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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 Westminster 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 deciphering Bentham's handwriting and in helping me to make contact with other Bentham scholars.

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

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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.

Revisionism¹ 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"': 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 Enlightenment? 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 category⁵ — 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, 1, 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 Yourself of Ultramarina*, 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. Helvétius 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 uncontroled 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 feminist 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 feminist 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 Ultramarina*, 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 unpunishable 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 withheld. [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 parts⁵⁹ 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