

Bentham's argument for representative democracy

1 Introduction

It is commonly claimed that Jeremy Bentham underwent a “transition to political radicalism” during the last couple of decades of his life.¹ The claim refers to his conversion to defending representative democracy as the only proper form of government, a defence ultimately resting on his theory of the two “sovereign masters” pain and pleasure. These two entities constitute the foundation of both human psychology and morality for Bentham: they figure in human motivation as well as in moral criteria of rightness. (Bentham 1970[1789/1823]:11.²)

In the following section of this chapter I will reconstruct Bentham’s argument for representative democracy according to this foundation. From the vast amount of Bentham’s writings, I will mainly employ texts dating after 1809 and dealing explicitly with democratic theory on the one hand, and motivational theory on the other. The exegesis will be complemented with selected important contributions or objections to Bentham’s ideas made by a few of his modern commentators.

2 Reconstructing Bentham's argument for representative democracy

Bentham’s main line of argument consists of three central claims; the first, which I will label as the *Proper End Claim*, concerns the proper end of government; the second, the *Actual End Claim*, concerns the actual end of government; the third, the *Reconciliation Claim*, concerns the reconciliation of these two ends, invoking the notion of representative democracy. I will sketch Bentham’s ideas on each of these claims respectively in the following three subsections.

2.1 The proper end of government

Bentham’s main line of argument for democracy takes its departure in the normative principle of utility, or greatest-happiness principle (in this chapter, for exegetical reasons, I will take

¹ For a short account of the reasons for, and main features of this transition, see Dinwiddy (1975). For a more detailed, biographical account of the evolution of Bentham’s political thought, and especially the emergence of his advocacy for democracy, see Schofield (2006).

² Dates in square brackets refer to the year of original publication or, in case the text was not published during Bentham’s lifetime, the year it most likely was written. In the latter case, I follow the estimations provided by the critical edition of *The Collected Works of Jeremy Bentham* by the Bentham Project (Oxford University Press).

these to be synonymous³), stating that “the greatest happiness of all” ought to be the end of all human action, or rather, since “on every occasion the happiness of every individual is liable to come into competition with the happiness of every other”, “the greatest happiness of the greatest number” (1989[1822]c:234). Since this principle applies to the actions of government as well, the following normative principle or *Proper End Claim* emerges:

The right and proper end of government in every political community is the greatest happiness of all the individuals of which it is composed. Say in other words, the greatest happiness of the greatest number. (Ibid:232.)⁴

It has been widely discussed what exactly to make of this latter phrase, not at least by Bentham himself. He explicitly recognized that the expression “[g]reatest happiness of the greatest number” was prone to mistaken interpretations: it might be thought that it considered solely some (arbitrarily chosen) majority’s total amount of happiness as relevant to the moral calculus, thus neglecting the minority’s amount of happiness. In other words, the principle thus stated might be thought to justify the sacrifice of a minority’s happiness to the happiness of a majority, even when this would reduce the sum total of happiness within the entire group. To avoid such misunderstanding, Bentham suggested that the italicized appendage should be discarded. (1983[1829]:309-10.)⁵ Thus, it is reasonable to interpret Bentham’s utility principle as advocating the maximization of the *sum total* of happiness within a given group.

For greater clarity, the relationship between the principle of utility, a “fictitious entity” according to Bentham’s ontology, and the “real entities” of pain and pleasure must be sketched. The latter, as opposed to the former, constitute “really existing” objects, which are capable of giving meaning and truth to propositions; in order not to constitute “a heap of nonsense”, propositions containing names of fictitious entities ultimately must be explicated by reference to real entities. (1983[1815/17]:74.)⁶ Bentham’s principle of utility advocates the maximization of the happiness of the community under consideration. The community, however, is another fictitious entity; it is constituted of all its individual real-entity members.

³ This assumption of synonymy is supported, inter alia, by Bentham’s own discussion of the several more or less “apt denominations” of this principle (1983[1829]:296-300); see also his (1970[1789/1823]:11n). Cf. also J. H. Burns (2005:49-53), who argues convincingly against David Lyons “dual standard” hypothesis, which assigns different meanings to the terms “principle of utility” and “greatest happiness principle” respectively. For an argument to the same effect, cf. even Rosen (1983:203-6).

⁴ Cf. even e.g. Bentham (1983[1830]:136).

⁵ For short discussions of this topic, see Burns (2005:57-8), Rosen (1983:201-3), and Goldworth (1969).

⁶ According to Bentham, while the possibility of referring to fictitious entities is a necessary precondition for rational discourse, “any name of a fictitious entity can no otherwise be made clearly intelligible than by means of some relation which the import of it bears to some word which is the name of a real entity”. (1983[1815/17]:74-9). For a discussion of Bentham’s concept of pleasure and its relation to his concept of the good, see Goldworth (1972). For an introduction to Bentham’s ontological theory, see Schofield (2006:1-27).

Hence, the community's happiness is constituted of all its members' individual amounts of happiness in aggregation. (1970[1789/1823]:12.) Finally, individual happiness (or "well-being") is the net sum of pleasure over pain within the individual under consideration (1983[1814-31]:130).

For the purpose of my argument, it would be preferable not to take a stand on the exact meaning of the terms 'happiness' or 'utility'. This would conveniently allow them to figure as placeholders for whatever notion the reader sees fit, irrespective of if she prefers Bentham's own ideas as to the sub-ends of happiness: subsistence, abundance, security, and equality;⁷ or a rather straightforward hedonist notion of happiness; or other mental-state accounts; or some account of preference satisfaction; or proxy accounts referring to goods or resources or capabilities of various kinds. Even egalitarian considerations, concerning these various notions, could be incorporated (by incorporating e.g. the badness of inequality or some conception of diminishing marginal utility).⁸

2.2 The actual end of government

The next step within the main line of argument for representative democracy relies on Bentham's descriptive psychological (motivational) *Principle of Self-Preference*, stating that, for every individual in general, "self-regarding interest is predominant over all other interests put together" (1989[1822]c:233).

The relationship between the notion of an interest and the already discussed notion of happiness is given according to the following:

A thing is said to promote the interest, or to be for the interest, of an individual, when it tends to add to the sum total of his pleasures: or, what comes to the same thing, to diminish the sum total of his pains. (1970[1789/1823]:12.)

From this, we can infer that 'individual interest' ('self-regarding interest' in Bentham's terms) refers to the maximization of pleasure or minimization of pain of the individual in question, or, in short, the maximization of this individual's own happiness (the net sum of pleasure over pain). Thus, the principle of self-preference states that maximizing one's own happiness is

⁷ Cf. Bentham (1989[1822]b:142): "It is the interest of the greatest number that the external instruments, or say means, of felicity be distributed in a manner as near to equality as is consistent with general subsistence, general abundance in the character of a security against accident, and general security in all its shapes."

⁸ Cf. Broome (1991). For a discussion of Bentham's own views on equality, see e.g. Rosen (1983:202-3; 211-220).

what generally psychologically motivates individual action (regardless of whether this violates the normative principle of utility).

Note, however, that Bentham distinguishes between pleasure and pain of the “*self-regarding*” and of the “*extra-regarding*” class. The latter denotes such pleasures and pains as are derived from other individuals’ happiness (on Bentham’s suggestion due to sympathetic or antipathetic interests), whereas the former denotes the remaining pains and pleasures, i.e. those which are independent of other individuals’ happiness. Thus, Bentham’s motivational theory is not necessarily a crude form of psychological egoism (1983[1815/17]:84-6; 94).⁹

Now, since any government is composed of individuals, I will call them ‘functionaries’, the principle of self-preference applies to it as well, thus entailing the following descriptive principle, or *Actual End Claim*:

The actual end of government is in every political community the greatest happiness of those, whether one or many, by whom the powers of government are exercised. (1989[1822]c:232.)

Now, there would be no problem, and thus no need for further argument, if the actual end (thus defined) necessarily coincided with the proper end of government. However, the turning point for Bentham’s argument is that such necessity cannot be presupposed. Thus, the mere possibility of discrepancy opens up for an interesting discussion of both its origins and possible solutions. But moreover, if it turns out that such discrepancy is not only possible, but also highly probable, such a discussion would gain importance, since finding and implementing discrepancy-reducing solutions (which adjust actual to proper end) would be of quite some moral urgency. In the remainder of this section I will argue that this discrepancy in fact is highly probable, given Bentham’s premises; Bentham’s solution for reconciling the two ends will be the topic of the subsequent section.

The discrepancy between the actual and proper end of government, between what is and what ought to be, occurs only in those cases where maximizing the happiness of the individuals constituting government is detrimental to the maximization of the happiness of all, i.e. of all the individuals constituting the community. This condition is thus a necessary one for Bentham’s argument; in turn, it seems to entail a necessary condition of its own: that the set

⁹ For a more detailed account of the different kinds of pleasures and pains constituting the “springs of action”, see Bentham (1983[1815/17]). For a discussion of psychological egoism, see below, section x.x.

of individuals constituting the community does not coincide with the set of individuals constituting government.¹⁰

This latter condition is inevitably satisfied within Bentham's scope of political thought; he solely considers governments that, as to the sets of their members, are distinct from the set of the members of the community (either the former forms a non-identical subset to the latter, or forms no subset at all): monarchy, aristocracy, and representative democracy (plus "mixed forms"). Direct democracy, the only form of government where these sets would coincide, Bentham deems to be "physically impossible", both regarding the gathering of every member of the community "within sight and hearing of all the rest", and regarding the amount of time each member would have to invest in this kind of decision-making. Here, Bentham's pragmatist approach to legal and political theory becomes evident;¹¹ in his estimation, direct democracy is just not feasible within the scope of nation states: "For a time at least it might serve for hundreds: it could never serve for millions." (1989[1822]c:238.)

The former condition, stating that the discrepancy between actual and proper end occurs only if the maximization of the functionaries' happiness is detrimental to the maximization of the happiness of all, calls for some closer scrutiny: when and why would this condition be fulfilled? The answer to this question rests on Bentham's ideas on the relationship between individual and universal interest.

In analogy to the notion of 'individual interest', 'universal interest' refers to the maximization of the happiness of all, i.e. of the community. Thus, again in analogy with what was established above, a thing can be said to promote the universal interest, when it tends to maximize the happiness of the community. Promoting the universal interest is, of course, what the principle of utility advocates. Promoting the individual interest is, on the other hand, what the principle of self-preference advocates, i.e. what motivates individuals. Whenever these two interests do not coincide, i.e. whenever an individual's interest is contrary to the universal interest, Bentham speaks of the individual interest as a "sinister interest". In case such interest motivates the individual to action, thus sacrificing the universal interest,

¹⁰ The question whether *coincidence* of the two sets (i.e. a government consisting of all and only those who are members of the governed community, "direct democracy") is a sufficient condition for the promotion of the utility-principle (i.e. the maximization of happiness of the community) will be examined below; see section x.x.

¹¹ Bentham actually attempted to provide the constitutional assemblies or sovereigns of England, Scotland, France, Russia, the United States, Venezuela, Poland, Spain, and Portugal with detailed, utilitarian-based, codes of law – ultimately though without any success (see Schofield 2006:240-9).

Bentham speaks of the “sinister sacrifice” (1989[1822]c:235n). The latter is especially problematic from a normative perspective when performed by functionaries, since it then compromises achieving the proper end of government (1989[1822]a:27).

But surely, we may assume that the functionaries’ individual interests might coincide with the community’s interest; be it that their self-regarding interests just happen to concur with the universal interest, or that they actually are motivated by extra-regarding interests beneficent for the whole community. However, since such coincidence could not be counted upon, Bentham notes that relying on it would be conducive to the “most pernicious” consequences (1989[1822]a:15).¹²

But again, we may set our hope to the functionaries’ sense of duty of promoting the universal interest, which could motivate corresponding behaviour. However, according to Bentham, we cannot rely on such a sense of duty to actually motivate individuals against their interests. Bentham even seems to suggest that we cannot truthfully speak of such a duty, since “it never is, to any practical purpose, a man’s duty to do that which it is his interest not to do” (1983[1814-31]:121). It seems that Bentham considers a corresponding interest as a necessary condition for the *existence* of any duty. This is, of course, a rather surprising statement, since it in a vast amount of cases seems to deprive a given moral imperative of its normative force, or rather to invalidate the moral imperative *per se*.

Presumably, Bentham’s idea is to show that promoting one’s interests will often entail doing one’s duty, by showing “in how many different ways, more than is very generally understood, each man’s happiness is ultimately promoted by an intermediate regard shewn in practice for the happiness of others” (ibid.:123).¹³ Arguably, this would provide a moral imperative with some motivating (if not normative) force. Even so, Bentham seems to anticipate his critics on this point and guards himself, leaving the relationship between interest and duty more open:

[I]f it can not be said with truth that what is not a man’s interest is not his duty, it may at any rate be said that unless in his eyes, at the moment for action, it is not his interest, *in vain* will it be said to be his duty or endeavoured to be rendered his duty. (Ibid.:175, my italics.)

¹² Cf. Schofield (2006:274): “Although self-regard was the predominant propensity of human nature, Bentham did not deny the existence of social interest – the pleasure a person experienced in seeing someone else happy. Yet so far as constitutional law was concerned, the legislator had to assume the worst [...]” Cf. Bentham (1989[1822]a:15): “In the framing of laws, suspicion can not possibly be carried to too high a pitch.”

¹³ For a similar suggestion on this “natural identity of interests” (as distinguished from the “artificial identification of interests” as developed in sec. 2.3 below), cf. Sprigge (1999:301-9).

For our discussion, this much more plausible assumption will be sufficient. It just states that even if there could be some duty without a (perceived) corresponding interest, we cannot expect individuals to act according to this duty, i.e. we cannot rely on any motivating sense of duty.

With all this said, what kind of opposition is assumed between individual and universal interest? Michael James claims one of Bentham's central presuppositions to state that "the individual normally would promote *any* interest he shared with a minority group within the community in preference to *any* interest he shared with the community as a whole" (1981:50, my italics). This is a somewhat polemic restatement of Bentham's own thought, which serves James' subsequent argument.¹⁴ In Bentham's own words, his presupposition is the following:

Of the principle of self-preference the effect is – that, as in every other situation so in that of ruler, generally speaking, a man pursues his own happiness in preference to that of all other individuals put together: in preference to, and thence, *in so far as competition has place*, to the sacrifice of their happiness. (1989[1822]c:270, my italics.)

This quote clarifies that Bentham neither presupposes that "competition" between individual and universal interest always has place, nor that an individuals' motivation stemming from his individual interest need be related with some minority group who shares this interest. Rather, Bentham's point is this: since it is every individual's predominant interest to maximize her own happiness, she will, as far as possible and as far as needed (considering that competition need not have place), act so as to sacrifice everyone else's happiness to her own.

When discussing the election of representative functionaries, Bentham appears to make more extreme assumptions as to the character of individual interests and the opposition between them:

If it were possible, each constituent would cause to be chosen such a Candidate as would sacrifice the interests of all the constituents to his: [...] certain points common to all excepted, the interests of all these several constituents are in a state of opposition to one another: the interest of no one can be promoted without the sacrifice of the interests of all his competitors and opponents, without the sacrifice of all these adverse interests. (1989[1822]b:135.)

Still, even if we were to accept this bleak picture of individual motivation (apparently lacking any extra-regarding interest), we must concede that for every state of affairs it is a contingent

¹⁴ For an account of James' argument, see below, section x.x.

matter whether the initial possibility-condition would be fulfilled, i.e. whether such a scenario – allowing some individual to literally exploit everyone else to her own benefit – would obtain. For that reason it cannot be claimed that the opposition between any two individuals' interests or between individual interests and the universal interest is a psychologically or metaphysically necessary one. For our argument, it suffices to claim – quite plausibly – that such opposition is possible.

Note that in this sense, possibly, there would also be opposition between any individual's interest and the interest of some minority group. Regarding his quote above, what James must have in mind is the following: probably, an individual *i* would be motivated to promote some strong individual interest *a*, which he shares with a minority group, *if* such a minority group's existence and cooperation would provide an opportunity to succeed in promoting *a*, *and if* there would be no opportunity to promote an even stronger individual interest *b*, which *i* shares with no one (which would be at everyone's, even the other minority group members', expense).

Indeed, this scenario is exactly what Bentham has in mind when he discusses the relationship between the functionaries' individual interests and the interest of the community. The functionaries can be conceived as members of a minority group (government) whose special character, viz. entrusted power, provides them with great opportunities to succeed in promoting whatever interests they share (whereas, arguably, regarding the promotion of their idiosyncratic interests, the functionaries have a similarly minuscule chance as everyone else in the community). Thus, both of the above conditions are fulfilled, which makes it quite probable that the functionaries would be motivated to promote their shared individual interests (rather than the universal interest). Thus, the possibility and probability of discrepancy between proper and actual end of government are established, posing a significant problem at this stage of the argument.

2.3 Proper and actual end reconciled

The gist of Bentham's argument is to reconcile the actual end of government with its proper end. With nothing else to rely on, the only practicable way of achieving this is to ensure that whatever course of action maximizes the happiness of the community would also be the course of action which maximizes the happiness of the individuals constituting government,

according to the following “Junction-of-interests prescribing” principle, or *Reconciliation Claim*:

If [...] the conduct of no man can at any moment reasonably be expected to be determined by any interest that at the same moment stands in opposition to that which in his conception is his own individual interest, [it] follows that for causing it to take any direction in which it will be subservient to the universal interest, the nature of man, the nature of the case, affords no other method than that which consists in the bringing the particular interest of the rulers into accordance with the universal interest. (1989[1822]c:235.)

Such an identification of interests, Bentham claims, can only be achieved by “over-powering” the motivational force of the individual, sinister interest, thus leaving as the only source of motivation the universal interest (in which, by definition, every individual has some part). There are, in theory, two ways of how this can be achieved: either all actions which promote the sinister interest are (sufficiently) punished, or all actions which promote the universal interest are (sufficiently) rewarded. (1989[1822]c:236.)¹⁵ However, since Bentham is pessimistic about the motivational force of (hope for) reward, the means that effectively remains is (fear of) punishment (1983[1830]:20-1; 21n-23n). In other words: the required identification of interests can only have place if there is an appropriate punitive incentive structure to this end.

The upshot of Bentham’s argument is that such an incentive structure can be effectively set up solely under one specific form of government: representative democracy. The argument is often framed in the negative, in terms of excluding other forms of government, stating the reasons why a monarchy or aristocracy (or any mixed forms of government) could not be expected to effectively set up such an incentive structure.¹⁶ However, I will here reconstruct a positive argument for representative democracy.

The structure of the argument can be stated as a chain of sufficient conditions for achieving the identification of interests for the functionaries; both conditions rest on Bentham’s theory of motivation. Firstly, for such identification to have place, it is sufficient that an incentive

¹⁵ According to Bentham, “over-powering” the motivational force of some interest (by changing the incentive structure) is the “direct mode” of abolishing the interest in question, whereas depriving an individual of the “power to perform” the actions necessary for promoting this interest is the “indirect mode” to the same effect (1989[1822]c:236). However, such depriving of power, short of physically incapacitating individuals (which surely is not an option for setting functionaries on the proper track of governing), can only operate through incentive structures which punish (or reward) unauthorized (or proper) actions. Hence, I will not investigate further into this indirect mode of abolishing an interest.

¹⁶ Cf. e.g. Bentham (1989[1822]cc:151-212); (1989[1822]c:236-7).

structure is set up and enacted which makes promoting any sinister interests less appealing for each functionary than promoting the proper, universal interest (preferably by threat from punishment). Secondly, in order to secure that such a proper incentive structure is set up and enacted, it is sufficient to entrust such a set of individuals (one or several) with this assignment whose predominant (motivating) interests coincide with the universal interest.

There is indeed one, and only one set of individuals whose predominant interests necessarily coincide with the universal interest of the community in question: the entire community itself, i.e. the people. The reason for this coincidence being necessary is that, according to Bentham, “the universal interest is nothing else but the aggregate of all individual interests” (1989[1822]:133).¹⁷ In Rawls’ words, the aggregation of everyone’s particular interests is the “pure procedure” for determining the universal interest: there is no other “independent criterion” to this effect (Rawls 1999:74-5).

Note that, even if the aggregation of all particular interests to the universal interest is a pure procedure, letting people make collective decisions according to their particular interests is not, since it might be the case that people are mistaken about their interests. However, Bentham assumes that individuals mostly know what their particular interest is: “With a benefit of a certain degree of experience it may be delivered in the character of a general proposition [that] every man is a better judge of what is conducive to his own well-being than any other man can be.” (1983[1814-31]:131.) This proposition is subsequently qualified as follows: “every man, being of mature age and sound mind” (ibid:251). This assumption will have to be discussed further on.

The economic expression of setting up and enacting an incentive structure can be translated into political terms if one replaces it with the notion of political power, more specifically: constitutive or sovereign power.¹⁸ This is indeed what Bentham entrusts the people with: “if an equal share of the constitutive power in question is in the hands of every member of the

¹⁷ This definition of the fictitious entity ‘universal interest’ can be found in numerous places in Bentham’s writing, e.g. as early as in (1970[1789/1823]:12): where the interest of the community (which, for the community in question, is just the universal interest) is claimed to be “the sum of the interests of the several members who compose [the community]”.

¹⁸ As for now, an intuitive notion of power will do in order to follow the argument. Bentham himself is not altogether clear on how the term should be defined. Two quotes may serve for illustrating what he had in mind: “The power of the governor is constituted by the obedience of the governed [...]” (1970[1782]:69n); “the ultimate efficient cause of all power of imperation over persons is a disposition on the part of those persons to obey” (ibid.:18n). More on power below, see section **xx**.

community in question, the aggregate of the several personal interests is itself the universal interest” (1989[1822]a:96). Two questions emerge from this: why “an equal share” and what exactly is “the constitutive power in question”?

Demanding an equal share of power for each member of the community reflects an early idea of Bentham: everyone’s individual interest is to be counted equally in aggregating the universal interest. Even though Bentham is aware that both the desire and the capacity for happiness might differ among individuals, and thus (the intensity of) their interests, he suggests that, lacking a trustworthy method of measurement, one should retreat to the next best claim, viz. assuming everyone’s interests to count as morally equal:

Chacun a un droit égal à tout le bonheur dont sa nature est susceptible. Faute de pouvoir déterminer le degré relatif de bonheur dont différents individus sont susceptibles, il faut partir de la supposition que ce degré est le même pour tous. Cette supposition, si elle n’est pas exactement vraie, approchera au moins autant de la vérité que toute autre supposition générale que l’on pourroit mettre à sa place. (2002[1788]:68.)¹⁹

Of course, this assumption is not uncontroversial and will have to be addressed.

The constitutive power in question which Bentham has in mind is somewhat specified in the third of the following means for “effecting the junction of interests”:

1. To those whose interest composes the universal interest give or leave as much power as possible.
2. To those whose interest is not the universal interest but in its very nature adverse to the universal interest give as little power as possible.
3. Keep on foot, in the character of a power prepared when occasion calls, a power superior to their own, the power of those whose interest is the universal interest, in readiness to act upon them in the character of Judges and punish them with dishonor and loss of office in their character of legislators. (1989[1822]c:242.)

In fact, what is referred to here is the incentive structure for the functionaries, as controlled by the people: they are given the opportunity to “punish” the functionaries in a number of ways. In Bentham’s terminology, the incentive structure is described as a number of “securities” which are to ensure that the course of action that maximized the happiness of the functionaries maximizes the happiness of all – or, in other words: that the functionaries’ desire to commit

¹⁹ “Everyone has an equal claim to all the happiness to which his nature is susceptible. Lacking the ability to determine the relative degree of happiness to which different individuals are susceptible, one has to assume that this degree is the same for all. This assumption, even if not exactly true, approximates the truth at least as much as any other general assumption which one could put in its place.” (My translation. I follow Schofield’s suggestion of translating “droit” with “claim” instead of “right”; cf. Schofield (2006:83n).)

the “sinister sacrifice” is nullified. Such successful nullification, as brought about by the proper securities, would result in an “appropriate moral aptitude” in the functionaries.²⁰

Note, however, that this talk of moral aptitude rather obfuscates what is at play here: it is not some internal moral quality but rather the external payoff-structure the functionaries find themselves placed in. Accordingly, Bentham defines “appropriate moral aptitude” as “practical innoxiousness [...] not having any other cause than impotence” (1989[1822]a:15). Moreover, he claims that, whenever functionaries extensively commit the sinister sacrifice, i.e. lack appropriate moral aptitude, merely replacing these *functionaries* with new ones would be an “altogether useless [...] pretended remedy”; what is needed is instead a change of the *form of government*, brought about by an uprising of the people (1989[1822]b:128).

The securities suggested by Bentham are on the one hand four “direct” ones, aiming to constrain the government members’ sets of action alternatives by minimizing their functionary power, access to public money, and salary, and by excluding any possibility to receive “factitious dignities” as a substitute for salary (1989[1822]a:28; 30-52). On the other hand Bentham suggests two “indirect” securities, aiming to nullify the government members’ desire to perform the sinister sacrifice by changing their incentive structure through maximizing both their legal and their moral responsibility. The former consists in the functionaries’ susceptibility to be dislocated from office or legally punished, whereas the latter consists in their susceptibility from “popular or moral sanction” at the hands of the informal “tribunal of public opinion”. (1989[1822]a:28; 53-76.)²¹

Since, according to Bentham’s premises, the only ultimate means of guiding individuals are (fear of) pain and, possibly, (hope for) pleasure, all these securities can be represented as payoffs within an incentive structure. Even “direct” securities, such as limiting a functionary’s power (i.e. constraining her set of action alternatives), can only be sufficiently established through (punitive) incentives which nullify any motivation to act in unauthorized ways. Ultimately, Bentham places all these securities, i.e. the entire incentive structure, under the

²⁰ Bentham’s famous claim is for both “maximization of appropriate aptitude” and “minimization of expence” (1989[1822]a:4). For a short account of the other parts of official aptitude, intellectual and active aptitude, see below. As to the “expence” of government, I will not account for this notion in the present context, since my concern lies with Bentham’s core argument for democracy (as popular control of functionaries), not with his entire political theory.

²¹ Maximizing both legal and moral responsibility presupposes a certain amount of “publicity” both in respect to the acts of the functionaries and in respect to the people’s opinions. Thus, publicity ought to be maximized; but in order to minimize expense, even “frugality” ought to be maximized (1983[1830]:162-3).

control of the people: it is up to them to punish their functionaries by choosing whether they should be dislocated from office (or remain), legally tried (or absolved), or publically libelled (or praised). In addition, the people elect their functionaries, thus singling out the individuals which may be placed within this incentive structure in the first place. Thus, these are the acts through which the people enact the incentive system, which is to employ their constitutive power.

On top of the functionaries' "moral aptitude", as provided by the incentive structure, they must be equipped with "appropriate intellectual aptitude" and "appropriate active aptitude". The former notion concerns their appropriate knowledge and judgment on issues of relevance for their services (1989[1822]a:77-86).²² The latter concerns their willingness and capability to perform the necessary services (ibid:87-94).²³ Comparing the aptitudes, it must be pointed out that Bentham deems appropriate moral aptitude more important than appropriate intellectual aptitude, since a functionary equipped with the latter but not the former would be capable of achieving considerably more mischief, i.e. detriment to the universal interest, than a functionary equipped vice versa (1989[1822]b:139; 144).

However, since both intellectual and active aptitude solely concern what is expected of the functionaries, and hence, the lack of which a functionary would be punished for by the people, it will be sufficient for our discussion to incorporate them within the incentive structure controlled by all the members of the community.

In the light of all these securities for functionaries, one might wonder whether there would be any need for securities concerning the people's actions. However, Bentham denies this: whereas a functionary is morally inapt in proportion to his disposition to sacrifice the universal interest to his particular interest, and hence must be subjected to the "strictest limits"

²² In order to secure appropriate intellectual aptitude, Bentham suggests demanding subordinated functionaries (i.e. administrative and judiciary staff) to undergo public examination on such issues, allowing "the force of the Tribunal of Public Opinion [to] be made to bear upon the whole process with the maximum of its force" (1989[1822]a:81). It remains unclear if even functionaries within the legislature (i.e. those directly elected by the people) must be put to the test. Bentham is quite explicit in demanding the former to be tested, but not the latter. Some commentators have read into his account even this demand (Rosen 1983:198, who refers to Thomas Peardon), while admitting that it is never explicitly stated in Bentham's published works. However, Rosen quotes a fragment from 1826, which was neither included in the *Constitutional Code* nor published elsewhere, where such an examination is anticipated as a possible future scenario for electable functionaries (ibid:199).

²³ The means are firstly, compulsory attendance in all functionary meetings, and secondly, minimizing the functionaries' salary by making applicants bid for the lowest accepted salary in a public auction (the latter concerns subordinate functionaries rather than elected; besides minimizing expense for government, Bentham assumes such an auction to bring forth only those really interested in and devoted to the job).

(1989[1822]b:134) or “checks” in place of limits (1983[1830]:42), there is no such disposition in the people (as a whole), since their particular interests constitute the universal interest. Thus, the people’s set of possible action alternatives (Bentham speaks of the people’s “power”) “needs no limits: no limits that could be applied to it could have any tendency to secure to the exercise given to it the most perfect conduciveness to its end” (1989[1822]b:134).²⁴ There is, however, a necessary condition for allowing/ensuring! the people to actually vote according to their own particular interest, instead of someone else’s, due to (hope for) reward or (fear of) punishment: the “*freedom of suffrage*” given by the secret ballot (1962[1817]:453).

If the sinister sacrifice ever should take place at the hands of the people, Bentham claims, the sole reason is that they lack intellectual aptitude. This might be rectified in part by giving people correct and relevant information, and by limiting suffrage to literate individuals of mature age, i.e. to those who have some capability to judge the functionaries – hence the term ‘virtual’ in his slogan “*virtual universality of suffrage*” (1989[1822]b:127-8; 1962[1817]:452).²⁵

Active aptitude, lastly, is only demanded for in a functionary, not in the people (1989[1822]b:142n). Bentham’s reasoning here can be assumed to trail the following lines: the functionary’s willingness and capability to perform the necessary services are necessary conditions for promoting the people’s interest, which is just what is expected of functionaries, while no analogous expectation exists for the people as electors. Of course, this is a controversial claim which we might need to reconsider below.

To sum up: the upshot of Bentham’s argument is that the only form of government which can guarantee the identification of interests for the functionaries, while at the same time being practicable, is a form of government which places the functionaries under the control of those whose interests constitute the universal interest. Representative democracy satisfies these constraints. (1989[1822]a:26; 113.)

²⁴ However, as Rosen (1983:47-8) argues, it might be claimed that there are “functional limitations” to the community members’ power since they can only elect and dismiss their functionaries (and decide to submit them to a legal trial) – but to claim that this forestalls us from attributing “unlimited sovereign power [to] the people” seems rather misleading, when seen in light of Bentham’s own statements.

²⁵ For Bentham’s normative arguments for female suffrage – and his pragmatic reasons for not advocating a corresponding constitutional reform – see his (1989[1822]a:97-100). We can here neglect any such pragmatic reasons and allow for universal suffrage limited solely by requirements of maturity and literacy.

So, what would such a representative democracy look like as a political system? Accounting for the entire detailed system Bentham proposes would in our present context not only be close to impossible, but also obscure rather than illuminate matters.²⁶ Instead, I will in Part 2 of this project sketch a simplified Benthamite model of representative democracy which is sufficient for his argument to work. In Part 3, I will deal with an interpretation of Bentham's notion of a deputy, which may constitute an objection to my interpretation of Bentham and the derived Benthamite model.

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²⁶ For a short summary of the institutions of Bentham's democratic government, see Rosen (1983:130-167).

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