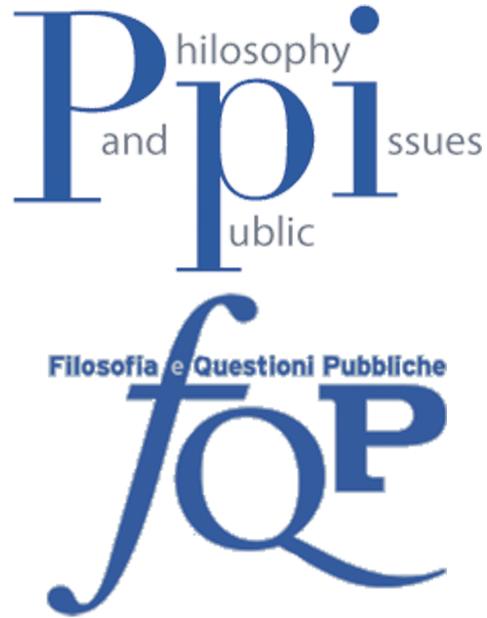


SYMPOSIUM
GLOBAL JUSTICE, PRIVATE MORALITY, AND
UTILITARIAN PERSPECTIVE



COMMENTS ON PHILIP
SCHOFIELD'S *JEREMY BENTHAM:*
PROPHET OF SECULARISM

DOMENICO MELIDORO

Comments on Philip Schofield's *Jeremy Bentham: Prophet of Secularism*

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I

Beyond decriminalization of homosexual conduct

Bentham argued that no action should be established as a criminal offence unless it caused harm. Homosexuality, where there was consent, caused no harm, and should, therefore, be decriminalized.

The pleasures of the bed would be treated with the same 'indifference' as the pleasures of the table (p. 24)

Just as morality and religion did not interfere in the methods of cookery, so they should not interfere in the modes of sexual gratification (p. 24).

These three quotations are very effective in showing the liberal effects of an utilitarian ethics such as Bentham's in dealing with decriminalization of homosexual acts among consenting individuals. When sexual acts concern adult and consenting people there is no harm and, when this occurs, morality, religion, and law should not interfere.

To be more precise, one should say that in Bentham's approach we find that non-interference is joined with indifference. In other words, a negative understanding of freedom coexists with a strongly non-judgmental attitude towards homosexual acts.

Bentham's approach has perfectly worked in favour of the decriminalization of homosexual behaviour. But how does it work when contemporary controversial issues involving some form of public visibility of sexual identities are at stake? The gay marriage goes beyond a simple decriminalization of homosexuality in so far as it seems to demand a fuller inclusion of gays and lesbians in the public domain, the recognition of different ways of understanding emotional ties, and a consequent transformation of the concept of family itself.

Bentham's approach would seem to be victim of the same weakness of a certain understanding of liberal toleration that has received objections by *recognition* theorists: "From the standpoint of liberal toleration, once homosexual sex has been legalized, gays and lesbians become full citizens on an equal footing with heterosexuals, even if they still face difficulties and humiliation in their private and social life."¹

II

Secularism and freedom of conscience.

Secularism is the view that what is morally right should be based on whatever promotes the well-being of sentient creatures in the physical world, to the exclusion of all considerations derived from a belief in the supernatural (p. 1).

Bentham wanted to throw off the grip of religion from all areas of public life: he regarded sexual morality as the field in which the critical battle would be fought (p. 4).

This quotations show that Bentham's conception of secularism is very strong and that, if it is realized, religion is completely banned from public life. This ban seems in contrast with the emphasis on the protection freedom of conscience, which is a central concern in the contemporary discourse about secularism in liberal democracies.

¹ A. E. Galeotti, *Toleration as Recognition* (Cambridge: Cambridge University Press, 2002, p. 171).

The deep divergences about how everyone has to lead her life is the starting point when freedom of conscience is at stake. Conceptions of the good have historically been the object of deep disagreements. This is not a contingent but a structural aspect of contemporary liberal democratic societies. Charles Taylor and Jocelyn Maclure argue that “the secular State respects [individuals’] freedom of conscience or their moral autonomy, namely their right to lead their life in light of their own choices of conscience” (*Laïcité et Liberté de Conscience*, Boreal, 2010, p. 31). Differently stated, in a secular State individuals are sovereign when they decide about the conception of the good they want to pursue. When people take their fundamental decisions, majorities of whatever kind should not exert coercive pressures. This means that a secular State respect individual conscience. But, what exactly is conscience?

As Martha Nussbaum has written, conscience is a peculiar human capability. To be more precise, it is the “faculty of inquiring and searching” (*Liberty of Conscience*, Basic Books, 2008, p. 169) for the ultimate meaning of life. Convictions of conscience, either religious or secular, are so relevant for the discourse about secularism and deserve special political and juridical protection because they concern fundamental individual commitments. Convictions of conscience, differently from other beliefs or preferences, are related to the moral identity of persons, to the ways in which they shape their life in those special circumstances in which the overall meaning of life is concerned. Further, as Taylor and Maclure maintain, convictions of conscience are connected to the notion of moral integrity. As it is used in this context, moral integrity “depends from the degree of fit between, from one side, what a person perceives as her duties and her axiological overriding commitments and, from the other side, her actions” (p. 97). Thus the special protection and status that a secular State confers to the convictions of conscience is a measure that permits to obtain a certain consistency between some very important moral commitments and the actions effectively performed.

My second comment concerns the way in which an approach to secularism derived from Bentham could deal with freedom of conscience. For instance, what is to be done when a woman decides as a matter of conscience (thus without coercion) to wear an Islamic veil? This decision brings in some way religion in public life. So what is the right attitude of a secular State grounded in Bentham’s views in similar cases?

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