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Jeremy Bentham on Religion and Law Reform *

Since the very beginning of his inquiries into the fields of legal, political and moral philosophy, always guided by the principle of utility – “the greatest happiness of the greatest number”¹ –, Jeremy Bentham entertained a complex relationship with matters regarding religion in every form. Bentham’s utilitarianism was a “secular” one, unlike the ethical theories of “theological” utilitarian thinkers such as William Paley, Richard Cumberland, John Gay, and Thomas Brown. These Anglican philosophers were looking for a middle path between Calvinist extreme theological voluntarism and Hobbes’ conventionalist ethics and politics (which were generally deemed to be atheistic)². Bentham thought that the union of religion and utility was perverse, because it deflected the “science of morals” from careful calculation of pains and pleasures, substituting to it the knowledge of the will of God³. But, while he can be considered as an atheist from a theoretic point of view, he had a strong and clear conception of the role played by religion in shaping men's beliefs, and therefore their desires and

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¹ “Nature has placed mankind under the governance of two sovereign masters, *pain and pleasure*. [...] The *principle of utility* recognizes 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. [...] *that principle* [...] states the greatest happiness of all those whose interest is in question, as being the right and proper [...] end of human action” (Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, London: The Athlone Press, 1970, p. 11 and footnote). See also *A Comment on the Commentaries and A Fragment on Government*, London: The Athlone Press, 1977, p. 393: “it is the greatest happiness of the greatest number that is the measure of right and wrong”.

² See Sergio CREMASCHI, “*Utilitarianism and its Nineteenth-Century Critics*”, in *Notizie di Politeia*, N. 90 (2008), pp. 31-45.

³ See Jeremy BENTHAM, *Deontology, Together With A Table of The Springs of Action and Article of Utilitarianism*, Oxford: Clarendon Press, 1983, p. 328. See also James E. CRIMMINS, *Secular Utilitarianism. Social Science and the Critique of Religion in the Thought of Jeremy Bentham*, Oxford: Clarendon Press, 1990, pp. 87-88.



aversions. Religion, he thought, was a notably important matter of fact, the influence of which had to be acknowledged by any legislator who wished to pursue the dictates of the principle of utility. The enactment of reforms designed to maximize the happiness of the political community – that is, its total amount of pleasure, of well-being – was doomed to fail its scope, if proper consideration of the religious biases and traditions of that community was not shown.

Bentham was well acquainted with the oppressive power that organized religion can display. When he was at Oxford University, he was forced to subscribe to the Thirty-nine Articles of the Anglican Church: subscription was required for graduation. Bentham was only twelve at that time, had had a strict religious education and was probably still a believer. Nonetheless, he could not make up his mind to swear his faith in the Articles, like all his fellow students. Being a young genius, with a restless enquiring spirit, he examined the Articles and found some of them in sharp contrast with the Scriptures or just with plain reason; some others seemed to him altogether devoid of any meaning. When he approached a religious tutor, to explain him his doubts and ask for advice, he was told bluntly not to question authority. He finally subscribed, committing what in his view was perjury. Moreover, he was sure that the absurdities contained in the Articles were such that no one could really understand and believe what they said, so every subscriber was also a perjurer⁴. Another episode that showed him the intolerance of official religion, as well as its close connection with temporal power, was the expulsion of the Methodists from Oxford University⁵. These experiences left their mark on Bentham, which started to develop the view that not only religion could show an arrogant and intolerant face, but it also was capable of corrupting the morals of those who adhere to its dogmas. The subject of oaths was very important to him, because he considered veracity as “one of the most important bases of human society”⁶. Every incentive to mendacity put at risk the administration of justice. The first of Bentham’s works on religious subjects to be published was titled “*Swear Not At All*” after a passage in the gospel of Matthew, in which Jesus condemned the practice of oaths. That work was mainly targeted to propose the abolition of oaths in British law courts, also because of the

⁴ See Mary P. MACK, *Jeremy Bentham. An Odyssey of Ideas 1748-1792*, London: Heinemann 1962, p. 45; also James E. CRIMMINS, *Secular Utilitarianism*, cit., p. 116.

⁵ See James E. CRIMMINS, *Secular Utilitarianism*, cit., p. 117.

⁶ Jeremy BENTHAM, *The Rationale of Reward*, in *Works*, cit., Vol. II, p. 210.



de facto exclusion of those who belonged to some Christian sects (like the Quakers) from the possibility of witnessing⁷.

The enforcement of religious beliefs by means of legislation was in itself, Bentham claimed, a proof of disbelief in the force of the arguments in favour of that specific religion. His last major work was on a *Constitutional Code* which he wanted to submit to the new born liberal republics of Latin America and Europe. This *Constitutional Code* did not include any specific arrangement for religious matters: it did not allow of reward, neither of punishment in any shape for the professing of any particular opinion on the subject of religion. In his own words, it left "to each individual, after hearing any such arguments as he chooses to hear, to decide for himself on each occasion, what opinion has the truth on its side"⁸. He thought that "to *establish* religion, is to establish *insincerity*", because no opinion, however absurd, will not be able to find its supporters if reward is held out for the embracing of it. Opinions cannot turn right and left on command, as if they were arms or legs; so, if we devise punishments or rewards for the embracing of them, we do not really act on the judgment of those concerned, but just encourage them to lie. This means, for Bentham, that no power of government should be employed to support any religious opinion, because it is only through punishments and rewards that government can act. If the mischief of forcing assent to any opinion, by means of punishment, is quite obvious, also encouragement by reward is pernicious. The matter of reward can only be collected by taxation, which is a form of coercion and *prima facie* an evil. If the assent encouraged to any article of religion is sincere, then reward is useless. If it is insincere, then reward is a prize for mendacity. Even paying a salary to teachers of religion, for the purpose of persuading others to embrace the same faith, is a form of corruption of the morals and intellect of those involved. Bentham seems to assume that, if someone accepts such a job, in many cases it must be because of the money and not because of real belief. When he teaches others those articles of faith, he turns from a liar for hire to a deceiver for hire. To this form of moral corruption, intellectual corruption adds itself, because in many cases the teacher endeavours to believe to be true what he believed to be false at first. In this self-deceptive process, he calls off his attention from any consideration which contradicts the dogmas of his religion, while exaggerating the importance or those considerations in favour or those

⁷ See Jeremy BENTHAM, *Swear Not at All*, in *Works*, cit., Vol. V., partic. p. 201.

⁸ Jeremy BENTHAM, *Constitutional Code*, in *Works*, cit., Vol. IX, p. 92.



same dogmas. As a result, he develops a habit of partiality and of “wilful blindness”⁹.

These are the undesirable consequences of the legislator meddling with religious subjects, whatever the content of the religion he tries to establish. But, was it possible, and desirable, for the legislator to ignore altogether any kind of matter concerning religion?

Bentham thought that nature had “placed mankind under the governance of two sovereign masters, *pain* and *pleasure*”, which determined every kind of voluntary human actions¹⁰. Pains and pleasures could also be used to oblige humans to act in the desired way and to follow certain rules. He called “sanctions” the different causes or sources of pain and pleasure which could be used to influence men’s conduct. There was a “political or legal” sanction, from which pains and pleasures originated as punishments and rewards, established by the legislator and administered by the judges. There was, in addition, a “moral or popular” sanction, which was due to the opinion entertained of us by people at large, particularly by those with whom we happened to have closer and more frequent relationships. Finally, there was also a “religious” sanction, which people thought to be in the hands of some invisible, superior being, who could award us great pleasures if we obeyed his will, and strike us with enormous pains if we did not. What differentiated this religious sanction from the others was that, while the latter were expected to act in our present life, the former was regarded as a cause of punishments and rewards mainly in a future life: life after death¹¹. Of this punishments and rewards, of course, we could have no clear conception, but they could be matter of expectation, that is, of fear and hope, and could therefore influence our behaviour.

To pursue the maximization of happiness of the political community, the legislator could shape individual conducts by means of the legal sanction, basically by threatening punishment for the violation of laws¹². The popular or moral sanction was much less controllable by him, but he could reasonably hope for it to help him in pursuing utilitarian ends. Moreover, the popular or moral sanction, in the shape

⁹ See Jeremy BENTHAM, *Constitutional Code*, in *Works*, cit., Vol. IX, p. 93.

¹⁰ Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 11.

¹¹ See Jeremy BENTHAM, *A Comment on the Commentaries*, cit., p. 82; *An Introduction to the Principles of Morals and Legislation*, cit., pp. 34-37; *Deontology*, cit., pp. 174-177. Bentham also speaks of a “physical”, and – much later – of a “sympathetic sanction”; however, these are not worth of consideration for our present purposes, as they are no source of obligations.

¹² See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., pp. 34-37.



of public opinion, was the only one that could be applied to control the legislator himself and all those possessing political power¹³.

The real trouble was with the religious sanction. As we have already seen, meddling with religious issues was not something that Bentham would recommend as wise legislation. But the force of the religious sanction was great, and so was the danger of it acting in a direction contrary to the greatest happiness of the greatest number. In Bentham's view, indeed, religion had been much more a cause of misery than of happiness for humanity. All monotheisms, it is true, had conceived of the supreme Being not only as almighty and omniscient, but also as infinitely good and benevolent. But, Bentham observed, only seldom believers had really meant what they said. The benevolence they attributed to God had to be very different from the benevolence we commonly speak of. If God was really benevolent, he had to be a utilitarian, concerned to maximize the welfare – that is, the pleasure – of all human beings, and to reduce as much as possible their suffering. But what we could see in religious ethics was not the coherent pursuance of the greatest happiness of the greatest number. In most cases, believers seemed to act under ethical principles opposed to that of utility, like the principle of sympathy and antipathy and the principle of asceticism.

The principle of sympathy and antipathy could not account for what it condemned and what it approved of, since its standard of right and wrong was unreasoning hatred or love¹⁴. Religionists tended to attribute to God an unmotivated hatred for certain kinds of actions, and love for some others, with no relation at all with their consequences in terms of happiness or pleasure. Believers also displayed an incomprehensible tendency to feel hate for those who thought different – or maybe just *spoke* different – on religious matters.

The principle of asceticism, as described by Bentham, was that absurd principle which condemned every kind of pleasure and prescribed sheer self-denial. Partisans of this principle disapproved of any action which displayed a tendency to increase pleasure, and made it a duty to seek physical pain. In religion, this principle was embraced by all those who condemned the so-called "pleasures of the flesh" and tried to gain a place in heaven by despising and avoiding the happiness of the present life. They were, somehow, misplaced hedonists: they sacrificed pleasures in this life to obtain infinitely greater pleasures in

¹³ See Jeremy BENTHAM, *Deontology*, cit., p. 101.

¹⁴ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., pp. 25-29.



the afterlife. But, if it was so, they conceived of God as a malevolent Being, who was pleased by seeing humans suffer unnecessarily, and rewarded them for it. Where was, then, the infinite benevolence of God?¹⁵

Religion in itself, then, is of very little use to the maximization of happiness. After all, it is concerned more with happiness in the afterlife than in this life. The fact is, it prescribes how to act in this present life, and that, in Bentham's view, can be an obstacle for utilitarian legislation. That's why, in his attack on Sir William Blackstone and his *Commentaries on the Laws of England*, he tries to show that it is improper to mix theology with jurisprudence. He focuses on the so-called Law of Revelation, to which all Christians were supposed to conform, both in their private conduct and in the laws of their States. There are two different systems of laws, Bentham says, in the Scriptures: the law that Moses gave to the Jews, and the law that Jesus gave to all mankind. Now, Mosaic law was a real system of law, enacted by a legislator upon his people. Christian law was rather a system of morals, which had to be inferred from scattered discourses and observations throughout the gospels. Jesus himself was unclear on which parts of the old law he wished to abolish, and which other parts he did not. For this reason, Bentham says, theologians have had to frame their own mark for distinguishing those articles that must be seen as regarding only the Jews, from those other articles which are to be regarded as confirmed by Jesus as applying to all human nations. But, what is the standard they had to appeal to? In Bentham's view, that must have been simple utility. If no utility can be seen in observing a certain article of Mosaic law, then – theologians say – it has to be understood as not applying to all humanity, but only to the Jewish nation, maybe in that particular moment of its history. But in the end, if theologians have to resort to the principle of utility, why entangle in complex, and usually unsatisfactory, interpretations of the Scriptures? Why not appeal directly to that principle, relieving ourselves from the embarrassment of trying to reconcile the contents of the Bible with utility?¹⁶ The idea of God, Bentham concluded, was "absolutely unserviceable and indeed disserviceable [...] for the purpose of solving any political problem"¹⁷.

¹⁵ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., pp. 17-21.

¹⁶ See Jeremy BENTHAM, *A Comment on the Commentaries and A Fragment on Government*, cit., pp. 23-28.

¹⁷ Jeremy BENTHAM, *A Comment on the Commentaries and A Fragment on Government*, cit., p. 22.



Religion was also an obstacle on the way of law reform. Bentham dedicated all his life to projects of codification and rationalization of law: he sought to substitute to English Common Law – which he dismissed as “sham law”, “judge-made law”, and “*ex-post-facto* law”¹⁸ – a complete system of statute law, built upon utilitarian foundations, and in conformity with a rational all-comprehensive plan. Now, in his view, religion lent jurisprudence a sanctimonious air which posed an obstacle to law reform, by encouraging the thought that “everything is as it should be”¹⁹.

It is true that, in some passages, Bentham seems to acknowledge the role that religion could play to enforce the dictates of the legislator. He proposed a classification of offences, in which divisions and subdivisions were to be made, according to the classes of objects that were supposedly affected by those offences. At first, he included religion among those objects. “Offences against religion” belonged to the branch of “public offences”²⁰ and were those acts that “diminished or misapplied” the influence of religion upon the public at large²¹. But we should not be misled and look deeper into his rationale for including this class of offences. Bentham explains that, for preventing offences of any class, political power can use punishments and rewards as its instruments. However, those in charge of enforcing the respect of laws cannot take cognizance of every offence, neither can reach the offender in all cases. So, it can be considered useful to inculcate into the people the idea of a superior and invisible Being, whose eyes can see each and every mischievous act, and whose hands can always punish the wrongdoer, maybe in a future life. Religion is the name we give to this idea²². But Bentham makes it clear that, if acts against religion must be

¹⁸ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 8; *A Comment on the Commentaries and A Fragment on Government*, cit., pp. 49-51 footnote; *Of Laws in General*, London: The Athlone Press, 1977, pp. 187 footnote, 190, 192-195.

¹⁹ Bentham accused William Blackstone, the great common lawyer, of being an enemy of reforms, who had declared that “everything is now as it should be”: see Jeremy BENTHAM, *A Comment on the Commentaries and A Fragment on Government*, cit., p. 407 and footnote. That phrase, however, had been applied by Blackstone only to the Anglican Church’s laws regarding heresy. See. G. HIMMELFARB, *Bentham Versus Blackstone*, in *Marriage and Morals Among the Victorians*, London-Boston: Faber and Faber, 1986, p. 98.

²⁰ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 196.

²¹ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 202.

²² See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., pp. 201-202.



considered offences, it is only in consideration of their *indirect* mischievous effects. It is just because they damage something that is used to prevent other mischievous acts, other classes of offences. Bentham is not advocating legal enforcement of religious dogmas, nor is he trying to protect religious feelings and sensibilities. We *can* criticize religion, as long as this does not affect its contribution to the respect of laws. Moreover, it should be noted that also the misapplication of religious influence belongs to this class of offences. If appeal to religion is made to encourage the violation of laws of the State, then this must be regarded as an offence - indeed, an offence against religion. Bentham specifies that he only considers the influence of religion upon the happiness of the community in the *present* life, and is not concerned with its effects on the salvation of the soul. He also explicitly says that he does not consider offences against religion as offences against God, since an almighty immortal Being cannot be affected by any human action²³. However, he felt considerable doubt whether to include offences against religion in his plan for a penal code²⁴.

Anyway, in his opinion the religious sanction was generally too strong a force, too unreliable and hard to deal with for the legislator. Its effects were likelier to be vicious than good. It also perverted somehow the action of the moral or popular sanction, that is, of public opinion. Pious and impious behaviour substituted itself, in the eyes of the public, to virtuous and vicious behaviour, calling for approval or condemnation from the people at large. The result was that actions which were actually detrimental to general happiness were praised, and other actions, which were in themselves innocuous or even beneficial, were condemned. This was, in Bentham's view, particularly evident in the case of sexual nonconformities. Religious asceticism condemned every kind of pleasure and also sexual enjoyment as such; sex was merely tolerated as necessary for the preservation of the species. Convinced of the necessity of gaining God's favour in this way, the religious ascetic despised any sexual activity which gave pleasure without the purpose of reproduction. Those involved in such activities were hated as enemies of God. The force of law had been used to gratify this hatred by prosecuting homosexuality. It is worth noting that Bentham distinguished between the attitudes of different religions towards this subject, and that he also believed that no condemnation of

²³ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 202 footnote.

²⁴ See *The Correspondence of Jeremy Bentham*, London: The Athlone Press, 1968, Vol. II, p. 252 (letter to Franz Ludwig Tribolet).



sexual nonconformities could actually be found in Jesus Christ's words. Asceticism, he argued, was something that did not belong to Jesus' doctrine as we find it in the gospels. It was St. Paul who had introduced into Christian morality the despising of sexual pleasure, and the condemnation of every kind of sexual behaviour without the purpose of reproduction²⁵.

The same mischievous influence of the religious sanction was evident in the case of fanaticism and hatred towards the so-called heretics. As a motive for action, religion can be more powerful than any other motive whatsoever, even of vengeance or of pecuniary interest. It is also much more constant a motive than any other. This is why it must be taken into account by the legislator when devising penal laws, and by the judge when applying the force of the legal sanction to punish an offender. An offence committed for the motive of religion is much likelier to repeat itself, and less likely to be prevented by fear of legal punishment. For this reason, it also causes more danger and alarm²⁶, that is, more mischief:

If a man happen to take it into his head to assassinate with his own hands, or with the sword of justice, those whom he calls heretics, [...] he will be as much inclined to do this at one time as at another. Fanaticism never sleeps: it is never gluttoned: it is never stopped by philanthropy; for it makes a merit on trampling on philanthropy: it is never stopped by conscience; for it has pressed conscience into its service. Avarice, lust, and vengeance, have piety, benevolence, honour; fanaticism has nothing to oppose to it²⁷.

Now, how can the utilitarian legislator pursue his purposes without clashing with religion? Widespread religious sentiments are something that legislation must take account of, even if its laws are intended to be founded upon utilitarian ethics. Utility and religion, it is true, can often conflict. But, violating certain religious taboos, and

²⁵ See Lea CAMPOS BORALEVI, *Bentham and the Oppressed*, Berlin-New York: 1984, pp. 59-60. Campos Boralevi quotes Bentham's unpublished manuscripts, which were conceived to be the continuation of his book *Not Paul, But Jesus* (London: Hunt, 1823), published under the pseudonym of Gamaliel Smith.

²⁶ On alarm as a "secondary" or "second-order mischief" – that is, a mischief which arises as a consequence of another – see Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 144.

²⁷ Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., p. 156 footnote,



offending religious feelings, is something which causes great pain – which is not utilitarian at all.

Moreover, religious habits or prejudices can be sources of privileges, wealth and power for some classes of people²⁸. Sudden abolishment of these privileges can be productive of great pain and, of course, of hostility towards the legislator. While reforms can be necessary, it is not necessary that they be enacted brutally and carelessly. “Tenderness and circumspection” are required, if utilitarian legislation is to be established²⁹. It must also be remembered that the legal abolition or prohibition of a custom has to be justifiable from a utilitarian point of view: we must not seek to prohibit religious habits just because we find them repugnant to our manners³⁰. Moreover, not all human behaviour can be regarded as a proper object of legislation: the legal sanction often has to give way to the popular or moral sanction. Sometimes, the behaviour in question is simply indifferent from the point of view of utility: it does not do any mischief, that is, it does not reduce the happiness of the community. Some other times, it would cause much more damage to prohibit that behaviour than to let it unpunished³¹.

Nonetheless, legislation must not give in completely to religious rules and habits. There has to be a gap between religion and the law of the State, even if a religious confession is largely prevailing and adhered to by the vast majority of the community. Religious prejudice can be an obstacle to good government and, therefore, must be contrasted. Wherever possible, legislation must be wisely devised to slowly get over those prejudices which, at first, appear inextirpable. The easiest innovation to introduce, Bentham says, is that of refusing to a coercive custom the sanction of law³². This also involves those punishments which are justified mainly on religious grounds, like the

²⁸ On the power and privileges of the Anglican Church, which Bentham sought to abolish, see L.J. HUME, *Bentham and Bureaucracy*, Cambridge: University Press, 1981.

²⁹ See Jeremy BENTHAM, *On the Influence of Time and Place in Matters of Legislation*, in *Works*, cit., Vol. I, p. 174.

³⁰ See Jeremy BENTHAM, *On the Influence of Time and Place in Matters of Legislation*, cit., p. 181.

³¹ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., pp. 290-291. The main problem with non-political (that is, non-legal) sanctions is that their force cannot be quantified, unlike the political one: see *ibid.*, p. 172. However, “in all matters of indifference, let the political sanction remain neuter, and let the authority of the moral sanction take its course” (Jeremy BENTHAM, *On the Influence of Time and Place in Matters of Legislation*, cit., p. 181).

³² See Jeremy BENTHAM, *On the Influence of Time and Place in Matters of Legislation*, cit., p. 181.



prosecution of homosexuality³³. Moreover, no violation of religious obligations, real or purported, should be sanctioned by law and regarded as an offence – unless, of course, it is mischievous also in some concrete, non-religious way.

In Bentham's view, not only the entertaining of any opinion on religious subjects, but also the conforming of one's conduct to the dictates of any religion is a matter of private ethics, unfit for legislation. If someone violates certain religious obligations, let the punishment come from the religious sanction, not from the legal sanction: from the supreme almighty being, not from the earthly legislator. The main reason for this attitude is that Bentham's ideal system of law is founded upon the principle of utility. His utilitarian ethics may be said to be both *antagonistic* and *inclusive* towards religious ethics. They are *antagonistic*, because they seek to occupy those spaces in politics and legislation that once belonged to religion. From this point of view, the claims of religions must be contrasted. Utilitarian calculation of earthly pleasures and pains must substitute itself to the pursuance of religious values. On the other hand, this version of utilitarianism has an *inclusive* aspect in respect of religions. Religious values and beliefs shape human desires and aversions, hopes and fears. Denying anyone the possibility of relating to the divinity, in any freely chosen way, is something that provokes great and unnecessary pain. Also external manifestations of devotion must be allowed, as long as they do not cause harm to others. Utilitarian politics and legislation must be very careful in respecting this powerful source of pains and pleasure, that is – in Bentham's view – of motivation³⁴. When reform of religiously inspired legislation is needed, this must be led with the utmost care. Even the unjust privileges of the clergy must be dealt with softly, providing adequate compensation for their abolishment.

What lesson may teach us Bentham's utilitarianism with respect to legislation and religion? As we have seen, he would regard as anti-utilitarian any legislative intervention aimed at preventing people from engaging in every kind of religious practice – provided, of course, that those practices do not cause suffering to other people. For example, no

³³ On religion and the prosecution of homosexuality see Jeremy BENTHAM, *Reati contro se stessi: la pederastia*, (Italian translation of L. CROMPTON (ed.), "Offences Against One's Self", first published in *Journal of Homosexuality*, Vol. 3, N. 4 and Vol 4, N. 1, 1978), in G. PELLEGRINO (ed.), *Libertà di gusto e d'opinione. Un altro liberalismo per la vita quotidiana*, Bari: Dedalo, 2007, pp. 106-108.

³⁴ See Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, cit., pp. 97-98; *A Comment on the Commentaries*, cit., p. 86; *Deontology*, cit., pp. 90-91 and 105.



legal prohibition for women to wear a *chador*, or even a *burqa*, would be justified by the principle of utility. There is little doubt that Bentham would regard those as expressions of absurd religious asceticism; still, he would not advise the legislator to meddle with them. On the other hand, those religious practices involving serious mutilation of non-consenting human beings – such as, for example, infibulation – should be considered too painful, and remediless, not to be prohibited by law.

While allowing the great majority of religious practices to be freely engaged in, the utilitarian legislator should not allow anyone to limit other people's freedom on religious grounds. This includes freedom of speech and of public discussion. As we have seen, offences against religion, in Bentham's view, are only those that tend to reduce or misapply the good influence that religions can have on public conduct. In other words, using religion to encourage the violation of laws should be considered as an offence against religion, and so should be undermining the encouragement that religion can give to the respect of law.

This does not include any criticism of those aspects of religion which are "neutral" from a utilitarian point of view. Where only private ethics are concerned, anyone should be allowed to criticize every religious confession, without having to fear for his or hers life and freedom. In this case, offending religious sensibility is not a good ground for punishment, since, as Bentham says, limitation of freedom of expression is much greater a pain than having to endure criticism, harsh as it may be. Moreover, freedom of public discussion is the only way to gradually inhibit those aspects of religious confessions which look more absurd and gratuitously painful. Where the legal sanction of the law cannot act profitably, the moral or popular sanction, that is, public opinion, can pursue the ends of the principle of utility.

Personal freedom must also be protected against forced compliance to religious obligations. Again, the legislator cannot do anything if those belonging to a same religious community condemn and isolate non-conformists; but he can protect the latter from violence and repression. Meanwhile, it is to be hoped that freedom of speech and discussion will gradually persuade religionists to adopt more tolerant attitudes, and less strict views. It may look as a very difficult and narrow path to follow, but it is arguably the only utilitarian way.