]

The passage — quoted above — in which the oppression of slaves and of animals are connected is particulary interesting insofar as it shows that Bentham's sensibility was affected not so much by the idea that a slave — or an animal — constituted a man's property, as it was offended by the possibility that such a condition implied that the owner was at liberty to inflict any kind of sufferings and torments upon the objects of his property. In fact the law quoted here by Bentham, in a footnote, is 'Lewis XIVth's *Code Noir*'. The *Code Noir* was not, as one might have expected from an 'abolitionst'point of view, a law which abolished slavery. Issued in 1685, it simply forbade the killing of slaves by their masters and protected slaves from maltreatment.[20] Bentham is horrified by 'absolutely unlimited slavery' which implied that masters possessed the liberty to torment their slaves, not by slavery itself. Analyzing the condition of master and servant in the *Introduction*, Bentham had defined slavery among various modes of servitude:

> As to the *power* by which the condition of a master is constituted, this may be either *limited* or *unlimited*. When it is altogether unlimited, the condition of the servant is styled *pure slavery*.[21]

Of course, says Bentham, the limitations on this pure slavery (called *privilege, immunity, exemption* for the servant) vary in the different countries:

> In different countries, therefore, the offence characterised by the above names will, if specifically considered, admit of very different descriptions. If there be a spot upon the earth so wretched as to exhibit the spectacle of pure and absolutely unlimited slavery, on that spot there will be no such thing as any abuse of mastership; which means ... that no abuse of mastership will be treated on the footing of an offence. As to the ques-

tion, Whether any, and what, modes of servitude ought to be established or kept on foot? this is a question, the solution of which belongs to the civil branch of the art of legislation.[22]

Slavery in the Civil Code

The work in which Bentham deals more extensively with slavery is indeed the *Principles of the Civil Code*.[23] It seems that in this work he had reached the conclusion that a law like the *Code Noir*, though desirable in principle, was in practice impossible to apply. This conclusion derives logically from the definition of slavery as a condition in perpetuity; perpetuity being considered the characteristic which distinguishes slavery from other kinds of servitude. The absence of any limitation in time is, as Bentham had already pointed out in the *Introduction*, the one reason why it is not possible to set any clear limitation on slavery itself. In the *Principles of the Civil Code* Bentham concludes that for this same reason, the mitigation of slavery, though advisable, was not easily obtainable in practice:

> Unlimited power, in this sense, can with difficulty be limited in any other. If we consider, on the one hand, the facility which the master possesses of aggravating his yoke by degrees; ... of extending his pretensions under diverse pretexts; ... if we consider, on the other hand, how difficult it is for slaves to claim and obtain legal protection; ... how much rather they are led to seek his favour by unlimited submission, than to irritate him by refusal; — we shall easily perceive that the project of mitigating slavery by law, is more easily formed than executed; ... that under the empire of the best laws in this respect, their most flagrant infractions only will be punished, whilst the ordinary course of domestic rigour will mock all tribunals.[24]

Bentham stresses the point that he is *not* arguing that 'therefore, slaves ought to be abandoned to the absolute power of the master'; he only wants to point out 'the evil inherent in the nature of slavery', i.e.:

> the impossibility of subjecting the authority of a master over his slaves to legal restraint, and of preventing the abuse of his power if he be disposed to abuse it.[25]

One would now expect Bentham to cease pleading for the mitigation of slavery, and demand its abolition *tout court*. But Bentham's reasoning never carried him to this conclusion. Bentham was against slavery, because on empirical evidence it caused more harm than happiness. He begins an examination of all those arguments which, from a utilitarian point of view, condemn slavery. He first appeals to the facts of the case. It is — he says — a fact that slavery is agreeable to masters, and 'disagreeable to the slaves', because the latter 'are only retained in this condition by restraint' and the former 'if they wished, could, in an instant cause it to cease'.[26] Empirical evidence is the basis on which Bentham disproves any theory that would:

seek to prove by calculation ... that a condition into which no one is willing to enter, and which everyone desires to leave, is in itself a pleasant condition, and suited to human nature.[27]

Of course he admits, it is true that the difference between the condition of a slave 'accustomed to the evil' and that of a free man is lesser than that between a free man and a man newly enslaved; but slavery, nevertheless, is still evil.[28] Empirical evidence provides further argument:

If it could be arranged in such manner ... that there should be only one slave to one master, there might be ground for hesitation in pronouncing beforehand which would have the advantage, and which the disadvantage; and it might be possible, that, all things considered, the sum of good in this arrangement would be nearly equal to that of evil.[29]

Bentham is therefore not opposed to the institution of slavery in itself, but considers it evil only on the basis of its effects. This attitude is a coherent consequence of his denial of any theory of natural rights. Bentham's condemnation of slavery is therefore interesting insofar as it does not refer to the violation of any real or 'fictitious' natural right or liberty of men, but only to the utilitarian calculation of the mischiefs or benefits caused by slavery in human society.[30] In this calculation the number of interests involved enters inevitably as a decisive factor:

As soon as slavery is established, it becomes the lot of the greatest number. A master counts his slaves as his flocks, by hundreds, by thousands, by tens of thousands. The advantage is only on the side of a single person; the disadvantages are on the side of the multitude. ... there can, therefore, be no ground for hesitation between the loss which would result to the masters from enfranchisement, and the gain which would result from it to the slaves.[31]

This calculation is also used by Bentham in his *Principles of Penal Law*, in comparing the pleasures derived from consuming sugar and coffee in Europe, and the sufferings of the multitudes of slaves in America:

It is not to be disputed that sugar and coffee, and other delicacies, which are the growth of those islands, add considerably to the enjoyments of the people here in Europe; but taking all these circumstances into consideration, if they are only to be obtained by keeping three hundred thousand men in a state in which they cannot be kept but by the terror of such executions: are there any considerations of luxury or enjoyment that can counterbalance such evils?[32]

This passage echoes Voltaire's *Candide*, which Bentham had read and in which an escaped slave tells his sad story to Candide, saying in conclusion: 'C'est à ce prix que vous mangez du sucre en Europe.'[33]

William Paley also used the same argument in his *Principles of Moral and Political Philosophy* (1785): 'It is said, that [sugar] could not be cultivated with quite the same conveniency and cheapness, as by the labour of slaves; by which means, a pound of sugar, which the planter now sells for sixpence, could not be afforded under sixpence-halfpenny — and this is the necessity!'[34]

Adam Smith and Siéyès

In echoing arguments used by other writers, Bentham is keen to pick up only those which rest on a utilitarian point of view. For this reason, he adopts the argument of the greater productivity of the free labourer, which had been used by Adam Smith in his *Wealth of Nations* on several occasions: 'It appears, accordingly, from the experience of all ages and nations, I believe, that the work done by freemen comes cheaper in the end than that performed by slaves.'[35]

The reasons given by Smith for justifying this assessment are, first, that 'the fund destined for replacing or repairing ... the wear and tear of the slave, is commonly managed by a negligent master', whereas 'that destined for performing the same office ... [for a free man] is managed by the free man himself';[36] and, in the second place, 'A person who can acquire no property, can have no other interest but to eat as much, and to labour as little as possible. Whatever work he does beyond what is sufficient to purchase his own maintenance can be squeezed out of him by violence only, and not by any interest of his own.'[37]

Thirdly, Smith argues that all the inventions which have improved the distribution or the division of labour, machinery itself, have always been made by free men.[38] For all these reasons 'the liberal reward of labour'[39] is the most productive system and is therefore adopted by all progressive societies. Slavery has been abolished where it is no longer convenient, i.e. for the cultivation of corn, but still exists where 'the planting of sugar and tobacco can afford the expense of slave-cultivation'.[40] Smith has a psychological explanation for this non-economical phenomenon, which he attributes to: 'the pride of man [which] makes him love to domineer. ... Wherever the law allows it, and the nature of the work can afford it, therefore, he will generally prefer the services of slaves to that of freemen.'[41]

Bentham takes up Smith's arguments, and develops them more fully:

> A free man produces more than a slave. ... Two circumstances concur in diminishing the produce of slaves: the absence of the stimulus of reward, and the insecurity of their condition. ... Fear leads him to hide his powers, rather than to show them; ... his ambition is the reverse of that of a free man; and he seeks to descend in the scale of industry rather than to ascend. ... Degraded to a beast of burden, a slave never raises himself above a blind routine, and one generation succeeds another without any progress in improvement. ... They will understand, that the richer they are the more they are exposed to extortion ... There is therefore no tomorrow for the greater number of slaves. The enjoyments which are realized at the instant are those alone which can tempt them. They, therefore, become gluttons, idle, dissolute ... All the faults destructive of industry, and all the habits most mischievous to society, are nourished in them by the sad feeling of insecurity, without compensation and without remedy.[42]

Bentham's most interesting development of Smith's argument is to be found in the *Principles of Penal Law*. In a short reference to the problem of 'active or laborious punishment' he writes:

> Labours which require great efforts ought to be performed by free labourers. [The labour obtained by the force of fear is never equal to that which is obtained by the hope of reward.] Constrained labour is always inferior to voluntary labour; not only because

the slave is interested in concealing his powers, but also because he wants that energy of soul upon which muscular strength so much depends. It would be a curious calculation to estimate hou much is lost from this cause in those states where the greater portion of labour is performed by slaves. It would tend greatly to prove that their gradual emancipation would be a noble and beneficial measure.[43]

In these last words Bentham summarized the ideal role of the legislator: to show men that their true interest, even if only in the long run, coincides with the greatest happiness of the greatest number. In this case, the legislator would really become Bentham's deontologist, making self-interested prudence and benevolence coincide under the principle of utility.

To Smith's reasoning Bentham only adds the refutation of an objection which evidently was commonly made against the champions of abolitionism: namely a comparison between the conditions of slaves in the West Indies and the free labourers of Europe. Those who spoke out against slavery were sometimes charged by left-wing critics with diverting public opinion from the real problems of free labourers in England and Europe by their crusade in favour of unknown and distant people living in the New World.[44] These same charges were to be repeated at a later date by Robert Owen and Marx. There is an echo of this debate in Bentham's reply to this objection, when he insists that the slaves' conditions were much worse than those of any free labourers, even than those of day-labourers. For Bentham, the difference between a day-labourer and a slave may be reduced to three main points: first, a day-labourer does have a 'motive of reward', because the better he is, the more he is paid, and the more constantly he is employed; secondly, 'the free labourer has his point of honour' which makes him sensible to popular sanction that, in a free country, 'attaches shame to the character of an idle or unskilful workman'; thirdly, what distinguishes a day-labourer from a slave is the security of gain, 'which no one else has the right to touch'.[45]

As always, Bentham adopts Smith's views not for 'the principle of authority', although he considered Smith 'a master', but only because he appreciated the utilitarian way of dealing with this problem. Certainly, his attitude towards Siéyès's argumentation is very different: in his *Observations on Parts of the Declaration of Rights as Proposed by Citizen Siéyès* (1795) Bentham attacks the enunciation of several parts of the *Declaration* and, among them, the sentence which states: 'Every man is sole proprietor of his own person, and this property is inalienable.'[46]

Bentham's opposition to Siéyès's point is of course clearly understandable, in the light of his general opposition to any kind of 'natural right' being attributed to man. 'Natural rights' were all 'Anarchical Fallacies',[47] as he entitled his main work on the French Declaration of Rights. The violence of Bentham's attack is not however due only to his opposition to the theory of natural rights in general, but also because Siéyès's formulation in particular, destroys the foundation of slavery, i.e. the idea that a man might be owned by another man.

Bentham had spoken against slavery only for its negative effects in terms of which he had concluded that it was an evil *de facto*. To abolish slavery *de jure* as the Declaration of Rights had done, meant however to attack property, to

attack that security of property which is the most important aim of any political society. After some strictures on the inapplicability of Siéyès's remarks to the cases which had been analyzed by Bentham under the title of 'guardianship' (husband and wife, father and child, master and servant) — which are not in my opinion particularly relevant[48] — Bentham adds:

> The article seems to be levelled at negro slavery: ... In the latter sense [of what the law shall be in the future] does it mean to declare, that no person shall have the right of exacting personal services of any other, or producing physical impressions on his faculties, without his consent? It reprobates all rights services of any kind, and all powers of punishnment. ... Does this article mean to set at perfect liberty all negro slaves at once? This would be not more irreconcilable with every idea of justice with regard to the interest of the present master, than with every idea of prudence with regard to the interests of the slaves themselves.[49]

Bentham's Ambiguous Attitude towards Slavery

For Bentham, slavery was not to be abolished suddenly. Whoever wants to transform him into an 'abolitionist' stands refuted here by Bentham's words. In the *Principles of the Civil Code*, i.e. writing at a time when he was less excited and polemical, he expressed his thought more clearly:

> The proprietors of slaves, whom personal interest has not made insensible to feeling and humanity, must ... desire the abolition of slavery, if this abolition could take place without overturning their own condition and their fortunes, and without attacking their personal security. The injustice and calamity that have accompanied precipitate attempts, form the greatest objection against projects of emancipation. This operation need not be suddenly carried into effect by a violent revolution, which, by displeasing[50] every body, destroying all property, and placing all persons in situations for which they were not fitted, might produce evils a thousand times greater than all the benefits that can be expected from it.[51]

As Streintrager has accurately pointed out, 'Bentham distinguished between a sharp and sudden attack on property, and a fixed, regular and necessary deduction which was required' for the benefit of the greatest number.[52] From the point of view of the principle of the greatest happiness of the greatest number, slavery was seen by Bentham as an evil not only because it implied the suffering of the multitude compared with the advantage of the few, but also because — as I have already explained — it constituted an obstacle to the augmentation of general wealth:

> Set at liberty all the slaves which a master possesses, this master would, without doubt, lose a part of his property; but the slaves, taken together, would produce not only what he lost, but still more. But happiness cannot be but augmented with abundance, whilst public power increases in the same proportion.[53]

Here the increase in general happiness clashes with the loss of property suffered by the master. The conflict is resolved by Bentham with a compromise which appears distinctly to be more in favour of property than of the slaves.

According to the priority always given to security over the other 'subsidiary ends' of abundance and equality, Bentham's plea for gradual abolition is the best deal he has to offer to the slaves. On the other hand, it is quite clear that he was aware that a different solution could be adopted, if equality was given priority over the other ends:

> In a word, where equality is spoken of as one of the particular ends, in the attainment of which the distributive law ought to occupy itself — the sort of equality kept in a view should be that which has place in the Anglo-American United States: meaning always those in which slave-holding has no place.[54]

Bentham's proposals for a gradual abolition of slavery are based on two 'methods': the first, aims at 'fixing a price at which every slave shall have the right to purchase his freedom',[55] and the second seeks to limit hereditary ownership of slaves. Bentham demonstrates all the disadvantages of the first method,[56] and seems to prefer the second one, which afforded gradual emancipation through a very mild limitation of the rights of inheritance. Slaves ought not to be inherited in indirect line, and one tenth of them should be emancipated at each change of ownership.[57] Bentham's proposal on this matter is very interesting because it recalls another case in which the principle of the greatest happiness clashes with that of security. In the case of the equalization of wealth, Bentham is definitely more in favour of security than of equality.[58] One of the compromises he adopts for toning down the violence of this clash is that of establishing taxes of inheritance. Relatives in the direct line would remain untaxed in Bentham's project, while the rest would be taxed at the rate of 50 percent.[59] It is interesting to see how Bentham (like J.S. Mill after him) considered inheritance as a less important part of security of property and therefore used death duties as a means to reconcile conflicting elements in his social philosophy. In the same way in which Bentham had expressed the hope that progress would afford a gradual although slow approach to the equalization of wealth,[60] so he says of the abolition of slavery:

> However, the bonds of slavery, which the legislator cannot break by a single blow, time destroys by little and little; and the march of liberty, though slow, is not the less certain. All the progress of the human mind, of civilization, of morality, of public wealth, of commerce, hasten forward, by degrees, the restoration of individual liberty. England and France were once what Russia, the Polish provinces, and part of Germany, are at present.[61]

This is another example of the existence of a historical dimension in Bentham's thought. The gradual abolition of slavery is indeed one of the examples adduced by Bentham to explain the 'Means of Uniting Security and Equality' throughout time. Just after the case of inheritance taxes, he cites the example of slaves:

> When the question is to correct a kind of civil inequality, such as slavery, it is necessary to pay the same attention to the right of property: to submit it to a slow operation, and to advance towards the subordinate object without sacrificing the principal object. Men who are rendered free by these gradations, will be much more capable of being so than if you had taught them to tread justice under foot, for the sake of introducing a new social order.[62]

A 'gradual abolition and intermediate modification of those personal obligations which come under the head of slavery'[63] are advocated by Bentham in the *Institute of Political Economy* as well.

Bentham's uneasiness and, more particularly, his ambiguity, becomes evident on a closer examination of the chapter on slavery in the *Principles of the Civil Code* to which we have referred. Bentham is eager to claim that he is here basing his arguments on facts, not deducing them from 'vain theory',[64] and that he is not attempting to 'excite emotion':

> Every thing which belongs to feeling may be easily accused of exaggeration, but the simple evidence of reason cannot be gainsayed,and it is so strong there can be no need to employ any suspicious colours.[65]

After having provided all the best arguments for the emancipation of slaves, Bentham warns us that 'this operation could not take place suddenly, except by a violent revolution, which, ... would produce evils a thousand times greater'.[66] At the end of the same chapter, however, after having stated that progress, time and the slow march of freedom will 'bring on the restoration of individual liberty',[67] Bentham seems to feel that he has gone too far, and tries to reassure immediately those 'proprietors' whose security he has at heart:

> Proprietors ought not to be alarmed at this change. Those who own the land have a natural power over those who can live only by their labour. The apprehension that freemen, at liberty to go where they choose, would abandon their native soil, and leave earth uncultivated, is a fear absolutely chimerical, especially when the emancipation goes on gradually. ... We have seen in Poland some proprietors, enlightened as to their true interest, or animated by a love of glory, carry into effect, throughout vast lordships, a total and simultaneous emancipation. Did this generosity ruin them? Just the contrary: the farmer, having an interest in his own labour, has soon put himself into a condition to pay more than the slave; and the domains cultivated by the hands of freemen receive every year an addition to their value.[68]

The fact that Bentham, who is usually so logical in his reasoning, should thus contradict himself in one and the same chapter,[69] is another striking piece of evidence that his attitude towards slavery was the result of a difficult compromise between two conflicting elements of his philosophy.

In two recent works on Bentham it has been argued that his attitude towards slavery was due to an indifference to the ideals of liberty and of human dignity, which had no appropriate place in his thought. Madame Griffin-Collart, whose work deserves more attention than it has received,[70] writes: 'Une telle conception, qui fait délibérément abstraction de tout souci de justice, de respect de la dignité humaine et du droit du chacun à une égale liberté, pour se borner à tenir compte de maximum de bonheur dans la communauté, ne permettra cependant pas toujours de condamner l'esclavage. En effet, si les esclaves sont peu nombreux et décemment traités et si, d'autre part leur travail est productif, il y a tout lieu de croire que le systeme produira plus des gains que de pertes en termes des satisfactions.'[71]

Long's work also contains the assertion that 'the idea of liberty was not an end in itself' in Bentham's system,[72] and that 'his condemnation of slavery involved not the slightest reference to dignity, humanity, or rights'.[73] Although

Griffin-Collart's and Long's works are very valuable in many respects, it must be said that in the case of slavery, they both place themselves in a position which is too external to Bentham's philosophy for them to discern its internal contradictions: both are eager to complain about the absence of this or that element in Bentham's system, but neither investigates what lies behind his ambiguity on this subject. Their interpretations may be sufficient to explain why slavery did not constitute a major theme for Bentham, and why he wrote so little on the subject, but they both fail to appreciate or to analyze the contradictions at the heart of Bentham's argument on the subject of slavery.

Slavery in the Colonies

Bentham's ambiguity on the subject of slavery needs also to be studied in the light of his unpublished manuscripts. Among his preparatory drafts for *Rid Yourselves of Ultramaria*,[74] the whole of Letter 16 is devoted to the 'Slave-Trade'. The terms and tone in which Bentham condemns slavery and the slave-trade are here more vehement than in his published works, and the contrast with the cautiousness of the solutions suggested by him, is even more striking. We find here passages which seem to condemn slavery unequivocally. For example Bentham attacks the reasons commonly given for justifying slavery in the colonies, by saying that the 'jargon' of the political language is being employed to conceal the truth. His argument echoes, in part, Paley's already mentioned refutation of the 'necessity' of slavery for the sugar plantations:

> Necessary? [writes Bentham] Oh yes doubtless it is: many are the things, many are the persons to which it is necessary. ... The things are — making pecuniary profit by injustice oppression and murder. ... Try it upon housebreaking like purpose of depredation, try it upon highway robbery, coupled or not coupled with murder according as by his obstinacy or his audacity the passenger makes or does not make, the murder of him necessary. ... Robbing black men of their liberty, of that blessing /possession/ in which the whole of their property for the bringing to the end of life is included is to the Slave dealer necessary to his living in the stile in which it is his wont to live: robbing the traveller of the money he has about him is necessary to the highwayman: necessary to his living in the stile in which it is his wont to live.[75]

Bentham goes on to charge the Spaniards with an infringement to their 'Constitution which everybody had sworn to observe'; he recalls art.4 of that constitution, which read: 'The nation is obliged to preserve and protect, by wise and just laws, the civil liberty and the property, besides all other legitimate rights, of *all* the individuals of which it is comprised.'[76]

Bentham's comment is ironical:

> Now then the human beings whose skin is of a darker colour than your own — are they not individuals? ... Slavery under you or any subjects of yours is what you mean by this same civil liberty?[77]

Bentham also ridicules the hypocrisy of the Spaniards, whose attitude towards tyranny is summarized by him in the following way:

> In short where we suffer by it we hate it ... but where we in our own opinions at least profit by it, there so far the case is quite reversed. Tyranny exercised over us is a most wicked thing. ... Tyranny excercised by us for us is a good thing. ... Tyranny it might be in others to hold a distant nation in subjection in the hope of squeezing money out of them: but in us it is but just exercise of legitimate rights. Tyranny it might be in others to keep men or to keep others in houses or fields in a state of slavery; but property is a sacred right: and in no such dealing is but the exercise of that sacred right.[78]

Thus Bentham sets up an interesting connection between the tyranny of possessing colonies and that of possessing slaves. The whole of Letter 16 is indeed devoted to the argument that one of the advantages to be obtained from the 'relinquishment' of Spanish colonies would be that of 'clearing Spain's morals and reputation from the taint of the Slave-trade and Slave-holding.' Thus, he tells the Spaniards, 'You will cleanse yourselves of the foulest of all political and moral leprosies'.[79] The 'leprosy' of slavery and of the slave-trade is therefore considered to be a good argument in favour of the emancipation of colonies. He even comes to the point of arguing that the Spaniards were obliged to accept slavery in order to continue to keep colonies under their subjection.[80] The emancipation of colonies would allow the mother country to 'wash your hands and keep them clean of this stain'.[81] It may even be suggested that one of the main reasons why Bentham was so eager to advocate the emancipation of colonies was that in this way such an uneasy problem as slavery need not then be faced directly by the European countries involved.

Nevertheless, Bentham thought that the elimination of these two 'tyrannies', thus connected, would bring about very different consequences. Whereas he believed at that time that the 'entire relinquishment of Ultramaria' was in the interest of the colonies themselves as much as of the mother country, he never thought that the abolition of slavery could be profitable for slave owners. As we have already seen,[82] he maintained that no future increase in the general wealth of the nation could balance the present loss of property suffered by the 'proprietors'. The abolition of slave-trade is in fact considered by Bentham to be one of the reasons for which the 'relinquishment of colonies' would be 'honourable', not profitable. For it would put an end to the Spaniard's hypocrisy and infringement of their Constitution, and it would place Spain 'not only above the French and the English Nation; but above the Anglo-American nation in the scale of true honour'.[83] Bentham was clearly aware that his arguments were only of moral purport, and would only appeal to people's sense of honour or sensibility to the 'moral sanction', not to their interests:

> In continuing it [slavery], in so far as by continuing it, they make greater profit than they could by any other means, they sin not against self-regarding prudence, they sin not against any virtue other than those which are comprehended under the head of Effective Benevolence. Only to the unhappy victims of that system of murder is their conduct injurious.[84]

Bentham is therefore eager to recommend to Spaniards to 'wash their hands from the stain of slavery' by relinquishing their overseas colonies for the sake

of their honour, but he does not plead for the abolition of slavery *tout-court.* Although in the course of the same Letter 16 he argues with vehemence against both slavery and slave-trade, when he might be expected to bring his argument to a consistent solution of the problem, he begins to differentiate between the two:

> Emancipation is one thing: cessation of purchase is another. Neither to the aggregate benefit nor even to the benefit of the Blacks alone would emancipation in immediate or other than gradual emancipation be practicable. ... Note the difference between Slave-buying and Slave-holding thence between forcing emancipation and forcessing cessation of purchase. By forced emancipation neither would Slave-Holders, nor Slaves themselves, be benefited.[85]

And, furthermore:

> It is of *Slave-buying* [he was speaking] ... not as yet of Slave-holding ... To abstain from Slave holding ... would require *acts*: acts which to constitute an adequately comprehensive, effective and preponderantly beneficient system would require to be formed into a chain of such intricacy that upon cursory view the mind is burdened in the contemplation of it.[86]

Again, as we have seen in his published works, Bentham is more concerned with security than with any other value:

> Be the man who he may, freedom to have is no means of well-being nor so much of *being*, except in so far as accompanied with subsistence for himself and security for others against him, as well as for him against others.[87]

Slavery and Slave-Trade in Africa

The same reasoning is to be found in Bentham's unpublished writings on Tripoli. In 1822, Bentham came into contact with the 'ambassador' to England from Tripoli, Hassuna D'Ghies. Bentham started to collect reports from travellers to Tripoli, in order to obtain as accurate an account as possible on the state of that country. Part of this account was also based on the reports given to him by D'Ghies himself.[88] Bentham also wrote a short pamphlet on Tripoli, entitled *Securities against Misrule Adapted to a Mahommedan State and Prepared with Particular Reference to Tripoli in Barbary*, partly published in Bowring's edition.[89]

Again in 1822 (October 22), in dealing with slavery which of course constituted an important feature of Tripoli's economic and social situation, Bentham proposed the 'emancipation without prejudice to property', i.e. 'emancipation upon the death of the proprietor, in the case of his leaving no descendents'. Bentham was still convinced at that time that these 'institutions' would 'contribute in a considerable degree to diminish the harm of slavery', without prejudice to property, and without causing great sufferings, because they did not raise any expectation of possession in indirect descendents.[90] A further and more interesting piece of evidence on Bentham's relation with Hassuna D'Ghies consists of the French autograph manuscript and Bentham's copy of

the English translation of a pamphlet written by the same D'Ghies. The printed version of this work is entitled: 'A Letter addressed to James Scarlett, Esq. M.P. and Member of the African Institution, on the Abolition of the Slave Trade', 12 May 1822.[91] In his 'Letter', D'Ghies speaks out against the abolition of the Slave Trade in Africa, arguing that 'the intestine wars of the negro people will not be thereby rendered less frequent; and if the sale of captives shall diminish on the Western coast ... it will probably increase on the North coast'; and that 'to prevent ... the slave-trade in the Atlantic, is by no means to extirpate slavery'.[92]

More interesting are the ideological justifications for D'Ghies's stand: 'But do you wish really and sincerely to abolish slavery in Africa? — Cause the people of the interior gradually to arrive at such a degree of civilization as may make them perceive that individuals, as well as societies, may find more happiness in agriculture, commerce, and the peaceful employment of civilized people, and slavery will cease of itself.'[93]

D'Ghies quotes Bentham twice: the first time for saying that 'for even supposing that such a cause may speedily produce such an effect, ... the balance between the good and the evil which may result from one proceeding rather than another, should not be neglected.'[94] The second time he quotes Bentham is in arguing that 'it is by studying circumstances, — it is by respecting the ruling prejudices, even though unreasonable, — it is by preparing innovations at a distance, so that they may no longer appear innovations.'[95] Considering the kind of collaboration which had already been established between the two, and the fact that Bentham wrote several letters and appeals on D'Ghies's behalf — notably an Appeal to Quincy Adams, U.S. Secretary of State[96] — one wonders whether Bentham's equivocation could have gone so far as to associate him with a defence of the slave-trade.

It is worth remembering in this connection that Bentham had been a good friend of William Wilberforce since 1795 at least.[97] There is a considerable amount of correspondence between the two, written between 1796 and 1811.[98] 'This intimacy had grown out of his [Wilberforce's] attempt to assist Mr. Bentham when the failure of his Panopticon had involved him in pecuniary losses'.[99] Wilberforce interceded several times in favour of Bentham, as many letters testify.[100] Wilberforce used to visit Bentham's house, meeting people such as General Bentham (Jeremy's brother), Romilly, and Lord St. Helens's etc.[101] From this friendship came Bentham's proposal to Wilberforce to go on a mission to Paris, in order to establish more friendly relations with France, in 1796. The mission would have been composed of Wilberforce as chief negotiator and Bentham himself, who offered his services as the secretary of the mission.[102] The project however met with the strong disapprobation of Lord St. Helens, and came to nothing.[103] The strange fact about Bentham's friendship with one of the most outstanding leaders of the anti-slavery campaign, is that there is almost no trace of any exchange of ideas about slavery in the many letters left to us. Yet, Bentham knew of this campaign.[104] The only piece of evidence which might suggest that Bentham shared Wilberforce's ideas is a letter written by the former in 1804:

I sympathize with you now happily promising exertions in behalf of the race of innocents, whose lot it has hitherto been to be made the subject-matter of depredation for the purpose of being treated worse than the authors of such crimes are treated, for those crimes, in other places.[105]

Notwithstanding this passionate declaration, Bentham did not become an abolitionist, as we have seen from his unpublished manuscripts written in 1821-22; and indeed he could not have been a consistent abolitionist without threatening the foundations of his social philosophy, namely the security of property.

Interpretations which explain Bentham's attitude towards slavery by means of the weakness of his belief in liberty, would be more convincing if Bentham had shown himself to be indifferent to this subject. On the contrary, all the evidence hitherto examined shows that Bentham had strong, but mixed feelings about slavery, because of the strength of his belief in security, which overcame — although not completely — the strength of his confidence on the principle of the greatest happiness of the greatest number.

On a straightforward application of his utilitarian 'felicific calculus' one would demand the abolition of slavery without hesitation, as, indeed, utilitarians have usually done. For, manifestly, the satisfaction increased (and the misery diminished) among the numerous slaves liberated would far exceed the misery experienced (and the pleasures lost) by the small number of slaveholders — as he himself had argued.[106] But this is not the only calculation that Bentham makes. He in fact rejects the plea for immediate emancipation on the ground that it threatens security, preferring a policy of gradual emancipation, which will not attack security directly.

The priority given to it, makes one suspect that security, at least in this case, is not just a 'subordinate end', a specification of the principle of utility, as Bentham defines it, but an autonomous end in itself, which has priority over everything else, even over the principle of the greatest happiness of the greatest number. From a strictly utilitarian point of view, it might be answered that Bentham reasoned in this way because any attack on security would cause more universal unhappiness to the whole of society than any application of the felicific calculus to single questions. But such an answer would — as I have already argued[107] — only reinforce the suspicion that security is an *a-priori*, axiomatically asserted to give a content to the otherwise empty frame provided by the principle of the greatest happiness of the greatest number to any kind of social philosophy. It will be worth noting in this connection, that the principle of the greatest happiness was considered by Bentham as the means by which he could give a 'scientific' dimension to the Moral world. Morals and legislation would no longer be based on the 'sandy foundations' of 'fictions' and 'dogmas', but were to be solidly built by him on the felicific calculus, through which Moral Arithmetics would have rationalized the empirical data deriving from pains and pleasures. This promise Bentham does not fulfill.

Our conclusion must be that the introduction of security as a determining element into Bentham's social philosophy, and, in the case of slavery, the priority given to it over all the felicific calculations derived from experience,

makes Bentham's philosophy take a step backward on the way to 'science'. The strong resemblance not only to Hobbes's priority of security, but also to Locke's sanctity of property, actually puts Bentham in the same camp as the natural rights theorists he so scornfully repudiates. From the point of view of the oppressed, the axiomatic priority given, in the case of the slaves, to security over all empirical calculations of gains and losses, might raise the fear that any other claim for a better consideration of their rights could, in the name of security, be indefinitely deferred.

Notes

[1] James Thomson depicted the horrors of the slave-trade in his *Seasons* (1726—1730), Defoe condemned the slave-trade in *The Reformation of Manners* and advocated better treatment of Negroes in his *Life of Colonel Jacque*. For further information on the writers who influenced the English public opinion on this matter, cf. Frank J. Klingberg, *The Anti-Slavery Movement in England: A Study in English Humanitarianism*, New Haven-London, 1926, ch. 2, pp. 22—58.

[2] John Locke, *Two Treatises on Government*, B. II, Ch. 4.

[3] 'Renoncer à sa liberté, c'est renoncer à sa qualité d'homme, aux droits de l'humanité, même à ses devoirs.' J.J. Rousseau, *Du Contrat Social* (1762), *Oeuvres Complètes*, ed. by B. Gagnebin, 3 vols., Paris, 1964, 'De l'esclavage', (B. I, ch. IV), vol. III, P. 356; cf. also *La Nouvelle Eloise, ibid.*, (p. IV, Letter 3), II, p. 414.

[4] M. De Secondat, B. de Montesquieu, *L'Esprit des Lois* (1748), *Oeuvres Complètes*, ed. by Roger Caillois, Paris, 1949—1951, vol. II, p. 495 (B.XV, Ch.V)

[5] Voltaire, *Essai sur les moeurs et l'esprit des nations et sur le principaux faits de l'Histoire depuis Charlemagne jusa'au Louis XIII* (1753), Ed. by R. Pomeau, 2 vols., Paris, 1963, II, p. 380; cf. also his *Candide* (1759), ch. 19. For further information on *philosophes*' attitude towards slavery see Claudine Hunting, 'The *Philosophes*, and Black Slavery: 1748—1765', *Journal of the History of Ideas*, vol. XXXIX, no. 3, 1978, pp. 405—418

[6] Cf. F.J. Klingberg, *op. cit.*, p. 26; cf. also Howard Temperley, *British Anti-Slavery 1833—1870*, London, 1972, p. 3.

[7] Cf. F.J. Klingberg, *op. cit.*, p. 57; H. Temperley, *op. cit.*, pp. 9—17.

[8] F.J. Klingberg, *op. cit.*, p. 53.

[9] From this point of view, the importance attributed by Bentham to different subjects is also quantifiable from the number of pages devoted to them. In the Bowring edition, references to slavery cover no more than about 8 pages, compared with the approximately 35 pages devoted to women, the hundreds of pages devoted to the administration of the poor and to prison reform, and the hundreds of manuscripts devoted to sexual nonconformity. Among his manuscripts collection at University College, I was able to discover only some 20 folio pages dealing with this subject, in Boxes XXIV, (about Tripoli) and CLXXII (*Rid Yourselves of Ultramaria*).

[10] See chapter on 'The Indigent'.

[11] See chapter on 'Women'.

[12] J.Bentham, *Introduction to the Principles of Morals and Legislation, op. cit.*, p. 245. Bentham is here referring to Aristotle, *Politics*, B. I, 1252b and 1254b. Bentham sets up a connection between slavery and 'the slavery of the best half of the human spe-

cies' also in the *Rationale of Reward*, cit., II, p. 197, quoted in the chapter on Women, notes 25—28.

[13] U.C., LXXII, 193. Cf. Louis Crompton, *op. cit.*, pp. 395—396: I have quoted Crompton's transcription first, adding the alternative version I have given in my own transcripts, in case of discrepancy.

[14] *Ibid.* Bentham is quoting here from Aristotle's *Probl.* Sect. 4, art. 27; in a footnote Bentham comments:' The former of these propensities [i.e. to bear a passive part] he attributes to a peculiarity of organisation, analogous to that of women. The whole passage is abundantly obscure and shows in how imperfect a state anatomical knowledge was in his time.'

[15] At this point Bentham puts a footnote which I will deal with later on, which reads: 'See Lewis XIVth's Code Noir.'

[16] J. Bentham, *Introduction, op. cit.*, p.283.

[17] This passage is taken from a long footnote *à propos* of animals. Cf. the following chapter on animals.

[18] In 1806 a Bill providing for the abolition of the trade to the conquered colonies passed both Houses. In 1807 this was superseded by a stronger measure which forbade the carrying of slaves in British vessels and their importation into any British colony. The Emancipation Act of 1833 stated that, from 1 August 1834, slavery, as a legal status, would cease to exist throughout the British Colonies. Children under the age of six would be immediately freed; all others were to be registered as apprenticed labourers for a period of eleven years, and a compensatory loan provided to the planters. Cf. H. Temperley, *op. cit.*, pp. 6—18.

[19] J. Bentham, *Introduction*, cit., p. 212. Cf. his *Fragment on Government, op. cit.*, p. 459. Cf. also his *Nomography*, written between 1811 and 1831: 'Suppose the whole population divided into two parts, of which one part is favoured, the other charged without being favoured: it is the case of complete and unrestricted slavery — such as in Ancient Sparta seems to have had existence as between the Spartans and the Helotes; but in modern times does not seem to be exemplified in any country, even in those in which domestic slavery is to be seen in its harshest forms; — for in every slave-holding country protection more or less efficient is by law afforded to the slaves; and in so far as it is afforded, two parties may be seen whose interests are in opposite ways affected by such protecting laws; — viz. the slave, who is the party favoured — and the master who is the party charged by it.' (Chapt. entitled 'On the different ways in which the interests of different persons may be affected by one and the same portion of law'), *Works*, III, p. 257.

[20] The Code Noir regulated the status of slaves in the French West Indies. Cf. footnote at p. 283 of the quoted *Introduction*, and cf. C. Hunting, *op.cit.*, p. 409.

[21] J. Bentham *Introduction*, cit., p. 241.

[22] J. Bentham, *Ibid*, cit., p. 241.

[23] The *Principles of the Civil Code*, together with the *Principles of Penal Law*, were translated into English by R. Hildreth, from the French edition by Dumont, who, in Bentham's *Traités*, published the *Principles*, taken from the original manuscripts, after a condensed statement of the general principles taken from the opening chapter of the *Introduction*. The chapter on slavery is therefore to be found in the *Theory of Legislation* (English translation of the Traités) as well. I shall quote from the *Principles of the Civil Code* published in Vol. I of Bowring's edition, mentioning the possibile discrepancies with the text of the *Theory* (of no real importance for the content).

[24] J. Bentham, *Principles of the Civil Code, Works*, I, p. 344. For other and later evidence that Bentham did not believe in the effectiveness of laws for the amelioration of slavery, see J. Bentham, *Introductory View of the Rationale of Evidence, Works*, VI, pp. 86—87.

[25] J. Bentham, *Principles of the Civil Code*, cit., p. 344; cf. also *Principles of Penal Law*, cit., I, p. 474.

[26] *Ibid.*, p. 344.

[27] 'We have proofs of the fact, that this condition is never embraced from choice, but, on the contrary, that it is always an object of aversion,' *Principles of the Civil Code* p. 344.

[28] Long comments that Bentham's dispassionate analysis of the slave's lot must surely constitute one of his most repulsive applications of the principle of security for expectations and the avoidance of disappointment. Long quotes from Bentham's manuscripts, U.C. XXIX, 5: 'Whatever the condition [of slaves] was ... it was such as they had been bred under ... such as they had been accustomed to adjust to. To the eyes of free men it was a bad state to live in but to them it must have at least been much less bad, as experience had never shown them any other.' Cf. also U.C., XXV, 14. D.G. Long, *Jeremy Bentham's Idea of Liberty in Relation to his Utilitarianism*, Toronto, 1977,p. 194.

[29] J. Bentham, *Principles of the Civil Code*, I, p. 344.

[30] Cf. Long, *op. cit.*, p. 194; see also E. Griffin-Collart, *Egalité et Justice dans l'Utilitarisme; Bentham, J.S. Mill, Sidgwick*, Bruxelles, 1974, p. 39.

[31] J. Bentham, *Principles of the Civil Code*, cit., pp. 344—45; cf. also *Introductory Views of the Rationale of Evidence*, cit., VI, p. 86: '... all persons in a state of slavery; that is, of all those of whome the great majority of the whole population is composed.'

[32] J. Bentham, *Principles of Penal Law, Works*, I, p. 444; cf. also his *Plan of Parliamentary Reform* (1817), III, p. 442, where he mentions the fact that slaves are 'often worked to the very death'.

[33] F.A. Voltaire, *Candide ou l'optimisme* (1759), ed. by C. Thacker, Génève, 1968, ch. XIX, p. 174; the preceding passage tells that 'On nous donne un calecon de toile pour tout vêtement deux fois l'année. Quand nous travaillons aux sucreries, et que la meule nous attrape le doigt, on nous coupe la main: quand nous voulons nous enfuir, on nous coupe la jambe: je me suis trouvé dans le deux cas. C'est à ce prix que vous mangez du sucre en Europe.'

[34] William Paley, *Complete Works*, New York, 1824, III, p. 146.

[35] A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), ed. by R.H. Campbell, A.S. Skinner, and W.B. Todd, 2 vols., Oxford, 1976 (B. I, ch. VIII), p. 99.

[36] A. Smith, *The Wealth of Nations op. cit.*, p. 98.

[37] *Ibid.* (B. III, ch. II), p. 387—88.

[38] *Ibid.* (B. IV, ch. IX), p. 684.

[39] *Ibid.* (B. I, ch. VIII), p. 98.

[40] *Ibid.*. (B. III, ch. II), p. 388.

[41] *Ibid.*

[42] J. Bentham, *Principles of the Civil Code*, cit., p. 345. This argument is taken over by Bentham in a work on economics, where he states: 'the reason for considering the inhabitants of a country as constituting a portion of its productive capital will be the stronger, the more perfectly they are free from that undefined mass of obligations which is indicated by the word servitude or slavery', *The True Alarm*, in *J.B.'s Economic Writings*, cit., III, p. 77.

[43] J. Bentham, *Principles of Penal Law*, cit., I, p. 441

[44] See for example the position of James Boswell in 'No Abolition of Slavery' (1791), by which he contrasted the condition of English laborers with that of slaves; cf. Klingberg, *op. cit.*, pp. 43—44.

[45] J. Bentham, *Principles of the Civil Code*, cit., pp. 345—346.

[46] J. Bentham, *Observations on the Parts of the Declaration of Rights, as Proposed by Citizen Sieyes, Works*, II, p. 531.

[47] Long's comment on these *Observations* is that, 'hatred of loose and delusive language and disgust at the political folly of natural rights theories were welded together in a ferocious hostility' (Long, *op. cit.*, p. 184). For further details on *Anarchical Fallacies*, see Halévy, *op. cit.*, II, pp. 38—43 and particularly J.H. Burns, 'Bentham and the French Revolution', *Transactions of the Royal Historical Society*, XVI, 1966, pp. 95—114.

[48] J. Bentham, *Observations*, cit., p. 531.

[49] *Ibid.*, pp. 531—532.

[50] Hildreth's translation, in the *Theory of Legislation*, although slightly different here, is equal in content; it says: 'This operation *could not take place* suddenly, *except by* a violent revolution, which, by *displacing* all men, by destroying all property, etc.,' *Theory of Legislation*, p. 207.

[51] *Principles of the Civil Code*, p. 346.

[52] J. Steintrager, *op. cit.*, p. 69.

[53] J. Bentham, *Principles of the Civil Code*, p.345.

[54] J. Bentham, *Codification Proposal* (1822), in *J.B.'s Economic Writings*, cit., III, p. XXIX; also *Works*, IV, pp. 540—2

[55] *Ibid.*, p. 346.

[56] The master could prevent the slave from obtaining the sum fixed for his ransom, etc. *Ibid.*

[57] 'The hope of inheritance is always very weak in distant successions, and this hope would no longer exist when the law became known. There would be no injustice, when no expectation was disappointed. ... Furthermore ... The diminution of a tenth would be scarcely sensible.' J.Bentham *Codification Proposal*, cit., p. 346.

[58] J. Bentham *Theory of Legislation*, pp. 115—124; cf. my chapter on the Indigent.

[59] J. Bentham *Supply without Burden*, in *Economic Writings*, cit., I, pp.283—87 and 298—300.

[60] J. Bentham, *Theory of Legislation*, pp. 122—123.

[61] J. Bentham, *Principles of the Civil Code*, I, p. 347.

[62] J. Bentham, *Theory of Legislation*, cit., p. 123; cf. *Works*, I, p. 312—313, in which the text differs only at the end: 'in order to introduce them to this new social condition.'

[63] J. Bentham, *Institute of Political Economy*, cit., in *Economic Writings*, III, p. 39.

[64] J. Bentham, *Principles of the Civil Code*, I, P. 345.

[65] *Ibid.*, p. 346.

[66] *Ibid.*, p.346, now quoted in the edition of the *Theory of Legislation, op. cit.*, p. 207.

[67] J. Bentham, *Theory of Legislation*, cit., p. 208—209. Cf. *Principles of the Civil Code*, p. 347.

[68] *Theory*, pp. 209; *Civil Code*, p. 347.

[69] This contradiction was noted by Hildreth, the translator of Bentham's *Traités*. To Bentham's sentence asserting that a sudden emancipation 'would produce evils

a thousand times greater', Hildreth adds a footnote which reads: 'Recent experience in the West Indies seems to contradict this theory; so does the case of the Polish lordship, cited in the last paragraph of the chapter.' (*Theory of Legislation*, cit., p. 207, note by the Translator.)

Richard Hildreth (1807—1865), historian, journalist, author of the well-known novel *Archy Moore or The White Slave* (which is considered as 'a forerunner of all antislavery novels in that country'), great supporter of General Harrison and then of Abraham Lincoln in their presidential campaigns, was a champion of the antislavery cause in the United States, as well as a utilitarian thinker (cf. his *Theory of Morals* and *Theory of Wealth*). See M.M. Pingel, *An American Utilitarian, R.H. as a Philosopher*, New York, 1948 (2nd ed. 1967), pp. 1—10; cf. D. Baumgardt 'The Forgotten Moralist: R.H.'s Theory of Morals', *Ethics*, VII, 1947, pp. 191—8 cf. for further bibliographical information D. Baumgardt, *Bentham and the Ethics of Today*, cit., pp. 323—24

Hildreth retranslated Dumont's French edition of Bentham's manuscripts into English, transforming Dumont's *Traités* into the more 'Hildrethic' title of *Theory of Legislation* (1864). It is remarkable to notice that Hildreth's translation was one of the most widespread editions of Bentham's works, and it was still used by Ogden in his edition of the *Theory*, in 1931, where he commented on the fact that: 'one of the most widely read volumes of jurisprudence in the English language shoud be the work of an American translating from the French of a Swiss pastor who had published over 60 years previously.' C.K. Ogden, *The Theory of Legislation by J.B.*, London, 1931, p. XXXI. Hildreth, a great exponent of the antislavery cause in the United States, could not fail to notice Bentham's ambiguity when dealing with the question of slavery.

70 In fact, the existence of Griffin-Collart's very thoughtful book has been hitherto ignored by almost all English-speaking Bentham scholars.

71 E. Griffin-Collart, *op. cit.*, p. 40; cf. also p. 90.

72 D. Long, *op. cit.*, pp. 215—217.

73 *Ibid.*, p. 194; cf. also p. 109 where Long argues that, as Bentham condemns slavery only because it is a condition into which noboby enters freely, 'No matter how dismal his condition, it is clear that, given Bentham's criteria for cases unmeet, such freely given consent to servitude could exempt any master from punishment.'

74 On *Rid Yourselves of Ultramaria* see chapter on colonies.

75 J. Bentham, U.C., CLXXII, Letter 16, 'The Relinquishment would be honourable. Slave Trade', July 1821, revised with some additions in April 1822, 331—348. I am quoting here from 331—333, where Bentham also asserts that 'the Highwayman ... in comparison of the Slave-dealer and of his accomplices ... is a Saint', *ibid.*, 333.

76 U.C., CLXXII, 339—340; he adds 'What? all the Citizens? all that are its Citizens and no others? No: no such restriction does it contain: *individuos* is the word: not *ciudadanos*.'

77 *Ibid* Bentham proposes a solution for avoiding this infringement: 'Well then go yourselves to Negro land, put yourselves under the power of those whom you now get under yours, in that way you may secure to yourselves the blessing you thus denunciate and without the complication and embarassment of Constitutional Codes made only to be violated or neglected.'

78 *Ibid.*, 344; by the way, Bentham's irony could easily be reversed on his own attitude: he certainly never considered property a 'sacred right', but his ambiguous attitude towards slavery is the result of his choice in favour of property rather than of slaves.

[79] U.C., CLXXII, 345 (April 1822); cf. also *ibid.*, 339, July 1821 (omitted in April 1822).

[80] *Ibid.*, 343 — 'You would rid yourselves I say of Slave-holding for I can not suppose that it is for your own use that you continue to do what you still do towards keeping up that practice. It is no part of your new scheme of good government to import Black men into Spain to serve as slaves in your own houses. (But it is only because if you did not in breach of your Constitutional Code suffer them to keep Black men slaves in their houses and on their lands they would not — you fear behave to you as subjects — this is the cause and the only cause by which the connection you have with the system of tyranny is continued.)'

[81] U.C., CLXXII, 345.

[82] J. Bentham, *Principles of the Civil Code*, cited, p. 345.

[83] J. Bentham, U.C., CLXXII, 345; cf. also 346: 'you will place yourselves above England in the scale of beneficence'; cf. 341: 'you could then be an object of respect as well as sympathy'.

[84] *Ibid.*., 336.

[85] *Ibid.*, 338, July 1821.

[86] *Ibid.*., 346 — 'Wide indeed is the difference between the plunging men into that sad condition and the keeping them in that same bad condition those whose hard lot is to be found in it. ... To abstain from the traffic in slaves nothing more is necessary than the mere negative act of not engaging in it.' For a condemnation of the slave-trade, cf. also *Panopticon versus New South Wales* (1802), *Works*, IV, pp. 196—197.

[87] J. Bentham, U.C., CLXXII, 346. Long's interpretation is certainly confirmed by this passage, but it is not an adequate explanation for the vehemence of the preceding passages.

[88] 'Tripoli; Some account on the State of Tripoli. On the Barbary Coast in North Africa. Derived from an authentic source and composed of particulars never till now made public in any European language.' August—November 1822, U.C., XXIV, 61—95. The whole Box XXIV at University College is devoted to material dealing with Tripoli.

[89] This work, written between 1822 and 1833 is in *Works*, VIII, pp. 555—600. Further information on Bentham's relationship with D'Ghies is now to be found in L.J. Hume, *op. cit.*, pp. 211, 296, 298.

[90] U.C., XXIV, 107; slavery is treated on 106—108, written between September and October 1822.

[91] U.C., XXIV, 539—540. Translated from the French by D. Kelly Mathematician, London, 1822, p. 16. Bentham's copy with several handwritten notes in Bentham's hand at University College, London.

[92] U.C., XXIV, 9—10. He also argues that slave-trade 'is the principal branch of exportation of those countries' and that its abolition would have stopped their only possibility of exchange, and therefore of 'the importation of several European manufactures, which are sent to them from the coast of Barbary', *ibid.*, 8.

[93] *Ibid.*, 10.

[94] *Ibid.*, 45.

[95] *Ibid.*, 14.

[96] U.C., XXIV, 396—505 (Wanted U.S. to back up Reform Party in Tripoli); U.C., XXIV, 378—392; cf. also *ibid.*, 40—60, and 1—18.

[97] See Wilberforce's Diary, December 27, 1795 in *The Life of William Wilberforce*, by his sons, Robert, Isaac and Samuel Wilberforce, 5 vols., London, 1838; II, p. 137: 'Dined at Morton Pitt's — Pitt, Glase, Runford, Bentham, General Bentham, Rose

and others — conversation not edifying. Poor Bentham! dying of sickness of hope deferred, which forced to stifle.'

[98] There are a dozen letters written by Bentham to Wilberforce between 1796 and 1801, which can be found in *The Correspondence of William Wilberforce*, by his sons, 2 vols., London, 1840.

[99] *The Life of W.W., op. cit.*, II, pp. 171—172.

[100] *The Correspondence of W.W., op. cit.*, I, pp. 121—2, 177—183, 212—213, 229, II, pp. 203—206, 205, etc.

[101] *The Life of W.W.*, cit., II, p. 170.

[102] *The Correspondence of W.W.*, cit., I, pp. 137—147; Bentham referred to the fact that both had been declared citizens of France by the National Assembly in 1792, and therefore they were the only English 'French citizens' who were not 'reputed Republicans'. Cf. C.M. Atkinson, *J. Bentham, His Life and Work*, London (1905), 1970, p. 110—111.

[103] *The Correspondence of W.W.*, cit., I, pp. 147—149, Letter of Lord St Helens to Wilberforce, in which he rejects Bentham's project as being completely unfeasible. This testimony is in someway complementary to the account given by C.F. Bahmueller, (*op. cit.*, pp. 64—65) on this episode, mainly seen from Bentham's point of view.

[104] Cf. his *Panopticon Versus New South Wales* (1802), *Works*, IV, p. 197: 'those discussions about the slave-trades that year after year have been occupying and agitating both houses of parliament'.

[105] Letter by Bentham to W. Wilberforce, Esq., June 8, 1804, quoted in *The Life of W.W., op. cit.*, III, p. 170.

[106] J. Bentham, *Principles of the Civil Code*, cit., I, pp. 344—45; see also *Works*, cit., VI, p. 86, cit. in note 31 of the present chapter.

[107] See the chapter on 'the Indigent'.

8. Animals

But is there any reason why we should be suffered to torment them [animals]? Not any that I can see. Are there any why we should not be suffered to torment them? Yes, several. ... The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny.[1] ... It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate [the caprice of the tormentor]. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversible animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?[2]

By these famous words contained in a long footnote of his *Introduction to the Principles of Morals and Legislation*, Bentham has unanimously been hailed as the first philosopher, or one of the first in Western Civilization, to offer rational foundations for the movement which was to produce the first societies for the prevention of cruelty to animals, and the movement for 'animal liberation'.[3] Such unanimity appears suspect to any contemporary Bentham student who is aware of the thorough revision to which most of the stereotypes that had characterized Bentham's image in the past, have been subjected by recent studies.[4]

In the case of women, Bentham's not always perfectly coherent attitude and his excessively cautious behaviour have caused some scholars to doubt whether the women's liberation movement owes anything to Bentham at all. In the case of the poor, it has been questioned whether it was Bentham's — and not someone else's — ideas which were taken up by the subsequent English Poor Laws, and, furthermore, it has been questioned whether Bentham's ideas on the indigent were actually to the benefit of these oppressed people, or whether they would in fact have brought the indigent under a worse kind of oppression, by eliminating also their liberty and dignity.

In the case of animals, no doubt has hitherto been cast on Bentham's reputation as the founder of what has nowadays been called 'Animal Liberation'. But is this reputation really so solidly founded? Is Bentham's favourable attitude towards animals a logical derivation from the more general principles of his philosophy, or was it simply prompted by his personal feelings? And finally, what problems are introduced by the consideration of the interests of animals in his philosophy?

Undoubtedly, Bentham's philosophical attitude towards animals was heavily influenced by his personal taste and 'love for pussies'. 'Love for pussies' was

the bond of union in his friendship with Samuel Romilly, whom he met at Lord Lansdowne's table after his return from Russia,[5] and with George Wilson, as Bentham himself remembers in his *Memoirs*:

> Cowper's story of his hares, had the highest interest for me when young; for I always enjoyed the society of tame animals. Wilson had the same taste — so had Romilly, who kept a noble puss before he came into great business. I never failed to pay it my respects. I remember accusing Romilly of violating the commandment in the matter of cats. My fondness for animals exposed me to many jokes. An acquaintance of Wilson's came to dine with me and I gave him a bed in my chambers. He had seen two beautiful asses. One of them had the name of Miss Jenny. At Ford Abbey, there was a young ass of great symmetry and beauty, to which I was much attached, and which grew much attached to me — each fondling the other.[6]

Bentham's own recollections of his strange relationships with animals,[7] have always excited the imagination of his biographers, eager to find anything capable of catching the attention of the reader, in the otherwise very monotonous story of his tranquil existence. From Bowring's, or from Bentham's own words, one learns how he used to walk around in the streets, followed by one of his cats, and how he used to rub with his stick a pig at Hendon, which enjoyed this treatment so much, that it used to follow him like a dog. One learns also about his other cat which he called Sir John Langborn and later re-named Reverend John Langborn and which used to eat macaroni at his own table. Bentham also loved mice, which played about in his workshop. One group used to run up his legs, and eat crumbs from his lap, at least according to Bentham's own recollections:

> I love everything that has four legs: so did George Wilson. We were fond of mice, and fond of cats; but it was difficult to reconcile the two affections.[8]

There is no doubt that Bentham had the interests of animals at heart. From a personal point of view, he was certainly more sympathetic towards animals than towards certain categories of oppressed human beings. He constantly enjoyed the company of animals, and the evidence of his writings on this subject shows more emotional participation than, for example, is shown in some of his writings on the indigent, on the Jews, or on the native people of British India.[9] He was in the habit of telling a number of anecdotes which concerned the cruelties which he had personally inflicted on animals when he was a child, and he still remembered, in his older years, the strong effect that the reproaches he received exerted on him:

> ... While I was thus employed up came my uncle, and reprimanded me for my cruelty. I felt it bitterly; for it was the only token of displeasure I ever experienced from him, from the day of my earliest recollection to the day of his death, which took place in 1784. He was one of the gentlest of all human beings, though a lawyer by profession.[10]

It seems to be agreed that Bentham's personal feelings influenced his philosophical attitude towards animals. Utilitarianism, before Bentham, apparently did not count anything but persons in the calculation of the greatest number, although David Hume had already expressed his belief that men are 'bound by the laws of humanity to give gentle usage to these creatures'.[11] A tendency to-

wards greater refinement and civility, more benevolence and less brutality, with respect to the 'brute creation' can be detected in several writings that belong to the Enlightenment. Besides Hume, we find Rousseau, Voltaire, and Alexander Pope, all expressed their abhorrence for excessive or useless cruelty to animals, opposing the Cartesian belief that beasts, which did not have immortal souls, did not have consciousness either, but were simply machines.[12]

Voltaire in particular attacked such beliefs, and the practice of dissecting live animals: 'Des barbares saisissent ce chien, qui l'emporte si prodigieusement sur l'homme en amitié; ils le clouent sur une table, et ils le dissèquent vivant pour te montrer les veines mésaraiques. Tu découvres dans lui tous les mêmes organes de sentiment qui sont dans toi. Réponds moi, machiniste, la nature a-t-elle arrangé tous les ressorts du sentiment dans cet animal afin qu'il ne sente pas? a-t-il des nerfs pour être impassible? Ne suppose point cette impertinente contradiction dans la nature.'[13]

Bentham was however the first philosopher who tried to rationalize his feelings about animals, and to introduce them into his utilitarian philosophy. From a logical point of view, in fact, the natural philosophy of Bentham's utilitarianism, which recognizes 'the governance of two sovereign masters, *pain* and *pleasure*', imposed by Nature over mankind, needs no logical adjustment to comprise also non-human animals under the same 'empire'.[14] As it has already been pointed out in the present essay,[15] Bentham's point of departure is remarkably egalitarian, insofar as he attributes the same psychological structure to all human beings, and claims therefore equal consideration of their interests. In the case of animals, Bentham refers to their capacity of suffering i.e. to the fundamental similarity in psychological structure of all 'sentient beings' — and claims due consideration for their interests too. In an unpublished manuscript, written in the 1780's, Bentham passionately affirmed:

> The poor worm you tread on in corporal sufferance feels a pang as great as when a hero dies.[16]

In other words, Bentham's plea for due consideration to the interests of animals is perfectly legitimate and rationally consistent with his anthropology. If men are to be defined not by their reason but by their sensibility, then animals may legitimately be compared to them.

> The question [about animals] is not, Can they *reason?* nor, Can they *talk?* but, Can they *suffer?*[17]

In opposition to any kind of prejudice, Bentham wishes to make clear that:

> What makes the condition of any creature an object of concern to a benevolent mind is the circumstance of sensibility; and not the circumstance of having a black skin instead of a white one, or four legs instead of two.[18]

The tyranny which has been exercised by men over animals is in fact a direct consequence of prejudice, a misconception about animals which characterizes the whole of Western civilization:

> ... animals, which on account of their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of things.[19]

Bentham was clearly aware of the philosophical purport of his statement. For, on another occasion, he explained in a footnote:

> In as far as their [animals'] mental faculties are taken into the account, they stand upon a footing with persons: in as far as they are not taken into the account, they stand on a footing with inanimate things.[20]

Peter Singer sees Bentham's argument as an important expansion of his moral horizon: 'Bentham does not arbitrarily exclude from consideration any interest at all — as those who draw the line with reference to the possession of reason or language do. The capacity for suffering and enjoyment is *a prerequisite for having interests at all*, a condition that must be satisfied before we can speak of interests in a meaningful way. It would be nonsense to say that it was not in the interests of a stone to be kicked along the road by a schoolboy. A stone does not have interests because it cannot suffer.'[21]

However one might object to an interpretation such as this,[22] the fact remains that Bentham does draw a line — although much further than other philosophers before and after him — which excludes non sentient beings' from consideration. What are the consequences of such an 'expansion', even though limited to animals, as in the case of Bentham? Bentham was much more cautious than has been suggested by his commentators, precisely because he was aware of the enormous difficulties of carrying out consistently such 'expanded' premises.

The concept of oppression will be able to throw some new light on Bentham's thought: for Bentham undoubtedly considered that, particularly in Western culture, animals were oppressed. But why and how were animals oppressed? One answer is, as has already been explained, to be found in Bentham's conception of the 'brute creation'. A second, and complementary answer is given by Bentham when he writes:

> Because the laws that are have been the work of mutual fear; a sentiment which the less rational animals have not had the same means as man has of turning to account.[23]

Tyranny has therefore been exercised over animals because of, and by means of, an unjust legislation which fails to take their interests into account. Such an answer closes the circle again, it explains what are animals' interests only in an indirect manner, and so brings us to the conclusion that these interests are strictly bound to animals' capacity for suffering. The present legislation in fact, by neglecting their interests, leaves animals unprotected from any kind of vexation bestowed upon them by men; animals' oppression consists in the fact that they have no protection from torment.

Utilitarian legislation, on the contary, must take animals into consideration and protect them from the tyranny of mankind. As it has already been stressed,[24] equal consideration of interests does not necessarily entail equality of treatment, as Bentham himself asserted, in opposing the Declaration of the Rights of Man and its ideals for 'formal' equality. The egalitarian position from which he started is thus complemented or qualified by the impact with reality. In the case of women, Bentham advocated a kind of 'compensatory discrimination' in favour of females, who were more sensible and less strong than

males.[25] Similarly, in the case of animals, Bentham recommended that a special protection be afforded to them by the utilitarian legislator. But whereas in the case of females, Bentham affirmed that women should have the same rights — and sometimes, as compensation, even greater — as men, he never claimed that animals were equal to men.

This point is of fundamental importance for a correct understanding of Bentham's philosophical attitude towards animals. Singer's statement that 'Bentham was perhaps the first to denounce "man's dominion" as tyranny rather than legitimate government',[26] is true only insofar as it is made clear that Bentham questioned the legitimacy of a government which neglected animals' interests; though he never questioned the legitimacy of government over animals in itself. Seen in this perspective, Bentham is certainly the ideological father of all the societies for the prevention of cruelty to animals, but he is not — nor could he be, given these philosophical premises — a supporter of vegetarianism. The consideration of the interests of animals does not entail, in fact, that animals should be treated as men, nor does it entail any logical connection between the prohibition of eating human meat and the enjoyment of a juicy piece of roast-beef. For Bentham, a just consideration of animals' interests would entail that the legislator should not only prevent and punish any useless and wanton cruelty to animals, but should also look for concrete ways of reducing the sufferings of animals by, for example, trying to find new ways of painlessly killing those animals which served as men's food:

> Men must be permitted to kill animals; but they should be forbidden to torment them. Artificial death may be rendered less painful than natural death by simple processes, well worth the trouble of being studied, and of becoming an object of police.[27]

The role of the utilitarian legislator was limited to the reduction — and possibly the abolition — of the oppression exercised over animals by ways of useless torment. Bentham thought that to own an animal was no tyranny; nor was it tyranny to kill it, provided that its sufferings had been reduced to a minimum, or eliminated altogether:

> If the being eaten were all, there is very good reason why we should be suffered to eat such of them as we like to eat: we are the better for it, and they are never the worse. They have none of those longprotracted anticipations of future misery which we have. The death they suffer in our hands commonly is, and always may be, a speedier, and by that means a less painful one, than that which would await them in the inevitable course of nature. If the being killed were all, there is very good reason why we should be suffered to kill such as molest us; we should be the worse for their living, and they are never the worse for being dead.[28]

Bentham is however very far from any conception which entails the sanctity of animal life, as found in Hinduism for example, and which Bentham imagined to be also a characteristic of Islam. He cites both religions as incentives for a more adequate consideration of the interests of animals.[29] His secularism on this issue leads him to deny the sanctity not only of animal life but also of human life, as he states in an unpublished manuscript:

> Killing of a man is the worst crime that can be committed against man — why? not on account of what the man himself suffered who is killed: for that is commonly less than he would have suffered by a natural death; because of the terror which such an act strikes into other men. In this horror other animals are not liable. ... Other animals have the privilege of not knowing that they are to die. Killing other animals therefore is nothing: the only harm is in tormenting them while they are alive.[30]

For Bentham not even medical experiments on animals — provided that they were surely useful to human beings — were tyranny:

> Sir — I never have seen, nor ever can see, any objection to the putting of dogs and other inferior animals to pain, in the way of medical experiment, when that experiment has a determinate object, beneficial to mankind, accompanied with a fair prospect of the accomplishment of it. But I have a decided and insuperable objection to the putting of them to pain without any such view.[31]

In other words, Bentham recognized that men could have certain rights over beasts — as for example property — which in itself did not constitute an oppression for the animal, but he thought it important to limit the extension of such rights with the consideration of animals' suffering. It is not true that 'Bentham lowered his normal standard of argument' in justifying men's eating meat.[32] Bentham never claimed that animals had the same rights as men, as he did for women. He accepted the idea of owning animals not only for questions of security — as in the case of men owning slaves — but because of an implicit concept of the inferiority of non-human animals, a concept which did not however extend to justifying their maltreatment:

> I do not approve the laws of the Hindus on this subject. There are good reasons why animals should serve for the nourishment of man, and for destroying those which incomode us. We are the better for it, and they are not the worse: ... and the death which they receive at our hand may always be rendered less painful than that which awaits them in the inevitable course of nature.[33]

From a logical point of view, Bentham never lowered his standard of argument, which started from the presumption of an analogy in the psychological structure between men and animals, allowing to both the capacity of suffering. From this presumption, the greatest happiness of the greatest number in its broadest application — entailed the reduction, or possibly the elimination, of the suffering of all sentient beings. On this presumption, we can reasonably conclude that eating the meat of an animal which has been killed without suffering, provides an increase, not a diminution, in the general amount of happiness in the whole universe of sentient beings. Oppression in present legislation, and therefore the due consideration to be given to animals by utilitarian legislators, was strictly limited by Bentham to the issue of useless and wanton maltreatment.

Whereas from the point of view of 'animal liberation' this might be considered a narrow perspective, (although it was already advanced, if we compare it with that of other philosophers) from a more philosophical point of view, all these qualifications appear to be the only way of reconciling Bentham's 'love for pussies' with his utilitarian doctrine. What would in fact have been the consequences for utilitarianism of 'an expansion of its moral horizon' of the kind

preached by Peter Singer?[34] What would have become of Bentham's philosophy, if the analogy between men and beasts were extended to qualities other than sensibility, if animals were to be considered oppressed in ways other than by maltreatment, and if, therefore, due consideration to animals meant doing much more than avoiding their maltreatment? How could the legislator take into consideration the interests of animals — in relation to security, subsistence, and, even, abundance and equality, if the calculation of the greatest happiness of the greatest number of men was already so difficult and complicated? What other kind of criteria could he use? And, last but not least, how could he justify such an expansion in terms of utility and interests?

In the case of slaves, Bentham had shown that their emancipation would have benefited the whole nation — besides benefitting the slaves themselves — although it would have caused immediate suffering in slave-owners. One of the main reasons why Bentham restricted his 'expanded horizon' to the prevention of cruelty of animals is that this issue could be justified in terms of interest for men:

> Among the many reasons which might be given for making criminal such gratuitous cruelties, I confine myself to that which relates to my subject. It is a means of cultivating a general sentiment of benevolence, and of rendering men more mild; or at least of preventing that brutal depravity, which after fleshing itself upon animals, presently demands human suffering to satiate its appetite.[35]

For the same reasons, Bentham thought it convenient to forbid 'cock-fights and bull-fights, the chase of the hare and the fox, fishing,[36] and other such amusements of the same kind'.[37] Besides cultivation of benevolence, prevention of cruelty to animals is also justified by Bentham in terms which have been considered 'grosser, more callous':[38]

> Why should the law refuse its protection to any sensitive being? A time will come when humanity will spread its mantle over everything that breathes. The lot of slaves has begun to excite pity; we shall end by softening the lot of animals which labour for us and supply our wants.[39]

Benevolence in itself was not a solid enough foundation for any part of utilitarian legislation to be built upon it, unless it was regulated in its application according to the principle of utility.[40] Benevolence towards animals is encouraged by utilitarian legislation, because it prevents a degeneration into more serious cruelties and is regulated, only insofar as it is restricted to cruelty and not to killing of animals *tout-court*:

> I am unable to comprehend how it should be — that to him, to whom it is a matter of amusement to see a dog or a horse suffer, it should not be a matter of like amusement to see a man suffer.[41]

Against Baumgardt's opinion, there is evidence which shows that the difference in tone and terms, but particularly in attitude, which can be found in comparing Bentham's attitude towards animals in the *Introduction* and in his *Traités* is not due — at least this time — to simplification by Dumont, in the process of editing.[42] At least in this case, the difference in attitude is to be

looked for in the different aims of these two works — the *Introduction* being the enunciation of Bentham's general principles, and the *Traités* an effort to apply these same principles to reality. Therefore the plea for a due consideration of the interests of animals is stressed in the former, while more 'anthropocentric' arguments are used in the latter. An unpublished manuscript, written in about 1780, shows that Bentham had already considered both points of view, and that the 'grosser and more callous' arguments were not worked out by Dumont, but by Bentham himself. In this manuscript in fact, Bentham explains that 'the restraining men from exercising cruelty on inferior animals is of use on three accounts', i.e. 'for the offender's own sake', 'for the sake of other men', and, 'for the sake of animals themselves'. On the first account, Bentham uses the argument that cruelty to animals brings later cruelty to other men:

> In this point of view, an act of direct legislation against cruelty to animals is an act of indirect legislation against Personal Injuries, Murder and Incendiarism; and in short against all crimes which have malice for their source.[43]

On the second account, 'for the sake of other men', Bentham explains that:

> considerable mischief is sometimes done by cats and other domestic animals when worried by the cruelty of children; but more particularly in the large towns by hurried cattle driven to madness by the cruelty of their drovers.[44]

On the third account, Bentham moves from the anthropocentric justifications and expands his horizon, with all the qualifications that we have already pointed out:

> To a benevolent mind misery, let it be found where it will, can never be an object of indifference. ... If there be any arguments by which man can be justified in being insensible to the sufferings of other animals; by the same reasons may sovereigns be justified in being insensible to the sufferings of their subjects.[45]

Bentham qualifies once more his philosophical attitude towards animals, which is benevolent only insofar as concerns the suffering of animals, but which does not question men's government over animals.[46] He also again clarifies the relationship between benevolence and self-interest:

> Every man by a principle in his nature which it would be equally impracticable and useless to surmount is irresistibly obliged to provide in the first place for his own well-being; and that in preference to the wellbeing not only of all other animals but of all other men; but when that is provided for, let any one say that can, why other animals in proportion to their susceptibility of pain and pleasure should have less claim to his attention than other men.[47]

With all these qualifications it can clearly be seen that Bentham's attitude towards animals, as expressed in his philosophical writings, may be considered to be the ideological foundations for all the Societies for Prevention of Cruelty to Animals. Such a link is however not only ideological, but also of historical purport. Among Bentham's papers there is the invitation Bentham received on July 9, 1829, from Lewis Gompertz, Honorary Secretary of the Committe of The Society for the Prevention of Cruelty to Animals, which had

been founded a few years before.[48] This evidence provides not only a material testimony to Bentham's contacts with the movement for the protection of animals in England, in his later years; it also says something about the influence which Bentham's ideas exercised, through these contacts, on a broader public.

It is worth noting in this connection that Sir Samuel Romilly, whose friendship with Bentham was strengthened by their common 'love for pussies',[49] when speaking in a debate in the House of Commons in 1809, in favour of a Bill which proposed to make it an offence to wound horses, cattle, sheep, and swine, used 'Benthamite' arguments. Besides arguing that cruelty to animals leads to cruelty to men, Romilly asserted that the right way to view the question was that expressed by the distinguished painter, Hogarth, who represented cruelty through its different stages, beginning with the amusement in watching the suffering of animals, and ending in the most savage murder.[50] It is instructive to observe that Bentham, as early as in 1780, had explained, in the above-mentioned manuscript, that the prevention of cruelty to animals was useful:

> to prevent their giving way to habits of cruelty or insensibility, which when indulged are apt to lead once into the worst of crimes. ... One of the best moral ... that ever was composed are Hogarth's prints enlisted The Progress of Cruelty. In default of Laws, it was the object of that admirable artist to punish these abuses by the censure of the world.[51]

If the role of the deontologist was that of conciliating every man's self-interest with enlightened benevolence, i.e. the utility of the greatest number, it must be recognized that in this case such a role has been played brilliantly by Bentham. If men were not convinced by arguments in favour of protecting animals from maltreatment, Bentham showed them the advantages they would have in expanding the 'greatest number', from individuals to a class of individuals, to the whole nation, to human kind in general, and from there to the whole universe of sensitive creation.[52] The struggle against cruelty to animals did not shake the foundation of the philosophical construction built by Bentham on the principle of utility: it reinforced it.

Notes

1 For the relationship between the tyranny of slavery and that of cruelty to animals see the chapter on slaves.

2 J. Bentham, *An Introduction to the Principles of Morals and Legislation, op. cit.*, pp. 282—83n.

3 Peter Singer, *Animal Liberation — Towards an End to Man's Inhumanity to Animals*, London, (1975) 1977, pp. 24—27 and 207; D. Baumgardt, *op. cit.*, p. 308, quotes also the similar opinions by Georg von Gizycki, Thomas Fowler,etc.; cf. also Stephan Clark, *The Moral Status of Animals*, Oxford, 1977, p.78.

4 For an excellent analysis of these studies, see L.J. Hume, 'Revisionism in Bentham Studies', *The Bentham Newsletter*, 1978, I, pp. 3—20.

[5] Charles M. Atkinson, *Jeremy Bentham, His Life and Work*, London (1905) 1970, pp. 90—91.
[6] J. Bentham, *Works*, cit, XI, p. 81.
[7] J. Bentham, *Works*, cit., XI, pp. 80—81; see also Atkinson, *op. cit.*, p. 8.
[8] J. Bentham, *Works*, X, p. 81.
[9] See the chapters on the indigent, on the Jews, on colonies, on slaves, etc.
[10] J. Bentham, *Works*, X, p. 17; see *ibid.* another anecdote told by Bentham about his childhood.
[11] D.Hume, *Enquiry Concerning the Principles of Morals*, ch. III.
[12] R. Descartes, *Discours de la Méthode*, p. V.
[13] Voltaire, *Dictionnaire Philosophique*, 'Bêtes'.
[14] J. Bentham, *Introduction, op. cit.*, p. 11 (Ch. 1, p. 1).
[15] See the chapter on women.
[16] U.C., LXXII,p. 214 (*Penal Code*, 'Cruelty to Animals').
[17] J. Bentham, *Introduction*, cit., p. 283n.
[18] U.C., LXXII, 214. — In this perspective, Bentham's definition of the indigent as 'that part of the national livestock which has no feathers to it and walks with two legs' (in *Pauper Management Improved*, cit. *Works*,; VIII, p. 432n) by which C.F. Bahmueller has been so shocked (*op. cit.*, pp. 129 and 210) should sound less alarming.
[19] J. Bentham, *Introduction*, p. 282n.
[20] J. Bentham, *Of Laws in General*, ed. by H.L.A. Hart, *Collected Works*, London, 1970, p. 35n.
[21] P. Singer, *op. cit.*, p. 27, cf. p. 12.
[22] Such expansion of our moral horizon entails great problems and opens up numerous questions. Recent studies, for example, have shown that plants are capable of suffering, and that some species of vegetals apparently maintain a kind of 'memory' of past suffering and are capable of something very close to 'expectation' of pain.
[23] J. Bentham, *Introduction*, p. 282n.
[24] See chapter on women.
[25] *Ibid*, notes 94—116.
[26] P. Singer, *op.cit.*, p. 207.
[27] J. Bentham, *Theory of Legislation*, cit., ch. XVI, p. 428—429.
[28] J. Bentham, *Introduction*, p. 282n.
[29] J.Bentham, *Introduction*, cit., p. 282n: 'Under the Gentoo and Mahometan religions, the interests of the rest of the animal creation seem to have met with some attention.' Cf, Bentham's reference to Hindostan, in his *Of Laws in General, op. cit.*, p. 49n.
[30] U.C., LXXII, 214.
[31] J. Bentham, Letter to the Editor of the *Morning Chronicle*, 4th March 1825, in *Works*, X, pp. 549—550; cf. the list of useful purposes for which animals' sufferings were justified: '1) In the way of chastisement, so it be moderate. 2) In making the animal subservient to the necessities or conveniencies of man, for example in the way of food, physics, cloathing, conveyance or manufacture. 3) To defence any person or thing from being hurt or annoyed by it. 4) In the way of experiment to promote medical and other useful knowledge.' U.C., LXXII, p. 214.
[32] P. Singer, *Animal Liberation*, cit., p. 213; cf. p. 210.
[33] J. Bentham, *Theory of Legislation*, cit., p. 66 (ch. XII).
[34] P. Singer, *op. cit.*, p.12.

[35] J. Bentham, *Theory*, cit., p. 66; Bentham refers in a footnote to *Barrow's voyage to the Cape of Good Hope*, for the cruelties of the Dutch settlers towards their cattle and their slaves. *Ibid.*

[36] On another occasion, Bentham declared fishing as an abominable sport, waste of time associated with cruelty: cf. Atkinson, *op. cit.*, p. 8.

[37] J. Bentham, *Theory*, p. 428.

[38] D. Baumgardt, *op. cit.*, p. 362.

[39] J. Bentham, *Theory*, p. 428.

[40] *Ibid.*, pp. 427—429.

[41] J.Bentham, Letter to the *Morning Chronicle*, cit., in *Works*, X, p. 550.

[42] D.Baumgardt, *op. cit.*, p. 338 ('Further Popularization of Fundamentals in the Introductory Part of the *Traités*'); cf. pp. 362—363. For Dumont's editing, see particularly Halévy, *op. cit.*, I, pp. 369—397 (Appendix 1).

[43] U.C., LXXII, 214.

[44] This is for the sake of other men but also in some cases of a whole neighbourhood. *Ibid.*

[45] Bentham adds: 'What reason can man give why he should be permitted to hurt other animals, except that it is not of their power to prevent it', *ibid.*, p. 214.

[46] Although he claims that this government should not become a tyranny.

[47] U.C., LXXII, 214.

[48] U.C., CIX, 328; Lewis Gompertz, who was the second secretary of the Royal Society for the Prevention of Cruelty to Animals, founded in 1809 by Erskine, wrote *Moral Inquiries on the Situation of Man and of Brutes*, London, 1824. (for further information, see P. Singer, *op. cit.*, pp. 210, 235—36.) See also 'Sulla Convenienza ed Utilità d'istituire nelle provincie venete una Società contro il Maltrattamento degli Animali', Memoria del Cav. Giuseppe Consolo, Padova, 1856, pp. 8—15.

[49] See J. Bentham, *Works*, cit., XI, p. 81.

[50] Atkinson, *op. cit.*, p. 147.

[51] U.C., LXXII, 214.

[52] J.Bentham, *Introduction*, pp. 57—58.

9. Conclusion

Oppression and Prejudice

The aims of this work have been to suggest adequate answers to the questions formulated in the Introduction, and to outline a different and hitherto unknown image of Bentham. Its main ambition, however, is to pose new questions and to open new perspectives on some of the most pressing problems of our own times. As Hart has also recently claimed: 'Bentham's marshalling and discussion of concrete detail ... forces upon our attention new questions rather than new answers to old questions.'[1] Central themes in Bentham's philosophy have thus been examined from the perspective of 'oppression', used on the one hand as a general category for uniting different groups under a common denominator, and on the other hand, as a specific issue for investigating for the first time subjects which have been hitherto unexplored or overlooked, and for looking at some controversial subjects from a fresh angle.

First of all, the analysis of Bentham's attitude towards different categories of oppressed groups has provided a fresh perspective for looking at some of the major themes of his philosophy, which hitherto have been regarded as hedonistic and illiberal. How is Bentham's concern for oppression — which is commonly associated with a lack of liberty and happiness — consistent with this image? What were the elements of oppression which attracted Bentham's attention so often and so deeply?

Undeniably, the common demoninator which unites all the oppressed is suffering. In the calculation of the greatest happiness of the greatest number, suffering is clearly as important as happiness. Hence, the utilitarian justification for Bentham's concern with oppression as a source of suffering, with the purpose of eliminating or diminishing it. Suffering as the consequence, or symptom of oppression remains, however, only a descriptive — although unifying — element in Bentham's analysis.

Bentham's 'censorial' explanation is in fact mainly based on prejudice, which plays a fundamental role in oppression. Prejudice constitutes at the same time the cause, the pretext, and the instrument of oppression. Prejudice has a double function. On the one hand, it forms a 'cloud' which prevents people from perceiving truth, deviating their opinions and attitudes from the path of utility. On the other hand, it is used as an instrument of oppression by the sinister interests of the ruling few, who take advantage of it and instil it in people's minds, in order to continue their oppression.

The first role in which Bentham conceives that prejudice functions is as that of a screen, a barrier between people and truth. Hence the importance of Bentham's critical analysis of language, which has already been stressed in the preceding chapters. The elimination of this screen can be accomplished by education, by the diffusion of knowledge, and does not necessarily entail the political or social reform of society. Such a conception shows us Bentham as a typical child of eighteenth century philosophy, believing in the self-evidence of right reason and in the role of the *philosophe*:

> Knowledge cannot give advantage to the bad, except so far as they have the exclusive possession of it. A snare which is known ceases to be a snare. The most ignorant tribes have known how to poison the tips of their arrows; but it is only nations well instructed who have become acquainted with all poisons, and have known how to oppose them by antidotes.[2]

On the other hand, Bentham's conception of prejudice as an instrument of oppression used by those who retain sinister interests was developed particularly during his radical years, i.e. mainly in his mature years. This second function of prejudice, as an instrument of oppression, deliberately used by the governing classes, who 'spread prejudices, and propagate errors ',[3] is not far from the sense attributed to the term 'ideology' by Marx, in his *Die Deutsche Ideologie*.[4] The elimination of prejudice in this second sense, not only entails the unmasking of sinister interests by enlightened reason, but also entails a reform of institutions, which should have been designed with the aim of preventing the formation of closed groups that pursue their own particular interests, in opposition to the greatest happiness of the greatest number. Enlightenment in this case is not sufficient: a radical reform of institutions is necessary, in order to uproot the evil which gives rise to prejudice.[5]

These remedies are not easily accomplishable for all the categories of oppressed groups which have been examined here. They are easily applicable to the cases of native people of the colonies (sinister interests of functionaries in overseas possessions), and to religious non-conformists (sinister interests of priests). They can be applied to other categories of oppressed groups, however, only by introducing several important qualifications. It might be argued that even in the case of women or animals there are always the sinister interests of some ruling class, that attract attention — today we would say aggressivity — onto weaker groups. The fact remains, however, that the tyranny exercised by a majority, — males or mankind — exploits the oppressed directly, even though the ruling few can take indirect advantage of this situation. In all these cases in fact Bentham speaks of 'the right of the stronger': it was the stronger by strength and number who made the laws, and imposed legislation prejudicial (in all the senses of this term) to the weaker. As a first conclusion it might be suggested here that Bentham's social theory of oppression may be considered as an integration of his political theory of sinister interests. Oppression does not only come from closed, limited groups — such as lawyers, churchmen, aristocrats, and politicians — but also from the majority, a majority that has made the laws in its own favour, excluding from consideration those who do not belong. Perhaps this does something to counteract the charge, often

brought against Bentham, that his utilitarianism leads to the *tyranny of the majority.*[6]

Tyranny of the Majority

Steintrager, in his chapter entitled 'Tyranny of the Majority?', quotes some passages from the *Constitutional Code*, in which Bentham mentions briefly and cautiously some aspects of the tyranny of the majority;[7] but according to these short and tentative references, one might believe that such a consideration was of only marginal concern to Bentham. Furthermore Long's claim that 'Bentham manifestly had no conception of the possibility of the suffocation of individuality under a blanket of social conformity'[8] has been disproved here. The evidence produced in the present work shows instead that this was a constant preoccupation to which Bentham returned again and again throughout his life. What was the remedy suggested by Bentham for eliminating the tyranny of the stronger, when stronger by reason of number? What were Bentham's utilitarian justifications for resisting this tyranny?

Bentham escaped the dilemma by using, once again, the theory of sinister interests: public opinion had been ill informed and deluded not only by prejudice, as has been already shown, but also as to its own true interests. For their own purposes, ascetic philosophers, priests, lawyers, even dramatists had created these fictions: in truth, it was not in the interest of the people — of their greatest number — that religious and sexual non-conformists were persecuted, that animals were left unprotected, and that women were kept in subjugation. First of all, unnecessary sufferings were caused, which diminished the total quantity of happiness in the whole society. Secondly, the diffusion of hatred, antipathy, violence, and cruelty created a potential danger for the whole community, by debasing men's characters, by diminishing their sensibility to the suffering of their fellows and by inspiring a desire for vengeance in the oppressed. The habit of cruelty to animals led easily to the habit of cruelty to men, and the habit of killing those for whom we feel antipathy is a dangerous principle, which should never be encouraged, for the sake of civil peace or security. Thus Bentham answers the possible objection that, from the utilitarian point of view, the torments inflicted upon a dissenter could be balanced or even outweighed by the pleasure caused by the view of his sufferings in the conformists who hate 'the different'. But this — Bentham asserts vigorously — would be a wrong calculation, because the quantity of pleasure produced in the tormentor will always be less than the quantity of suffering produced in the oppressed person.[9] In any case, where the formation of sinister interests is prevented by the radical reform of the political system, then these unfortunate delusions will disappear, prejudice will no longer have a social function, and the oppressed — even those oppressed by the majority — will be emancipated.

In this perspective, any attempt to answer to Steintrager's open question 'A Tyranny of the Majority?' — should begin with a fundamental distinction between Bentham's analysis of reality and his proposals for an 'ideal, utilitarian republic.'[10] In principle, Bentham did not conceive of the possibility that the greatest number — which was part of the criterion of right and wrong — if correctly governed, could exercise any tyranny. From this principle two distinct kinds of implications were derived by Bentham: the first involving Bentham's lifelong concern for the tyranny exercised by an ill-governed majority over non-conformists or over the weaker in the present world, for which he proposed several remedies; the second, Bentham's proposal for a world — his ideal republic — in which any tyranny would be prevented by institutions, designed to eliminate sinister interests. The famous charge addressed by J.S. Mill against Bentham — that he did not provide an adequate defence of the individual, particularly the cultivated individual, against the 'absolute authority of the majority', and against the 'despotism of Public Opinion' — could thus be reversed. The possibility that the government of the greatest number would be transformed into the tyranny of the majority could only take place in the case of a breakdown of the mechanism of Bentham's ideal republic, which was designed in order to prevent any kind of tyranny. The oppression of any number of people — great or little — and of any kind of individuals — cultivated or ignorant — could in this perspective be considered as a warning light of this breakdown — i.e. of the reappearance of some particularistic interest which had reemerged from a hole left in the net created by Bentham in order to prevent its entrance into his ideal republic.[11]

Oppression and Toleration

Prejudice on the side of the oppressors and suffering on the side of the oppressed are the unifying elements in Bentham's general theory of oppression — as it can be reconstructed from the examination of his attitude towards the different categories of oppressed groups. For our purpose, which is that of tracing the extent and limits of such an attitude, the differentiating elements appear of no less value and interest: among them, one of the most important is the relationship between Bentham's personal likes and dislikes and the formulation of his philosophical attitude for the different groups.

Although he tried to deal with all these categories only from the utilitarian point of view, nonetheless his personal commitment — betrayed by the tone and by the quantity of his writings on each subject — was far from being uniform. Besides the already mentioned case of animals, the comparison between Bentham's attitude towards two categories of non-conformists — the 'sexual' and the 'religious', i.e. homosexuals and Jews — appears highly instructive: on the one hand, as it has been extensively shown, Bentham did not like Jews, and yet spoke out against their oppression and in favour of their right to practise

freely their own religion, and to live in communities with their own rules, whose protection, he thought, was to be guaranteed by the State.[12] On the other hand, Bentham displayed marked personal sympathy for homosexuals — a sympathy which is testified beyond any doubt by the impassioned tone and by the enormous quantity of his unpublished manuscripts on the subject. Any suspicion about Bentham's private life would not be pertinent here: it would only confirm Bentham's fears that, just because he had spoken out in favour of this *taboo* group, he would have been suspected of their same propensity by a prejudiced public opinion.[13] The difference in Bentham's personal attitude on these two types of non-conformists, however, is undeniable, and prompts us to a closer scrutiny of the different motivations and genesis of his writings on the oppressed. For sexual non-conformists in fact, as for animals, Bentham had only to rationalize his own feelings of sympathy for and of indignation at their unjust persecution; whereas for the Jews, as for the Catholics, he had first to overcome his own dislike, in order to achieve a rational approach, which entailed toleration in its fullest sense.

This leads us to a re-consideration of the category of 'oppression', which, in Bentham's writings, is used as a unifying heading for situations and conditions which differ essentially, one from the other, not only from the point of view of Bentham's personal feelings, but also from those of public opinion. Besides the categories into which they have already been divided for practical purposes in the present work, a line of division may be drawn between those oppressed by reason of their supposed inferiority, and those oppressed by reason of their diversity. In the first class — the 'inferior' — we can include, women, native people of the colonies, slaves, animals,[14] Negroes, and, furthermore, children[15] and low ranking military.[16] In the second class — the 'different' — we can include sexual non-conformists (particularly homosexuals), all religious minorities such as Jews, Quakers,[17] Catholics, heretics in general, and the insane.[18]

The attitudes of public opinion towards these two great classes of oppressed groups are wholly different: the inferior are despised, the different are hated. As a consequence, the ways in which oppression is exercised upon these two classes are wholly different: the inferior are kept in a state of inferiority because they are supposed to be incapable of taking advantage of a better condition — and thus the circle remains closed. The oppression of the 'different', on the contrary, is much more dramatic, demanding either their physical extinction or expulsion, or the elimination of those elements which determine their 'diversity': heretics and Jews are either suppressed or converted; homosexuals are either burnt or put in a condition in which they cannot practise theirh'diversity', or else segregated from society.

The distinction between these two classes, however, was not considered by Bentham: nor did he apparently give attention to the fact that, while the 'inferior' are not allowed to develop all their potentialities, being denied of the rights which are attributed to male grown-up and non-deviant human animals, the 'different' are simply forbidden to manifest their own nature and identity. Bentham, while ignoring this distinction, nevertheless proposes differ-

ent remedies for these two sets of situations: the consideration of the interests of those who are reputed to be 'inferior' may be difficult to accept, but it seems likely — in Bentham's opinion — that reasonable men, once convinced by logically cogent arguments and after having unmasked all the sinister interests that interfere with the path of right reason, will agree on its necessity. In the case of the 'different', such a task is much harder: besides convincing by cogent arguments and unmasking sinister interests, it is necessary to overcome the antipathy, hatred, and horror which the different — be they religious or sexual non-conformists, or the insane, or else ugly animals — inspire.

Toleration is the great remedy proposed — and personally adopted — by Bentham against oppression: it is indeed a utilitarian remedy, insofar as it avoids any sentimentalism and invokes only rational arguments. Shirley Letwin defines Bentham's utilitarianism as 'a system of tolerance':[19] Letwin's enthusiasm is perhaps excessive, as will be explained later. It is nevertheless true that the philosophical foundations of Bentham's ideas on man — man's dependence on pain and pleasure, the search for happiness as descriptive and normative ends of human life — entail tolerance, in the private as well as in the political sphere: in the political sphere, the legislator puts 'bridles in our mouths' only in order to prevent 'our doing mischief to one another'; but to direct a man for his own good is another matter:

> The tacking of leading strings upon the backs of grown persons in order to prevent their doing themselves a mischief is not necessary either to the being or tranquillity of society however conducive to its well being.[20]

This belief rests upon the presupposition that every man is the best judge of his own interests,[21] and that therefore the legislator has nothing to say in the field of 'self-regarding prudence', but has only to prevent the possibility that the pursuit of his interests should interfere with anyone else's happiness. Most of Bentham's political economy is based on this conception of man, who knows his interests better than anyone else, and therefore does not have to be directed in his behaviour, except in the case in which it clashes with the happiness of other people.[22] The same conception of man can be detected in Bentham's writings on sexual non-conformity: his plea for sexual liberty is based on the assumption that grown-up persons should be free to satisfy their sexual desires in any 'eccentric mode', unless they produce harm to others.

Toleration on the side of the legislator, as on the side of any citizen, towards any single individual as towards any group, is one of the most important logical derivations of Bentham's utilitarianism, which judges behaviour only from the calculation of its consequences: men should be left free to think and do what pleases them, insofar as they do not produce harm to others, even though this may not please us. In the case of the Jews, as in that of Catholics, Bentham gives personally the example of a tolerant attitude, which overcomes his own antipathetic feelings. This is what he wrote to his friend and disciple Carlile:

> I am not a Catholic: at the same time were it my misfortune to see a Catholic ... for his opinions the sort of treatment which you have ... for yours, my sympathy for his sufferings my antipathy as towards the authors of them as such would not be less intense in that case than in yours.[23]

Toleration is therefore Bentham's answer to oppression. The first question which comes logically to mind is whether toleration is an adequate answer to oppression: it could be argued that, as in the case of prejudice, true toleration will be guaranteed only when its true causes — sinister interests — have been uprooted. In this direction one could come to ask for the abolition of religion and the dismantling of the closed group of priests, as Steintrager apparently suggests.[24] But this is not our point. For, even supposing that toleration were put wholly into effect, the question is: would it be a sufficient remedy against all kinds of oppression? Toleration will do — although with some qualifications — as a remedy for the oppression of the 'different', who suffer because they are not tolerated, but is not a solution for the 'inferior', who are already tolerated but are not allowed to develop wholly their potentialities. Toleration in fact entails a negative attitude on the side of the oppressor — to abstain from doing harm — and a negative concept of liberty — liberty from interference in one's private sphere of beliefs and behaviour — on the side of the oppressed. But the enfranchisement of women — to give but an example — entails a positive concept of liberty,[25] which is not assured by toleration alone. We have thus to consider not only Bentham's conception of toleration, which was undoubtedly influenced by Locke's *Epistola de Tolerantia*, but also and particularly his idea of liberty, as it can be discerned from his writings on the oppressed.

Oppression and Liberty

As has already been pointed out, prejudice and suffering are the unifying elements in Bentham's general theory of oppression. Whereas suffering constitutes the descriptive element, the causes of suffering (and therefore the forms of oppression) constitute a differentiating, critical element in this theory, answering the apparently simple question: why do the oppressed suffer?

Evidently, the different answers which can be given to such a question will depend on the different systems of values taken into consideration: for a liberal, oppression is mainly lack of liberty: for a materialist, it is the lack of the means of subsistence, or for a Marxist, of production, and so on.

Oppression could not be defined by Bentham in terms of lack of liberty. For Bentham gave a strongly restrictive, negative definition of liberty, as 'absence of coercion. ... It exists without law and not by means of law'.[26] Absolute liberty in this sense is an anti-social condition; general, unrestricted liberty, is for Bentham simply a state of anarchy:[27] absolute liberty cannot be the basis for a political society which affords security and hence entails coercion (as rights impose correlative duties) on its members. From these definitions, we can under-

stand that Bentham could not analyze oppression fully in terms of lack of liberty. The lack of the absence of coercion means coercion itself: but how could he distinguish then, between oppression, and law, which also creates coercion?

Security comes in here as Bentham's philosopher's stone.

> The Law to produce Liberty in any body must act on somebody. To act on somebody it must coerce. To coerce it must either restrain or constrain. ... Law therefore cannot produce liberty but it must produce coercion at the same time: ... Where there is no coercion, there is no security: ... That which under the name of Liberty is so much magnified, as the invaluable, the unrivalled work of Law, is not *liberty*, but *security*.[28]

Liberty is, for Bentham, absence of coercion, and therefore not created by Law, which is coercion by definition: 'Liberty created by Law' Bentham calls security. Hence, oppression may be defined as that coercion which does not produce security, or better that does not produce sufficient security as a balance to coercion: 'What is oppression? Power misapplied to the prejudice of some individual.'[29] This is the central reason why Bentham always speaks of oppression in terms of absence of security instead of liberty. Those critics who derive from Bentham's restrictive definition of liberty and from his personal dislike of this term (whose abuse he attributed to the theorists of natural law) the illiberal character of his 'social engineering', completely miss the point. As has been stressed by Long,[30] we should look with greater attention to Bentham's concept of security, which, under certain conditions, incorporates the common idea of liberty, liberty becoming, in Bentham's terms, 'a branch of security'. This idea Bentham got from Montesquieu, who had defined political liberty as consisting in security, as opposed to philosophical liberty, which consists in the exercise of will.[31] Bentham believed, indeed, that security was the fundamental aim of any political society, because security constituted in his opinion the best means for achieving the greatest happiness of the greatest number.

It is worth noting in this connection that the emphasis laid on security — created by Law — as the element which characterizes and supports political society, corresponds to the emphasis laid on positive rights, created by Law, in opposition to natural rights, which according to that 'fiction', exist before and without human law. The limits of this correspondence are constituted by the fact that Bentham did not create a true opposition between liberty and security, as he did between natural and positive rights. As Long has remarked, 'it is important to realize that the ascendancy of security as a value in the utilitarian society is, throughout Bentham's work, at the same time the ascendancy of a form of liberty.'[32]

Bentham's aim however was that of opposing his idea of political society to that proposed by natural law theorists.

Oppression provides a good test case for ascertaining whether Bentham carried out his challenge successfully in a particularly difficult field. Let us first examine the case of slavery, a concept which is commonly connected with the idea of liberty, by way of opposition: what is a slave, if not the opposite of a

free man? Bentham's answer is different: slaves are oppressed because they lack security, not liberty. But what does Bentham mean by security? In this case, slaves lack the security against misrule, against maltreatment on the side of their master. As it has been observed, 'securities against misrule served much the same function for Bentham as natural rights do for others'.[33] When compared to English day-labourers, furthermore, slaves lack security of gain, of expectation. The main point about slavery, however, is that Bentham, weighing the pros and cons of a possible emancipation, opposed the lack of security of the slaves to the loss of the security of property which would have been caused by slaves' emancipation. In other terms, avoiding Bentham's philosophical *camouflage*, the dilemma was that of choosing between slaves' liberty and slave-holders' right to property: not an easy dilemma, even for the fathers of liberalism. Bentham chose a compromise, gradual emancipation, which would be carried out without shaking the stability of social order, combining the positive right to property with some consideration of slaves' 'natural' right to liberty.

It might appear strange, perhaps improper, to speak of Bentham's philosophy in terms of liberty and natural rights. But if we do not want to be 'fascinated by the tyranny of language', we must try to see whether Bentham's hostility to any theory of natural rights is only a question of terms or also of substance: in other words, our task is that of testing whether Bentham used these concepts of rights in disguise.

The compromise adopted by Bentham in the case of slavery was clearly one in favour of security of property. It might be objected in utilitarian terms, that slave-holders' property was already a right sanctioned by law, a positive right, whereas that of slaves was still to be achieved. But if priority is always given to legal rights, to rights which are already assured by law, how can society be reformed? Was not Bentham the great reformer, in the name of utility? The rights of slaves are not sanctioned — or better, were not, at Bentham's time by law, but are based on the calculation of the happiness of the greatest number. In this respect, Letwin has pointed out that, 'as long as the discussion used the language of utility, Bentham was more than willing to make the same sort of judgements that natural law theorists made, to declare some positive laws good and others bad according to a standard outside them.'[34] In truth, Bentham explicitly chose an external standard, in opposition to natural rights theorists, who grounded one species of right — legal — upon another species of right — natural.[35] Letwin is however correct in pointing out that Bentham invokes a moral standard, just as do natural rights theorists. Our aim is to determine whether Bentham's moral standard is actually based on utility — i.e. on the greatest happiness of the greatest number — or whether he invokes, without naming them, other principles.

Slaves — as well as other categories of oppressed people — provide an interesting example in answer to Hart's question of 'why should Bentham not have said that men have non-legal rights based on the principle of utility, i.e. on "utilitarian entitlements?" '[36] The central and most alarming reason provided by Hart, among other equally persuasive ones, is that 'the content of

such utilitarian entitlements would fluctuate with changing circumstances and have none of the stability over time and consequent availability as guides to action ... which are strongly associated with the notion of rights wherever the notion is employed'.[37] What is alarming is that 'the fundamental axiom and measure of right and wrong' on which the whole building of Utilitarian legislation and morals should be founded, betrays itself as a 'fluctuating element', so that, 'neither Bentham nor Mill regarded the direct requirements of the principle of utility as in themselves constituting obligations'.[38] Hart quotes Bentham's illuminating words:

> But reasons for wishing there were such things as rights are not rights: a reason for wishing that a certain right were established is not that right — want is not supply hunger is not bread.[39]

The principle of utility can only explain hunger, but cannot provide bread. While echoing Ricardo's devastating criticism of the principle of utility,[40] Hart's observation concerning the 'fluctuating element' inherent in this principle should be connected with Bentham's claim to have conceived his scientific and stable system of legislation in opposition to that 'built on quicksand' of Natural Law.

As it has already been argued, the principle of 'the greatest happiness of the greatest number', at least in questions of social policy, is never taken into consideration as a criterion in itself, but always associated with the four 'subsidiary ends' of security, subsistence, equality and abundance, i.e. primarily with security. In the case of slaves, as it has been seen, the standard of the greatest number has clashed with, and yielded to security. In the case of women, Bentham's claim for their right to vote is also based upon the greatest happiness principle: again, this is not a legal right, and Bentham's plea for it is based on a non-legal standard ('hunger'). In the case of women, apparently, Bentham's arguments are exclusively utilitarian: except for strategic reasons, he always supported women's right to vote. His consistent attitude — at least in point of principle — is mainly due to the fact that, in Bentham's opinion, women's political enfranchisement did not interfere with the security of property ('bread'):[41] as with slaves, it is not the principle of the greatest happiness in itself, but its relation to security which decides Bentham's attitude. Furthermore, enfranchisement entails a concept of liberty, of positive liberty, because it gives to the citizens the possibility of participating in political life, or at least of calling some attention to the consideration of their interests. Bentham himself speaks in this case of 'powers'.[42] Thus we could say that in the case of women, Bentham claims for women's right to positive liberty.

But women are not only oppressed because they lack positive liberty. They are also oppressed because they lack protection or, in other words, security against misrule. Again, as for enfranchisement, protection can be afforded to women, without interfering with other peoples's security, and so can be advocated by Bentham with perfect consistency.

Let us now consider the case of the indigent, where Bentham's concern for security is particularly emphasized. Apparently, in this case there is no trace

of any internal struggle between conflicting elements of Bentham's philosophy.[43] The whole plan has been designed for the subsistence of the indigent and also for the sake of security against the possibility of a revolt by masses of starving people. The limitation of relief to the indigent constitutes moreover a further reinforcement of security of property, preventing any tendency towards an equalization of wealth, which could be promoted by the extension of relief to all the poor in general. The first social statistics, which began to be collected in those years, tell us that, by this limitation, Bentham's relief of indigence did not take adequately into account the greatest number of poor people, although he asserted that his plan would have also helped the working poor.[44] It may be instructive to note in this connection that the same kind of concern for the indigent was present in Locke, the philosopher who makes the most categorical assertion of the right to property: the scheme Locke presented to the Board of Trade, in 1697, resembles Bentham's plan in many important features. Locke planned the reprehension of vagrants and beggars, who had to be forced into Houses of Correction, and pauper schools, where children would have paid for their maintenance by way of their work.[45] The indigent, as it has already been pointed out, are oppressed by the tyranny of want: their relief is pleaded by Bentham clearly in the name of security.

As a first conclusion, it might be suggested that Bentham's extensive use of the term security in relation to oppression, either veils or confuses two different sets of meanings. On the one hand, in the critical analysis of the causes of oppression, the security lacked by the oppressed can almost always be translated into concepts belonging to natural rights theory, and sometimes can be explained properly only in these terms: i.e. in terms of liberty — positive or negative — and of moral rights. On the other hand, in the remedy proposed, (i.e. the compromise by which Bentham tried 'to reconcile the demands of liberty with the requirements of a basically static social framework'[46]) security of property — or in other words the positive right to property — and the right to security in the sense of social order, play a determining role in Bentham's choice between alternative solutions.

Bentham's theory of oppression is 'conservative' not because it is lacking in an adequate consideration of liberty, but because as far as remedies are concerned, security of property and the maintenance of social order are given priority over any other principle, even over the calculation of the greatest happiness of the greatest number. Nevertheless, this does not mean that his whole theory of oppression is equally conservative. The greatest happiness principle, particularly, appears as a dynamic element, insofar as its egalitarian premises open wider horizons and provide appropriate justification for Bentham's consideration of and concern for the oppressed. Furthermore it has been shown that Bentham's attitude towards the oppressed cannot be wholly explained in terms of utilitarianism or 'legal positivism', which is recognized by common agreement as one of the greatest achievements of Bentham's philosophy.

Oppression and Benevolence

It has been argued here that toleration — the great utilitarian remedy proposed by Bentham — is an important and necessary instrument against oppression, but, entailing only a negative concept of liberty, it is not adequate for situations characterized by the lack of liberty in its positive sense, or by the lack of moral rights, which have been equally denounced by Bentham in terms of oppression. The limits of toleration as a remedy against oppression can be detected also in another direction, i.e. in the definition of toleration as a utilitarian remedy, insofar as it avoids any sentimentalism and invokes only rational arguments. In fact, in his analysis of oppression, Bentham has also brought to light many 'non-utilitarian', emotional components in oppression, such as antipathy, hatred, and horror. The question, then, is: are rational weapons sufficient to win the war against oppression and eliminate all these often deeply rooted feelings, or is it necessary to resort also to non-rational tools? An exhaustive answer to such a question would imply a thorough examination of the relationship between utility and benevolence in Bentham's philosophical system, which is certainly beyond the aims of the present study.

Some hints as to a re-consideration of this vital relationship in Bentham's utilitarianism can be offered here, however, as a result of the examination of Bentham's writings on the oppressed from this point of view. In the case of homosexuals, for example, Bentham finds a re-confirmation of his belief that utility is the only principle upon which it is possible to build a political system which prevents tyranny. When in fact the 'principle of caprice'[47] — i.e. sympathy or antipathy — is taken as a criterion for legislation, tyranny is the only possible result: religious and sexual non-conformists are oppressed just because of legislation which takes as a standard of right and wrong the legislator's subjective taste, instead of the 'objective' criterion of the greatest happiness of the greatest number. This does not mean that Bentham does not take sympathy — or its opposite — into account in his analysis of motives, or 'springs of action'. Bentham never denied the existence of non-utilitarian motives: furthermore sympathy and antipathy, unlike asceticism, are not opposed to utility. Bentham only denied the value of sympathetic predispositions as a stable basis for any political and legal system: utility, on the contrary, he saw as a sound and dependable principle, and moreover one that was quantifiable, thus meeting the requirements of 'scientificity' posed by Bentham in his effort to bring morals and legislation out of the world of fiction in which they had been so far kept.[48]

The logical consequences of such a conception would be that the first and main step in the war against oppression is constituted by the elimination of any element which is not based on utility. Bentham's position on this point is not altogether simple, nor unswerving: the analysis of Bentham's writings on the oppressed shows that an important role is reserved in them for emotional attitudes, not only in the criticism of oppression, but also in the examination of the possible remedies to it. Benevolence, as opposed to a narrow self-interest,

and sympathy as opposed to antipathy, are recurring terms in Bentham's writings on the oppressed, and play a positive role.

The fact is that sympathy, thrown by Bentham out of the front door of direct legislation, comes in through the back door of indirect legislation: whereas direct legislation confronted crime, indirect legislation was conceived by Bentham in order to combat criminal propensities in general. Indirect legislation is in fact an important and alarming element of Bentham's philosophy: it is the means by which he expected to realize the conditioning and even the mutation of human behaviour. Among the 'Indirect Means of Preventing Offences', Bentham lists the changing course of dangerous desires, satisfying certain desires without injury, the employment of the motive of honour, of religion, and the cultivation of benevolence. Besides the alarm which the power of such indirect legislation can create in anyone concerned with individuals' independence, the employment of indirect legislation endangers the whole system of tolerance, built by Bentham on the principle that every man is the best judgeofhisowninterests,thusdampeningLetwin'senthusiasm.[49]

However, the main question is: why does Bentham consider benevolence a useful instrument for the prevention of offences? What is the social role of benevolence, which has been denied a political one? A first result of the examination of Bentham's writings on the oppressed does not help to render this role clearer: on the one hand, in the case of the indigent, benevolence appears as a mere complement to the legally enforced relief of indigence, which can be usefully supplemented by charitable societies: on the other hand, humanity is said to be the personal motive for Bentham's concern for the indigent, although it had to be transformed into a utilitarian attitude, in order to propose an effective legal plan. In the case of animals, besides Bentham's sympathetic feelings towards them, the main burden of Bentham's argument rests on the issue of benevolence towards animals, even though such benevolence is carefully justified in utilitarian, or 'anthropocentric' terms. In the case of Jews, Bentham has not only overcome his own antipathy for them, in order to achieve a tolerant attitude towards them insofar as they are oppressed. He also blames Voltaire and satirists who weaken that benevolence, the diffusion of which is seen by Bentham as an important instrument for preventing religious intolerance. But religious intolerance — one would have thought from a utilitarian point of view — is mainly overcome by the destruction of prejudices, the diffusion of knowledge and by the appeal to reason against the appeal to passions which characterizes religious fanaticism. It might be suggested that even in this case, benevolence is a mere supplement to the utilitarian — tolerant — attitude towards religious dissenters. Such an answer however would not solve the case of slavery: it is instructive to realize how benevolence is seen in this case not as a supplement to utilitarian legislation, but as a category belonging to a different order. Being in fact clearly aware that the emancipation of slaves would have been against the interests of slave-holders, Bentham appeals to their sense of honour and benevolence: slave-holders, he says, do not sin against self-regarding prudence, but only against the virtue of Effective Benevolence. In other words, slave-owners, as long as legislation guarantees their right to own

slaves, do not act against Law, but they do act against Morals. It is worth noting that Bentham stressed this point in his work *Rid Yourselves of Ultramaria*, written in his later years.

A tentative answer — in the way of a working hypothesis — might be suggested here by an evolutionary aspect of Bentham's theory of benevolence, which would explain the puzzling changes in his stressing of the role of benevolence in his utilitarian philosophy. In his *Introduction to the Principles of Morals and Legislation*, Bentham had in fact delimited the spheres of Morals and Legislation, arguing that their aims and principles were the same (hence the title of that work). Growing older and less optimistic, Bentham emphasized more and more the role of self-interest in the legal-political sphere: at the end of his life, he came to conceive a whole world — his ideal republic — as based exclusively on the principles of self-interest and distrust. On the other hand, and in a parallel way, Bentham emphasized more and more the role of benevolence and sympathy in his ethical writings: he added a fifth sanction, the sympathetic, to the four canonicals he had always considered (the physical, the legal, the moral or popular, and the religious).[50] The *Deontology*, his last work in ethics, is mainly devoted to the problem of conciliating self-interest with benevolence, which, intended in the sense of enlarged self-interest, plays a fundamental role. The 'business of the deontologist' is therefore

> to bring out of their obscurity ... the points of coincidence to the extent of which extra-regarding interest is connected, and has by the hands of nature been identified with, self-regarding interest.[51]

Undoubtedly, the gap between the legal-political and the ethical sphere, even in Bentham's latest works, is never so great as it might at first appear: even in the *Constitutional Code* the existence of social motives is not denied, and in the *Deontology* the conciliation of self- and extra-regarding interests is suggested by way of enlargement, not of sacrifice of the former to the latter. The gap would mainly reside in a change of emphasis, rather than principles with respect to the legal-political and ethical spheres. If this hypothesis were true, benevolence would have gradually lost ground in Bentham's political writings, and gained it in the ethical ones. This would afford a tentative answer to the unstable role attributed to benevolence, as it results from the examination of Bentham's attitude towards the oppressed.[52]

Oppression and Utilitarianism

From our examination of Bentham's writings on the oppressed it has been argued that many important elements in his attitude towards the oppressed are not simply logical consequences of his utilitarian philosophy, but are in practice 'borrowed' from the natural rights theory and from the philosophies of sympathy, which he claimed to reject totally. There is however a field in which Bentham's wholly original and fruitful contribution to the problems of the oppressed derives directly from his frontal opposition to the Declaration of the

Rights of Man: it entails a thorough criticism of the *clichés* of the Enlightenment, in which Bentham himself had been educated.

Bentham's methodological criticism of the Declaration was directed to the confusion between 'is' and 'ought': a distinction which is a fundamental milestone in Bentham's empiricism.[53] Bentham affirmed that the Declaration gave the appearance of the existence — of imprescriptible, natural rights — to ideals such as liberty, property and equality, whose extension to all citizens was the main goal of any society. He asserted with vehemence that it was simply not true that all men are free, equal and proprietors by right and, particularly, that such assertions were very dangerous: they would make one believe that ideas which should constitute one's aims, had already been achieved, confounding utopia with reality.[54]. On the contrary, for Bentham, any ideal 'ought', had to be based on the 'is', the existing reality. The fecundity of this methodological discussion in the field of oppression has already been emphazised. Bentham refused formal equality in favour of a more substantial equality, — insofar as equality actually counts in his philosophy. The distinction between 'is' and 'ought' gave Bentham the possibility of distinguishing rigorously between the remote goal of utopian equality and the concrete aim of an equality which takes into account actual inequality: the concept of compensatory discrimination, suggested by Bentham for women, is the central and still topical consequence of this distinction.

The distinction between 'is' and 'ought' is also of fundamental importance for a correct understanding of the purport of Bentham's writings on the oppressed. Opposing some recent appproaches to Bentham's philosophy —which emphasized its coerciveness and its lack of adequate concepts of human liberty and dignity,[55] — the point of view of oppression privileges instead some libertarian consequences of his utilitarian doctrine. This, however, is only an apparent opposition, and the image of Bentham which has been outlined here does not contradict the image emerging, for example, from his writings on the Panopticon; for, as has been stressed, when all his ill-published or unpublished works are available in reliable editions, 'Bentham will be seen as a far more complex figure than he is usually considered to have been.'[56] Such opposition would only be true if 'the results deriving from a limited though careful and detailed research' are extended 'to the totality of Bentham's thought':[57] if, for example, a project, like the Panopticon, designed for a clearly assigned class of individuals in particular situations, is considered to be a miniature society.[58] Such arbitrary extensions can only be avoided by distinguishing carefully between the general principles by which Bentham tried to reform society, and his detailed plans for concrete institutions, in which he sought to apply his general principles in a practical way.[59]

This is the case of the principle 'the more strictly we are watched, the better we behave' that Bentham regarded as 'one of the cornerstones of political science'. Many Bentham scholars have been horrified by such a principle used in connection with Panopticon discipline, thus deducing all the alarming conclusions which have been drawn on this ground. This same principle, however, if applied to political society in general, and to the governing class in partic-

ular, can be considered as one of the basic principles of Bentham's political theory of representative democracy. Most warnings launched by these horrified scholars on the alarming implications of Bentham's theory of social control will vanish, if we consider that Bentham firmly believed, particularly in his later years, that not only criminals and other potentially dangerous elements in society had to be watched, but also that 'the ruling few', the governing class, who were in the position of creating the greatest and most effective dangers for a true utilitarian society.[60] L.J. Hume's notable book has rightly stressed the continuity to be found in Bentham's principles of administration, — i.e. communication, information, inspection, and duty-and-interest-conjunction principle, — when correctly extrapolated from their applications, both in the *Panopticon* and in the *Constitutional Code*.[61]

As far as the oppressed are concerned, general principles such as the emancipation of women and slaves, absolute sexual and religious liberty, relief of indigence, the relinquishment of colonies, the protection of animals, have been analyzed here in relation to both Bentham's utilitarian theory and to the historical and objective circumstances in which he tried to apply these principles. The limitations, qualifications or extensions of these principles in their application to reality constitute one of the most stimulating and still open questions of the present work.

The question is not whether Bentham could have developed his attitude towards the oppressed in a more consistent manner, or whether his philosophical system was too narrow to overcome all the kinds of oppression which attracted his attention. The problem is whether it is still possible today to conceive of an effective theory against oppression without resorting to some sort of natural rights.

Notes

1 H.L.A. Hart, *Essays on Bentham, op. cit.*, p. 4

2 J. Bentham, *Theory of Legislation, op. cit.*, p. 410. Hart has however stressed the modernity of Bentham's Theory of language, in his *Essays on Bentham, op. cit.* pp. 9—11, 28—30, 128.

3 J. Bentham, *Theory of Legislation*, cit., p. 412.

4 For a comparison between Bentham and Marx, see H.L.A. Hart, *op. cit.*, pp. 2—4 and 24—27.

5 In his later years particularly in his *Constitutional Code* and in *Securities against Misrule*, Bentham conceived the 'Public-Opinion Tribunal' as the institution designed exactly for this purpose. For a thorough analysis of these works, also in this respect, cf. F. Rosen, *Jeremy Bentham and Representative Democracy*, Oxford University Press, 1983, which unfortunately appeared after this book had been written.

6 J.S. Mill, 'Bentham' (1838), reprinted in *Jeremy Bentham: Ten Critical Essays*, ed. by Bhikhu Parekh, London, 1974, pp. 29—31. See the recent discussions by J. Steintrager, *Bentham*, London, 1977, pp. 97—116 ('A Tyranny of the Majority?') and F. Rosen, 'Bentham on Democratic Theory', *The Bentham Newsletter*, 3, 1979, pp. 53—58.

[7] J. Steintrager, *op. cit.*, p. 104, cites Bentham's *Constitutional Code, Works*, IX, p. 53.

[8] D.G. Long, *op. cit*, p. 218.

[9] 'The pleasure produced by the contemplation of human suffering is never so great as to be equal to the suffering itself: not even supposing the pleasure of vengeance not followed in any degree by the power of remorse.' (*Rid Yourselves of Ultramaria*, U.C., CLXVII, 214—220). As Baumgardt has remarked, Bentham proves, 'in the provocative language of moral arithmetic, that hate is necessarily uneconomic' (Baumgardt, *op. cit.*, p. 338). This point is missed by Steintrager, when he considers 'the difficulty for Bentham . . . of explaining why the happiness of a majority, derived both from their religious pleasure *and* the pleasure of antipathy, might not outweigh any pain caused to any religious minorities, particularly if it could be argued that the majority would suffer considerable pain from practising tolerance'; see James Steintrager, 'Language and Politics: Bentham on Religion', *The Bentham Newsletter*, 4, 1980, p. 101.

[10] T. Peardon, 'Bentham's Ideal Republic', now reprinted in *Jeremy Bentham: Ten Critical Essays*, ed. by B. Parekh, cit., pp. 120—144.

[11] Such a conception would not be too far from the contemporary theories that detect in the oppression of minorities a fundamental element for deciding on the totalitarian character of any regime.

[12] The Jews have been chosen as the representative group of the oppressed for religious reasons; for Catholics, in fact, the question is much more complicated, although Bentham's attitude towards them is very similar to that towards Jews. Bentham did not like the Catholic ('Papist') religion, and particularly hated its institutions, such as monastic orders, which embodied in his mind the most extreme kind of ascetical principles, opposed to utility. Among his unpublished manuscripts, there are many pages highly disrespectful of the chastity and sanctity of monastical life (see for example, U.C., LXXIV, 28—33). This did not prevent him from pleading for the rights of oppressed Catholic groups in Scotland and Ireland. Bentham's friendship with Daniel O'Connell, whose cause he apparently embraced in his mature age, introduced, however, an element of sympathy in an attitude which would have otherwise been an example of the purest kind of religious toleration. The mass of material which I have gathered on Bentham and Catholics and on which a whole book could be written, suggests however the opportuneness of carrying out a thorough study on this subject.

[13] There are several elements which suggest that Bentham could have had some homosexual relations: his juvenile friendship with John Lind seems to have been much more passionate than a normal friendship between philosophers. Furthermore it should be remembered that Bentham enjoyed the company of young secretaries, particularly in his mature age, and requested their company during the night, when he was obsessed by the ghosts which — he said — populated his nightmares. cf. John F. Colls, *Utilitarianism Unmasked*, London, 1844, pp. 53—55. These suspicions do not alter however the substance of our argument, even if they suggest a variety of motivations for a concern about homosexuality.

[14] Animals can be considered only as 'inferior' if they do not inspire horror; in this case they would belong to the 'different', as has been shown in the chapter on sexual non-conformists.

[15] Bentham considered the educational method of his own time very repressive, ineffective, and unable to develop the effective capacities of children. He wrote in favour of the banishment of corporal punishment from school discipline.

[16] Bentham wrote against some aspects of military discipline, which oppressed the soldiers of the lower ranks.

[17] Quakers attracted Bentham's sympathy and are always cited by him dealing with religious toleration. They could be listed among the 'religious' oppressed, together with Jews, Catholics, and heretics in general.

[18] Bentham wrote also in favour of the insane, and of their 'civil rights', which were wholly denied at that time.

[19] S. Letwin, *The Pursuit of Certainty*, Cambridge, 1965, pp. 137—154.

[20] J. Bentham, *Defence of Usury, Works*, III, p. 5.

[21] Or at least, 'a better judge than anyone else', if not the only one. See J. Steintrager, 'Language and Politics', *op. cit.*, p. 11.

[22] The whole *Defence of Usury*, for example, is founded on the presupposition that any man is able to choose — without the guide of the legislator — whether it is in his interest to borrow money at a high rate, or not.

[23] J. Bentham, U.C., X, 14—20, Letter to Carlile, April 10, 1820; see also *ibid.*: 'You are if I mistake not a theist and it is for this that you are [Prob. imprisoned]. Were it for being a ... an Atheist, a Quaker, a Methodist among Church of Englandist or other Protestant among Catholics, or a Catholic among Church of Englandist that you were a sufferer my sympathy with your sufferings my antipathy towards the authors of your sufferings would still be the same.' I am indebted to Dr. Martin Smith, who has been editing Bentham's correspondence for the Bentham Project, London, for pointing out and giving me the transcript of this manuscript.

[24] J. Steintrager, 'Language and Politics', *op. cit.*, p. 10.

[25] See the classical definition in I. Berlin, *Four Essays on Liberty*, London, 1969.

[26] J. Bentham, U.C., LXIX, 4, cited in Halévy, *op. cit.*, I, p. 360.

[27] D. Long, *op. cit.*, p. 76; cf. J. Bentham, U.C., LXIX, 56.

[28] J. Bentham, U.C., LXIX, 56, quoted in Halévy, *op. cit.*, p. 360—361, and in Long, *op. cit.*, p. 74—75.

[29] J. Bentham, *Anarchical Fallacies, Works*, III, p. 504. cf. *Securities Against Misrule, Works*, VIII, pp. 558—560.

[30] Long, *op. cit.*, p. 75.

[31] 'La liberté philosophique consiste dans l'exercise de sa volonté, ou du moins (s'il faut parler dans tous les systèmes) dans l'opinion où l'on est que l'on exerce sa volonté. La liberté politique consiste dans la sûrete, ou du moins dans l'opinion que l'on a de sa sûrete.' Montesquieu, *Esprit des Loix* (B. XII, ch. II, De la liberté du citoyen). Halévy has pointed out Montesquieu's and de Lolme's influence on Bentham's idea of liberty and security, then repeated and developed by Long, *op. cit.*, pp. 28—34. Montesquieu's influence on Bentham — although always overlooked by Bentham himself and by most of his critics — should be investigated with greater care. Admittedly, Bentham was often strongly opposed to Montesquieu on matters of penal law (see Halévy, *op. cit.*, I, pp. 110—112, 129, etc.). Nevertheless Montesquieu's cultural relativism plays a determining role in Bentham's attitude towards sexual non-conformists, Jews, the native people of the colonies and in the historical perspective attributed to the development of the relationship between men and women. (See also Stark, *op. cit*, I, pp. 173—192.)

[32] D. Long, *op. cit.*, p. 169.

[33] S. Letwin, *op. cit.*, p. 142. Cf. F. Rosen, *Jeremy Bentham and Representative Democracy*, cit., which has just appeared.

[34] S. Letwin, *op. cit.*, p. 143.

[35] J. Bentham, U.C., LXIX, 6—7; quoted in Long, *op. cit.*, p. 66

[36] H.L.A. Hart, *Essays on Bentham, op. cit.*, pp. 85—86.

[37] *Ibid.*, p. 86.

[38] *Ibid.*

[39] J. Bentham, *Works*, II, p. 501; III, p. 221 quoted in Hart, *op. cit.*, p. 89. Hart's main point, however, is to stress Bentham's merit in having carefully distinguished between rights and reasons for them.

[40] D. Ricardo, *Works*, cit, VII, pp. 239—242, extensively quoted in the chapter on colonies, note 86.

[41] As enfranchisement in general was not an attack on property; see J. Bentham, U.C., CXXIX, p. 19, in Long, *op. cit.*, p. 167: 'equality in respect of this branch of government is free from the objection which is so fatal to equality in matters of property. ... Equality in respect of the right of voting, is attended with no such inconvenience. Push it to the utmost, the motives for labour remain untouched.'

[42] J. Bentham, U.C., C, p. 74, *ibid.*, p. 166; U.C., C, pp. 153—154. Cf. Hart, *op. cit.*, pp. 162—219.

[43] Bahmueller is right in stressing that 'Bentham saw no ultimate or overwhelming moral conflicts' in his writings on the reform of the Poor Laws, but is wrong in extending this remark to Bentham's 'philosophy generally', as it has been extensively argued here. Cf. Bahmueller, *op. cit.*, p. 104.

[44] W. Roberts 'Bentham's Poor Law Proposals', *The Bentham Newsletter*, 1979, 3, pp. 28—42

[45] J. Locke, P.R.O. Board of Trade Papers, quoted in M. Cranston, *John Locke, a biography*, London, 1957, pp. 424—5. I am indebted to Professor Cranston for calling my attention to this document.

[46] D. Long, *op. cit.*, pp. 118 and 164

[47] This is the way Bentham often calls the principle of sympathy and antipathy. For an explanation, see J. Bentham, *Introduction to the Principles of Morals and Legislation*, *op. cit.*, p. 21n.

[48] For this point see Lea Campos Boralevi, 'Jeremy Bentham e l'utilitarismo come scienza sociale', *Il pensiero politico*, XII, 1979, 2, pp. 361—371.

[49] For the concept of 'influence' in Bentham see the interesting contribution by M.P. Mack, *Jeremy Bentham: An Odyssey of Ideas*, London, 1962, p. 10 and ff; L.J. Hume, 'Revisionism in Bentham Studies', *The Bentham Newsletter*, 1978, 1, pp. 13—16, and now his recent book on *Bentham and Bureaucracy, op. cit.*, which analyzes this concept with great care. Cf. also J. Steintrager, 'Language and Politics', *op. cit*, pp. 8—11.

[50] J. Bentham, *Deontology*, U.C., XIV, 197 (1817) (1. The physical, 2. the political, including the legal, 3. the popular or moral, 4. the social or sympathetic, 5. the religious).

[51] J. Bentham, *Deontology*, U.C., XIV, 139 (18 Sept. 1819); I am indebted to Professor Amnon Goldworth for giving me permission to consult his transcript of Bentham's *Deontology*, which he has edited for the Bentham Project, London and is forthcoming in its series.

[52] This hypothesis might even provide a possible answer to the question why does Bentham not preview the possibility of an oppressed minority in his *Constitutional Code*? — by arguing that his 'strategy of individualization' his 'prescriptive individualism' based on the principles of self-regarding interest and distrust, would have prevented the formation of any social group, of any minority, which, as any group, needs some cohesion, not conceivable in a wholly atomized world. See Steintrager, *op. cit.*, p. 9; Hume, *op. cit.*, p. 15.

[53] For a thorough analysis of the role of 'is' and 'ought' in Bentham's theory, see M.P. Mack's and also D. Baumgardt's works.

[54] Bentham attacks the ambiguity of the terms 'can' and 'cannot' applied to law, with reference to liberty, etc. (III and IV art. of the Declaration): 'Is it ... to speak of what *is* established or what *ought* to be established?' The terms *can* and *cannot* 'leave it continually in doubt' whether they 'mean solely to declare what shall be the state of the law after the moment of the enactment of this declaration, or likewise what has been its state previous to that moment.' J. Bentham, *Anarchical Fallacies, Works*, cit., II, pp. 499—502 and 530. Cf. Twining, 'The Contemporary Significance of Bentham's Anarchical Fallacies', *Archiv für Rechts- und Sozialphilosophie*, XLI, 1975, p. 315.

[55] See the cited works by G. Himmelfarb, D. Long, C.F. Bahmueller. One of the most ambitious works is M. Foucault's *Surveiller et punir, Naissance de la prison*, Paris, 1975, whose chapter III (pp. 197—229), entitled 'le panoptisme' is mainly devoted to Bentham's work. For a different and not necessarily opposite approach, see the cited works by J. Steintrager, L.J. Hume, H.L.A. Hart, F. Rosen.

[56] C.F. Bahmueller, *op. cit.*, p.IX. — The present work has also tried to emancipate Bentham's image from the child-stereotype. It has been shown here that Bentham was not a child — if by childishness we mean the candid ignorance of all the passions which move human behaviour, nor did he consider women in the abstract. Bentham had indeed his own personal life, with its joys and dramas, as most common mortals have. Bentham knew, studied and had a life-long interest in such passions, from the love of honour and reputation, to the most unusual — he would say 'eccentric' sexual desires.

[57] F.Rosen, 'Jeremy Bentham: Recent Interpretations', *Political Studies*, XXX, 1982, 4, pp. 576—577.

[58] See the chapter on the Indigent.

[59] L.J. Hume, *Bentham and Bureaucracy*, cit., p. 12.

[60] The Public Opinion Tribunal was the main means by which the governing class ought to be watched. Besides Hume's book, see, F. Rosen, *Jeremy Bentham and Representative Democracy*, London, 1983.

[61] L.J. Hume, *Bentham and Bureaucracy*, cit.

Appendix

Bentham's Unpublished Manuscripts

Women

Bentham MSS., University College, London, LXXb, 270—272 (c.1776)
Penal Law, Abortion, In ricketty women, whether to be permitted.

[270]

Abortion

Upon a very different footing with the other supposed impediments of Population stands the offence of procuring Abortion.

For this / on the one hand / the temptation is strong and general, very little controlled by any natural principle, on the other hand the detection unequivocal and the prevention easy.

Besides that, it is attended with danger to the Mother.

The temptation is strong inasmuch as the [...?] anticipate, not only discovery, but suspicion: It is general, inasmuch and over and above those whose motives to it is shame, who are a few, it offers itself, to those whose motives maybe Avarice [?] who are a multitude. For in all the Countries where children intend of being an accession to, are a destruction of wealth — that is in all but such as are newly peopled, or suits whenever the [...?] and climate afford substenance almost without [effort?] — a very great majority of The People are / were it pubblicly known and permitted would be / impelled to it by that motive.

Its detection is unequivocal, because it requires an apparatus of drugs and the counsel of at least, if not the assistance of, another person whose profession has led him to an acquaintance with these dangerous secrets. (*Note*: No woman herself, could find means to perpertrate it; at least without such present pain and apparent dangers as would be sufficent to deter her — No mischief of the 2nd and 3rd order — now hardly the first)

For the same reason the prevention is easy; that Profession being one, the qualification for which exacts a considerable degree of time and experience, is a pledge in the hands of the community for the good behaviour of those who bear it. (B.R.I.1)

[271]

Those who in place of utility are accustomed to take foreign analogies and physical [...?] for their guides in political questions will be startled at first sight, at the notion of punishing the destruction of the same being when contingent, of which the slaughter [...?] existing / brought into existence / is let pass with impunity: accordingly *uninstructed* instinct of the people would be apt strongly to revolt against the partial distinction. But as the reason for it is / though / not obvious, is no less specious than solid when it is made known,

and coincides well with the trend [?] of their moral affections, the [...?] of that reason to the law against abortion would, it should seem obviate the objection against such a prohibition, or rather of the [...?] permission, which such a prejudice if unceasable would afford. (*Note*: Admission that among The Animals it was frequent. Why were [...?] called unnatural — It is to be supposed there will always be sufficient number most of the / [...?] actual size / of population, if not died up as they will do at it.)

Of the various abuses incident to the generative faculty, Abortion seems to be the only one / that fatal one, against which, busy solitary / the work of solitude / all Laws are impotent, excepted / from which society has any thing seriously to apprehend, on the size of population.

Abortion — Punishment

The proper Punishment for the Accomplice / Assistant / seems to be Banishment for life; some [...?] lesser would sufficiently effect the purpose of Prevention — (*Note*: To the Woman, the Infamy of a place in the procession among the [...?] with some symbolical reproach [...?] as Wax Babies hung about her neck.) The Prosecution would notify the existence of a person able and ready to lead his assistance to these forbidden practises: and [...?] large / consistent / reward, would, it is to be supposed, at any time tempt him to [...?] that [...?] of another prosecution, which [...?] the condemnation of the equal motive which the only probable witness has to surely, would much diminish. He would be the [...?] violently impelled to this cause of which [...?] as it may be supposed, the loss of character would in great measure preclude him from every other / lawful / one. (B.R.I.2)

[272]

There are cases where Abortion might be allowed; as in those where the child bearing threatens to be fatal. Such is the case in subjects whose bones by defect of oxygen [?] in the system have become crooked. The pelvis, instead of the circular figure it maintains in subjects rightly constituted, constructs in consequence of a weakness in the oxygen part of the System with an oval too narrow to give exit to the infant.

One consideration however ought not to be omitted. The effect of an allowance of the practise in any case would naturally be a diminution of the abhorrence of it in general — That cast of instructive sentiments / as it will / which suppose and perhaps not altogether without reason to be the most effectual guard to [...?] in the citizen (how unfit so ever it is to be the guide of the legislator) would on this behalf be weakened.

The question of utility therefore upon this subject stands thus, in which way the loss of happiness to [...?] to be the greater: whether by the number of births prevented more than would be otherwise, in consequence of such a diminution in the abhorrence of the practice as such liberty might effect, if given: or by the loss of matrimonial and consequent comfort, which must be sustained by such of the females, so conformed who might otherwise be able to match themselves, if the liberty be withholden. (*Note*: To a female of this unfortunate conformation one sees there is but this alternative — Abortion or a

perpetual / privation of the sweets of marriage / sentence to the mortifications of celibacy.

Bentham MSS., University College, London, LXXII, 182 (c.1780)
Penal Code. Offences against one's self
[182]

Procuring Abortion

The act of procuring abortion may be considered in a two-fold point of view:
1. as an operation dangerous to the health and even the life of the patient.
2. as an act tending to diminish the force of the community.

In the first point of view it does not seem to come within the competency of the legislators any more than any other medical operation: it is for the patient herself to choose between the risque and the advantage.In the other point of view it will be considered as an offence of the former class under the head of offences against the public force.

Where any person behaving [?] [...?] or any other medical application to have a tendency to produce abortion persuades a woman to employ it not [...?] her for such a tendency, it is a previsional injury. See Offences against Individuals, Title Personal Injuries.

Bentham MSS., University College, London, CLXX, 144—145 (1789)
(France) — *National Assembly and King* (Constitution)
[144]

Electors who Infants Insane Females

Observations on art.6

Whatever benefit belongs to the right of suffrage there is no reason prima facie why it should be refused to one more than to another. Upon a second view the only persons to whom it can reasonably be denied are those concerning whom it is evident that by reason of some indisputable imperfection, they are incapable of / stand under an incapacity of / making use of it either to their own advantage or that of the community / others /. Such is evidently the case with persons of unsound mind. Such is also the case with infants up to a certain age; what age must be determined by a law which for this purpose as for others can not but be in some measure an arbitrary one.

Question 1. Why admit women to the right of suffrage?

Answer. Why exclude them? Of the two sexes of which the species is composed how comes all natural right to political benefits to be confined to one? As to the custom / usage / which has prevailed so generally in prejudice to / to the disadvantage of / the softer sex, it has tyranny for its efficient cause, and prejudice for its sole justification.

Objection 1. The intellectual faculties of the female, it has been said are naturally inferior to those of the male.

Answer 1. The fact is dubious: but, were it ever so certain, it would be nothing to the purpose, unless in the best endowed of the one sex they were inferior

to what they are in the worst endowed of the other. The appeal to History is obvious: and the result of it would rather be to exclude the male sex from monarchical political power than the female. But if no sensible inconvenience can be found to arise from the entrusting them with the exclusive power of royalty, what danger can there be in their occupying / possessing / so small a fragment of political power, and that in common with the other sex?

2. Suppose the inferiority of faculties: the greater it is, the less their capacity of abusing the power in question. If they belong to the class of idiots, at least, / If women are idiots, at least / they do not to the class of mischievous idiots. [145]

If there are any points in respect of which their inferiority were / stands / questionable, one should think it were the articles of bodily strength and personal courage. The English Common Law in its wisdom has determined otherwise. It calls / subjects / them equally with the men to take upon them those offices the duties of which consist in apprehending vagrants and quelling riots. From those / such / political rights which / as / may be exercised without labour or hasard it excludes them with unrelenting care.

Virgins to search houses of all forms.

Pregnant women to apprehend murderers and quel riots

Objection 2. It will call them off from the exercise of their domestic duties.

Answer. The men have their domestic duties as well as the women: it will not call off the one sex more than the other. It is not more necessary that women should cook the victuals, clean the house and nurse the children than it is that the greater part of the male sex should employ an equal share of their time in the labours of the workshop or the field.

Objection 3. The very idea of the interference of women in such matters is ridiculous.

Answer. Not so truly so as the idea of excluding them from it. The cause of ridicule resides not in objects but in mind[s]. In itself one thing is not more ridiculous than other. To this or that man any thing is ridiculous which he feels himself disposed to laugh at. To I forget what sovereign of Asia, the idea of any government other than that of absolute monarchy was ridiculous to the extreme. The question is whether it is in the power of one person to destroy the rights of another by laughing at them. A pretension of that sort, if it is not ridiculous is something worse.

Supposing it ever so desirable to exclude the women from all political influence, it will / must / be acknowledged to be impossible. To exclude them from all influence in political matters, you must change the nature of things and exclude them from all influence. The question is then whether what influence they possess / enjoy / they shall enjoy it by law or contrary to law: openly or by contraband: whether the one half of the species are to be subjected to a stigma in the view / for the purpose / of preventing what it is as impossible to prevent as it is undesirable.

On the ground of avocation it would be much more reasonable to exclude them from visiting any assemblies of amusement. To put a slip of paper with a name on it into a box or a glass is not the work of a minute. One play or

one ball will take up / occupies / more time than would be consumed in / expended upon / the exercise of this right would require in the compass of a whole life.

Bentham MSS., University College, London, CLXX, 151 (1789)
(France) — *National Assembly and King* (Constitution)

Members who

Observations on art.
Quest. Why throw open to all the world the right of being elected?
Answer. Why exclude any person from it? Every disqualification put / negative put by law / upon a candidate is an infringement of the right of the elector; and there can not be a more unnecessary nor unprofitable one.

What then? Would you admitt for example an idiot, a child in arms, a woman, a negro, a convicted murderer?
Answer. It is a case supposable that the majority of the inhabitants of a whole little Province should concur in choosing an idiot a child in arms, a woman, a negro, or a convicted murderer?

If they did what would be the consequence? The idiot would remain in the hospital, the child in arms would remain in arms, the convicted murderer would be dealt with like other convicted murderers.

As to the Negro and the Woman were they by some strange accident to overcome the body of prejudice which opposes / combats / their admission with so much force there could not be a stronger proof of a degree of merit superior to any that was to be found among whites and among men.

Macaulay

In France it seems to be no uncommon opinion that M. Necker a [...?] of Germany (?) is not of all men the least [...?] of the [...?] of French men. England possesses an Historian, who [...?] the crime of her (?) sex, would in the opinion of many capable of proving herself not less fit than many a worthy country Gentleman for serving her Country in Parliament.

Were France and England / Were the French and English legislature / to (?) interchange [...?], there could not be a more peaceful means of wearing away those national antipathies and jealousies which as far as they prevail are so disgraceful and so [...?] detrimental to both countries.

That foreigners should stand excluded from occupying places in the gift of the Crown may be no more than reasonable / not unreasonable / enough — Why? for the same reason that the exclusion would be absurd in the other case. In the one case the danger is that the appointment may be disagreeable to the people: in the other case the certainty is that it is the people's own desire.

Bentham MSS., University College, London, CLXVII, 179 (1821)
Rid Yourselves of Ultramaria, Part II, Letter 11

1821 April 1

Ultramarian Deputat' none

One observation there is which though pertinent to the case I know not how to make without / exposing / subjecting myself for the moment at least to the repraisal of calumnious insinuation.

It regards the 70,000 souls spoken of in Article 31. Of him who framed this Article together with Articles [...?] Of those who adopted it what were the pressures in matter of religion.

Was it really Christian? / Not to speak of Catholicism / was it not rather Mahometan. Their blood is it altogether free from a Monarch contaminated. In their conception have the female half of humankind each of them a soul belonging to it? If so in these in the number of seventy thousand souls taking Article 31 upon its own basis a proportion of females viz 35, over or some number less than 35, over must be included.

If so it be that in their conception, and in the acceptance which in that case it is your duty to give to the Article, in female bodies there are no souls (one difficulty is removed) then so it is that by those 70,00 souls we are to understand 70,000 male animals of the human species.

But in this case other difficulties will meet us. But if the objects indicated by this number 70,000, are no other animals of the human species than those which are of the male sex, then so it is that we are compelled to understand than in the conception of the proposer and adopters of this article, such animals of the human species as are of the female sex have no souls.

If this were not their conception, for what cause was it, that they went aside from the usual mode of expression, and instead of *hombres*, by which word both sexes would have been embraced, employed the word *almas*?

Sexual Non-conformists

Bentham MSS., University College London, LXXIV, 74 (1785)
Nonconformité (Penal Law) *Introduction*

Conjectures, pourquoi ce sujet n'a pas été traité jusqu'a présent profondement d'aucun philosophe.

Il semble que ce sujet n'etait pas traité a fond d'aucun philosophe moderne, que parcequ'ils ne le croient pas digne d'une discussion philosophique ou parceq'uils croient une discussion telle inutile ou par prejugé comme rellement tendante à la corruption de mœurs, ou enfin qu'ils craignoient d'être regardé come des conjectures des mœurs des grands libertins et d'être par cela exposé d'être puni d'exile de tout Europe.

A cela je repond 1. ment que ce sujet touche les plus grands et peut être les seuls reélles plaisirs des hommes, et qu'il est a cet égard le sujet le plus interessante pour les mortels, plus interessant surement que les discussions frivoles sur l'existence de Dieu, de l'ame, de la [...?] tualité de cette Dieu [...?] etc. et par cette raison bien digne de l'attention d'un philosophe. 2. ment une discussion telle n'est point inutile, parce qu'elle apprendroit d'éviter l'exces parce que l'exces le rend incapable de jouir long temps, et expose quelquefois a beaucoup des misères le corp, elle apprendroit aux hommes de les moquér d'une religion superstitieuse, que leurs defend l'usage de l'amour comme un ennemi, et fait de la continence une des premieres vertus, elle enfin fait voir que les loix de l'Europe a cet égard sont souvent cruelles et plus souvent absurdes, elle contribuet par la de les corriger ou de les abolir. Une telle discussion ne peut pas corrompre le mœurs, parce qu'il sera demonstré plus bas que le mot, *corruption des mœurs, a cet égard*, n'est qu'une invention des moines, que de jouir des toutes le sortes du plaisir de l'amour n'a aucun influence sur la probité du caracter moral et qu'elle ne rend pas les hommes genereux, avares, de courageux timides, des gens d'esprit imbecilles etc. Souvent tout le contraire: une discussion telle ailleurs feroit plutôt voir aux hommes les raisons les davroient determiner de fuir l'excès, qui seul tend à la corruption du corps, et de l'esprit.

3. ment le motif dernier ne peut pas servir mieux, i.e. qui pour tout autre traité philosophique contre la superstition, religion chretienne, l'existence de l'ame ou de la divinitè etc. le philosophe qui entreprend une tel ouvrage doit cacher son nom, et le faire inprimer dans un pays ou la penseé est libre.

Bentham MSS., University College, London, LXXIV, 123—132 (1814—1816)
Code Penal — Sexual

[p. 123]
29 July 1816

Alledged Mischief — Injury to Population

With these, J.B. as to Usury had proved the folly of governing too much.

On the subject of population, considered in a deontological / political point of view, Mr. Malthus has opened the eyes of the public, as / before him / Mr. Chalmers had done before him on the same subject considered in an exegetical / historical point of view. By D. Price and others the notions advanced had been that from the commencement of history to the (present) or at any rate that from some much earlier times to the present, the numbers of the species in England had been on the increase. By Mr. Chalmers it was made to appear beyond possibility of disproof that from the earliest period, of the state of which, in this respect, whether from direct or from circumstantial evidence any judgement can be formed the population of this country had been on the increase. Before Mr. Malthus's work had / made its appearance / appeared, among the list of duties incombent upon government that of straining every nerv / labouring by activ measures / for the increase of population found every where a place. Not that of this deontological notion / the notion of the actual existence / that of a general tendency in the numbers of mankind to suffer decrease was in general an accompaniment. But for as much as under two general heads national wealth being one, and national population being the other, the whole property of the sovereign including the whole stock of the external elements of his felicity were comprehended / was comprized /, no such additional stimula as that of a dread of decrease was necessary to give sharpness to the appetite for encrease.

[p. 124]

July 1816

No says Mr. Malthus: so far from giving increase to it if your measures in so far as they regard quantity of population the tendency might rather to be to diminish it. Of itself / so the business of government be but tolerably administered, population / it always goes on fast enough: of itself it rather goes on too fast than too slow: so fast does it go on that for its companion it has almost everywhere afflictive indigence: so fast does it go on that by the increase while the aggregate quantity of the population / while the numbers of mankind of the human species / increases, the sum of happiness is by this very cause rather diminished than encreased.

It would encrease still further and faster, were it not for the so conjunct force of three cooperating causes: *misery*, i.e. unhappiness/sufferings from indigence, *vice*, and *moral restraint*:

(Go on — explaining these three: showing that unprolific sensuality (?) ought not to be esteemed vice, nor moral [...?] employed in the restraint of it [...?] it is not a virtue; but neither a vice)

moral restraint vice and indigence.

Of these first in operation comes moral restraint; but in idea before it will come indigence.

By the word moral restraint the ideas meant to be brought to / it should bring to / view will be restraint applied to the appetite by the apprehension of the

pernicious consequences that appear likely to be produced by the gratification of it. These consequences will be different according to the modes in which the gratification is affected: according as it is by marriage or without marriage: if by marriage the cause of the restraint will be the apprehension of indigence as likely to be produced by the bitterness naturally attached to that state, nor in the first place the certain experience of maintaining the wife, in the second place the independently greater though but intrinsical expence of providing for the offspring of the union, in whatsoever number they may come.

[p. 125]
16 Aug. 1816

Population Malthus

If without marriage, vice is the name by / to which, especially the profession of the ingenious author considered the cause of the check will naturally in every instance be designated. If by any consideration / In so far as / referable to the head of utility the application of the words vice and virtue were determined only in the case / and the only case / where its gratification of this or of any other appetite were / would be considered as referable to the head of vice is that in which it is productive of a net balance in the side of suffering / unhappiness i.e. pain. Unhappiness may be and but too often is produced otherwise than by vice: but vice could not with any propriety be said to have place in any case that is in any sort of case in which no unhappiness is produced.

Of moral restraint in so far as it operates in restraint of the gratification of appetite, the effect is / immediate and certain tendency / manifestly to check the increase of / prevent / population. But of vice the tendency to produce this effect is not in every case so certain, nor in any case so immediate. In the case in which though without previously producing marriage, the desire of the gratification is productive of sexual intercourse in a prolific mode with a prolific subject, here addition to, and not subtraction from, the aggregate mass of the population is / at any rate the immediately probable / result. If the offspring / fount of this union dies, then indeed a diminution in the mass of population has place: but neither in every instance does the offspring of such a union die, nor in every instance is the union producing / productive of / *misery* in the shape of *indigence*, or in any other shape. In this case therefore that which applied to population by what is called *vice* is not so efficient as that which is applied by *moral restraint.*

[p. 126]
15 Aug. 1816

Population Malthus

If population be an evil, then everything that operates towards the diminution of that evil must in so far be a good. Call it misery — call it even vice, still in so far as this good effect is produced by it the quality of goodness is not with the less propriety attributable to it.

On the other hand, that in misery evil is to be found in most unhappy abundance, is but too / sufficiently / obvious. The import[ance] of it is far from being quite so determinate as might be wished: but in so far as it is so, it seems to be present suffering in respect of extent not determinate but in respect of intensity existing in a degree occupying a high degree in the scale (i.e. numbers of the persons sharing in it).
Meantime of an excess in population be the degree of that excess as high as it may, wherein consists the evil? in misery itself, taken at some degree or other, and in no worse shape can it possibly have existence.
[p. 127]
18 Aug. 1816

So / thus again as to vice. Vice itself is not misery: for the object which the word is employed to designate is an object different from misery; or without a contradiction in terms a different word can not be employed for the designation of it. Not being itself a misery is it then productive of misery; i.e. / or rather to speak more determinately of suffering? if it be not, nor yet of loss of enjoyment, then it is not in any shape an evil. But, by the supposition, excess of population is an evil, and of vice the effect is the diminishing that evil, or what comes to the same thing — the preventing the increase of it: if then being productive of good in one shape it is not productive of evil in any other, the good of which it is productive is so much pure good. But to speak of vice as being productive not only of good but of pure good is a contradiction in terms.
[p. 128]
18 Aug. 1816

Lastly as to moral restraint. By the supposition in so far as this state of things / by this cause, excess in population, or restraint and thence suffering or loss of enjoyment or both diminished this too is a good.
But in so far as it is restraint it is an evil. For taken by itself, as all constraint, so all restraint is an evil: if in any degree it be a good it can only by the prevention of a more than equivalent mass of evil, of a mass of evil in the production of a mass of good more than equivalent to itself. But according to an account given of it as above Vice itself is not an evil: it is a pure good. But as to restraint whatsoever be the good produced by it that good is at any rate not pure: while the good produced by Vice is pure. Therefore according to this account of the matter, vice is a better and a more desirable thing than moral Restraint. Vice then is the thing to be encouraged, Moral Restraint the thing to be discouraged.

[p. 129]

Sex

1. Injury to population
2. Unnatural
3. Prematurity[?]

Per autem these why discourage then encourage *celibacy*
1. Injury to population. Of all the alledged effects which in this case have been brought to view in the character of grounds for legal punishment, this is by

far the most plausible. But the more closely and thoroughly it is examined into, the more plainly it will be perceived to be ill grounded and inadequate.
2. It is capable of having any effect on population. In regard to population its effect if it had any would be rather favourable than unfavourable.
3. If it had any effect unfavourable to population punishment applied to such practices would not be a proper mode for filling up the supposed deficiency.

[p. 130]
10 Apr. 1814

Code Penal

1:It has no effect on popul(ation) — is not capable of having / producing any effect on population.
The apprehension real or pretended of seeing the quantity of population in any country suffer diminution from any such cause, is upon the face of it so palpably abused that it is not easy to speak of it with that seriousness which the importance of the subject demands. Not more absurd would be the apprehension of the effect of a [...?] as about to be produced by the last for [...?] labour. For keeping up the quantity of population up to the level at which it is found existing in any country at any given time, less than a hundredth or a two hundredth part of the capacity of procreation would if reduced to nil suffice if reduced to nil in the manner of which particular is the result.

[p. 131]
15 Apr. 1814

Code Penal

State for analogy the overpopulation of other animals and plants.
2. If [by] the practices / irregularity in question population were capable of being affected in any way, the way in which it would be affected would rather be favourable than unfavourable. (From the prevalence of any such irregular propensity on the part of the female sex no such apprehension has ever been entertained: it is to the male sex altogether that all apprehensions have confined themselves.)

From excess of population flows / comes no small part of the misery / unhappiness: with which and in a degree proportionable to that of the civilization the civilized part of the population of the globe and in particular that of the British empire is affected. By any case, of any cause there were other than human suffering by which a check could be applied to the effect of this tendency, the balance on the side of happiness would be increased.
Urged by desire, the opposite and corresponding sexes contract their union. But setting aside the instances to the contrary produced by casual imprudence, the female will not join in it unless her partner of the other sex will in and by the matrimonial contract bind himself amongst other things / performances to continue with her during their joint lives in the bond of the same contract / engagement, and in the mean time maintain, until they are of an age of

maintain themselves, all the children in what number so ever they may be, of which it may happen to their confirmed union to be productive.

[p. 132]
20 Aug. 1816

Sex

Here then from each pair are produced children in such numbers, as but for the variety of accidental causes by / from which its number / reaching to be prolific / living to such an age as to become parents is subjected / receives defalcation would in / at the end of a comparatively small series / number of generations produce to a number so prodigiously superior to the greatest ever actually exemplified under the most favourable cirumstances. The quantity / average stock of necessaries, but more particularly of necessaries in the shape of food, that can be produced by a married couple in a given number of years not being by a great deal adequate to the maintenance of the average number of children begotten between them in that space of time, a portion more or less considerable of the whole number of those children necessarily die: die for want of that support whether partly in the shape of necessaries partly in the shape of attendance which in a state of opulence a married couple are both able and willing to procure for theirs. Since them, if they come into life, quit it in early youth, they must, the earlier they quit it, so much the better for all parties, the children themselves as well as their parents. The quantity of care and attendance bestowed by the parents is so much the less, and in the part of the children themselves so is the intermediate suffering produced by the deficiency of necessaries or attendance is so much the less.

Bentham MSS., University College, London, CLXI b, 276—283 (1818)
Not Paul, but Jesus Doctrine. Ascetism. 1. Population. Ch. 1

[276]
1818 Jan. 2

Supposed injury to population. Groundlessness of this charge

55. n 1. *Injury to population. This charge obsolete by Malthus in detail. Population being always excessive never deficient*

1. As to the supposed of alledged injury to population.

In this we have an argument / a consideration / which, how so ever it may have been in use to be recaused to in former days, presents little probability of it ever being employed / being thought worth employing / even by the most ardent and inconsiderant zeal in future. Even since the great work of Mr. Malthus on this subject has had time to produce its effect, so far as concerns population, a truth which every thinking and even every influential mind without exception seems sufficiently possessed of, is that everywhere it is from excess in this article that human / general / happiness has everything to fear: from deficiency, nothing.

56. n 2. *Before this, in principle by Bentham*

Several years before that work, by a stock of facts of detail / particular facts / the theoretical proposition so replete with practical instruction / lessons for practice / had been illustrated and established. (By the pen of Bentham several years before that work had made its appearance the same proposition had been demonstrated on the ground of facts).
Circumstances essential to human nature and apparent / visible / the very surfaces of the case this same proposition had received a concise but not the less incontrovertible demonstration. (*Note*: Here make the reference to Dumont's papers in Genevan Review)
[277]
57. n : *No motive too absurd to be embraced as no argument against a practise supposed to be condemned by religion and morality.*

When a conclusion has ever been determined upon / accepted / and that determination accompanied with the persuasion that to listen to any thing on the other side would be an offence against religion and morality and thence with a determination to adhere to it at all events, any argument the most absurd may on that sight venture to produce itself without fear of seeing itself rejected or so much as scrutinized.
For manifesting the absurdity of any such appertinence as that by any such cause as that in question any deficiency in population was capable of being produced slight indeed in the view that need have been taken of the case / of the nature of the case / glance that might have sufficed.
58. *Absurdities of the notion that population can be decreased for want of [...?] in the ordinary mode. Operations in a year say 300: of which in case of faithful wedlock only one can be prolific. Here for every act employed in [...?] 299 may be wasted in other modes without detriment to population.*

Speaking in round numbers, in the only scheme of sexual intercourse which is favourable to population of all the whole series of sexual operations which the male is capable of performing in the course of the whole twelve months, it is by one alone that any addition to the mass of population is capable of being made. Beyond / over and above / that vice every such operation whatsoever be the profit in the account of pleasure is in the account of population so much waste for any effect produced by it in that shape as well as might have been bestowed upon a being of the same sex or of a different species. Allowances made for absence and sickness supposed only 300 to be the average number of impregnations performed in the state of marriage among persons on both sides existing in a state of capacity in this respect. (*Note*: Here there are three hundred times as many acts of impregnation actually employed as would be sufficient for giving the sum of population every increase which the other circumstances of the case admit of its receiving).
[278]
59. n 4. *Verses indicating the number of acts performable / each performance / but different ages without prejudice to health.*

The sort of general matter of fact here in question is of the number of those in relation to which the very nature of the case renders it most difficult to obtain any particular evidence.

A little / short / lesson in [...?] belonging to the branch of medicine (which the author of these pages somewhere were to have heard) would, if it could be recollected, afford to a question of this sort an answer which not having had any such purpose as in the present in view might thereby in that account be deemed not the less satisfactory but in the contrary the more so.

In it are presented to view the number of those acts which in the compass of twenty-four hours are regarded as capable of being performed by an average male in the marriage state without prejudice to health. From a certain age to a certain age, one such act: thencefoward two: then up to another age the number unlimited: then down again: then back to one, and at last to none. The mode of expression employed was for the first / earliest / age a good night *or* good morrow; for the second, good night *and* good morrow.

60. *On this calculation no injury to population by eccentric modes unless 300 times as pleasurable [?] as the ordinary*

According to this extimate, (before) it could have any effect capable of affording any defalcation not only from the actual but from the possible quantity / degree / of population, the propensity of this appetite to the same sex would have to be three hundred times as great as towards the correspondent and opposite sex.

61. *Eccentric would in this case be the proper appellation of the ordinary mode*

The oppositeness of this imaginary state of things to the real state of things is too glaring to admit of comment: supposing it real, to the conjunction between the opposite sexes if in either case would the term eccentric properly be applicable not to that between persons of the same sex. As to the term unnatural, it is a more expressive of ungoverned rage / thoughtless passion / not applicable to desire in this shape nor unhappily to guilt in any shape.

But where the violence or passions real or pretended is received as matter of thread, the greater / more flagrant / the absurdity the more rupturous the applause.

62. *Species extinct were the whole capacity thus employed — yes: as if upon females past child bearing.*

If during a certain period the sum total of the capacity for procreation were employed in the eccentric modes to the exclusion of the ordinary mode, at the end of that period the species would be extinct — O yes, *that* it would: and so it would, if in the male sex the whole of that capacity were employed upon such of the female sex as had passed the age of child bearing.

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Go on to show that paederasty tends not to decrease population; this in the Appendix under the head of Overpopulation.

63. n 8. *Population checked by the eccentric mode, good would on this score be produced: to the evil of overpopulation it would* pro tanto *be a remedy.*

If from the directions given in this case to the sexual appetite to the pleasures of the bed any real effect upon population in the way of check were to be looked for: far from being an evil it could not in this point of view be deemed to operate in the character of a remedy.

64. n 9. *Security tolerable nowhere means of subsistence keep pace with population:*

In no country in which by the state of government any tolerable security is afforded for personal property can / does / the power of providing (the means of) subsistence keep pace with the tendency to that union by which the numbers of the species / mankind / are kept up and encreased.

Evil of the excess: 1. Of the indigent deaths preceded by lingering disease. 2. On the affluent, burthen i.e. pain of privation corresponding to the relief afforded.

This superfluity has for its consequence evil in a variety of shapes. 1. On the part of the indigent premature death preceded by lingering disease. 2. On the part of the opulent / affluent / pain of privation to an amount proportioned to the amount of relief afforded to the distress of the indigent, as above.

Relief — never can be completely adequate. Adequate for one moment, it acts as a bounty producing more marriage, procreation, distress, ever does the evil outstrip the remedy.

But as there is no civilized country in which such relief is altogether withholden so neither is there any in which it is or indeed ever can be completely adequate. By the quantity of supply afforded at any given period of time relief, and that adequate, is afforded (suppose) to the quantity of indigence existing at that time. Good: but by the supply thus afforded, is produced the effect of a bounty operating as an encouragement / the effect of giving additional extent / to that union by which an addition is made to the mass of the population and thence to the mass of indigence:

Be the amount of the remedy ever so great / be the magnitude increase in the quantum magnitude / the encreased in magnitude of the evil is constantly outstripping it.

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1818 Jan. 3

Per Malthus, checks to population are 1. misery 2. vice 3. moral restraint:

1. misery — the suffering productive of the premature death as above;

2. vice — the gratification obtained in some improlific mode: (by no other sort of name could this check be designated by a divine)

3. Moral restraint — when by fear of indigence as attached to the prolific mode the appetite is kept unsatisfied

By the Reverend Mr. Malthus, whose work is the classical book on the subject, the causes of restraint by which the evil receives whatsoever evil it actually receives are collected under three general heads, viz. *misery, vice*, and *moral restraint.*

1. To the head of *misery* may be referred the decrease which the numbers of the species experience by premature death which takes place / occurs / to an amount proportioned to the quantity of indigence unrelieved.

2. To the head of *vice* will upon the ascetic principle be referred all those instances in which that propensity which in case of affluence would have been gratified / obtained gratification / in the prolific mode, obtain it in some unprolific mode. (By a writer / an author / writing and publishing in any such situation as that of the Reverend Gentleman this part of the effect could not it is

evident, escape being designated by some such condemnatory / damnatory / name)

3. Under / To the / name of *moral restraint* may with propriety be included / referred / every instance in which by the fear of indigence in case of satisfaction to the prolific mode or of the imputation of vice in case of satisfaction obtained in an unprolific mode, the appetite is kept unsatisfied.

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Jan. 3

68. *Of course: Sole remedy recommended by him,* moral restraint:misery *is the extremity of the evil itself.*

So much for the Theory: When practical lessons come to be deduced from it. Of these checks, the Reverend Gentleman recommends of course the last in the character of the only eligible one remedy. Misery of course no man could recommend in the character of a remedy. It is itself the extremity of evil: of that evil the remedy of which (if not [...?] at any rate palliative) is the thing to be looked out for (in all quarter) and if / as far as / possible provided.

69. *Per Asceticism as well as utility misery an evil.*

Per Asceticism vice *a still worse evil: per Utility, so far as [...?] of misery, a good in itself, and so far as it excludes overpopulation a remedy to that evil.*

Under both systems viz. the system of asceticism / under the system of utility / carried to the length in which it is commonly carried in this country, and no farther, and under the system of utility, *misery* will alike be admitted to be the evil.

Not so in regard to *vice.* Under the system of asceticism if it be admitted as a remedy against the above-mentioned evil, viz. against indigence, it will be regarded not only as being itself an evil but commonly it is supposed as an evil still worse than the desease.

Under the system of utility if the above statements and observations are correct it will be regarded at every rate not as an evil but as a good, in whatsoever degree it may operate or fail of operating with relation to the decrease of indigence / in the character of a remedy in relation to the Devil of indigence / . (*Note*: And that the unprolific gratification may save someone from prolific and so from adding to the disease of indigence yet by their abhorence from the prolific mode so many more will be left free to practise it.)

As to *moral restraint* — Under the system of utility moral restraint in whatsoever degree it may operate [...?] in the character of a remedy to the disease to the evil designated by the name of misery, it involves in its whole extent two effects the claims of which to the appellation of evil will not in either instance be easily desired; these are 1. loss of pleasure, by the amount of the capacity of gratification that prevented from coming into act. 2. Actual pain, viz. pain of unsatisfied desire, as measured by the number on individuals in whose instance the desire having existence remains unsatisfied: viz. 2 its intensity and 3 its duration in the instance of each of them.

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1818. Jan 3
71. n 16. *Note that by the moral restraint each man prevents himself from adding to the overpopulation, yet the more there are that do so, the more liberty they leave to others to practise.*

As to the evil of overpopulation to shew by what means it may in the most advantageous manner, according to the principle of utility, and discarding altogether that / the principle / of asceticism be made to receive such check as it is susceptible of is surely a subject well worth the enquiry, a task the importance of which will afford ample payment for the labour. But lest in this place it should be found to protract the thread of the discussion to a disproportionate length, it has been discarded to the Appendix.
72. n 17. *Best remedy for overpopulation an important enquiry: but being too long for this place is postponed to the Appendix.*

Bentham MSS., University College, London, LXVIII, 10—15 (1824—1825)
Penal Code — Appendix — Sexual eccentricities

[p. 10]
20th December 1824

Ch. or SS. Innoxious eccentricities / aberrations / of the sexual appetite why not included in the scheme of punishment.

Nature has given to man two crops of physical sweets: the one containing those which are the produce of the operation by which the individual is preserved: the other, containing those which are the produce of the operation by which the species is preserved. Into both, seconded by pride and blind antipathy, what is called Religion has now for about 18 centuries, exerted itself in the endeavour either to dash the crop from the hand, or by the infusion its quill to convert the crop of sweets into a crop of bitterness.

On the enjoyments resulting from / attached to / the operation by which the individual is preserved, the effects produced by it / have been conspicuously disastrous / have shown themselves in a variety of shapes: putting a veto on this or that source of the enjoyment and thereby lessening the enjoyment — in the case of meats and drinks: putting a veto upon all sources for certain lengths of time: and these to such a degree protracted, as to substitute positive suffering to positive enjoyment.
For the establishment of evil in both these shapes the pretence has been the acquisition of the favour / sympathy / and the appeasing the antipathy of an Almighty being, who, by a self-contradicting proposition is at the source stiled benevolent: and not simply benevolent but supremely benevolent. In this race of mischief and absurdity of moral and intellectual depravity, the followers of Mahomet have outstript the self-stiled and so falsely and manifestly stiled followers of Jesus: in that philosopher, for whether God or not, philosopher he was at any rate, asceticism in all its fervour views an object of indifferent scorn and ridicule. Asceticism is not *Christianity* but *Paulism.*

[p. 11]
1824 Dec. 20

On the enjoyments attached to the operations by which the species is preserved, its influence has been no less disastrous.

In both cases, the distaste / law / of appetite is an expression no less than a concession, the perfection of simplicity. [...?] enjoyment: in the two words it stands expressed. With two amendments, made, the one by self-regarding prudence the other by effective benevolence, it stands confirmed by reason. So indirect the enjoyment that neither by loss of [...?] nor by injury to pecuniary concerns evil / preponderant in quantity and value / be the accompaniment or the value of it: thus so sayeth self-regarding Prudence. So limit and direct the enjoyment, that it shall not have had for its accompaniment or result suffering to a preponderant amount on the part of others, thus sayeth Effective Benevolence.

Such are the limitations which apply to the enjoyment in the one shape; such are those which apply to enjoyment in another shape: no reason can be given why a limitation which applies not to the one would apply to the other. To no other limitations than the above can reason give her sanction; if any other there be, in him by whom the existence of any other is affirmed, it has to produce it.

[p. 12]
1824 Dec. 20

1. temporis 2. loci 3. sexus 4. species

From the operation by which the individual is preserved, enjoyment more or less intense to insufferable. But beyond the minimum of enjoyment which is inseparable from its productions of that effect, enjoyment of the same kind is producible to an indefinite extent — a relative excess of enjoyment by which no contribution to that effect is made. Of that matter by the consumption of which existence is continued the quantity consumed is determined — not by the consideration of the least quantity, sufficient for the continuance of life, health and strength, but by the task and instruction of the moment: for taking measures by the first of these standards none but men profoundly skilled in medical art and science could suffice: for taking measures by the other standard any man suffices.

So far as this source is concerned, to no one with the word *religion* in his mouth, in a Protestant country at least takes this superflux of enjoyment for a ground of censure: by no one is any man ascribed either to slint in quantity or to choose less of that which is in preference to that which is more probable. You like oysters: I do not: therefore you ought to be killed, and I ought to do my utmost to have you killed. In a Protestant country at any rate no such logic as this has as yet been heard.

No tyrant has as yet stood forth and said:

1. Abstain from meat and drink one whole day in every month
2. Abstain from shewing with the life side of yours
3. Abstain from calling others to abstain from eating oysters: observe all these prohibitions, you may live: vitiate any one of them you shall die.

In no one of these extravagances has tyranny by raising in England at least ever yet indulged itself.

[p. 13]

1824 Dec. 20

In its application to the enjoyment connected with the preservation of the species in every one of those extravagances does tyranny continue to indulge itself.

By the physical appetite of the tyrant has the standard been fixt: from that standard every other appetite has been regarded as an aberration: and for the crime of aberration the penalty is death. Four are the directions in which the quantity of error has been ascribed to deviate from the course marked out by the standard appetite. Sexual errors 4: 1. error temporis 2. error loci 3. error sexus 4. error species 5. error numeri.

1. In the case of error temporis the sex presented by orthodoxy has been adhered to: the error counts only in the article of time. During an entire portion of the female month, the appetite of the male tyrant the patient is no longer an object of [...?] Such is the case of Moors. By the votaries of that religion which springs out of that of Moors this prohibition has not been adopted. Why has it not?

2. With the error loci the error sexus be combined or not. Where the sex is that prescribed by orthodoxy, the fury of orthodoxy has not by this consideration been [...?]: the single error seems to have provoked still greater indignation than ever the double one: by the face of the Almighty here now seen to be flown into, and the provision made by him set at defiance: nearer the truth would have been made the most of. The book or quarto was a law book the authors of the passage Serjeant lawjers, and the learned sarjeant had been a manmidwife / he killed like an apothecary and he fell like a manmidwife / the error in this shape the tendency he saw would be to lessen practice.

[p. 14]

1825 Jan. 13

3. In the case of the *error sexus* the appetite for vengeance has for its real cause the wound to blind antipathy.

Till of late years it had a more valuable case fear of damage to population. Till within a century or two, ever since Saint Paul declared that the world would come to an end in the life time of his contemporaries the species has been about coming to an end by an instantaneous operation. In De Pries time it was coming to an end by a gradual decline. Since the publication of Mr Malthus the apprehension of the public has begun to take a contrary direction. Over population not under population is now seen to be the great cause. Yet of his the antidote to this evil, what he calls *vice* is one. By it he means any thing or at least he includes improlific gratification of the sexual appetite. But in so far as the practice is free from wrong to third person virtue rather than vice should be the appellation of a practice by in which in so far as it operates in population supposing it to operate in population, it would rank among those restrictions of which he recommends the use. But Mr. Malthus belongs to that profession by

which the use of reason is abjured, to which the acknowledgement of error is rendered impossible.

If moral turpitude had anything to do in the matter, turpitude in the case of this error should be the same in one sex as in the other. But in this case no physical turpitude protrudes itself: physical antipathy remains unwounded; Jewish law is here silent.

By a case of this sort conjunct amusement might be afforded to an English Judge. It is among this or that cause he would find himself at liberty to destroy or [...?] and [...?] pleasure: the requisite dose of criminative circumstances would as directed be visible or invisible. True it is not made mortal by the Laws of the Jews. But in the punishing of the error loci when not accompanied by the error sexus English Judicial law has outstretched Jewish Law: and having gone that far, where if any where should it stop? True it is that by extraneous evidence the crime might very easily be brought within a received definition. But by insufficient evidence any one thing may be proved as well as another: *witchcraft* for example and any view there to be proved: in New South Wales it was by this and nothing else that murder was proved upon the Causer, but who now hanged for it: to an English Judge nothing is impossible.

[p. 15]

1825 Jan. 13

4.Error species. Against error in this shape the rage of antipathy is not altogether so furious as in the last case. None are killed for it indeed, because like the second evil they are used to it: they do not remain [...?], but they do remain [...?]: they are put of the way, and with the exception of the little that is necessary to afford the customary warrant for killing them, little or nothing is said about the matter. While the force of the extinction of the species prevailed, the danger in ths case did present itself as quite so formidable as in the other.

In this zeal to destroy every thing they are or wish to appear averse to, English Judges have not confined themselves within the bounds of the definition laid down by them in the case of the error sexus. Had they done so values would never have been to hand: and things would thus far have recurred in the state they were in before the passing of the delightful Statute.

But the object being given no English Judge need ever be at loss to accomplish it. Everything is determined by precedent: but to the purpose which it may (have) a precedent if not yet made it may be made at any time: if not, how is it that any precedent could have been made. On the other hand, the spot in question be already covered by a covering of Judge-made matter in this case need there be any difficulty: if as to what is wicked, it is true: if it be any thing other than what is wicked, it is *not* law: *made* law by such learned hands, nothing can be, but declared law by the learned Judge any thing can be.

Have you not certified this in a Mr. Justice Blackstone [...?] (*Note: Commentaries*)

Slaves

Bentham MSS., University College, London, CLXXII, 331—348 (1821—1822)
Rid Yourselves of Ultramaria — Letter 16
'The Relinquishment would be honourable. Slave Trade'

[331]
1821 July 19 Omitted Apr. 1822

Seek [such?] disinterestedness not in practice. Witness U.S.

I have spoken of the jargon by which when carried on upon the largest scale appropriate even depredation oppression partly for the gratification of selfish pride used the court of [...?] quickly for the purpose of depredation are to use to be defended: in use to be thus paid and for this plain reason that the nature of the case affords not in the way of needs any thing better by which by possibility they can be defended.

Where the Slave trade is to be defended in this form is no longer acceptable. In secrecy unoffending human beings and dealing by them [on ...?] are dealt with though with legend more suffering to them, there is neither honour, nor play nor dignity: no natural rights no [...?] sovereignty, supremacy in the case.

What then is this case, is the word? The vocabulary of the political jargon. The vocabulary of the political branch of the [...?] language has been searched and no more than one word applicable to this case has been found in it. Necessity the word is necessity: a word in / and by / which where it is rightly applicable one argument of no mean cogency is expressed / conveyed /.

In this or that country the continuance of the Slave Trade that is the purchase of men of black complection from whom in their native climate have them in their power is matter of necessity: it is necessary to the cultivation of the province to the existence of its populations, their continuance could not continue without it.

[332]
1821 July 19

Necessary? Oh yes doubtless it is: many are the things / many are the persons / to which it is necessary. But what are those things, what are those persons what are they. The things are — making pecuniary profit by injustice / oppression and murder / by injustice in the flagitious profit in this shape are not only content but reasonably ordered in their endeavours to continue / or make others to continue / in the promotion of this flagitious injustice.

By the word *necessity* — by any other word although like uses in a [...?] it was day by day and every hour of the day — repeated would the injustice would the selfish barbarity be in the smallest degree alleviated?

If, and upon so vast a scale by this or any other word injustice coupled with / the [...?] of / cruelty be defended and vindicated by it upon the like wickedness when committed upon a less extensive scale.

Try it upon housebreaking like purpose of depredation, try it upon highway robbery, coupled or not coupled with murder according as by his obstinacy or his audacity the passenger / sufferer / makes or does not make, the murder of him necessary.

Here you have necessity, / In this case have you not / here you have it in a form as cogent as irresistible as unanswerable as in the case of the Slave Trade? Robbing black men of their liberty, of that blessing / possession / in which the whole of their property for the bringing to the end of life is included is to the Slave dealer necessary to his living in the stile in which it is his wont to live: robbing the traveller of the money he has about him is necessary to the highwayman: necessary to his living in the stile in which it is his wish to live.

[333]

1821 July 19

The most fervent [...?] [...?] infest Spain. [...?] in comparison of the [...?] and protected Slave Traders — and their Protectors.

Aiding, abetting, assisting, supporting and engaging black men in that course of murder which by its being carried on upon a scale of a certain magnitude — is carved with honour and called war is to the slave dealer and his mode of living in stile a mode of absolute necessity: of each gang [...?] murdering a [...?] more or less considerable by a course of torment of water or similar duration is another course of conduct necessary to the same inimical end. On the other hand, not less necessary in the case of obstinacy or resistance on the part of the traveller is every now and then the destruction of his life.

Meantime if so it be that by the necessity applying to his case the Slave-dealer is justified in his essence / morals / so much as estimated, not only is the Highwayman [...?] added or not added by him to depredation, justified; but in comparison of the Slave-dealer / trader / yes and of his accomplices / his aiders, abbetters, supporters, engagers / in all manner of ways and in every country he is a Saint.

The man who sitting on the opposite side of a table tells me that the continuance of the Slave Trade is necessary — necessary to him, as to those with whom he is in a commonweal of interest or association, and that it is by the sense of that necessity that by such / whatever / arguments he can bring to bear he stands engaged to support it, what is it that prevents him from rifting my home and stripping it of every thing that is in it that takes his fancy and to secure him his life against the consequences of my resistance / self-defence / destroying it? What but the force of punishment at the hands of the law: or that out of the question, the fear of that disruption which may attach upon

such his conduct for want of his having *custom* — that custom which applies to the case of the Slave Trade for a check to it?

[334]

1821 July 20

There is a certain thing we are every now and then hearing of / talking about / called *tyranny*. My friends what say you to it. In regard to it what is the state of your affections? What a question! say you: as if we would do otherwise than abhor it. Good: but how abhor it? simply and absolutely? or only subject to certain distinction and no otherwise. /Wherever / In so far as we are the victims of it, oh yes: there we do abhor it: but where are the authors of it or among the instruments of it, there the case changes: in short where we suffer / wherever we are sufferers / by it we hate it, as all wise and humane we / wise and humane as we are / do of couse / can not do otherwise / but where / in so far as / we in our own opinions at least profit by it, / reap an advantage from it / there so far the case is quite reversed. Tyranny exercised over us is a most wicked / a bad / thing: honour where that all would forbid our endurance of it. Tyranny exercised by us for us is a good thing: honour could not endure our parting with it: no means of any thing we did would with any propriety be termed tyranny: what however is not the case / you must acknowledge / that which in others might be tyranny, with us is just exercise of legitimate rights. Tyranny it might be in others to hold a distant nation in subjection in the hope of squeezing money out of them: but in us it is but just exercise of legitimate rights. Tyranny it might be in others to keep men or to keep others in houses or fields in a state of slavery: but property is a sacred right: and in no such dealing is but the exercise of that sacred right.

[335]

1821 July 19

Religion indeed! / Take for his habitual // every day // occupation / Make murder and robbery upon the largest scale and profess at the same time that religion is in his eyes an object of regard. The profession / of him / is it sincere or insincere! If insincere what is to be thought of him? If sincere what is to be thought of religion of that religion which has place in his breast: A religion which suffices not to whain one from the habitual practice of the most flagitious enormities what can it be good for, what the rules of it, what the uses of it? Murder and robbery and murder by any number of masses can they be atoned for? What then are we to think of masses? Be it what it may with reference to the happiness of a future life — of that life in comparison of which the present is but as a grain of sand to the universe in its effects is the happiness of the present life is it anything / would such a religion be / better than a nuisance? the practice of it any thing better than a public calamity? the support of it than a public grievance?

[336]

1821 July 19

But if thus indefensible / inexcusable / is the conduct of those Colonists who are partakers in the Slave Trade how much more inexcusable is that of your Masters if by your loss they continue themselves in that abomination by afford-

ing or striving to afford protection to those who persist [?] in staining themselves with it. In continuing it, in so far as by continuing it they make greater profit than they could by any other means, they sin not against self-regarding prudence, they sin not against any virtue other than those which are comprehended under the head of Effective Benevolences. Only to the unhappy victims of that system of murder is their conduct injurious.

But your Rulers, / in act or in endeavour / to [...?] as they [...?] to the provinces engaged in that traffic their protestation such as it how much further are they / is their conduct / from being excusable.

[337]

1821 July 19

You rank yourselves with the rulers of France — like to Ultras — the despots of England.

Say not such disinterestedness as you preach — such virtue as and without expence on your part you call for the exercise of at ours is at too high a pitch for the frailty of human nature? Call not upon us to soar above the level of the common native: it is sufficient / we content ourselves with what is practicable, to us to be upon a level with the rest of mankind.

Spaniards! this will not serve you. Think not that by abstaining from depredation and murder in this you would place yourselves above the level of human nature: all that you would do would be the ceasing to be as you are at present, in a deplorable degree below it.

(*Note*: Say not such self denial as is recommended is too high for human nature. More than this, as applied to Slave buying and Slave-holding has been perseveringly practised in U.S.)

[338]

1821 July 19

Emancipation is one thing: cessation of purchase is another. Neither to the aggregate / common / benefit nor even to the benefit of the Blacks alone would emancipation in immediate or other than gradual emancipation be practicable.

Not as cessation of purchase

For my part to speak of impossibilities if at that price, and not at any less price in addition emancipation the establishment of the Blacks in a /under / government such as that of the Anglo-American United States could be effected gladly as a / in the character of / indispensable means to that end would I see the White population every man woman and child [...?, put ...?]

[Marginal note: Note the difference between Slave-buying and Slave-holding thence between forcing emancipation and forcessing cessation of purchase. By forced emancipation neither would Slave-holders, nor Slaves themselves, be benefited.]

[339]

1821 July 20 Omitted 9 April 1822

Well then: in this result you see another advantage — (and if there be any moral feeling in you a prodigious one you will see it is) from the proposed relinquishment. While you retain the dominion, or any claim upon it, this foul

slain / that moral leprosy / cleaves to you: rid yourselves of the encumbrance, and you rid yourselves of the leprosy along with it. Think not that upon any other terms, even were / supposing / you were so desirous it would be in your power then to purify yourselves. Among these your former dependencies there are some who are to such a degree tainted with it, that as surely as they saw in you a disposition to put an end to that enormity, so surely, howsoever disposed to cleave to you, they would break loose. Then indeed / Thereupon / Then indeed would come the excuse derived from / composed out of / the abuses of the word necessity, it is necessary to keep on foot this practice: for otherwise these subjects of ours would no longer be so. This we must not endure, so long as by any thing we can do we can retain them under our subjection; this would be an infraction of our Constitution, of that Constitution which every body has sworn to observe.

[340]

1821 July 20

Sworn to observe? Oh yes: sworn to perform all and singular / this together with all the / impossibilities which may be seen swarming in it.

Look at Article 4. 'The nation is obliged to preserve and protect, by wise and just laws, the civil liberty and the property, besides all other legitimate rights, of *all* the individuals of which it is comprised.' What? all the Citizens? all that are its Citizens and no others? No: no such restriction does it contain: *individuos* is the word: not *ciudadanos*. Now then the human beings whose skin is of a darker colour than your own — are they not individuals? When they cease to be individuals, then will you cease / your Representatives / to have guaranteed their *civil liberty*: then should any one say to you — you are tyrants not haters of tyranny, hypocrites not men of sincerity then will you be able to clear yourselves of the approbrium / their reproaches /, and call (it) calumny, and call the authors of their calumniators.

Slavery under you or any subjects of yours is it what you mean by this same civil liberty? / slavery such as that in which they keep those whom for that purpose they have purchased instead of cattle / well then go yourselves to Negro land, put yourselves under the power of those whom by such purchase you now get under yours — / in that way / by that means you may secure to yourselves the blessing you thus denunciate and without the complication and embarrassment of Constitutional Codes made only to be violated or neglected.

[341]

1821 July 20

/ Having healed yourselves / Casting from you this leprosy you could then be that which so long as it cleaves to you you can not be — an object of respect as well as sympathy to the whole of the English nation and the honest part of the French and / but / especially to the Anglo-American United States. Spaniards / My friends / why should I dissemble to / conceal from / you those reproaches in which it is said that had it not been for your nation and another which I can not bring my pen to trace this stain upon Christianity would years ago have been washed out. Such are the reproaches with which my ears are wounded: and what can I say to clear myself of them? tell me I beseech you

what, for with all my affection for you with all my partiality for your cause as often as this topic comes on the carpet so often am I mute.(*Note*: to that nation [*probably referring to U.S.*] whose place in the seat of moral and intellectual worth it stands so high above both.)

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1821 July 20

Speaking of the French nation, I say the *honest part*: for it is but too true and sufficiently notorious that in that nation there are those who having made a vow to make slaves of their own countrymen regard with honor any proportion / measure / the effect of which would be to set limites to the number of their slaves. With you these men I am satisfied are no more in honour than with me. But on this [. . .?] subject whatsoever may be said against them on the score of / inhumanity / barbarity and injustice, nothing can be said against them on the score of inconsistency and / or / hypocrisy. They have not sworn as your Representatives / by Articles 4 and 13 / and your King laws sworn to take for the end of / their / government the happiness of all the individuals belonging to the nation: they have not sworn to preserve civil liberty to all those individuals. In their eyes the proper end of government is — not the happiness of all, but the happiness of one, together with that of such few others, to whom in consideration of a certain mass of property which no matter by what means they have proceeded / contrived / to get such their possession, it shall please him to suffer to enjoy at his expense / share with him / a share in the means of happiness.

And these same men — what / in their eyes / are you yourselves? A gang of rebels and traitors whose blood flowing from a scaffold would to that of the vast majority of their fellow citizens to the most delightful of all spectators to their eyes. Such are the men with whom so long as any part of Ultramaria is called yours you hold community of principle and affection and endeavour: but with this difference that what with exceptions too inconsiderable to be worth taking into account they do but wish to be, you are.

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1821 July 20

How then my friends, if honour has any place / so it be that honour has / in your wishes, there it is for you and the Slave-buying provinces the connection is dissolved. There it is for you and of the purest kind.

Note well too that by so doing you will rid yourselves not only of the abomination of Slave-buying, but of the abomination of Slave-holding and by so doing you will thus in the scale of true honour place yourselves not only above the French Nation not only above the English Nation but above the Anglo-American Nation. For with them / this young and virtuous nation / though this least bad part of the double system is matter of regret and shame, it is still theirs: for with them that / necessity / which in your matters would be but pretence has for the present but too incontestable an existence, has still that hold which with honesty and sincerity they are continually employed in loosening to the utmost of their power.

You would rid yourselves I say of Slave-holding for I can / will / not suppose / I see no reason to suppose / that is for your own use that you continue to do what you still do towards keeping up that practice. It is no part of your new scheme of good government to import Black men into Spain to serve as slaves in your own houses. (But it is only because if you did not in breach of your Constitutional Code suffer them to keep Black men slaves in their houses and on their lands they would not (you fear) behave to you as subjects — this is the cause and the only cause by which the connection you have with the system of tyranny is continued) if you would not suffer them to treat others as slaves.

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1821 July 19 Omitted 9 Apr. 1822

Spaniards / Men of Spain /

Think not that by shutting his eyes, and giving the reins to passion, to self-tormenting no less than mischievous passion it is in the power of man to convert wrong into right, justice into injustice, cruelty into humanity, rashness into prudence, blindness into discernment, impossibility into accomplishment. Think not that by shutting his own a man can shut other eyes. Fancy not that any more than you are Don Quixote merely by shutting his eyes or driving spurs into his horse could any one of you more effectually than Don Quixote did put to death a wind-mill or stop the sails of it in their course. [...?]

Talking and trying thus they think to raise themselves, in fact they sink themselves. Nonsense will not in Spanish any more than in French or English raise a man. For the moment perhaps, yes: but no sooner is the nonsense seen to be nonsense than that moment is at an end.

The more you praise yourselves, not the more, but the less, will you be praised by others. Self-praise, be the quantity in which it is daubed on ever so unconceivable / enormous / will not stike. Even in this accomplishment, think not that you do or can make yourselves stand foremost. We have those who can outdo you in it. We have been longer in the practice of it. Look at our Tories: look at our Whigs: See with what facility, honor, glory, splendour, dignity pass with us for reasons. For reasons for our holding our jackets open to be pillaged: for reason for hiring men, by hundreds of thousands, to kill others in equal multitudes, multitudes none of whom ever gave them offence

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1822 April 6 Ultr.

Letter 16. By relinquishment, Spain will clear her morals and reputation from the taint of the Slave-trade and Slave-holding. Both stains expunged.

Spaniards!

Yes: I have this other honor for you: and this too without cost. You will cleanse yourselves of the foulest of all political and moral leprosies. Yes, and not so much as the trouble of a dip into a river will be requisite. In your Peninsula no man either buys Slaves or keeps Slaves: if to any Peninsular Spaniard it happens to defile himself with this abomination, he is out of the country or at any rate sends his money out of it. True it may perhaps be said morality will so

far be preserved inviolate, conscience unwounded *dishonor escaped*: but still no *honor*, no positive honor *gained.*

Oh, but indeed there will be. True it is, in itself the honor is but negative: but, thanks to comparison and to contrast, thanks to the dishonor that you will leave elsewhere, this honor of yours till be positive. Washing your hands and keeping them clean of this stain, you will place yourselves / take your station / above France,you will place yourselves above England: yes, in this seat of honor you will place yourselves even above the Anglo-American United States. No nation whose place is in so many other scales so much above that of every other. To be above France — above her in that degraded state from which it is hoped she is emerging is alas! but little: placing yourself above her you might still be in the mire: that the aggregate of despotic atrocity might be served up to the maximum, murder and oppression and depredation in this their most aggravated shape, one not merely connived at but encouraged: encouraged with a degree of enjoyment to which perfidy violation of one of the few treaties which have ever had beneficence for their object gives a zest.

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1822 Apr. 6

Rid Yourselves Lett. 16 Slave Trade stain

It is of *Slave-buying* you will understand me to be now speaking in the first place: not as yet of Slave-holding: for, wide indeed is the difference between the plunging men into that sad condition and the keeping them in that same bad condition those whose hard lot it is to be found in it. To keep himself pure from the [...?] stain is as perfectly in any man's power as to keep himself from plunging into any other filth that can be named: whether it be possible to cleanse himself from this other without producing evil in another shape and perhaps even to a still greater amount depends upon circumstances infinitely diversified.

To abstain from the traffic in slaves nothing more is necessary than the mere negative act of not engaging in it (*Note*: here too, wide is the difference between the purchasing of those who have been recently forced into this sad condition for the purpose of being sold, and the purchasing who were born in it, even of those who were found already settled in it.)

To abstain from Slave holding is a course of conduct which though negative in the expression would require acts: acts which to constitute an adequately comprehensive, effective and preponderantly beneficent system would require to be formed into a chain of such intricacy that upon cursory view the mind is burdened in the contemplation of it. Be the man who he may freedom to have is no means of well-being nor so much of *being* except in so far as accompanied with subsistence for himself and security for others against him as well as for him against others.

Turning with just honor from *Slave-traffic*, of *Slave-holding* and nothing worse than Slave-holding, for it is quite bad enough, let us now speak. Look now my friends, in the first place to England. See how by the simple act of ridding yourselves of your Ultramarian encumbrance you will on this ground place yourselves above England in the scale of beneficence. True it is that

neither in England nor in any European, Asiatic or African country under the dominion of England are there any human beings in a state of domestic slavery: nor yet, so I hope and believe in any part of English America situated on the Continent. But England has two American isles: of the population of these islands by far the greater part is in this sad state under the rest. Throughout that extensive archipelago colour still determines whether a man shall be dealt with by men as a man or as a beast. The owners of these unfortunates are not only inhabitants — a large portion of them — of the soil of England, therefore with so many of his subjects though the whip itself is not exercised yet the produce of it is enjoyed.

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1822 April 6
Rid Yourselves

This could not be the case or at least this neither and nor ought to be the case, of England were rid of her Ultramaria, as you will be, I hope, of yours. This would as little be the case with you, if by your rulers your Ultramarian kinsmen were given up to themselves. They would then be left to themselves: with the benefit of independence would be mixt in their case, whatsoever of good and evil the creation of their situation may have attracted to it. At any rate this honor will in all its entirety be yours: with them it would rest to say whether they will take any and what share in it.

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1822 April 6
Rid Yourselves

But now for the crown to all your glories: look downwards and on this part of the field of government you will behold stationed beneath you even the Anglo-American United States. In the endeavour to stop the traffic they were [. . .?] the first. Yet still has the poison maintained possession of their veins. No man to whom either the rest of mankind, or they themselves, are an object of regard — no such man can either think well of them, or hope so well for them, while the person remains there as if it were expelled. In any Assembly of Representatives how long can virtue in any shape dwell unimpaired if in the fields and the dwellings of so many of their constituents the evil of slavery and the correspondent despotism are not only unexpected but left to acquire an unlimited increase? When, as I do without difficulty I speak of a Constitution such as theirs as being formed by its own nation to last to the end of time, conscience never fails to whisper a *previso* — provided always that by some means or other this stain has at length been washed out of the current of private life. Still as that great condition remains as yet unfulfilled, the path is still open whereby you may outstrip those who are now the first in the race of felicity and virtue. Make their constitution yours, by that alone you may come up with them. Mean time what is much easier and sooner done, cast off the foul encumbrance of domestic slavery, you will then have the start of them. Thenceforward their course may keep up with yours, but can never run beyond it.

Animals

Bentham MSS., University College, London, LXXII, 214 (c. 1780)
Penal Code — Cruelty to Animals

Cruelty to animals — an offence

If any is wantonly (a), instrumental (b), in hurting or worrying (d), any animal (c), his punishment shall be as follows.

Punishment

1. He shall be made to do penance more or less public
2. If he be under 15 years, or of a condition not superior to that of a day-labourer, and of the male sex he may be whipped.

Exposition

[(a) Wantonly] The act is to be deemed wanton when performed deliberately for the sake of seeing the animal suffer, and not for any useful purpose.

It may be done for a useful purpose when done

1.In the way of chastisement, so it be moderate.

2. In making the animal subservient to the necessities or conveniences of man for example in the way of food, physic, cloathing, conveyance or manufacture.

3.To defend any person or thing from being hurt or annoyed by it.

4.In the way of experiment to promote medical and other useful knowledge.

[(c) Animal] It matters not what the animal is, so it appears to be susceptible of pain: whether bird, beast, fish or insect.

'The poor worm you tread on
'In corporal sufferance feels a pang as great
'As when a hero dies'

[(b) Instrumental] It matters not by what means: whether by beating it for instance with one's own hand, or by setting another animal to worry it; as by setting cocks to fight cocks, dogs to [. . .?] bulls or badgers.

[(d) Worrying] An animal may be worried by terrifying noises and gestures as well as by actual beating: as where an ox or a horse has broke horn and is pursued.

Reasons

Cruelties to animals restrained

The restraining men from exercising cruelty on inferior animals is of use on three accounts.

1. For the offender's own sake

1.On their own account: to prevent their giving way to habits of cruelty or insensibility, which when indulged are apt to lead once into the worst of crimes. He who has no feeling for [. . .?], will have but little for his fellow citizens.

In this point of view, an act of direct legislation against cruelty to animals is an act of indirect legislation against Personal Injuries, Murder and Incendiarism; and in short against all crimes which have malice for their source.

One of the best moral [P?] that ever were composed are Hogarth's prints enlisted The Progress of Cruelty. In default of laws, it was the object of that admirable artist to punish these abuses by the censure of the world.

2. For the sake of other men

2. In the same cases on account of these and even of a neighborhood: considerable mischief is sometimes done by cats and other domestic animals when worried by the cruelty of children; but more particularly in large towns by horned cattle driven to madness by the cruelty of their drovers.

3. For the sake of the animals themselves

3.On account of the animals themselves. To a benevolent mind misery let it be found where it will can never be an object of indifference. What reason can man give why he should be permitted to hurt other animals, except that it is not of their power to prevent it. If there be any arguments by which man can be justified in being insensible to the sufferings of other animals; by the same reasons may sovereigns be justified in being insensible to the sufferings of their subjects. Every man by a law of / principle in his nature which it would be equally impracticable and useless to surmount is irresistibly obliged to provide in the first place for his own well-being in the first place: and that in preference to the well-being not only of all other animals but of all other men: but when that is provided for, let any one say that can, why other animals in proportion to their susceptibility of pain and pleasure should have less claim to his attention than other men. What makes the condition of any creature an object of concern to a benevolent mind is the circumstance of sensibility: and not the circumstance of having a black skin instead of a white one, or four legs instead of two.

Between the case of man and that of other animals there is however this essential difference. Killing of a man is the worst crime that can be committed against man (*Note*: why? not on account of what the man himself suffered who is killed: for that is commonly less than he would have suffered by a natural death): because of the terror which such an act strikes into other men. In this horror other animals are not liable. To make amends for their [. . .?] in other respects, other animals have the privilege of not knowing that they are to die. Killing other animals therefore is nothing: the only harm is in tormenting them while they live.

Bentham MSS., University College, London, XIV, 310—312 (1830)
Deontology, Private (published partially in 1834)

[p. 310]
1830 January 6

Deontology Private

[After speaking of the relation of this to Deontology public, proceed thus —]

[...] You and all human beings besides. These are the beings whose happiness is here in question: whose happiness it is the object of these pages to promote. Say rather all sensitive beings besides: for why should any part of the sensitive creation be passed over with neglect. Not by any means unentitled to your care are the animals styled by you inferior with reference to the human. For were they not entitled to it on what footing stands the best title that could be made for the human: besides that by re-employing yourself in promoting their happiness you are led to promote the happiness of the animals of the race to which you yourself belong, and through theirs your own. Of this connection you cannot but have some conception already: to render it more particular, clearer, and stronger will be among the objects of these pages.

(Make reference to the Cruelty to Animals Preventing Society.)

[p. 311]
Deontology private

Yourself and all sensitive beings besides: First and foremost, as being nearest and naturally dearest to yourself all human beings. Supposing it to be your endeavour, by what mean will it be your endeavour? Answer — by virtues of which the aggregate is in the singular number denominated virtue. Of virtue there are two branches: the one commonly familiarly named prudence; the other now for the first time effective benevolence, an explanation of which will soon follow. Say of necessity in two words effective benevolence: for the designation of the idea in question no single word does the language afford.

Seat of prudence, the understanding: seat of effective benevolence, the will and its sources and affections; styled when considered as intense and strong, the passions.

Branches of prudence two: the one self-regarding; that which is not considered as having any influence upon or bearing any reference to the happiness of any other being: it is that to which exercise might have been given by the prototype of Robinson Crusoe — Alexander Selkirk — in his otherwise uninhabited islands: the other, extra-regarding; that which bears reference to / supposes the existence of other human beings. Say then extra-regarding prudence is that branch of prudence to which exercise is given by you in your dealings with other human beings.

[p. 312]
1830 Jan.6

Another sense in which the word prudence is employed is that in which it denotes the faculty by which whatsoever be the end in view aptitude is given

to the means employed for the attainment of it: but this belongs not to the present purpose.

Now as to effective benevolence. Purpose for which this term is employed, the designation of the compound composed of benevolence / beneficence. By the word benevolence alone expression would not be given by the idea here in view for supposing beneficence out of the question — supposing it never to have place it would be of no use; nothing would it add — nothing would it contribute to happiness. So on the other hand in regard to beneficence. True it is that it does contribute — by the very import of it, it means that which does contribute to happiness: but of itself taken apart from beneficence it is no virtue — it is no quality belonging exclusively to human or any other sensitive beings — it is a quality that is possessed by stocks and stores.

(Go on to speak of its branches positive and negative and to say that all virtues are reducible to these.)

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